

REPORT OF  
THE INDEPENDENT MONITOR  
FOR THE  
DETROIT POLICE DEPARTMENT



REPORT FOR THE QUARTER ENDING  
AUGUST 31, 2007  
ISSUED OCTOBER 15, 2007

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## **EXECUTIVE SUMMARY**

On June 12, 2003, the United States Department of Justice (DOJ) and the City of Detroit (City) (collectively, the parties) filed two Consent Judgments with the United States District Court for the Eastern District of Michigan (Court).<sup>1</sup> The Consent Judgments were negotiated and agreed to by the parties. On the same date, the parties filed a motion indicating the joint selection of an Independent Monitor, subject to the Court's approval, to "review and report on the City and the DPD's [Detroit Police Department's] implementation"<sup>2</sup> of the Consent Judgments. On July 18, 2003,<sup>3</sup> the Court entered both Consent Judgments. On July 23, 2003, after hearing testimony concerning qualifications, the Honorable Julian A. Cook, Jr., U.S. District Court Judge, appointed Sheryl Robinson Wood, with the assistance of Kroll, Inc., as the Independent Monitor in this matter. This is the sixteenth quarterly report of the Independent Monitor.<sup>4</sup>

The two Consent Judgments contain a total of 205 substantive paragraphs and subparagraphs with which the City and the DPD must substantially comply, 131 from the UOF CJ and 74 from the COC CJ.<sup>5</sup> The City and the DPD have achieved compliance with the policy components of the vast majority of paragraphs in both Consent Judgments, a significant accomplishment.<sup>6</sup> There are a number of paragraphs that are "policy only" paragraphs with which the City and the DPD will remain in compliance unless a revision is made that does not meet the terms of the Consent Judgments.<sup>7</sup> These 13 compliant "policy only" paragraphs are: U14-17, U19, U20, U42, U44, U46-47, U52, U54, and U56. There are also several paragraphs that require the City and the DPD to take a specific action and, once compliant, these paragraphs will generally remain in compliance; the DPD has complied with 11 such paragraphs or subparagraphs: U82-84; U88a, b d, and e; C22; C34; C44; and C46. Significantly, the DPD has been in overall

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<sup>1</sup> The two judgments are the Use of Force and Arrest and Witness Detention Consent Judgment (UOF CJ) and the Conditions of Confinement Consent Judgment (COC CJ).

<sup>2</sup> UOF CJ at paragraph U124 (hereinafter UOF CJ paragraphs will be referenced by "U"). COC CJ at paragraph C79 (hereinafter COC CJ paragraphs will be referenced by "C").

<sup>3</sup> The "effective date" of the Consent Judgments.

<sup>4</sup> The Monitor's quarterly reports may be found on the Internet at [www.kroll.com/detroit](http://www.kroll.com/detroit).

<sup>5</sup> There were originally 177 numbered paragraphs from the UOF CJ and COC CJ that were considered to be subject to monitoring. After adjusting for those paragraphs that are no longer being monitored on a regularly scheduled basis (for example, the monitoring of paragraphs U139 and C94) and paragraphs that the Monitor has separated out into subparagraphs for ease of analysis and/or reporting (paragraphs U62 and U67, for example), the total number of paragraphs and subparagraphs being monitored currently stands at 205. These paragraphs and subparagraphs are identified in the Report Card attached as Appendix B to this report.

<sup>6</sup> These paragraphs are identified in the comments column of the attached Report Card. Pursuant to paragraphs U133 and C88 and various other paragraphs, these paragraphs also require implementation, which must also be accomplished for the DPD to achieve overall substantial compliance.

<sup>7</sup> For these "policy only" paragraphs, implementation is separately evaluated under another substantive paragraph.

compliance for two substantive quarters with 24 paragraphs or subparagraphs of the Consent Judgments.<sup>8</sup>

Each quarter, the Monitor examines a certain number of substantive paragraphs and subparagraphs. During the sixteenth quarter, which ended on August 31, 2007, the Monitor examined a total of 96 paragraphs or subparagraphs (53 paragraphs or subparagraphs of the UOF CJ and 43 paragraphs or subparagraphs of the COC CJ). Of these, the City and the DPD are in compliance with 18, in partial compliance<sup>9</sup> with 1, and are not yet in compliance with 60; the Monitor did not complete its evaluation<sup>10</sup> of 11 paragraphs or subparagraphs, and has withheld a determination of compliance with 6 paragraphs or subparagraphs.<sup>11</sup> The Monitor notes that the DPD has made notable progress toward achieving compliance with one of the paragraphs that the Monitor concluded was not yet in compliance.<sup>12</sup>

As described above, overall, the Monitor is assessing the City and DPD's compliance with 205 paragraphs and subparagraphs, 131 from the UOF CJ and 74 from the COC CJ. The City and the DPD are currently in compliance with 55 of these paragraphs and subparagraphs, 36 from the

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<sup>8</sup> These paragraphs and subparagraphs – U49, U57, U62b, U62c, U62d, U63, U66, U71, U78d, U82, U99, U105, U110, C20, C34, C39, C42a, C42b, C43, C45, C61, C63d, C65c and C70 – are substantive paragraphs that are on a regular and periodic review schedule; this list does not include “policy only” paragraphs and other paragraphs and subparagraphs with which the DPD will generally remain in compliance once compliance is achieved. Of these 24 paragraphs, the Monitor found six in compliance for the two consecutive review quarters for the first time during the current review period.

<sup>9</sup> Going forward, for quantifiable findings, the Monitor will generally find that the DPD has achieved partial compliance where the overall compliance rate is greater than 80% for the implementation component of a paragraph. The new finding of partial compliance and the terms describing progress are more fully explained in Section III of the Introduction of this report.

<sup>10</sup> The paragraphs for which the Monitor has not yet completed its evaluation are generally “implementation” paragraphs, for which the DPD has now complied with the related policy requirements. In these instances, the Monitor's testing of implementation is currently taking place and has not yet been completed. There are varying reasons why the assessments have not yet been completed, including the dates documents were requested and/or submitted and the availability of information relevant to making the assessment. In addition, the Monitor times its reviews of certain topics to coincide with its review of DPD audits that cover those topics; the Monitor will generally defer its assessment of compliance with the topics if its review of the related audit has not been completed.

<sup>11</sup> For each of these paragraphs, the Monitor's review and findings as of the end of the quarter are included in this report. The Monitor is mindful that this report is issued some 45 days after the end of the quarter. Therefore, for paragraphs assessed during the current quarter, the Monitor will make every effort to mention significant developments that occurred after the end of the quarter in footnotes throughout the report. For those paragraphs that were not assessed during the current quarter, developments that occurred during the current quarter or after the quarter's end will generally be fully reported on in the next quarter in which the applicable paragraph is under review.

<sup>12</sup> Paragraph U104 (guidelines for disciplinary process). Going forward, for quantifiable findings, the Monitor will generally report that the DPD has made significant progress where the overall compliance rate is greater than 66% to 80% for the implementation component of a paragraph. The Monitor will report notable progress where the overall compliance rate is greater than 50% to 66% for the implementation component of a paragraph. The new finding of partial compliance and the terms describing progress are more fully explained in Section III of the Introduction of this report.

UOF CJ and 19 from the COC CJ. In addition, the City and the DPD are in partial compliance with one additional paragraph from the UOF CJ.

#### *Use of Force Paragraphs*

During the current quarter, the Monitor assessed the DPD's compliance with UOF CJ requirements regarding the use of firearms, an intermediate force device, and chemical spray. The Monitor found that the DPD remains in compliance with all policy requirements related to each of these areas. The Monitor further found that the DPD is effectively implementing the requirements that prohibit officers from firing at or from a moving vehicle and from intentionally placing themselves in the path of a moving vehicle. However, the Monitor found that the DPD is not yet implementing requirements regarding firearms re-qualification, nor is it complying with implementation requirements regarding the intermediate force device, as training on the selected device, the PR-24, has taken place for only 22.3% of the Department. Lastly, the Monitor withheld its determination of the DPD's compliance with the implementation of its chemical spray policy, pending the Monitor's completion of its review of incidents identified in the *Use of Force Investigations Audit* submitted by the DPD on August 31, 2007.

#### *Arrest and Detention Paragraphs*

The Monitor assessed the Department's compliance with several UOF CJ requirements regarding arrest and detention. The Monitor found that the DPD remains in compliance with the policy requirements of the paragraphs assessed, and had varying degrees of success in complying with the implementation requirements of the paragraphs. The DPD remains in compliance with the requirement to obtain a court order prior to taking a material witness into custody and to document each material witness on an auditable form and achieved partial compliance with the requirement that all arrestees be presented for prompt judicial review or be released. However, the Monitor found that the DPD has taken a step backwards in connection with warrant requests. The Department's compliance rate for warrant requests to be submitted within 24 hours of an arrest has decreased from the previous assessment, and the DPD is no longer in compliance with the requirement to document on an auditable form all instances of late requests for arraignment warrants and late arraignments. The Monitor also found that the DPD is not yet in compliance with requirements to document each instance in which a hold is not processed within twenty-four hours and to document all violations of the DPD's restriction policy by the end of the shift in which the violation occurred. Lastly, the Monitor found that the DPD has not yet complied with the requirement that district and specialized unit Commanders review in writing all reported violations of the DPD's Prompt Judicial Review, Holds, Restrictions, and Material Witness Detention policies.

#### *Audit Paragraphs*

During this quarter, the Monitor completed its review of the two UOF CJ required audits submitted by the DPD's Audit Team on April 14, 2007, the *Arrest Audit* and the *Custodial Detention Practices Audit*, and four of the seven audits submitted on July 31, 2007, the *Use of Force in Holding Cells Investigations Audit*, the *Detainee Safety Programs and Policies Audit*,

the *Environmental Health and Safety Audit* and the *Food Services Audit*. The Monitor's reviews of the other three audits submitted on July 31, 2007 are in progress and should be completed early during the quarter ending November 30, 2007. The Monitor's reviews of the four UOF CJ required audits submitted on August 31, 2007 are also in progress.

The DPD's Audit Team found that the Department was not yet in compliance with 48 of the 59 paragraphs tested in these 13 audits, which is consistent with the Monitor's findings for these paragraphs, with only three exceptions related to "policy only" paragraphs.<sup>13</sup>

In its evaluation of the quality of these audits, the Monitor found that the *Custodial Detention Practices*, the *Use of Force in Holding Cells Investigations*, the *Environmental Health and Safety* and the *Food Services Audits* were in compliance. The *Arrest* and *Detainee Safety Programs and Policies Audits* were not compliant audits, primarily because the DPD Audit Team's evaluation or reporting of significant issues was either inadequate or incorrect. Nonetheless, the Monitor found that the quality of these audits was improved compared to the previous audits of these topic submitted by the DPD.

The Monitor notes that members of the DPD's Holding Cell Compliance Committee (HCCC) were sufficiently involved in the audit fieldwork and report review of the COC CJ audits evaluated this quarter. Although the HCCC and Audit Team did not submit two of the audits required to be submitted, the HCCC and Audit Team did submit 13 audits over a four-month time period. This represents a tremendous amount of effort on the part of HCCC and Audit Team members. The Monitor also commends the DPD Audit Team for its continued improvements to the quality of its audits and for achieving compliance in four of the six audits evaluated by the Monitor.

In regard to the DPD's follow-up on audit recommendations, the DPD has begun to implement processes designed to examine each of the audit recommendations for feasibility and appropriateness in an effort to further the DPD towards compliance with both Consent Judgments. The Monitor will assess the quality of these processes and associated documentation during the quarter ending November 30, 2007.

#### *Risk Management Paragraphs*

Although the DPD's risk management database, the Management Awareness System, is not yet fully developed or operational, the DPD is on schedule to meet deadlines outlined in the agreement reached between the DOJ and the DPD that was described in our previous report, and the DPD has now complied with the requirement that the system be organized into modules. Nevertheless, the Monitor found that the DPD was not yet in compliance with several paragraphs related to the system, as the original deadlines contained in the UOF CJ remain in effect for

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<sup>13</sup> The Monitor has determined that paragraphs U37, U42 and U44 are "policy-only paragraphs," and has concluded that the DPD is in compliance with them based on the creation of the related policies. The Audit Team concluded that the DPD was in non-compliance due to the lack of implementation of those policies.

purposes of assessing compliance. According to the DPD, the Interim Risk Management System (IMAS) is operational and 72% of supervisors have now been trained on the system. As more supervisors are trained, the Monitor will begin testing the DPD's implementation of the IMAS in future quarters.

The Monitor also assessed compliance with Consent Judgment requirements regarding scout car video recording equipment and videotapes. Requirements assessed involved revisions of and augmentations to policy on video cameras, to include specific requirements regarding the installation and use of video cameras in patrol cars; supervisory review of videotapes; and the retention and preservation of videotapes. Also addressed were the review of scout car camera videotapes for training and integrity purposes; random surveys to review the operability of scout car video recording equipment; and the DPD's repair or replacement of non-functioning video cameras. The Monitor found that the DPD remains in compliance with the policy requirements but is not yet in compliance with the implementation requirements of each of these provisions. However, the Monitor commends the DPD for continuing to increase the number of patrol cars with operable cameras.

The Monitor found that the DPD had complied with the requirements contained in two of the three UOF CJ paragraphs addressing the imposition of discipline: one paragraph that requires the City to ensure that adequate resources are provided to eliminate the backlog of disciplinary cases and that all disciplinary matters are resolved as soon as reasonably possible and another paragraph that requires the DPD to create a disciplinary matrix that includes a number of specified provisions. The Monitor found that the DPD is not yet in compliance with the third paragraph that addressed discipline, which requires the DPD to schedule disciplinary hearings, trials, and appeals at appropriately frequent intervals to prevent a disciplinary backlog from developing. However, the Monitor did note that the DPD made notable progress towards achieving compliance with the requirements of the paragraph.

### *Training Paragraphs*

The Monitor found that the DPD is not yet in compliance with UOF CJ training requirements scheduled for review this quarter, including Custodial Detention, Supervisory Training, Leadership and Command Accountability Training,<sup>14</sup> and Investigator Training, as the DPD had yet to submit finalized lesson plans that meet the specific requirements for these areas. During this quarter, the DPD re-submitted its *Use of Force Lesson Plan* on August 14, 2007.<sup>15</sup> The Monitor also found that the DPD is not yet in compliance with the specific training requirements included in the COC CJ, as the DPD is currently in the process of revising the *Detention Officer Training Lesson Plan*. The DPD previously re-submitted its Field Training Officer Protocol, for which it had received conditional approval from the DOJ, and is awaiting feedback from the DOJ as this paragraph is subject to DOJ approval.

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<sup>14</sup> On September 1, 2007, one day after the end of this quarter, the DPD submitted the *Supervisory Leadership and Accountability Lesson Plan*. The Monitor provided written feedback to the DPD on September 30, 2007.

<sup>15</sup> The Monitor provided feedback on this lesson plan on various dates in September.

### *COC CJ Holding Cell Paragraphs*

During the current quarter, the Monitor assessed the DPD's compliance with COC CJ requirements regarding prisoner safety policies, environmental health and safety policies, food service policies, and the availability of personal hygiene items.

The Monitor relied upon the DPD's *Detainee Safety Programs Audit*, submitted on July 31, 2007, supplemented by its own onsite inspections of all DPD buildings containing holding cells, to assess compliance with requirements regarding the development and implementation of prisoner safety policies for all facilities that maintain holding cells. The Monitor and the DPD's Audit Team concluded that the DPD complied with the requirement to provide continual direct on-site remote observation of all observation cells that are occupied, but had not yet achieved compliance with most other requirements related to prisoner safety policies.

The Monitor relied upon the DPD's *Environmental Health and Safety Audit*, submitted on July 31, 2007, supplemented by its own onsite inspections of all DPD buildings containing holding cells, to assess compliance with requirements regarding the development and implementation of environmental health and safety policies for all facilities that maintain holding cells. The Monitor and the DPD's Audit Team concluded that the DPD complied with most of the requirements in this section of the COC CJ, including those involving the cleanliness of holding cells; adequate heating and ventilation for all buildings containing holding cells; the repair of broken or malfunctioning lighting, toilets, sinks and windows in holding cells and observation cells; and prisoner access to toilets and potable water. The Monitor and the Audit Team determined that the DPD remained in compliance with the policy requirement but has not yet complied with the implementation requirements related to cleaning and maintenance of all holding cells. The failure to comply was primarily the result of the unavailability of cleaning and maintenance logs, which are required to provide documented evidence that the relevant policies are being implemented.

The Monitor relied upon the DPD's *Food Service Audit*, submitted on July 31, 2007, supplemented by its own onsite inspections of all DPD buildings containing holding cells, to assess compliance with requirements regarding the development and implementation of food service policies for all facilities that maintain holding cells, as well requirements regarding the provision of personal hygiene item to detainees. The Monitor and the DPD's Audit Team concluded that the DPD complied with requirements regarding the provision of personal hygiene items and that the DPD remained in compliance with the food service policy requirements. However, the Monitor and the Audit Team found that the DPD is not yet in compliance with the implementation requirements related to the food service policies.

**REPORT CONTENTS:**

**SECTION ONE: INTRODUCTION.....1**

- I. BACKGROUND .....1**
- II. MONITOR’S ROLE.....2**
- III. EFFORTS TOWARD COMPLIANCE .....2**
- IV. METHODOLOGIES .....4**
- V. REPORT CARD .....5**
- VI. MONITOR’S PLEDGE.....5**

**SECTION TWO: COMPLIANCE ASSESSMENTS - THE USE OF FORCE AND  
ARREST AND WITNESS DETENTION CONSENT JUDGMENT .....6**

- I. USE OF FORCE POLICY.....6**
  - A. General Use of Force Policies.....6
  - B. Use of Firearms Policy.....6
  - C. Intermediate Force Device Policy.....8
  - D. Chemical Spray Policy.....9
- II. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW .....12**
  - A. General Investigations of Police Action .....12
  - B. UOF and Prisoner Injury Investigations .....12
  - C. Review of Critical Firearms Discharges and In-Custody Deaths .....12
- III. ARREST AND DETENTION POLICIES AND PRACTICES.....13**
  - A. Arrest Policies.....13
  - B. Investigatory Stop Policies .....13
  - C. Witness Identification and Questioning Policies .....14
  - D. Prompt Judicial Review Policies .....14
  - E. Hold Policies.....17
  - F. Restriction Policies .....18
  - G. Material Witness Policies .....19

H. Documentation of Custodial Detention .....	20
I. Command Notification.....	20
<b>IV. EXTERNAL COMPLAINTS .....</b>	<b>22</b>
A. Intake and Tracking .....	22
B. External Complaint Investigations.....	22
<b>V. GENERAL POLICIES.....</b>	<b>23</b>
<b>VI. MANAGEMENT AND SUPERVISION .....</b>	<b>28</b>
A. Risk Management Database.....	30
B. Performance Evaluation System.....	33
C. Oversight.....	34
D. Use of Video Cameras .....	43
E. Discipline .....	45
<b>VII. TRAINING .....</b>	<b>49</b>
A. Oversight and Development.....	49
B. Use of Force Training .....	49
C. Firearms Training.....	49
D. Arrest and Police-Citizen Interaction Training.....	50
E. Custodial Detention Training.....	50
F. Supervisory Training .....	51
G. Investigator Training.....	53
H. Field Training.....	55
<b>VIII. MONITORING, REPORTING, AND IMPLEMENTATION.....</b>	<b>56</b>

**SECTION THREE: COMPLIANCE ASSESSMENTS - THE CONDITIONS OF CONFINEMENT CONSENT JUDGMENT .....57**

**I. FIRE SAFETY POLICIES .....57**

**II. EMERGENCY PREPAREDNESS POLICIES .....58**

**III. MEDICAL AND MENTAL HEALTH CARE POLICIES .....58**

**V. PRISONER SAFETY POLICIES .....59**

**V. ENVIRONMENTAL HEALTH AND SAFETY POLICIES .....63**

**VI. POLICIES CONCERNING PERSONS WITH DISABILITIES .....67**

**VII. FOOD SERVICE POLICIES .....67**

**VIII. PERSONAL HYGIENE POLICIES.....71**

**IX. USE OF FORCE AND RESTRAINTS POLICIES .....73**

**X. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW.....75**

**XI. EXTERNAL COMPLAINTS .....78**

**XII. GENERAL POLICIES.....79**

**XIII. MANAGEMENT AND SUPERVISION .....79**

**XIV. TRAINING .....93**

**XV. MONITORING AND REPORTING .....95**

**CONCLUSION.....96**

APPENDICES:

- A. Acronyms Frequently Utilized in Quarterly Reports Issued by the Independent Monitor
- B. “Report Card” Summarizing the Monitor’s Evaluation of Compliance with the Consent Judgments as of the Quarter Ending August 31, 2007

## SECTION ONE: INTRODUCTION

### I. BACKGROUND

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On June 12, 2003, the DOJ and the City filed two Consent Judgments with the United States District Court for the Eastern District of Michigan. The Consent Judgments were negotiated and agreed to by the parties. On the same date, the parties filed a motion indicating the joint selection of an Independent Monitor, subject to the Court's approval, to "review and report on the City and the DPD's implementation" of the Consent Judgments. On July 18, 2003, the Court entered both Consent Judgments. On July 23, 2003, after hearing testimony concerning qualifications, the Honorable Julian A. Cook, Jr., U.S. District Court Judge, appointed Sheryl Robinson Wood, with the assistance of Kroll, Inc.,<sup>16</sup> as the Independent Monitor in this matter. This is the sixteenth report of the Independent Monitor.

In the first quarterly report, for the quarter ending November 30, 2003, the Monitor<sup>17</sup> outlined the history of the DOJ investigation, the Technical Assistance (TA) letters and the DPD's reform efforts. The Monitor also summarized the complaint filed against the City and the DPD and the overall content of the Consent Judgments.<sup>18</sup> The Monitor's duties and reporting requirements were also described.

As the Consent Judgments require that the DPD achieve and maintain substantial compliance for a specified period of time,<sup>19</sup> the Monitor will review the paragraphs on a periodic schedule over the life of the Consent Judgments. The paragraphs that were scheduled for review during the sixteenth quarter, which ended on August 31, 2007, are assessed in this report.<sup>20</sup>

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<sup>16</sup> The primary members of the Monitoring Team are Joseph Buczek, Jerry Clayton, Penny Cookson, Hazel de Burgh, Ronald Filak, Thomas Frazier, Marshall Johnson, Denise Lewis, Terry Penney, and Sherry Woods.

<sup>17</sup> The word "Monitor" will be used to describe both the Monitor and the Monitoring Team throughout this report.

<sup>18</sup> Complaint, Case no. 03-72258. The complaint, Consent Judgments and TA letters are publicly available at [http://www.usdoj.gov/crt/split/documents/dpd/detroit\\_cover\\_2.html](http://www.usdoj.gov/crt/split/documents/dpd/detroit_cover_2.html).

<sup>19</sup> Non-compliance with mere technicalities, or temporary failure to comply during a period of otherwise sustained compliance, shall not constitute failure to maintain substantial compliance. At the same time, temporary compliance during a period of otherwise sustained noncompliance shall not constitute substantial compliance. Paragraphs U149 and C106.

<sup>20</sup> As previously mentioned, for the paragraphs under review for this quarter, the Monitor makes every effort to report on significant matters that have taken place after the end of the quarter, although this is not possible in every instance. These occurrences appear in footnotes throughout the report.

## II. MONITOR'S ROLE

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The Monitor's role is to conduct compliance assessments,<sup>21</sup> make recommendations, provide TA and report on the DPD's progress toward substantial compliance with the Consent Judgments on a quarterly basis. The Monitor carries out this role with a healthy respect for the critical role the Department plays in enforcing the law and the significant risks taken by DPD officers each day. The Consent Judgments, which are orders of the Court, are meant to improve the overall policing in the City of Detroit by remedying the unconstitutional conduct alleged by the DOJ in its complaint filed against the City and the DPD. The Consent Judgments can only be modified by court order.

## III. EFFORTS TOWARD COMPLIANCE

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During the sixteenth quarter, the Monitor continued to test the DPD's implementation of the policies, to evaluate whether training has taken place and to review audits conducted by the DPD's Audit Team (AT). This quarter, of the paragraphs that were scheduled for evaluation, the Monitor found the DPD to be compliant with paragraphs in the following areas: the prohibition of firing at moving vehicles; the requirement for obtaining a court order for material witnesses; the regular and periodic review of DPD policies; the modular development of the Management Awareness System (MAS); the *Custodial Detention Practices Audit*; the elimination of the backlog of disciplinary matters and the implementation of the disciplinary matrix; the provision of suicide garb; the removal of suicide hazards; the direct observation of holding cells; the cleanliness of cells; the proper ventilation of cells; the repair of cells; the provision of reasonable access to toilets and potable water; the availability of personal hygiene items; the *Use of Force in Holding Cells Audit*; the Holding Cell Compliance Committee (HCCC) *Environmental Health and Safety Audit*; and the HCCC *Food Service Audit*. In addition, the DPD achieved partial compliance with the implementation of the prompt judicial review requirement that arraignments occur within 48 hours and made notable progress in its effort to comply with the requirement to schedule disciplinary hearings, trials, and appeals at appropriately frequent intervals to prevent a disciplinary backlog from developing, including the establishment of guidelines dictating the maximum period of time that should elapse between each stage of the disciplinary process..<sup>22</sup>

It is the Monitor's understanding that the City and the DPD are now moving in the direction of building a holding cell facility as opposed to retrofitting the holding cells in the districts. The Monitor will provide more information on the proposed facility as it becomes publicly available.

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<sup>21</sup> Paragraphs U138 and C93 require that the Monitor regularly conduct compliance reviews to ensure that the City and the DPD implement and continue to implement all measures required by the Consent Judgments. The Monitor shall, where appropriate, employ sampling techniques to measure compliance.

<sup>22</sup> The terms "partial compliance" and "notable progress" are defined and explained immediately below.

As previously reported, the City filed a motion asking that both Consent Judgments be extended until the year 2011. The court granted the motion to extend both consent judgments in open court, after the end of the quarter, on September 21, 2007. A written order from the court granting the motion is forthcoming.

Also, as reported in a Focus Issue in the Monitor's Report for the Quarter Ending May 31, 2007, the City filed a brief with the Court on May 16, 2007, arguing that 39 paragraphs in the UOF CJ and COC CJ are "policy only" and do not require implementation. The DOJ filed a response to the City's brief on June 27, 2007. The matter was scheduled for a hearing before Magistrate Judge Scheer; after rescheduling, a hearing was supposed to occur on September 17, 2007.

In the meantime, in order to provide a streamlined process for giving the City and the DPD credit for progress made on the road toward achieving substantial compliance, after discussions initiated by the parties, the Monitor has implemented one new finding and two new terms to describe their efforts. The finding is one of partial compliance. For quantitative paragraphs where the DPD continues to make forward movement and its compliance rate is greater than 80% for the implementation component, the Monitor will render a finding of partial compliance. We have incorporated this new finding into our report this quarter for quantitative paragraphs. For non-quantitative paragraphs, which are evaluated primarily based on qualitative rather than quantitative criteria, such as the audit paragraphs, the Monitor will develop criteria to assist in defining the finding of partial compliance. Due to the late date after the quarter ended that this finding was implemented, on September 13, 2007, the Monitor is still in the process of developing such criteria and has not used this finding in this report for non-quantitative paragraphs.

We have also implemented two terms to describe the DPD's progress. The terms are notable progress and significant progress. For quantitative paragraphs, the term notable progress will be used when the DPD has achieved a compliance rate of greater than 50% to 66% for the implementation component of the paragraph. Under the same circumstances, the term significant progress will be used when the compliance rate is greater than 66% to 80% for the implementation component. If the DPD's compliance rate in the implementation component remains the same or decreases, then these terms of progress will not be applicable. For non-quantitative paragraphs, the Monitor will develop criteria to help define these progress terms in the manner described above. We have not implemented these terms for non-quantitative paragraphs during this quarter.

After the Monitor developed this new finding and terms and agreed to implement them, on September 14, 2007, the City withdrew from consideration by the Court its brief arguing that 39 additional paragraphs were "policy only" and did not include implementation requirements.

#### IV. METHODOLOGIES

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The *Methodologies to Aid in Determination of Compliance with the Consent Judgments* (the *Methodologies*) generally outline the methods that will be employed by the Monitor to determine compliance by the City and the DPD with each substantive provision of the Consent Judgments. The Monitor has submitted final copies of the *Methodologies* for both Consent Judgments to the parties. Any future modifications to the *Methodologies* will generally be made on a paragraph-by-paragraph basis.

Under the *Methodologies*, the DPD will generally be assessed as compliant when either a reliable audit has been submitted that concludes compliance or at least 94% compliance is achieved for a statistically valid random sample<sup>23</sup> of incidents from as recent a period as is practicable. As mentioned above, the Monitor is now in the process of implementing a finding of partial compliance under certain circumstances where the overall compliance rate of the implementation component of a paragraph is greater than 80%.

In the course of conducting compliance assessments, among various other activities, the Monitor conducts interviews of various City and DPD personnel and other individuals. It is the Monitor's general practice, unless otherwise noted, to use matrices to ensure that the same general questions and subject matter are covered in interviews and document reviews.

Under certain circumstances, the Monitor may elect to rely on audits submitted by the DPD in assessing compliance with substantive paragraphs of the Consent Judgments. In doing so, the Monitor evaluates the audit to determine if it is compliant with the applicable audit paragraph requirements of the Consent Judgments. If the Monitor determines that the audit is compliant, the Monitor may rely on the audit and adopt all of the audit's findings.

Even if the Monitor determines that an audit is not compliant with the applicable audit paragraph requirements of the Consent Judgments, the Monitor may still rely on some or all of the audit's findings if it is determined that the specific findings are reliable.<sup>24</sup> In addition, the Monitor reserves the right to adopt certain audit findings of non-compliance even in instances in which the Monitor has not determined whether the audit's findings are reliable, as long as the audit's assessment has been supplemented with additional testing by the Monitor.

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<sup>23</sup> If the total population of incidents is so small that the process of selecting a statistically valid random sample would take longer to perform than to evaluate 100% of the incidents in the population, 100% testing will be performed.

<sup>24</sup> As an example, if the audit report and fieldwork were considered reliable related to the substantive paragraphs under review but the audit was considered non-compliant because it failed to address a specific issue unrelated to the substantive paragraph or was submitted late, the Monitor may use all of the audit's findings regarding the substantive provisions of the paragraph(s) even though the audit was considered non-compliant.

## V. REPORT CARD

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As a tool to assist the reader of this report, the Monitor is attaching as Appendix B a “Report Card,” which provides a “snapshot” of the DPD’s compliance with each of the substantive provisions of the Consent Judgments. It also serves as a tool to summarize the DPD’s progress in complying with those provisions. Specifically, the Report Card summarizes the *overall* grade of compliance with each paragraph and subparagraph<sup>25</sup> of the Consent Judgments for the five most recent quarters, including the current quarter, in which compliance has been assessed.<sup>26</sup> The quarter in which the most recent evaluation was made is also indicated, as is the quarter in which the Monitor anticipates conducting the next evaluation of compliance for each paragraph. The next evaluation is estimated based on available information at the date of issuance of this Quarterly Report and accompanying Report Card. These estimated dates are subject to change as information develops and circumstances change.

The findings on the report card are: compliant, not yet evaluated, determination withheld or non-compliant. As described above, the Monitor is implementing the additional finding of partial compliance. Also in the comments section of the report card, the Monitor will add a notation for each paragraph where the DPD has made notable or significant progress under the circumstances described above.

## VI. MONITOR’S PLEDGE

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The Monitor continues to be dedicated to making this process a transparent one, and continues to share the interest of all parties in having the City and DPD achieve substantial compliance with the Consent Judgments in a timely manner.

To that end, we have provided the parties with interim assessments of compliance throughout each quarter, including the quarter ending August 31, 2007. A draft copy of this report was made available to the parties at least ten days prior to final publication in order to provide the parties with an opportunity to identify any factual errors,<sup>27</sup> and to provide the parties with an opportunity to seek clarification on any aspect of compliance articulated in this report.

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<sup>25</sup> Although subparagraphs are often specifically identified in the Consent Judgments, the Monitor has split certain paragraphs that include more than one topic. The purpose of this is to facilitate the future evaluation of and reporting on each sub-topic.

<sup>26</sup> The Monitor emphasizes that the Report Card provides summary information and should be read in conjunction with this report so that the reader may obtain a thorough understanding of the level and nature of the DPD’s compliance with the provisions of the Consent Judgments.

<sup>27</sup> As required by paragraphs U142 and C97.

## **SECTION TWO: COMPLIANCE ASSESSMENTS - THE USE OF FORCE AND ARREST AND WITNESS DETENTION CONSENT JUDGMENT**

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This section contains the Monitor's compliance assessments of the UOF CJ paragraphs scheduled for review during the quarter ending August 31, 2007.

### **I. USE OF FORCE POLICY**

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#### **A. GENERAL USE OF FORCE POLICIES**

This section comprises paragraphs U14-19. The Monitor has found the DPD in compliance with paragraphs U14-17 and U19, which are "policy only" paragraphs. The DPD will remain in compliance with these paragraphs until such time as the policies directly responsive to the paragraphs are revised.<sup>28</sup> The Monitor last assessed the DPD's compliance with paragraph U18 during the quarter ending May 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with paragraph U18 during the quarter ending May 31, 2008.

#### **B. USE OF FIREARMS POLICY**

This section comprises paragraphs U20-23. The Monitor found the DPD in compliance with paragraph U20, which is a "policy-only" paragraph, during the quarter ending August 31, 2006. The DPD will remain in compliance with this paragraph until such time as the policy directly responsive to the paragraph is revised.<sup>29</sup> The Monitor last assessed the DPD's compliance with paragraphs U21-23 during the quarter ending August 31, 2006. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

#### **Paragraphs U21-23 –Firearms Re-qualification; Firearms Policy Regarding Moving Vehicles; Firearms and Ammunition**

Paragraph U21 states that officers who fail to re-qualify shall be relieved of police powers and relinquish immediately all Department-issued firearms. Those officers who fail to re-qualify after

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<sup>28</sup> As with all "policy-only" paragraphs with which the DPD has achieved compliance, any revisions to the policy will trigger an additional assessment by the Monitor. Implementation of the policy is tested under paragraph U43.

<sup>29</sup> Revisions to policy will trigger an additional assessment by the Monitor. The implementation and training requirements associated with the paragraph will be assessed separately under paragraphs U111 and U113.

remedial training within a reasonable time shall be subject to disciplinary action, up to and including a recommendation for termination of employment.

Paragraph U22 requires the firearms policy to prohibit firing at or from a moving vehicle. The policy must also prohibit officers from intentionally placing themselves in the path of a moving vehicle.

Paragraph U23 requires the DPD to identify a limited selection of authorized ammunition and prohibit officers from possessing or using unauthorized firearms or ammunition. The DPD must specify the number of rounds DPD officers shall carry.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U21-23 during the quarter ending August 31, 2006, finding the DPD in compliance with the policy requirements of paragraphs U21-23. The Monitor had not yet evaluated the implementation requirement of paragraph U21, withheld a determination of compliance with the implementation requirement of paragraph U22 and found that the DPD was not yet in compliance with the implementation requirement of paragraph U23.

### *Current Assessment of Compliance*

The DPD has not yet re-submitted its revised *Firearms Tactical Training and Qualification In-Service Lesson Plan*, which contains the firearms training protocol pursuant to paragraph U113, since the Monitor provided written feedback on November 6, 2006 and held meetings to discuss the lesson plan on November 30, 2006 and January 24, 2007. The firearms training protocol is key to the implementation of paragraph U21, since firearms training and qualification must take place in accordance with the protocol before re-qualification can take place under paragraph U21.

Nevertheless, to their credit, the DPD continues to qualify and re-qualify officers and their firearms. In response to a document request, the DPD provided a listing of officers who completed marksmanship training in 2007 and tactical training in 2006. The DPD also provided sign-in sheets for remedial firearms training. However, currently the firing range is closed due to lead clean up which has delayed firearms training, particularly the tactical portion.

With regard to paragraph U22, the DPD has issued a teletype concerning the prohibitions in this paragraph.<sup>30</sup> This information is also in the firearms policy which was previously disseminated. In its Sixteenth Quarter Status Report, the DPD indicated that Force Investigation (FI) has investigated one incident of an officer firing at a moving vehicle during the current annual

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<sup>30</sup> The teletype was issued after the end of the quarter on September 21, 2007.

review period for paragraph U22. This investigation found that the involved officer did violate the policy and is facing subsequent Departmental disciplinary charges. Based on these circumstances, the DPD is effectively implementing the requirements of paragraph U22.

With regard to U23, the Monitor has not yet completed its evaluation of the requirements of this paragraph. The Monitor will complete its evaluation and report on the findings during the Quarter Ending February 29, 2008.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements of paragraphs U21-23. The DPD is not yet in compliance with the implementation requirements of paragraph U21, is in compliance with paragraph U22, and the Monitor has not yet completed its evaluation of paragraph U23.

### C. INTERMEDIATE FORCE DEVICE POLICY

This section comprises paragraph U24. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending August 31, 2006. The Monitor again assessed compliance with these paragraphs during the current quarter. The results of our current assessment follow.

#### *Paragraph U24 – Intermediate Force Device Policy*

Paragraph U24 requires the DPD to select an intermediate force device, which is between chemical spray and firearms on the force continuum, that can be carried by officers at all times while on-duty. The DPD must develop a policy regarding the intermediate force device, incorporate the intermediate force device into the force continuum and train all officers in its use on an annual basis.

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph U24 during the quarter ending August 31, 2006, finding the DPD in compliance with the policy requirements but had not yet evaluated the DPD's compliance with the implementation requirements of the paragraph. The DPD had effectively developed and disseminated TD 04-03 *Use of Force Continuum*, Directive 304.2 *Use of Force* and 304.4 *PR-24 Collapsible Baton*. The DPD re-submitted its roll-out plan for the Department's selected intermediate force device, the PR-24, at the end of that quarter. The DPD continued Train-the-Trainer courses on the PR-24 and began training members using the approved lesson plan.

#### *Current Assessment of Compliance*

With regard to training on the PR-24, in its Sixteenth Quarter Status Report, the DPD indicated that training and re-training of all DPD members continues using the approved *Monadnock PR-*

*24 Collapsible Baton Lesson Plan.* According to the DPD, as of the end of this quarter, 678 out of approximately 3,034 members (22.3%) have received the initial training.

The Monitor has reviewed the PR-24 roll-out plan which was submitted during the last quarter that this paragraph was scheduled for review. The Monitor finds that the roll-out plan discusses training on the PR-24 but does not contain information on procurement or integration which the DPD previously indicated that it would.<sup>31</sup> Many of the Monitor's comments that were provided in November 2005 in response to a previously submitted roll-out plan have not yet been addressed. For example, although the most recently submitted roll-out plan provides an inventory of equipment needed for training, there is no discussion of whether the Department has purchased a sufficient number of PR-24s for distribution to members once training has taken place or how the distribution will be carried out. The previous roll-out plan requested the initial purchase of 2,500 weapons; however, the most recently submitted plan does not address this issue at all.

Based on the foregoing, the Monitor finds that the DPD is in compliance with the policy requirements but not yet in compliance with the implementation requirements of paragraph U24.

#### D. CHEMICAL SPRAY POLICY

This section comprises paragraphs U25-26. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending August 31, 2006. The Monitor again assessed compliance with these paragraphs during the current quarter. The results of our current assessments follow.

##### *Paragraphs U25 and U26 – Chemical Spray Policy; Chemical Spray Prohibition*

Paragraph U25 states that the DPD shall revise its chemical spray policy to require officers to: provide a verbal warning and time to allow the subject to comply prior to the use of chemical spray, unless such warnings would present a danger to the officer or others; provide an opportunity for decontamination to a sprayed subject within twenty minutes of the application of the spray or apprehension of the subject; obtain appropriate medical assistance for sprayed subjects when they complain of continued effects after having been de-contaminated or they indicate that they have a pre-existing medical condition that may be aggravated by chemical spray and if such signs are observed the subject shall be immediately conveyed to a local hospital for professional medical treatment; and obtain the approval of a supervisor any time chemical spray is used against a crowd.

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<sup>31</sup> See Current Assessment of Compliance for paragraph U24 in the Monitor's Report for the Quarter Ending August 31, 2004.

Paragraph U26 requires the DPD to prohibit officers from using chemical spray on a handcuffed individual in a police vehicle. The DPD must also prohibit officers from keeping any sprayed subject in a face down position, in order to avoid positional asphyxia.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U25 and U26 during the quarter ending August 31, 2006, finding the DPD in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraphs. Training had not yet taken place on the requirements of these paragraphs. Furthermore, the Monitor reviewed a sample of auditable forms involving uses of chemical spray and found that the forms were not being fully completed.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraphs U25-26, the Monitor reviewed the incidents included in the *Use of Force in Holding Cells*<sup>32</sup> (*UOFHC Audit*), which was submitted by the DPD on July 31, 2007 to address the requirements of subparagraph C65a. The audit evaluated whether the DPD is complying with various policies and procedures regarding uses of force that occur in holding cells. Some of the policies and procedures addressed by the AT included Directive 304.2, *Use of Force*, Directive 04-7; *Use of Force/Detainee Injuries or Allegations of Injuries Reporting and Investigating*; and Directive 305.4, *Holding Cell Areas*.

This *UOFHC Audit* identified and evaluated a total of eight UOF incidents that occurred from February through June 2007,<sup>33</sup> only one of which involved the use of chemical spray on a prisoner in a holding cell. The Monitor's review of this incident revealed that the DPD adequately implemented the above policies with regard to the use of chemical spray. Specifically, the officers provided a verbal warning prior to using chemical spray, they provided time to allow the subject to comply prior to using the spray, and they decontaminated within 20 minutes of the application of spray.

The Monitor is currently evaluating the DPD's *Use of Force Investigations Audit*, which was submitted on its due date of August 31, 2007 (the last day of this quarter). Based on the limited number of incidents available for review in *UOFHC Audit* population (one), the Monitor will also use incidents identified in the *Use of Force Investigation Audit*, to evaluate the DPD's implementation of paragraphs U25-26. The Monitor will report on those findings in its Report for the Quarter Ending November 30, 2007.

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<sup>32</sup> Refer to the *Current Assessment of Compliance* for subparagraph C65a in this report for the Monitor's evaluation of the *UOFHC Audit*.

<sup>33</sup> For Command Investigations the time period was February through March 2007 and the AT reviewed five investigations; for FI investigations the time period was April through June 2007 and the AT reviewed three investigations.

With regard to training, on August 14, 2007 the DPD submitted its *Use of Force Lesson Plan* to address the requirements of paragraphs U25-26, among others.<sup>34</sup> Training on the specific requirements of the UOF CJ has not yet taken place but will be separately evaluated under paragraph U112.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but withholds a determination of compliance with the implementation requirements of paragraphs U25-26 until the evaluation of relevant incidents is completed.

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<sup>34</sup> The Monitor provided feedback on the UOF LP after the end of the quarter on several dates in September 2007.

## **II. INCIDENT DOCUMENTATION, INVESTIGATION, AND REVIEW**

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This section of the UOF CJ (paragraphs U27-41) requires the DPD to make significant changes to its policies related to general investigations of police action and to investigations of UOF, prisoner injury, critical firearms discharges and in-custody deaths. In addition to various changes in general investigatory procedures, reports and evaluations, the UOF CJ requires that the DPD develop a protocol for compelled statements and develop an auditable form<sup>35</sup> to document any prisoner injury, UOF, allegation of UOF and instance where an officer draws a firearm and acquires a target. The DPD Shooting Team must respond to and investigate all critical firearms discharges and in-custody deaths, and the DPD must develop a protocol for conducting investigations of critical firearms discharges. The DPD's Internal Controls Division (ICD) must investigate a variety of incidents, pursuant to the requirements of the UOF CJ, including all serious UOF (which includes all critical firearm discharges), UOF that cause serious bodily injury, and all in-custody deaths. Finally, the UOF CJ requires the DPD to create a command level force review team that is charged with critically evaluating and reporting on critical firearms discharges and in-custody deaths.

### **A. GENERAL INVESTIGATIONS OF POLICE ACTION**

This section comprises paragraphs U27-33. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2007, and is scheduled to again assess the DPD's compliance with them during the quarter ending November 30, 2007.

### **B. UOF AND PRISONER INJURY INVESTIGATIONS**

This section comprises paragraphs U34-36. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2007, and is scheduled to again assess the DPD's compliance with them during the quarter ending November 30, 2007.

### **C. REVIEW OF CRITICAL FIREARMS DISCHARGES AND IN-CUSTODY DEATHS**

This section comprises paragraphs U37-41. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2007, and is scheduled to again assess the DPD's compliance with them during the quarter ending November 30, 2007.

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<sup>35</sup> The UOF CJ defines an auditable form as a discrete record of the relevant information maintained separate and independent of blotters or other forms maintained by the DPD.

### **III. ARREST AND DETENTION POLICIES AND PRACTICES**

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This section of the UOF CJ (paragraphs U42-60) requires the DPD to make significant changes to its policies, practices and procedures related to arrests, investigatory stops and frisks, witness identification and questioning, the detention of material witnesses, arrestee restrictions, custodial detention, prompt judicial review, holds and command notification regarding arrests and witness detention issues. For many of these areas, the DPD must develop auditable forms to document officer violations of the UOF CJ requirements or to capture certain events.

This section also requires DPD supervisors to conduct reviews of all reported violations and take corrective or non-disciplinary action. Precinct commanders and, if applicable, specialized unit commanders, are required to review within seven days all reported violations of DPD arrest, investigatory stop and frisk, witness identification and questioning policies and all reports of arrests in which an arraignment warrant was not sought, and to review on a daily basis all reported violations of DPD prompt judicial review, holds, restrictions and material witness policies. The Commanders' reviews must include an evaluation of the actions taken to correct the violation and whether any corrective or non-disciplinary action was taken.

#### **A. ARREST POLICIES**

This section comprises paragraphs U42-43. The Monitor found the DPD in compliance with paragraph U42, which is a "policy-only" paragraph, during the quarter ending May 31, 2006. The DPD will remain in compliance with this paragraph until such time as the policy directly responsive to the paragraph is revised.<sup>36</sup> The Monitor last assessed the DPD's compliance with paragraph U43 during the quarter ending May 31, 2007, and is scheduled to again assess the DPD's compliance with the paragraph during the quarter ending November 30, 2007.

#### **B. INVESTIGATORY STOP POLICIES**

This section comprises paragraphs U44-45. The Monitor found the DPD in compliance with paragraph U44, which is a "policy-only" paragraph, during the quarter ending May 31, 2005. The DPD will remain in compliance with this paragraph until such time as the policy directly responsive to the paragraph is revised.<sup>37</sup> The Monitor last assessed the DPD's compliance with

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<sup>36</sup> Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U43.

<sup>37</sup> Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U45.

paragraph U45 during the quarter ending May 31, 2007, and is scheduled to again assess the DPD's compliance with the paragraph during the quarter ending November 30, 2007.

### C. WITNESS IDENTIFICATION AND QUESTIONING POLICIES

This section comprises paragraphs U46-48. The Monitor found the DPD in compliance with paragraphs U46 and U47, which are "policy-only" paragraphs, during the quarter ending May 31, 2006. The DPD will remain in compliance with these paragraphs until such time as the policy directly responsive to the paragraphs is revised.<sup>38</sup> The Monitor last assessed the DPD's compliance with paragraph U48 during the quarter ending May 31, 2007, and is scheduled to again assess the DPD's compliance with the paragraph during the quarter ending November 30, 2007.

### D. PROMPT JUDICIAL REVIEW POLICIES

This section comprises paragraphs U49-51. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

#### **Paragraph U49 – Revision of Policies and Requirements of Arraignment within 48 Hours**

Paragraph U49 requires the DPD to revise its policies to require prompt judicial review, as defined in the UOF CJ, for every person arrested by the DPD. The DPD must develop a timely and systematic process for all arrestees to be presented for prompt judicial review or to be released.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U49 during the quarter ending February 28, 2007, finding the DPD in compliance. The DPD complied with the policy requirements of the paragraph, as it submitted a written description of its "timely and systematic process" for all arrestees to be presented for prompt judicial review that was integrated into its Live Scan detainee processing system. The Monitor also reviewed a sample of 86 arrests, noting that 64 detainees were released prior to arraignment. For the remaining 23 detainees, all but four were presented for arraignment within the prescribed 48-hour period.

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<sup>38</sup> Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U48.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U49 during the current quarter, the Monitor requested and received a listing of all arrests for the period May 1 through December 31, 2007. In total, 4,194 arrests were identified, from which the Monitor selected a random sample of 94 for review.<sup>39</sup> Of the 94 arrests reviewed, 57 detainees were either released prior to arraignment or they were released to another law enforcement agency, and 39 detainees were presented for arraignment. For three arrests in which the detainees were released, the Monitor could not ascertain whether the detainees were released within 48 hours of arrest. For two arrests, although the detainees were released, they remained in custody for nearly 50 hours.<sup>40</sup> In seven instances, the detainees were presented for arraignment after 48 hours had elapsed.<sup>41</sup> This translates into a compliance rate of 87.2% (82 of 94).

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements and the DPD is in partial compliance with the implementation requirements of paragraph U49.

### *Paragraph U50 – Requirement of Warrant Request*

For each arrestee, paragraph U50 requires the DPD to submit to the prosecutor's office, within 24 hours of the arrest, a warrant request for arraignment on the charges underlying the arrest.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U50 during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance. The DPD submitted a written description of its "timely and systematic process" for all arrestees to be presented for prompt judicial review that was integrated into its Live Scan detainee processing system. The Monitor also reviewed a sample of 87 arrests. For 30 of the arrests, the DPD sought a warrant and nine were not submitted within the requisite 24-hour period.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U50 during the current reporting period, the Monitor reviewed the sample of arrests selected to assess compliance with paragraph U49, among other paragraphs. The Monitor determined that the 24-hour rule was not applicable to 48

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<sup>39</sup> The Monitor obtained this sample utilizing a confidence interval of 95%, an error interval of +/-4%, and an expected proportion of success rate of 94%.

<sup>40</sup> In one instance, although the warrant request was submitted within 24 hours, it was denied by the prosecutorial agency; the detainee, nonetheless, remained in custody an additional 36 hours before release.

<sup>41</sup> For the seven detainees, the amount of time that elapsed before arraignment ranged from 49 hours to 75 hours.

of the 94 arrests selected for review, as either the DPD effected the arrest pursuant to an existing warrant or the DPD released the detainee without seeking a warrant request.<sup>42</sup> For the remaining 46 arrests where the requirements of paragraph U50 are applicable, the Monitor determined that warrant requests were not submitted within 24 hours for 16 arrests. This translates into a compliance rate of 65% (30 of 46).<sup>43</sup>

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U50.

### *Paragraph U51 – Documentation of Late Request for Arraignment Warrants and Late Arraignments*

Paragraph U51 requires the DPD to document on an auditable form all instances in which an arraignment warrant is submitted more than 24 hours after the arrest, all instances in which it is not in compliance with the prompt judicial review policy, and all instances in which extraordinary circumstances delayed the arraignment. The documentation must occur by the end of the shift in which there was:

- A failure to request an arraignment warrant within 24 hours;
- A failure to comply with the prompt judicial review policy, or
- An arraignment delayed because of extraordinary circumstances.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U51 during the quarter ending February 27, 2007, finding the DPD in compliance. The DPD submitted a written description of its "timely and systematic process" for all arrestees to be presented for prompt judicial review that was integrated into its Live Scan detainee processing system. The Monitor also reviewed 87 arrests noting an auditable form was required in 13 arrests and completed for 12 arrests.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U51 during the current reporting period, the Monitor reviewed the sample of arrests selected to assess compliance with paragraph U49, among others. Of the 94 arrests selected for review, 18 arrests required an auditable form for either not submitting a warrant request within 24 hours or not presenting the detainee for arraignment within 48 hours, or both. The required auditable form was not completed in six

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<sup>42</sup> In some instances, the underlying charges were minor, not requiring the warrant request.

<sup>43</sup> In the Monitor's last assessment of this paragraph, during the quarter ending February 28, 2007, the DPD achieved a higher compliance rate of 70%.

instances when a warrant request was not submitted within 24 hours; in three additional instances, although an auditable form was completed, it was incorrectly completed with regard to the warrant request. In four of these instances, the auditable form did not address the detainee's presentation for arraignment in excess of the mandated 48-hour period. This translates into an overall compliance rate of 50% (9 of 18).

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U51.

## E. HOLD POLICIES

This section comprises paragraphs U52-53. The Monitor found the DPD in compliance with paragraph U52, which is a "policy-only" paragraph, during the quarter ending February 28, 2006. The DPD will remain in compliance with this paragraph until such time as the policy directly responsive to the paragraph is revised.<sup>44</sup> The Monitor last assessed the DPD's compliance with paragraph U53 during the quarter ending February 28, 2007. The Monitor again assessed the DPD's compliance with paragraph U53 during the current quarter. The results of our current assessment follow.

### *Paragraph U53 – Documentation of All Holds*

Paragraph U53 requires the DPD to document all holds, including the time each hold was identified and the time each hold was cleared. On a daily basis, the DPD must document on an auditable form each instance in which a hold is not processed within twenty-four hours.

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph U53 during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance with the paragraph. The DPD's Office of Civil Rights (OCR) represented that the DPD "cannot provide any supportive documentation that would substantiate the clearing of the selected holds within 24 hours of being identified." This information is integral to assessing the DPD's compliance with the mandates of paragraph U53.

#### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U53 during the current quarter the Monitor requested and received a listing of holds for the period May 24 through May 31, 2007. In total, the DPD identified 213 holds. The Monitor determined that the dates and times of

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<sup>44</sup> Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U53.

identification of the holds were documented for only 70 of the 213 holds. The Monitor could not determine whether the holds were cleared, as the dates and times were not documented. This translates into an overall compliance rate of zero percent.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U53.

## F. RESTRICTION POLICIES

This section comprises paragraphs U54-55. The Monitor found the DPD in compliance with paragraph U54, which is a “policy-only” paragraph, during the quarter ending February 28, 2006. The DPD will remain in compliance with this paragraph until such time as the policy directly responsive to the paragraph is revised.<sup>45</sup> The Monitor last assessed the DPD’s compliance with paragraph U55 during the quarter ending February 28, 2007. The Monitor again assessed the DPD’s compliance with paragraph U55 during the current quarter. The results of our current assessment follow.

### *Paragraph U55 – Documentation of Restrictions*

Paragraph U55 requires that whenever a detainee is restricted from either using the telephone or receiving visitors, such restriction must be documented, reviewed at the time the restriction is placed and re-evaluated, at a minimum, each day in which the restriction remains in effect. All violations of the DPD’s restriction policy must be documented on an auditable form by the end of the shift in which the violation occurred.

### *Background*

The Monitor last assessed the DPD’s compliance with paragraphs U55 during the quarter ending February 28, 2007, at which time the Monitor found that the DPD was not yet in compliance. The Monitor reviewed documentation for 27 detainees with restrictions; for 26 detainees, and the Monitor was unable to determine whether the restrictions were reviewed at the time placed or whether the restrictions were lifted or re-evaluated within 24 hours of being placed.

### *Current Assessment of Compliance*

In order to assess the DPD’s compliance with paragraph U55 during the current quarter, the Monitor requested a listing of all detainees with restrictions for the period December 1, 2006 through May 31, 2007. In response, the DPD indicated that it had identified 86 detainees with restrictions and provided legible photocopies of related auditable forms. For 21 of the first 30

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<sup>45</sup> Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U55.

restrictions reviewed, the Monitor was unable to determine whether the restrictions were reviewed at the time they were placed or whether they were lifted or re-evaluated within 24 hours of being placed.<sup>46</sup> For an additional three restrictions, although the restrictions were lifted in excess of 24 hours, the required auditable form was not generated and completed. This translates into a compliance rate of 20% (6 out of 30).

Based on the foregoing, the Monitor finds that the DPD is not in compliance with paragraph U55.

## G. MATERIAL WITNESS POLICIES

This section comprises paragraphs U56-57. The Monitor found the DPD in compliance with paragraph U56, which is a “policy-only” paragraph, during the quarter ending February 28, 2006. The DPD will remain in compliance with this paragraph until such time as the policy directly responsive to the paragraph is revised.<sup>47</sup> The Monitor last assessed the DPD’s compliance with paragraph U57 during the quarter ending February 28, 2007. The Monitor again assessed the DPD’s compliance with paragraph U57 during the current quarter. The results of our current assessment follow.

### *Paragraph U57 – Requirement to Obtain a Court Order Prior to Taking a Material Witness into custody*

Paragraph U57 requires the DPD to obtain a court order prior to taking a material witness into DPD custody. Each material witness must also be documented on an auditable form with a copy of the court order attached thereto.

#### *Background*

The Monitor last assessed the DPD’s compliance with paragraph U57 during the quarter ending February 28, 2007, at which time the Monitor found the DPD in compliance. The Monitor reviewed supporting documentation for five material witnesses identified by the DPD for the period April 1, 2006 through November 30, 2006. For all five material witnesses, the DPD obtained the required court order prior to detaining the witness and completed the requisite auditable form. The Monitor also reviewed Homicide Detectives’ daily logs for the period November 12 through December 12, 2006 in an attempt to identify unreported material witnesses. No additional material witnesses were found.

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<sup>46</sup> Based on the results of reviewing the first 30 restrictions, the Monitor determined that the DPD was not in compliance with paragraph U55. As a result, the Monitor elected not to review the entire population of 86 restrictions.

<sup>47</sup> Revisions to policy will trigger an additional assessment by the Monitor. Implementation of policy is tested under paragraph U55.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U57 during the current quarter, the Monitor requested a listing of all material witnesses for the period December 1, 2006 through May 31, 2007. The DPD identified nine material witnesses for the period under review. For all nine material witnesses, the DPD provided evidence that court orders were obtained prior to taking the material witnesses into DPD custody. Also, for all nine material witnesses, all required information responsive to paragraph U57 was documented on auditable forms and attached to the court orders.<sup>48</sup>

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U57.

## H. DOCUMENTATION OF CUSTODIAL DETENTION

This section comprises paragraph U58. The Monitor last assessed the DPD's compliance with paragraph U58 during the quarter ending May 31, 2007, and is scheduled to again assess the DPD's compliance with the paragraph during the quarter ending November 30, 2007.

## I. COMMAND NOTIFICATION

This section comprises paragraphs U59-60. The Monitor last assessed the DPD's compliance with paragraph U59 during the quarter ending May 31, 2007, and is scheduled to again assess compliance with the paragraph during the quarter ending November 30, 2007. The Monitor last assessed the DPD's compliance with paragraph U60 during the quarter ending February 28, 2007. The Monitor again assessed the DPD's compliance with the paragraph during the current quarter. The results of our current assessment follow.

### *Paragraph U60 – Daily Reporting Requirements*

Paragraph U60 requires the Commander of each precinct or, if applicable, a specialized unit to review in writing all reported violations of the DPD's Prompt Judicial Review, Holds, Restrictions, and Material Witness Detention policies. Such review must be completed on the day the violation occurs. The Commander must evaluate actions taken to correct the violation and determine whether any corrective or non-disciplinary action was indeed taken.

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<sup>48</sup> As done in prior reporting periods, the Monitor requested access to review Homicide Detective daily activity logs for the period December 1, 2006 through May 31, 2007. The Monitor was unable to complete this review, as the Homicide Section was in the process of moving to a different location and related records were inaccessible. The Monitor will resume its review of daily activity logs during the next regularly scheduled assessment of paragraph U57.

## *Background*

The Monitor last assessed the DPD's compliance with paragraph U60 during the quarter ending February 28, 2007, finding the DPD in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraph. The Monitor determined that there was no documented Commanding Officer (CO) review and evaluation on 39 of 40 auditable forms that required such review and evaluation on the date generated. Additionally, the DPD had no mechanism to track the release time and date of holds and, thus, no mechanism to ensure all required auditable forms are generated and reviewed.

## *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U60 during the current quarter, the Monitor requested and received auditable forms for certain arrests for which a warrant request was not submitted within 24 hours and for certain arrests for which the detainee was not presented for arraignment within 48 hours of arrest. The Monitor also requested and received auditable forms for restrictions placed on detainees and material witnesses.<sup>49</sup> In total, 18 arrests required the generation of an auditable form for either not requesting a warrant within the mandated 24 hour period or not presenting the detainee for arraignment within the mandated 48 hour period. Of these, a total of 12 auditable forms were generated requiring a CO review and evaluation on the date generated. For the remaining six instances an auditable form was not generated.

The Monitor reviewed the auditable forms received and determined that there was no documented CO review and evaluation in nine required instances. In two of the three instances that did have a documented review, although the COs reviewed and completed the auditable forms, their reviews were not completed the same day. Lastly in the one remaining instance, although the CO reviewed and completed the auditable form, the date and time of review were not documented. This translates into a compliance rate of zero percent.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not in compliance with the implementation requirements of paragraph U60.

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<sup>49</sup> Please refer to the Monitor's assessment of compliance for paragraphs U49-U51, U55 and U57, respectively.

## **IV. EXTERNAL COMPLAINTS**

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This section of the UOF CJ (paragraphs U61-69) requires the DPD to revise its policies and procedures regarding the intake, tracking, investigation and review of external complaints. There are specific requirements relative to the roles and responsibilities of the Office of the Chief Investigator (OCI) and the DPD, including the development and implementation of an informational campaign and the review and evaluation of each allegation in an external complaint investigation.<sup>50</sup>

Section IV's introductory section comprises paragraphs U61-63. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2007.

### **A. INTAKE AND TRACKING**

This section comprises paragraphs U64-66. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2007.

### **B. EXTERNAL COMPLAINT INVESTIGATIONS**

This section comprises paragraphs U67-69. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2007.

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<sup>50</sup> The OCI reports to the Board of Police Commissioners (BOPC) and is responsible for conducting external complaint investigations.

## V. GENERAL POLICIES

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This section of the UOF CJ (paragraphs U70-77) requires the DPD to develop, revise, and/or enforce a variety of general policies. The DPD is required to ensure that all terms are clearly defined in policies that it develops, revises, and augments, and to make proposed policy revisions available to the community.

This section also requires the DPD to advise its personnel that taking police action in violation of DPD policy will subject them to discipline, possible criminal prosecution, and/or civil liability. In addition, the DPD must enforce its policies requiring all DPD officers to report misconduct committed by another DPD officer.

The DPD must also revise its policies regarding off-duty officers taking police action, revise its policies regarding prisoners and develop a foot pursuit policy. Finally, the DPD and the City are required to develop a plan for adequate deployment of supervisors in the field.

The Monitor last assessed the DPD's compliance with paragraphs U70 and U71 during the quarter ending August 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2007.

The Monitor last assessed the DPD's compliance with paragraphs U72-77 during the quarter ending February 28, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraphs U72 and U74 – Police Action in Violation of DPD Policy; Officers to Report Misconduct*

Paragraph U72 requires the DPD to advise all officers, including supervisors, that taking police action in violation of DPD policy shall subject officers to discipline, possible criminal prosecution, and/or civil liability.

Paragraph U74 requires the DPD to enforce its policies requiring all DPD officers to report any misconduct committed by another officer, whether committed on- or off-duty.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U72 and U74 during the quarter ending February 28, 2007, finding that the DPD was in compliance with the policy requirements but not yet in compliance with the implementation requirements of these paragraphs.

### *Current Assessment of Compliance*

During the current quarter, the Monitor requested a listing of all training conducted in relation to paragraphs U72 and U74, including any formal classroom training and roll call training. In response to the document request, the DPD provided some training rosters; however, the rosters were for a limited number of personnel, many of the rosters were for subject matter unrelated to the requirements of paragraphs U72 and U74, and copies of relevant materials used or disseminated during the training was not fully provided as requested.<sup>51</sup>

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with implementation requirements of paragraphs U72 and U74.

### *Paragraph U73 – Sergeants in the Field*

Paragraph 73 requires the DPD and the City to develop a plan to ensure regular field deployment of an adequate number of supervisors<sup>52</sup> of patrol units and specialized units that deploy in the field to implement the provisions of this agreement.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U73 during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance. The Monitor reviewed daily attendance records for all 27 District station and specialized unit platoons for the period December 11-13, 2006 and calculated an overall compliance rate of 81%.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph U73 during the current quarter, the Monitor requested daily attendance records for all District station and specialized unit platoons for May 29, 2007. In response, the DPD provided 62 daily attendance records.

The Monitor reviewed all 62 daily attendance records, noting that four patrol platoons and 11 specialized units were deployed with a ratio of officers to a supervisor exceeding eight to one.<sup>53</sup> As a result, the DPD's overall compliance rate was 76% (48 of 62).<sup>54</sup>

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<sup>51</sup> The document request for training materials for paragraphs U74-77 was responded to by the DPD with 88 pages of documents, the majority of which did not include the information that was requested. One district, the Western District, reported that it did not conduct any training on paragraphs U74-77. It is unclear from the remainder of submission whether the other districts conducted training on each of these paragraphs or not.

<sup>52</sup> Paragraph "pp" of the UOF CJ defines a supervisor as a sworn DPD employee at the rank of sergeant or above and non-sworn employees with oversight responsibility for DPD employees.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with the implementation requirements of paragraph U73.

### *Paragraph U75 – Off-Duty Police Action*

Paragraph U75 requires the DPD to revise existing policy regarding off-duty officer police actions. Specifically, off-duty officers are:

- a. required to notify on-duty DPD or local law enforcement officers before taking police action, absent exigent circumstances, so that they may respond with appropriate personnel and resources to handle the problem;
- b. prohibited from carrying or using firearms or taking police action in situations where the officer's performance may be impaired or the officer's ability to take objective action may be compromised; and
- c. required to submit to field sobriety, breathalyser, and/or blood tests if it appears that the officer has consumed alcohol or is otherwise impaired.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U75 during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance. The Monitor had previously determined that the DPD complied with the policy requirements of this paragraph by adequately disseminating Directive 202.1, *Arrests*. However, the DPD had not yet begun training officers on the requirements of the paragraph or the directive's content.

### *Current Assessment of Compliance*

During the current quarter, the Monitor again requested documentation in connection with the DPD's training on the requirements of paragraph U75 and the implementation of relevant policy. In response to the document request, the DPD provided some training rosters; however, the rosters were for a limited number of personnel, many of the rosters were for subject matter unrelated to the requirements of paragraph U75, and copies of relevant materials used or disseminated during the training were not fully provided as requested.

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<sup>53</sup> For seven specialized units, the Monitor noted no supervisory review for the portion of the platoon that was reviewed. For two specialized units, an assessment was not possible, as the hours worked by assigned supervisors were not documented.

<sup>54</sup> As reported in the *Background* section above, the compliance rate was higher during the quarter ending February 28, 2007, when the Monitor last assessed this paragraph.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with the implementation requirements of paragraph U75.

### **Paragraph U76 – Handling of Prisoners**

Paragraph U76 requires the DPD to revise policies regarding prisoners to:

- a. require officers to summon emergency medical services to transport prisoners when the restraints employed indicate the need for medical monitoring;
- b. require officers to utilize appropriate precautions when interacting with a prisoner who demonstrates he or she is recalcitrant or resistant, including summoning additional officers, summoning a supervisor and using appropriate restraints; and
- c. prohibit arresting and transporting officers from accompanying prisoners into the holding cell area.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U76 during the quarter ending February 28, 2007, finding the DPD in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraph. For nine of the 49 arrests selected for review, the DPD was unable to provide documentation demonstrating compliance with subparagraphs a and b of paragraph U76.

### ***Current Assessment of Compliance***

During the current quarter, the Monitor again requested documentation in connection with the DPD's training on the requirements of paragraph U76 and the implementation of relevant policy. In response to the document request, the DPD provided some training rosters; however, the rosters were for a limited number of personnel, many of the rosters were for subject matter unrelated to the requirements of paragraph U76, and copies of relevant materials used or disseminated during the training were not fully provided as requested.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with the implementation requirements of paragraph U76.

### **Paragraph U77 – Foot Pursuit Policy**

Paragraph U77 requires the DPD to develop a foot pursuit policy that, at a minimum:

- a. Requires officers to consider particular factors in determining whether a foot pursuit is appropriate, including the offense committed by the subject, whether the subject is armed, the location, whether more than one officer is available to engage in the pursuit, the proximity of reinforcements, and the ability to apprehend the subject at a later date;
- b. Emphasizes alternatives to foot pursuits, including area containment, surveillance, and obtaining reinforcements;
- c. Emphasizes the danger of pursuing and engaging a subject with a firearm in hand; and
- d. Requires officers to document all foot pursuits that involve a UOF on a separate, auditable form, such as the UOF report.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U77 during the quarter ending February 28, 2007, finding the DPD in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraph. The Monitor requested documentation supporting the DPD's compliance with the training requirements of this paragraph. The DPD responded by indicating that no training has occurred.

### *Current Assessment of Compliance*

During the current quarter, the Monitor requested a listing of any and all training conducted in relation to paragraph U77. In response to the document request, the DPD provided some training rosters; however, the rosters were for a limited number of personnel, many of the rosters were for subject matter unrelated to the requirements of paragraph 77, and copies of relevant materials used or disseminated during the training were not fully provided as requested.

The DPD's response also included an Administrative Message dated March 28, 2007 entitled *Required Documentation for "Foot Pursuits"* to be read at ten consecutive roll calls. The message directed members to fill out a Foot Pursuit Evaluation Form for all foot pursuits and a Use of Force Report form (UF-002) for all foot pursuits that involved a use of force. This message does not fully address the overall training component of paragraph U77.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with the implementation requirements of paragraph U77.

## VI. MANAGEMENT AND SUPERVISION

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This section of the UOF CJ (paragraphs U78-105) requires the DPD to devise a comprehensive risk management plan that will consist of a Risk Management Database, a performance evaluation system and an auditing protocol. The plan must also provide a mechanism for the regular and periodic review of all DPD policies, and for the regular occurrence of meetings of DPD management to share information and evaluate patterns of conduct that could potentially increase the DPD's liability. This section of the UOF CJ also includes requirements in connection with the DPD's use of video cameras, as well as the DPD's policy and practices regarding discipline.

The Monitor last assessed the DPD's compliance with paragraph U78, the introductory paragraph to section VI., during the quarter ending February 28, 2007. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

### *Paragraph U78 – Development of Risk Management Plan*

Paragraph U78 requires the DPD to devise a comprehensive risk management plan, including:

- a. a Risk Management Database (discussed in paragraphs 79-90);
- b. a performance evaluation system (discussed in paragraph 91);
- c. an auditing protocol (discussed in paragraphs 92-99);
- d. regular and periodic review of all DPD policies; and
- e. regular meetings of DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U78 during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance with subparagraphs U78a, c and e and was in compliance with subparagraph U78d.

Regarding subparagraph U78a, during the quarter ending February 28, 2007, the City/DPD and the DOJ finalized a letter outlining the conversion of the Interim Management Awareness System (IMAS) into the Management Awareness System (MAS) without the use of an outside vendor, thereby obviating the need for a request for proposal (RFP). The letter also outlined a course of action, including deadlines to complete the MAS. However, as of the end of that

quarter, the DPD was not yet in compliance with a majority of the paragraphs related to the Risk Management Database.<sup>55</sup>

Regarding subparagraph U78b, the Monitor previously reviewed a sample of evaluations during the Quarter Ending August 31, 2006 to evaluate the DPD's compliance with paragraph U91. The Monitor found that the evaluations were insufficient in addressing the requirements of the paragraph.

Regarding subparagraph U78c, the DPD was not yet in compliance with the majority of the paragraphs related to the auditing protocol.<sup>56</sup>

Regarding subparagraph U78d, the Monitor found that the agendas and minutes from two Policy Focus Group meetings held on April 5, 2006 and August 2, 2006 met the requirements of this subparagraph.

Regarding subparagraph U78e, the Monitor was not provided with information sufficient to evaluate whether the DPD's weekly Senior Management Team meetings met the requirements of subparagraph U78e.

### *Current Assessment of Compliance*

The DPD's risk management database, MAS, is not yet fully developed or operational. However, the parties have been meeting monthly to discuss the DPD's progress toward implementation of the MAS. The DPD has also provided monthly status reports and supporting documentation to the DOJ and the Monitor. As of the end of the quarter, the DPD was on schedule with meeting the requirements of the agreement between the parties outlined above.<sup>57</sup>

Regarding subparagraph U78b, the Monitor has not yet re-evaluated the requirements of paragraph U91. The Monitor will evaluate the requirements of that paragraph during the quarter ending February 29, 2008.

Regarding subparagraph U78c, the DPD is not yet in compliance with the majority of the paragraphs related to the auditing protocol.

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<sup>55</sup> Of the pertinent paragraphs (U79-90), the DPD was in compliance with paragraphs U82-84 and subparagraphs U88a, b, d and e; was not yet in compliance with paragraphs U79-81 and U85-87, subparagraphs U88f and g, and paragraph U89; and, by agreement between the parties, monitoring of subparagraph U88c was discontinued beginning with the quarter ending May 31, 2007.

<sup>56</sup> Of the related audit paragraphs, the DPD is not in compliance with paragraphs U93-97.

<sup>57</sup> The agreement between the parties was fully outlined in the *Current Assessment of Compliance* for paragraph U85 in the Monitor's Report for the Quarter Ending February 28, 2007.

The DPD's Policy Focus Committee continues to meet in order to conduct regular and periodic reviews of all DPD policies pursuant to subparagraph U78d. The Monitor reviewed the minutes from the August 15, 2007 meeting and finds that the committee is fulfilling the requirements of this subparagraph. The Monitor was not able to attend the August 15<sup>th</sup> meeting but hopes to attend the next scheduled meeting and has asked the DPD for the date.

With regard to subparagraph U78e, the DPD is in the process of developing regular meetings of DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD's liability.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with subparagraphs U78a, c and e and is in compliance with subparagraph U78d. The Monitor has not yet re-evaluated the DPD's compliance with subparagraph U78b.

## A. RISK MANAGEMENT DATABASE

This section comprises paragraphs U79-U90. It provides specific requirements relative to the Risk Management Database (hereafter referred to as the Management Awareness System or MAS), including the development and implementation of a new computerized relational database for maintaining, integrating and retrieving data necessary for the supervision and management of the DPD. While the Risk Management Database is being developed, paragraph U89 requires an interim system (IMAS) to be developed and implemented.

The Monitor has previously concluded that the DPD is in compliance with paragraphs U83-84 and subparagraphs U88a, b d, and e, as the DOJ provided the DPD with verbal conditional approval of the Data Input Plan and approved the Review Protocol and the Report Protocol. The DPD will remain in compliance with these provisions until these documents are revised.<sup>58</sup>

The Monitor last assessed the DPD's compliance with paragraphs U79-82 and U86-87 during the quarter ending May 31, 2007.<sup>59</sup> The Monitor is scheduled to again assess the DPD's compliance with these paragraphs and subparagraphs during the quarter ending November 30, 2007.

The Monitor last assessed the DPD's compliance with paragraph U85, subparagraphs U88f and g, and paragraph U89 during the quarter ending February 28, 2007. The Monitor again assessed the DPD's compliance with these paragraphs and subparagraphs during the current quarter. The results of our current assessments follow.

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<sup>58</sup> Revisions to the documents will require additional review and approval by the DOJ and trigger additional compliance assessments by the Monitor.

<sup>59</sup> As reported in the Monitor's Report for the Quarter Ending May 31, 2007, the Monitor discontinued monitoring compliance with subparagraph U88c, which requires the issuance of an RFP, as a result of the DOJ's agreement to allow the DPD to convert the IMAS into the MAS without the use of an outside vendor, thereby obviating the need for a RFP.

### **Paragraph U85 – Risk Management Database Modules**

Paragraph U85 requires the DPD to seek to ensure that the Risk Management Database is created as expeditiously as possible. As part of this effort, the DPD, in consultation with the DOJ, must organize the Risk Management Database into modules in developing the Data Input Plan, the Report Protocol, the Review Protocol and the RFP and in negotiating with contractors, such that difficulties with one aspect of the Risk Management Database do not delay implementation of other modules.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U85 during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance. As described in the *Background* for subparagraph U78a, during the quarter ending February 28, 2007, the parties signed a letter outlining their agreement that the City and the DPD will use internal resources to develop the MAS as of January 24, 2007. On February 23, 2007, the DOJ submitted a letter to the Court outlining its agreement with the City and the DPD that internal resources will be used for the IMAS to MAS conversion and attaching the previously executed agreement.

### ***Current Assessment of Compliance***

As described in the *Current Assessment of Compliance* for paragraph U78, the MAS is not yet fully developed or operational. However, the DPD is on schedule to meet the requirements of the agreement between the parties.<sup>60</sup> The MAS has been organized into modules as required by paragraph U85.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U85.

### **Subparagraph U88f – Beta Version of Risk Management Database**

Subparagraph U88f requires the DPD to have ready for testing a beta version of the risk management database by June 30, 2005. The DOJ and the Monitor shall have the opportunity to participate in testing the beta version using new and historical data and test data created specifically for purposes of checking the risk management database.

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<sup>60</sup> The agreement between the parties was fully outlined in the *Current Assessment of Compliance* for paragraph U85 in the Monitor's Report for the Quarter Ending February 28, 2007.

### *Background*

The Monitor last assessed the DPD's compliance with subparagraph U88f during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance for the reasons described in the *Background* for paragraph U85.

### *Current Assessment of Compliance*

The above-mentioned agreement between the parties outlines a schedule for implementation that requires the DPD to comply with the requirements of subparagraph U88f regarding the availability of a beta version of the MAS by January 24, 2008.<sup>61</sup> The DPD is currently on schedule to meet this agreed-upon deadline. Nevertheless, the deadline mentioned in paragraph U88f remains in effect for purposes of assessing this paragraph.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with subparagraph U88f.

### *Subparagraph U88g –Risk Management Database Operational*

Subparagraph U88g requires the risk management database to be operational and fully implemented by December 31, 2005.

### *Background*

The Monitor last assessed the DPD's compliance with subparagraph U88g during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance for the reasons described in the *Background* for paragraph U85.

### *Current Assessment of Compliance*

The above-mentioned agreement between the parties outlines a schedule for implementation that requires the DPD to comply with the requirements of subparagraph U88g, that the MAS will be operational and fully implemented, by July 24, 2008.<sup>62</sup> The DPD is currently on schedule to meet this agreed upon deadline. Nevertheless, the deadline mentioned in paragraph U88g remains in effect for purposes of assessing this paragraph.

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<sup>61</sup> The Monitor notes that the agreement between the City and the DOJ does not alter the language containing the initial deadlines provided in the UOF CJ.

<sup>62</sup> This due date is after the expiration of the five-year term of the UOF CJ (which is July 17, 2008). After the end of the quarter, on September 21, 2007, the court granted the City's motion to extend both Consent Judgments until 2011 on the record. A court order will be forthcoming.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with subparagraph U88g.

### **Paragraph U89 – Interim Risk Management System**

Paragraph U89 states that prior to the implementation of the new Risk Management Database, the DPD must develop an interim system to identify patterns of conduct by DPD officers or groups of officers.

### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U89 during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance, as not all relevant personnel had received training on the IMAS as of the end of that quarter.

### ***Current Assessment of Compliance***

The IMAS has been developed and is fully operational. According to the DPD, a total of 541 of the 752 (72%) of the DPD's supervisory members have been trained on IMAS. An IMAS tutorial is available on the DPD-Intranet for members to utilize.

In the DPD's Sixteenth Quarter Status Report, it indicated that a refresher training course was conducted for 26 DPD executives on the use of the IMAS on June 21-22, 2007. In addition, "Train-the-Trainer" sessions were held on July 5-6 and 12-13, 2007. The 46 supervisors that attended this training are responsible for ensuring that the supervisors at their respective commands are trained or, if needed, are given refresher training on the IMAS. The Monitor will request an opportunity to attend a future training session.

Now that training has occurred for a significant number of officers, the Monitor will begin testing whether the system is being utilized throughout the department.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph U89.

## **B. PERFORMANCE EVALUATION SYSTEM**

This section comprises one paragraph, paragraph U91, which requires the DPD to ensure that performance evaluations for all DPD employees occur at least annually and include consideration of civil rights integrity, adherence to federal constitutional amendments and civil rights statutes and for supervisors, the identification of at-risk behavior in subordinates.

The Monitor last assessed the DPD's compliance with paragraph U91 during the quarter ending August 31, 2006. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

### *Paragraph U91 - Performance Evaluation System*

Paragraph U91 requires the DPD to ensure that performance evaluations for all DPD employees<sup>63</sup> occur at least annually and include, but are not limited to, consideration of the following: civil rights integrity; adherence to law, including performing duties in a manner consistent with the requirements of the Fourth and Fifth Amendments to the Constitution and the Civil Rights laws of the United States; and supervisor's performance in identifying and addressing at-risk behavior in subordinates, including their supervision and review of use of force, arrests, care of prisoners, prisoner processing, and performance bearing upon honesty and integrity.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U91 during the quarter ending August 31, 2006, finding that the DPD was not yet in compliance, as the sample of performance evaluations that were reviewed did not insufficiently address the requirements of paragraph U91.

### *Current Assessment of Compliance*

The Monitor has not yet evaluated the DPD's compliance with the implementation component of this paragraph. The Monitor will complete its evaluation of the DPD's compliance with this paragraph during the quarter ending February 29, 2008.

Based on the foregoing, the DPD remains in compliance with the policy requirements of paragraph U91; the Monitor has not yet re-evaluated the implementation requirements of the paragraph.

## C. OVERSIGHT

This subsection of the UOF CJ (paragraphs U92-99) requires the DPD to establish an internal audit process, to perform annual audits of all precincts and specialized units on eight areas of policing,<sup>64</sup> to perform periodic random reviews of scout car camera videotapes and video

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<sup>63</sup> The parties proposed a modification to the language of this paragraph stating that it is applicable to all DPD employees below the rank of Deputy Chief. The Court issued an order on October 4, 2004 adopting the proposed modification.

<sup>64</sup> Including UOF investigations; prisoner injuries; allegations of misconduct; arrests; stops and frisks; witness identification and questioning; custodial detention practices, and complaint investigations.

recording equipment, and to meet regularly with local prosecutors to identify any issues in officer, shift or unit performance. Each of these oversight provisions requires the DPD to examine a number of issues, but a common theme among them all is the requirement to assess and report on the appropriateness of the police activity being examined.

The Monitor last assessed the DPD's compliance with paragraphs U93-94 and U99 during the quarter ending May 31, 2007, with paragraph U98 during the quarter ending February 28, 2007, with paragraphs U92, U95 and U97 during the quarter ending November 30, 2006, and with paragraph U96 during the quarter ending August 31, 2006. The Monitor again assessed the DPD's compliance with paragraphs U92, U94-98 during the current quarter. The results of our current assessments follow.

### *Paragraph U92 – Audit Protocol*

Paragraph U92 requires the DPD to develop an Audit Protocol to be used by all personnel when conducting audits. The Audit Protocol must establish a regular and fixed schedule for all audits required by both the UOF CJ and COC CJ to ensure the audits occur with sufficient frequency and cover all DPD units and commands.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U92 during the quarter ending November 30, 2006, finding the DPD in compliance with the requirements of the paragraph. The Monitor evaluated the 2006/2007 Audit Protocol submitted by the DPD and determined that audits were scheduled with sufficient frequency and the protocol included appropriate standards for conducting and reviewing such audits. In addition, the DPD provided adequate training on the Audit Protocol to its audit personnel, and maintained signed annual confidentiality declarations from all audit personnel.

### *Current Assessment of Compliance*

On August 27, 2007, the DPD submitted its 2007/08 Audit Protocol (AP). The Monitor conducted a review of the content of the AP and determined that the UOF and COC CJ audits were scheduled with sufficient frequency therein, and that the AP contains adequate standards for conducting and reviewing such audits in accordance with *Generally Accepted Government Auditing Standards*.

In response to a related document request,<sup>65</sup> the DPD indicated that the dissemination of the protocol and related training processes are currently underway, and the DPD will submit the requested documentation prior to the end of the quarter ending November 30, 2007.

Based on the foregoing, the Monitor is withholding a determination of the DPD's compliance with paragraph U92.

### **Paragraph U94 – Audits of UOF, Prisoner Injuries and Misconduct Investigations**

Paragraph U94 requires the DPD to conduct regularly scheduled annual audits of a) UOF investigations, b) prisoner injury investigations, and c) investigations into allegations of misconduct. Such audits must cover all precincts and specialized units. These audits were due by August 31, 2004, and annually thereafter.

#### ***Background***

The Monitor last assessed the DPD's compliance with subparagraph U94a during the quarter ending May 31, 2007, finding that the DPD was not in compliance. The audit required by this subparagraph was not submitted as of the end of that quarter, nor had it been submitted since the inception of the UOF CJ in July 2003.

The Monitor last assessed the DPD's compliance with subparagraph U94b during the quarter ending May 31, 2007, finding that the DPD was not yet in compliance, as there were substantive qualitative deficiencies with the *Prisoner Injury Investigations Audit* report submitted by the DPD's AT on January 31, 2007.

The Monitor last assessed the DPD's compliance with subparagraph U94c during the quarter ending November 30, 2006, finding that the DPD was not yet in compliance. Although the *Allegations of Misconduct Audit* report submitted by the DPD's AT on August 31, 2006 was one of the better written audit reports submitted by the AT, it did not address all of the requirements of subparagraph U94c and there were a number of qualitative deficiencies.

#### ***Current Assessment of Compliance***

##### ***Subparagraph U94a - UOF Investigations Audits***

The DPD submitted its first *Use of Force Investigations Audit* on August 31, 2007, finding that the Department was not yet in compliance with the paragraphs tested, including paragraphs U27-41. Given the fact that this audit, along with several others, was recently but timely received on

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<sup>65</sup> On September 5, 2007, the Monitor requested documentation supporting the dissemination and implementation of the 2007/08 Audit Protocol.

the last day of the quarter, the Monitor has not yet completed its evaluation of this audit or the DPD's compliance with subparagraph U94a.

*Subparagraph U94b –Prisoner Injuries Investigations Audits*

The Monitor is scheduled to re-assess the DPD's compliance with subparagraph U94b during the quarter ending May 31, 2008.

*Subparagraph U94c –Allegations of Misconduct Investigations Audits*

The DPD submitted the *Allegations of Misconduct Audit*, which was combined with the COC CJ required audit of the same topic, on July 31, 2007, one month prior to the due date. The audit concluded that the Department was not yet in compliance with all of the paragraphs tested, namely U27-30, U32-33, U66 and U67.<sup>66</sup> The Monitor reviewed the audit report and reminded the DPD to provide the planning documents for this audit.<sup>67</sup> On August 28, three days prior to the end of the quarter, the Monitor received the working papers, which are critical to the Monitor's review. As a result, the Monitor had not completed its evaluation of this audit or the DPD's compliance with subparagraph C65c as of the end of the current quarter.

**Paragraph U95 – Audits of Probable Cause, Stops and Frisks and Witness Identification and Questioning Documentation**

Paragraph U95 requires the DPD to conduct regularly scheduled annual audits of a) arrest practices, b) stops and frisks, and c) witness identification and questioning documentation. Such audits must cover all precincts and specialized units and must include an evaluation of the scope, duration, content, and voluntariness, if appropriate, of the police interaction. The arrest practices audit must also include a comparison of the number of arrests to requests for warrants and number of arrests for which warrants were sought to judicial findings of probable cause. These audits were due by August 31, 2004, and annually thereafter.

***Background***

The DPD submitted the *Arrest Audit*, required by subparagraph U95a, on April 14, 2007. The Monitor had not yet completed its review of this audit as of the end of the previous quarter. The Monitor found the DPD's previous *Arrest Audit*, submitted on January 13, 2005, was not yet in compliance due to substantive qualitative deficiencies with the audit.

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<sup>66</sup> Please see the *Current Assessment of Compliance* for subparagraph C65c for further information.

<sup>67</sup> The Monitor has an ongoing document request for audit working papers to be submitted either along with or soon after an audit report is submitted, as these documents are critical to the Monitor's review of audits. On August 6, 2007, the Monitor sent a "reminder" to the DPD regarding this ongoing document request.

The Monitor last assessed the DPD's compliance with subparagraph U95b during the quarter ending August 31, 2006, finding that the DPD was not yet in compliance, as the *Stops and Frisks Audit* submitted on August 31, 2006 failed to identify and report a number of significant issues.

The Monitor last assessed the DPD's compliance with subparagraph U95c during the quarter ending November 30, 2006, finding that the DPD was not yet in compliance, as a *Witness Identification and Questioning Audit* was not submitted since April 2005 as of the end of that quarter.

### *Current Assessment of Compliance*

#### *Subparagraph U95a – Arrest Audit*

In order to assess the DPD's compliance with paragraph U95a, the Monitor reviewed the *Arrest Audit* report submitted by the DPD AT on April 14, 2007. The Monitor also conducted an assessment of a statistically valid random sample of the audit population of arrests, and reviewed the audit matrices and other related working papers related to the sample.<sup>68</sup>

The Monitor's findings, which have been discussed the DPD AT, are highlighted below:

- The DPD AT submitted the *Arrest Audit* in a timely manner<sup>69</sup> and properly included all of the substantive paragraphs related to this topic. The AT tested a statistically valid sample of 89 arrest incidents from October 16-22, 2006, and determined that the DPD was not yet in compliance with the requirements of paragraphs U42-43, U50, U59 and U114.
- The Monitor identified substantive errors in the AT's assessments of seven of the first 14 arrests in its sample, as well as deficiencies in the AT's audit methodology and audit working papers. These findings are described below.
- Paragraph U95 requires that the audit include comparisons of the number of arrests to the number of requests for warrants, and the number of warrants requested to the number of judicial findings of probable cause. The AT correctly included a comparison of the number of arrests to the number of requests for warrants; however, the AT misunderstood the objective of the second comparison and did not properly perform this step.<sup>70</sup>

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<sup>68</sup> The Monitor's initial sample used a confidence interval of 95%, an error interval of +/-4%, and an expected proportion of success rate of 94%. Due to the number of errors identified in the first 14 arrests reviewed (to +/-10%), the Monitor concluded that the audit was non-compliant and ceased further testing.

<sup>69</sup> The Arrest Audit was submitted more than four months prior to its due date, and related to testing of arrests within the prior 6 months.

<sup>70</sup> During meetings with the Monitor, the AT acknowledged this error and indicated that it will correct it in subsequent audits of this topic.

- Although the AT appropriately found that the DPD was not yet in compliance with the probable cause requirements of paragraph U43, it reported that only a lack of supporting documentation was the cause. However, in addition to the lack of documentation, the Monitor identified one multiple-arrestee incident in which one arrestee was not mentioned in the arrest narrative and no other documentation articulated or established that probable cause existed. The AT incorrectly determined that probable cause existed in this instance;<sup>71</sup> as a result, the AT failed to report insufficient probable cause for an arrest as an additional reason for the lack of compliance.
- The AT appropriately used the “verified” field on the CRISnet reports, which includes the supervisor’s name and time of review, to determine whether the supervisory reviews for probable cause were conducted and whether they were conducted within 12 hours, as required by paragraph U43. However, of the 14 arrests reviewed by the Monitor, the Monitor identified one arrest for which the CRISnet report was missing and another arrest for which the “verified” field was blank. The AT erroneously determined that supervisory reviews were documented in both instances. In addition, the AT did not report the problem associated with the missing CRISnet report, nor did the AT include recommendations to address the issue.
- The AT employed definitions to evaluate the “scope,” “content” and “duration” of arrests, as required by paragraph U95, that were incongruous with UOF CJ requirements and with the definitions for “probable cause” and “prompt judicial review”. By utilizing these definitions, AT failed to identify whether reasonable suspicion was present (probable cause) and whether arrestees were being held for more than 48 hours (prompt judicial review).<sup>72</sup>
- For arrests involving existing warrants, the AT incorrectly concluded that probable cause needed to be articulated in the arrest report when it was already established in the warrant. For these same arrests, where the warrant was issued prior to the arrest, the AT also incorrectly concluded that warrant requests for arraignment needed to be submitted within 24 hours after the arrest. Lastly, the AT failed to identify and report that some of the warrants failed to comply with the prompt judicial review requirement of paragraph U49, as they were processed in excess of 48 hours.
- In addition to the above substantive errors, the Monitor noted a number of less significant errors in the audit working papers and audit report. The Monitor communicated these errors to the AT and emphasized the need for a higher level of quality control in the audit review process.

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<sup>71</sup> The Monitor also noted that the documentation did not articulate probable cause for three other arrestees who were involved in the same incident. Although these three other arrestees were not selected in the sampling process, the AT should have addressed the findings related to these arrestees within the audit report, possibly within an “Other Related Matters” section.

<sup>72</sup> The AT properly evaluated probable cause in the *Custodial Detention Practice and Programs Audit* required by paragraph U96. Refer to the Current Assessment of Compliance for paragraph U96 for further details.

- Notwithstanding the above, the Monitor notes that the audit report was improved from the prior report submitted in January 2005, as it was more concise and better written. The AT's matrix questions and other working papers were generally well-formatted and organized.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with subparagraph U95a.

#### *Subparagraph U95b – Stops and Frisks Audit*

The DPD submitted the *Stop and Frisk Audit* required by this subparagraph on August 31, 2007, finding the Department in non-compliance with all of the paragraphs tested, namely U44-45 and U59. Given the fact that this audit, along with several others, was recently but timely received, the Monitor has not yet completed its evaluation of the audit or the DPD's compliance with subparagraph U95b.

#### *Subparagraph U95c – Witness Identification and Questioning Audit*

The DPD submitted the *Witness Identification and Questioning Audit* required by this subparagraph on August 31, 2007, finding the Department in non-compliance with all of the paragraphs tested, namely U46, U48, U57, U59 and U60. Given the fact that this audit, along with several others, was recently but timely received, the Monitor has not yet completed its evaluation of the audit or the DPD's compliance with subparagraph U95c.

### **Paragraph U96 – Audit of Custodial Detention Practices**

Paragraph U96 requires the DPD to conduct regularly scheduled annual audits of the DPD's custodial detention practices, including evaluating the length of detention between the time of arrest and the time of arraignment and the time to adjudicate holds. Such audits must cover all precincts and specialized units.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U96 during the quarter ending August 31, 2006, finding that the DPD was not yet in compliance as the *Custodial Detention Practices Audit* due by August 31, 2006 had not been submitted since August 2004.

The AT submitted a *Custodial Detention Practices Audit* required by this subparagraph on April 14, 2007. The Monitor had not completed its review of this audit as of the end of the previous quarter.

#### ***Current Assessment of Compliance***

In order to assess the DPD's compliance with paragraph U96, the Monitor reviewed the *Custodial Detention Audit Report* submitted by the DPD AT on April 14, 2007. The Monitor

also conducted an assessment of a statistically valid random sample<sup>73</sup> of the audit population of arrests and holds, and reviewed the audit matrices and other related audit working papers.

The Monitor's findings, which have been discussed with the AT, are highlighted below:

- The AT submitted the *Custodial Detention Practices Audit* in a timely manner,<sup>74</sup> reviewed and assessed restrictions and the requisite training related to this topic, and properly included all of the substantive paragraphs related to this topic. The AT tested a statistically valid sample of arrests<sup>75</sup> and holds, and AT determined that the DPD did not meet the requirements of any of the paragraphs tested, namely U49-55, U58, U60 and U115.
- The AT's matrix questions and working papers were well-formatted and organized, and the Monitor was able to reconcile the findings reported to the supporting work papers. The AT also properly defined and assessed the "time between arrest and arraignment" and the "time to adjudicate holds," as required by paragraph U96. The Monitor concurred with the AT's conclusions of non-compliance with all paragraphs tested.
- The audit report was improved from the previous report, which was submitted in October 2004, as it was more concise and better written. The Monitor did identify various reporting problems, including a lack of detail regarding systemic problems identified during the collection and review of arrest reports.<sup>76</sup> The Monitor also noted that certain wording or phraseology within the audit report conveyed incorrect information, such as suggesting that restricting a prisoner's access to an attorney is acceptable and suggesting that the DPD's policies are non-compliant (rather than expressing that the DPD was non-compliant with the implementation of the policies). These reporting problems were communicated to the AT in order to improve future audit reports but did not significantly impact the overall quality of the report.
- The AT made appropriate recommendations to address the systemic problems identified during the course of the audit.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U96.

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<sup>73</sup> The Monitor reviewed a sample selected using a confidence interval of 95%, an error interval of +/-4%, and an expected proportion of success rate of 94%.

<sup>74</sup> The audit report was submitted more than four months prior to its due date.

<sup>75</sup> The AT used the same population and sample of arrests as described above in the *Arrest Audit* (refer to the Current Assessment of Compliance for paragraph U95a).

<sup>76</sup> Although the detail of these problems was lacking in the report, the AT did include appropriate recommendations to remedy these problems.

### **Paragraph U97 – Audits of OCI Audits of External Complaints and Investigations**

Paragraph U97 requires the Chief Investigator (CI) of the OCI to designate an individual or entity to conduct annual audits that examine external complaints and complaint investigations, and to review all audit reports regarding officers under OCI command and take appropriate disciplinary or non-disciplinary corrective action.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U97 during the quarter ending August 31, 2006, finding that the DPD was not yet in compliance. The Monitor determined that the *External Complaint and Complaint Investigation Audit* submitted by the DPD on August 31, 2006 was not in compliance due to specific qualitative deficiencies in the AT's assessment and reporting.

#### ***Current Assessment of Compliance***

The DPD submitted the *OCI Investigations Audit* required by paragraph U97 on August 31, 2007, finding the Department non-compliant with all of the paragraphs tested, namely U27-33, U61, U64-66, U67a-d and g-h, U68 and C58-59. Given the fact that this audit, along with several others, was recently but timely received, the Monitor has not yet completed its evaluation of the audit, or the DPD's compliance with paragraph U97.

### **Paragraph U98 – Random Reviews of Videotapes and Recording Equipment**

Paragraph U98 requires the DPD to conduct and document periodic random reviews of scout car camera videotapes for training and integrity purposes. In addition, the DPD must require periodic random surveys of scout car video recording equipment to confirm that it is in proper working order.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U98 during the quarter ending February 28, 2007, finding that the DPD was in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraph.

#### ***Current Assessment of Compliance***

The Monitor submitted a document request on July 9, 2007 requesting information to assist in evaluating the DPD's compliance with the requirements of paragraph 98. The DPD's initial response was on August 15, 2007, with a follow up response on August 23, 2007, answering additional questions from the Monitor. The DPD indicated that the Video Review Protocol and related forms have been revised and will be submitted to the Monitor once its internal review is

completed. The DPD also submitted training rosters for training that has taken place on the INSIGHT video system. However, since the review protocol has not been finalized and disseminated, training on the requirements of paragraph U98 has not yet taken place.

The DPD submitted documentation of video reviews conducted by the Central District and the Tactical Mobile Unit. The Monitor commends the DPD for conducting reviews even while the Departmental procedure is being developed. However, the DPD will not be able to achieve compliance with the review requirements of this paragraph until the Departmental procedure is developed and implemented.

The Monitor previously reported that as of February 20, 2007, of the total fleet of 658 patrol cars, 401 (61%) had cameras installed; 237 of the patrol cars were equipped with operable cameras, an increase from 15% to 36% of the total fleet. During the current quarter, the DPD indicated that it has a total fleet of 535 patrol cars, 414 (77%) of which have cameras installed and 306 (57%) of which have operable cameras. The Monitor commends the DPD for increasing the total number of cars with operable cameras.

The Monitor also requested copies of recent DPD inspections for this and related paragraphs. The DPD did not submit documentation of an internal inspection for paragraph U98. The inspections would evaluate whether the DPD is implementing the requirements of this paragraph.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with the implementation requirements of paragraph U98.

#### **D. USE OF VIDEO CAMERAS**

This section comprises paragraphs U100-102. It requires the DPD to develop a policy on the use of video cameras that provides a systematic approach for activation, recording, review and preservation of video cameras and tapes. Additionally, the DPD is required to repair and replace all non-functioning video equipment. Other paragraphs in the UOF CJ and COC CJ that require periodic random reviews of videotapes and periodic random surveys of recording equipment are U98 and C64, which are also discussed in this report.

Consistent procedures throughout the DPD in this area will facilitate the availability of information for investigative purposes and will assist in the identification of at-risk behavior and violations of police procedure. These policies will also serve to protect DPD officers by providing an accurate record of encounters with citizens.

The Monitor last assessed the DPD's compliance with paragraphs U100-102 during the quarter ending February 28, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

**Paragraphs U100-102 – Non-Functioning Video Cameras; Video Camera Policy; Video Recording Policy**

Paragraph U100 requires the DPD to repair or replace all non-functioning video cameras.

Paragraph U101 states that the DPD policy on video cameras shall be revised and augmented to require: activation of scout car video cameras at all times the officer is on patrol; supervisors to review videotapes of all incidents involving injuries to a prisoner or an officer, uses of force, vehicle pursuits and external complaints; and that the DPD retain and preserve videotapes for at least 90 days, or as long as necessary for incidents to be fully investigated.

Paragraph U102 states that the DPD policy on video cameras shall require officers to record all motor vehicle stops, consents to search a vehicle, deployments of a drug-detection canine, or vehicle searches.

***Background***

The Monitor last assessed the DPD's compliance with paragraphs U100-102 during the quarter ending February 28, 2007, finding that the DPD remained in compliance with the policy requirements but was not yet in compliance with the implementation requirements of the paragraphs. It was apparent from documentation provided by the DPD that not all non-functioning cameras had been repaired or replaced. In addition, inspections reports related to compliance with these paragraphs were not included in the reports submitted by OCR during that quarter. Lastly, training had not yet been provided for these paragraphs, and the Monitor had not received a lesson plan that addressed all of the requirements of these paragraphs.

***Current Assessment of Compliance***

On July 9, 2007, the Monitor requested information as to whether or not training on Directive 303.3 had taken place. The Monitor also requested copies of repair orders/requests for in-car cameras for the month of December 2006, as well as any internal DPD inspections of the requirements of paragraphs U100-102.

On August 15, 2007, the DPD provided the Monitor with documentation in connection with 38 repair orders relating to camera and/or microphone repair for the month of May 2007.<sup>77</sup> Thirty-eight repair orders for inoperable cameras in a given month is less than 1% of the total fleet of cars, and 12.4% of all cars that have operable cameras. In addition, as described in the *Current*

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<sup>77</sup> The remaining forms that were provided contained a date other than May 2007 or were for Mobile Data Computer repairs as opposed to camera repairs.

*Assessment of Compliance* for paragraph U98, it is apparent that not all non-functioning cameras have been repaired or replaced as required by paragraph U100.<sup>78</sup>

As reported in the *Current Assessment of Compliance* for paragraph U98, the DPD indicated that the Video Review Protocol and related forms have been revised and will be submitted to the Monitor once its internal review is completed. As a result training in connection with paragraphs U101-102 has not yet taken place and the supervisory review process required by paragraph U101 has not been implemented Department-wide, nor has the policy regarding the types of incidents that officers must record pursuant to paragraph 102.

The Monitor also requested DPD internal inspection reports related to compliance with these paragraphs. The DPD responded that paragraphs U100-102 are not subject to inspections.<sup>79</sup>

The DPD did provide supervisory videotape reviews from the Central District and Tactical Mobile. However, since the DPD would be unable to achieve compliance through submissions from one district and one specialized unit and the Monitor has not received a finalized copy of the policy and related documents for the reviews, the Monitor did not review this submission.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with the implementation requirements of paragraphs U100-102.

## E. DISCIPLINE

This section comprises paragraphs U103-105. It requires the DPD to eliminate the current backlog of disciplinary cases and to establish guidelines and create a scheduling process that will prevent backlogs from developing in the future. In order to provide guidelines for uniformity in discipline, the DPD must create a matrix that establishes a presumptive range of discipline for each type of rule violation.

The Monitor last assessed the DPD's compliance with paragraphs U103-105 during the quarter ending February 28, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

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<sup>78</sup> As described in the *Current Assessment of Compliance* for paragraph U98, during the current quarter, the DPD had 535 total cars of which 414 patrol cars had cameras installed 306 of which were operable. Therefore, cameras are inoperable in 108 of the 414 cars with cameras installed.

<sup>79</sup> It is noted that the DPD is not required to conduct internal inspections and the lack of inspections will not affect the Monitor's compliance findings; however, the Monitor has recommended that such inspections be conducted for a number of paragraphs that are not subject to audits so that the DPD can assess its own progress and its ability to achieve and then sustain compliance with these paragraphs.

### **Paragraph U103 – Backlog of Disciplinary Cases**

Paragraph U103 requires the City to ensure that adequate resources are provided to eliminate the backlog of disciplinary cases and that all disciplinary matters are resolved as soon as reasonably possible.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U103 during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance with the paragraph. During that quarter, on January 30, 2007, the DPD submitted a response to the Monitor's document request, stating that "a backlog would exist if the investigation/misconduct report was logged into Discipline and the trial board did not commence within a 12 month period." The DPD also indicated that there was not a backlog of disciplinary cases at the time of its response. During the same quarter, the Monitor reviewed all disciplinary files that the DPD reported as having closed in July 2006. Using the definition of backlog provided by the DPD, there were 9 files (20%) where, for various reasons both stated and unstated, the trial board did not commence within twelve months of the Disciplinary Administration (DA) receiving the file. The Monitor concluded that this indicated that there was still a backlog of disciplinary cases; although it was apparent that the DPD was working to clear the backlog and some of the more recent incidents were being resolved more quickly.

#### ***Current Assessment of Compliance***

In response to a document request from the Monitor, the DA provided to the Monitor a list of three (3) discipline cases that are backlogged and have not proceeded to a trial board within 12 months of being logged into discipline. All three cases had extenuating circumstances, as subject members are currently out on extended leaves of absence.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph U103.

### **Paragraph U104 – Guidelines for Disciplinary Process**

Paragraph U104 requires the DPD to schedule disciplinary hearings, trials, and appeals at appropriately frequent intervals to prevent a disciplinary backlog from developing. As part of determining how often to schedule such hearings, the DPD must establish guidelines dictating the maximum period of time that should elapse between each stage of the disciplinary process.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph U104 during the quarter ending February 28, 2007, withholding a determination of compliance with the paragraph, as all of the Monitor's questions on the Disciplinary Timeline Process had not yet been addressed.

### *Current Assessment of Compliance*

Since the last assessment, the DPD satisfactorily answered the Monitor's questions and the DPD's Disciplinary Timeline Process was finalized. During this quarter, the Monitor requested access to all disciplinary files that were closed in June 2007. In response, the DPD provided the Monitor with a list of 13 disciplinary files. The referred actions for 3 of the files were Commander's Disciplinary Action, nine files were handled at the command level and one file was an administrative closure.<sup>80</sup> The Monitor reviewed each individual file and determined that the DPD adhered to the Disciplinary Timeline Process for 7 of 13 (53.8%) files. Therefore, the DPD has made notable progress toward achieving compliance with this paragraph.<sup>81</sup>

Based on the foregoing, the Monitor finds the DPD is not yet in compliance with paragraph U104.

### *Paragraph U105 – Disciplinary Matrix*

Paragraph U105 requires the DPD to create a disciplinary matrix that: establishes a presumptive range of discipline for each type of rule violation; increases the presumptive discipline based on both an officer's prior violations of the same rule as well as violations of other rules; requires that any departure from the presumptive range of discipline must be justified in writing; provides that the DPD shall not take only non-disciplinary corrective action in cases in which the disciplinary matrix calls for the imposition of discipline; and provides that the DPD shall consider whether non-disciplinary corrective action also is appropriate in a case where discipline has been imposed.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U105 during the quarter ending February 28, 2007, finding the DPD in compliance with the policy and implementation requirements of the paragraph. The Monitor reviewed 45 disciplinary files that were closed in June 2006 and determined that in all but two cases discipline imposed fell within the appropriate presumptive range on the disciplinary matrix. The two cases that did not were due to arbitration, and were handled appropriately and included documentation. In addition, the Monitor found that the presumptive range was appropriately increased if the officer's disciplinary record required it.

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<sup>80</sup> The file was administratively closed by the City Law Department because contractual (collective bargaining) timelines were not met.

<sup>81</sup> The Monitor will request a copy of the DA's six month review which is required by the disciplinary timelines during the next period of review for this paragraph.

### *Current Assessment of Compliance*

Pursuant to the document request described in paragraph U104 above, the Monitor reviewed the 13 disciplinary files that were closed in June 2007 and determined that the discipline imposed in 11 of the 13 files fell within the appropriate presumptive range on the disciplinary matrix. For the two remaining files, the charges were dismissed and, therefore, the disciplinary matrix was not applicable. There were no instances where the presumptive range had to be increased since all eleven files appropriately resulted in official written reprimands.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with paragraph U105.

### *Recommendations*

The Monitor notes that there were no instances where the documentation in the files indicated that the DPD considered and/or imposed non-disciplinary corrective action in addition to the disciplinary corrective action that had been imposed as required by paragraph U105. During the Monitor's last review, there was only one file with information about non-disciplinary corrective action. The Monitor recommends that the DPD begin considering whether non-disciplinary corrective action also is appropriate in a case where discipline has been imposed, as also required by this paragraph. If the DPD is already making these considerations, then it should begin documenting it.

## VII. TRAINING

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This section of the UOF CJ (paragraphs U106-123) directs the DPD to coordinate and review all UOF and A&D training to ensure quality, consistency, and compliance with applicable law and DPD policy. Significantly, the DPD must provide annual training for all DPD recruits, officers and supervisors in a number of areas including UOF, arrests and other police-citizen interactions and custodial detention. Furthermore, the DPD must develop a firearms protocol and provide supervisory, investigator and field training. The Department must also select and train trainers, evaluate all training, conduct needs assessments, and create and maintain individual training records for all officers. The UOF CJ provides specific requirements for review and reporting on these issues to the Monitor and the DOJ.

### A. OVERSIGHT AND DEVELOPMENT

This section comprises paragraphs U106 -111. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending May 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2007.

### B. USE OF FORCE TRAINING

This section comprises paragraph U112 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending November 30, 2007.<sup>82</sup>

### C. FIREARMS TRAINING

This section comprises paragraph U113 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending November 30, 2007.

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<sup>82</sup> During this quarter, on August 14, 2007, the DPD resubmitted the Use of Force Lesson Plan. The Monitor provided comments after the end of the quarter on various dates in September.

## D. ARREST AND POLICE-CITIZEN INTERACTION TRAINING

This section comprises paragraph U114 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending May 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending November 30, 2007.

## E. CUSTODIAL DETENTION TRAINING

This section comprises paragraphs U115-117. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraphs U115-117 – Custodial Detention Training; Custodial Detention Training – Advise Relative to Arraignment Delay; Custodial Detention Training – Advise that Materiality of Witness is Judicial Determination*

Paragraph U115 requires the DPD to provide all DPD recruits, officers and supervisors with annual training on custodial detention. Such training shall include DPD policies regarding arrest, arraignments, holds, restrictions, material witness and detention records.

Paragraph U116 requires the DPD to advise officers of the DPD arraignment policy shall not be delayed because of the assignment of the investigation to a specialized unit; the arrest charge(s) the availability of an investigator, the gathering of additional evidence or obtaining a confession.

Paragraph U117 requires the DPD shall advise officers that whether an individual is a material witness and whether that material witness should be committed to custody is a judicial determination.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U115-117 during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance. The DPD was conducting custodial detention training on an ongoing basis despite the fact that the lesson plan for that training had not been approved by the Monitor. The Monitor found that the lesson plan previously submitted by the DPD contained substantial deficiencies, and the Monitor had not received a revised lesson plan that meets the requirements of these paragraphs as of the end of that quarter.

### *Current Assessment of Compliance*

The DPD continues to conduct custodial detention training on an ongoing basis, despite the fact that the lesson plan for the current training has not been submitted to or approved by the

Monitor. According to the DPD's Sixteenth Quarter Status Report, the *Law of Arrest/Search and Seizure/Police-Citizen Interaction (Legal) Lesson Plan*, which incorporates these paragraphs, is currently being revised by the DPD's Curriculum Design and Development Team (CDDT) to correct deficiencies identified by the Monitor. The Monitor notes that neither the original lesson plan nor the revised lesson plan, submitted by the DPD on May 15, 2007, included or addressed the requirements of paragraphs U115-117.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with the requirements of paragraphs U115-117.

## F. SUPERVISORY TRAINING

This section comprises paragraphs U118-120. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraphs U118 and U119 – Supervisory Training; Leadership and Command Accountability Training*

Paragraph U118 requires the DPD to provide supervisors with training in the appropriate evaluation of written reports, including what constitutes a fact based description, the identification of conclusory language not supported by specific facts and catch phrases, or language that so regularly appears in reports that its inclusion requires further explanation by the reporting officer.

Paragraph U119 directs the DPD supervisors to receive leadership and command accountability training and learn techniques designed to promote proper police practices. This training shall be provided to all DPD supervisors within 30 days of assuming supervisory responsibilities and shall be made part of annual in-service training.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs U118-119 during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance. The Monitor received and reviewed the lesson plan entitled *Supervisory Leadership and Accountability*, which was submitted by the DPD on August 31, 2006 to meet the requirements of paragraphs U118-119, among others. The Monitor reviewed the lesson plan and determined that it was contained a number of deficiencies and did not address the requirements of the paragraphs. The Monitor submitted a memorandum to the DPD emphasizing areas of improvement and overall lesson plan development. The Monitor also held meetings with the DPD subsequent to its review of the lesson plan in an effort to correct identified deficiencies in lesson plan development and improve

the course content. However, the Monitor had not received a revised lesson plan that meets the requirements of these paragraphs as of the end of that quarter.

On April 14, 2007, the DPD submitted to the Monitor a revised *Supervisory Leadership and Accountability Lesson Plan* to address the requirements of paragraphs U118-119, among others. On June 29, 2007, the Monitor provided a written memorandum to the DPD that identified additional deficiencies in the lesson plan.

### *Current Assessment of Compliance*

According to the DPD, as of the end of the current quarter, the CDDT was revising the *Supervisory Leadership and Accountability Lesson Plan* to correct the deficiencies identified by the Monitor.<sup>83</sup>

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with the requirements of paragraphs U118-119.

### *Paragraph U120 – Supervisory Training - Risk Assessment Training Requirement*

Paragraph U120 directs the DPD to provide training on risk management to all DPD supervisors, including the operation of risk management database.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U120 during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance. As of the end of that quarter, the DPD had not submitted appropriate documentation addressing the requirements of this paragraph. Furthermore, the risk management database, specifically the DPD's MAS, had not yet been fully developed or implemented.

On April 14, 2007, the DPD submitted to the Monitor a revised *Supervisory Leadership and Accountability Lesson Plan* to address the requirements of paragraph U120, among others. On June 29, 2007, the Monitor provided a written memorandum to the DPD that identified additional deficiencies in the lesson plan.<sup>84</sup>

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<sup>83</sup> On September 1, 2007, one day after the end of this quarter, the DPD submitted the *Supervisory Leadership and Accountability Lesson Plan*. The Monitor provided written feedback on September 30, 2007.

<sup>84</sup> The Monitor notes that although paragraph U120 is not specifically referred to in the lesson plan, the lesson plan attempts to address the requirements of the paragraph.

### *Current Assessment of Compliance*

According to the DPD, as of the end of the current quarter, the CDDT was revising the *Supervisory Leadership and Accountability Lesson Plan* to correct the deficiencies identified by the Monitor.<sup>85</sup> Furthermore, the risk management database, specifically the DPD's MAS, has not yet been fully developed or implemented.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with the requirements of paragraph U120.

### G. INVESTIGATOR TRAINING

This section comprises paragraphs U121-122. The Monitor last assessed the DPD's compliance with these paragraphs during the quarter ending February 28, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

#### *Paragraph U121 – Investigator Training – Required Training*

Paragraph U121 directs the DPD to provide training on appropriate burdens of proof, interview techniques and the factors to consider when evaluating officer, complainant or witness credibility to all officers who conduct investigations to ensure that their recommendations regarding dispositions are unbiased, uniform and legally appropriate.

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph U121 during the quarter ending February 28, 2007, finding that the DPD was not yet compliance. The DPD was conducting training relevant to this paragraph without an approved lesson plan. As of the end of that quarter, the Monitor had not received any documentation to validate instructional content, performance objectives, structure, or evaluation measurements.

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<sup>85</sup> As described in the Current Assessment of Compliance for paragraphs U118-119, the DPD submitted a revised *Supervisory Leadership and Accountability Lesson Plan* on September 1, 2007, and the Monitor provided written feedback on September 30, 2007.

### *Current Assessment of Compliance*

The DPD is currently conducting training relevant to this paragraph without an approved lesson plan.<sup>86</sup> According to the DPD, the *Detective School Lesson Plan*, which addresses the requirements of this paragraph, is currently under development by the DPD's CDDT.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with the requirements of paragraph U121.

### *Paragraph U122 – Investigator Training – Handling External Complaints*

Paragraph U122 directs the DPD to provide all supervisors charged with accepting external complaints with appropriate training on handling external complaints that emphasizes interpersonal skills. The DPD shall provide training on the DPD external complaint process, including the role of OCI and IAD in the process, to all new recruits and as part of annual in-service training.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph U122 during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance. As of the end of that quarter, the DPD had not submitted appropriate documentation addressing the requirements of this paragraph.

On April 14, 2007, the DPD submitted to the Monitor a revised *Supervisory Leadership and Accountability Lesson Plan* to address the requirements of paragraph U122, among others. On June 29, 2007, the Monitor provided a written memorandum to the DPD that identified additional deficiencies in the lesson plan.

### *Current Assessment of Compliance*

According to the DPD, as of the end of the current quarter, the CDDT was revising the *Supervisory Leadership and Accountability Lesson Plan* to correct the deficiencies identified by the Monitor.<sup>87</sup>

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<sup>86</sup> According to the DPD's Sixteenth Quarter Status Report, the DPD's Criminal Investigations Bureau conducted an 80-hour Detective School training session on March 19 through March 30, 2007. Thirty-six members of the DPD attended this training.

<sup>87</sup> As described in the Current Assessment of Compliance for paragraphs U118-119, the DPD submitted a revised *Supervisory Leadership and Accountability Lesson Plan* on September 1, 2007, and the Monitor provided written feedback on September 30, 2007.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with the requirements of paragraph U122.

## H. FIELD TRAINING

This section comprises paragraph U123 only. The Monitor last assessed the DPD's compliance with this paragraph during the quarter ending August 31, 2006. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

### *Paragraph U123 - Field Training – Enhancement of FTO Program*

Paragraph U123 directs the DPD to develop, subject to DOJ approval, a protocol to enhance the Field Training Officer (FTO) program within 120 days of effective date of this Agreement. The protocol shall address the criteria and method for selecting and removing the FTOs and for training and evaluating FTOs and trainees.

#### *Background*

The Monitor last assessed the DPD's compliance with paragraph U123 during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance. The DPD's FTO program was dormant, with no formal organizational structure in place. The Monitor's inquiries pertaining to this paragraph revealed that the FTO program failed to meet the conditional approval as directed by the DOJ's correspondence dated April 11, 2006, and the Monitor did not receive any documentation regarding the current status of the FTO program.

#### *Current Assessment of Compliance*

As mentioned in the *Background* section above, on April 11, 2006, the DOJ sent the DPD a letter granting the DPD conditional approval for the DPD's FTO Protocol. The DPD subsequently revised the protocol in an attempt to meet the concerns that the DOJ outlines in granting conditional approval. This revised protocol was forwarded to the DOJ on April 26, 2007. The DPD had not received a response from the DOJ as of the end of the current quarter.

Based on the foregoing, the Monitor withholds a determination of the DPD's compliance with the requirements of paragraph U123, pending the DOJ's response to the revised protocol submitted by the DPD.

## VIII. MONITORING, REPORTING, AND IMPLEMENTATION

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Paragraph U139 requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. The paragraph requires that any directive to reopen an investigation by the Monitor be given within a reasonable period following the investigation's conclusion and be given prior to the time when the disposition is officially communicated to the subject officer. Although the Monitor has requested various investigative files for review, as the DPD pointed out in its Fifteenth Quarter Status Report, the files reviewed usually closed several months prior to the review. The Monitor did not take into account whether it was a reasonable period since closing and did not have knowledge as to whether the disposition had been communicated to the subject officer. The Monitor has not yet requested that a mechanism be developed for meeting the restrictions of this paragraph regarding when an investigation can be reopened. However, a mechanism for taking these matters into account must be developed before the requirements of this paragraph can be carried out properly.

As reported herein, the DPD submitted its first *Use of Force Investigations Audit* on August 31, 2007. Although the Monitor has not completed its evaluation of the audit with regard to the DPD's compliance with subparagraph U94a, it is worth noting that the audit found that the DPD is not yet in compliance with paragraphs U27-41. Once again, the requirements of paragraph U139 will become more pertinent when the DPD begins to achieve compliance with these investigative requirements.

As reported previously, the Monitor will no longer make a compliance finding with regard to this paragraph but, rather, will report instances in which the Monitor directs the DPD to reopen an investigation and the results thereafter.

## **SECTION THREE: COMPLIANCE ASSESSMENTS - THE CONDITIONS OF CONFINEMENT CONSENT JUDGMENT**

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This section of the report contains the Monitor's compliance assessments of the COC CJ paragraphs scheduled for review during the quarter ending August 31, 2007.

As described in previous quarterly reports, the organization of the COC CJ paragraphs vary, in that some paragraphs have separate but related "policy"-required paragraphs within the COC CJ,<sup>88</sup> while others do not.<sup>89</sup> These varying formats impact the way in which the Monitor assesses compliance with each paragraph. Specifically, the Monitor's compliance assessments of paragraphs that do not have a separate policy-related paragraph include reviews for written guidance or instruction<sup>90</sup> in order to ensure that the required procedures are mandated by the DPD and appropriate DPD personnel have received the necessary direction to carry out the requirements of the COC CJ.

### **I. FIRE SAFETY POLICIES**

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This section of the COC CJ comprises paragraphs C14-22. It requires the DPD to develop, implement, and provide training on specific fire safety policies and procedures and develop and implement a comprehensive fire safety program in all DPD facilities that maintain holding cells.

The Monitor found the DPD in compliance with paragraph C22 during the quarter ending August 31, 2005, as the Monitor confirmed that all Kane Fiber Ceiling Tiles had been removed from DPD buildings containing holding cells.<sup>91</sup>

The Monitor last assessed the DPD's compliance with paragraphs C14-21 during the quarter ending November 30, 2006. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2007.

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<sup>88</sup> See, for example, paragraph C39 – Cleanliness of Cells and paragraph C40 – Cleaning Policy.

<sup>89</sup> See, for example, paragraph C45 - Access to Toilets and Potable Water.

<sup>90</sup> As described in the Introduction to the Methodologies, this is the Policy Component of compliance.

<sup>91</sup> The DPD will remain in compliance with paragraph C22 unless it begins using buildings that contain Kane Fiber Ceiling Tiles to detain prisoners.

## **II. EMERGENCY PREPAREDNESS POLICIES**

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This section of the COC CJ comprises paragraphs C23-25. It requires the DPD to develop and implement emergency preparedness plans for all facilities that maintain holding cells. These procedures and policies are to be designed to ensure that each precinct and the entire Department have a clear understanding of what actions are required in the event of an emergency.

The Monitor last assessed the DPD's compliance with paragraphs C23-25 during the quarter ending November 30, 2006. The Monitor is scheduled to again assess the DPD's compliance with these paragraphs during the quarter ending November 30, 2007.

## **III. MEDICAL AND MENTAL HEALTH CARE POLICIES**

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This section of the COC CJ comprises paragraphs C26-34. It requires the DPD to develop and implement a medical and mental health care program, which includes a series of policies, procedures and protocols. These policies and procedures must be designed and developed to ensure that the DPD is adequately identifying and responding to the medical and mental health care conditions and needs of its detainees. The policies and procedures must be approved by a qualified medical and mental health professional. The comprehensive medical and mental health screening program (CMMHSP) must include specific intake screening procedures and medical protocols and must be reviewed and approved by the DOJ prior to implementation.

The Monitor last assessed the DPD's compliance with paragraphs C26-34 during the quarter ending May 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending February 29, 2007.

## V. PRISONER SAFETY POLICIES

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This section of the COC CJ comprises paragraphs C35-38. It requires the DPD to develop and implement prisoner safety policies for all facilities that maintain holding cells. Each precinct, and the entire Department, must have clear and concise policies, procedures and forms that will ensure the safety and well-being of prisoners.

The Monitor last assessed the DPD's compliance with paragraphs C35-38 during the quarter ending November 30, 2006. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraph C35-38 – Ensure Safety Level; Security Screening of Prisoners; Cell Check Policies; and, Observation Cell Policy*

Paragraph C35 requires the DPD to ensure a reasonable level of safety of staff and prisoners through the use of appropriate security administration procedures.

Paragraph C36 requires the DPD to develop and implement a prisoner security screening program for all buildings containing holding cells. At a minimum, this program must:

- a. establish protocols based upon objective, behavior-based criteria for identifying suspected crime partners, vulnerable, assaultive or special management prisoners who should be housed in observation cells or single-occupancy cells; and
- b. require that security screening information is documented and communicated between consecutive shifts.

Paragraph C37 requires the DPD to develop and implement procedures for the performance, documentation and review of routine cell checks in all holding cells to ensure safe housing. At a minimum, these procedures will require that cell checks on the general population are performed at least twice per hour and that cell checks on prisoners in observation cells and Detroit Receiving Hospital (DRH) holding cells are performed every 15 minutes, unless constant supervision is required, and that detention officers document relevant information regarding the performance of cell checks in an auditable log.

Paragraph C38 requires the DPD to record in a written policy and implement a procedure that requires detention officers to provide continual direct or onsite remote observation of all observation cells while they are occupied.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C35-38 during the quarter ending November 30, 2006. At that time, the Monitor withheld a determination of compliance

with paragraph C36, pending the outcome of the anticipated discussions with the DPD and DOJ regarding the development of objective behavior-based criteria for screening and housing of detainees. The Monitor found the DPD was not yet in compliance with paragraphs C35, C37 and C38 based, in part, on the following:

- DPD policies were outdated and not in alignment with the DPD's newly developed procedures and forms.
- Cell checks were not adequately documented, nor were they being performed with sufficient frequency.
- The DPD did not document continual direct or on-site remote observation of all observation cells while they were occupied.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraphs C35-38, the Monitor reviewed the DPD's *Detainee Safety Programs Audit* submitted on July 31, 2007, which was required by subparagraph C69. The Monitor also conducted supplemental onsite inspections<sup>92</sup> of all DPD buildings containing holding cells. Activities conducted during these inspections included observations, non-statistical document reviews, and staff interviews.

The *Detainee Safety Programs Audit* included compliance assessments of the requirements of paragraphs C35-38 and the DPD's Detainee Safety Program. The Monitor reviewed the audit report, work plan, and audit working papers related to the audit. Although the Monitor identified deficiencies in the audit report leading to a determination of non-compliance, none of the documented deficiencies prevented the Monitor from being able to rely upon the audit's findings.<sup>93</sup>

The following reflects the Monitor's and AT's findings:

#### *Paragraph C35- Assurance of Safety*

The AT determined that the DPD is not yet in compliance with the requirements of paragraph C35 based on its failure to comply with the requirements of paragraphs C36-38.

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<sup>92</sup> The Monitor conducted on-site inspections of the Northwestern, Western, Eastern, and Northeastern Districts, as well as Schafer Annex and the DRH on July 30, July 31, August 30 and August 31, 2007.

<sup>93</sup> Refer to the *Current Assessment of Compliance* for paragraph C69 for information regarding the Monitor's assessment of the audit, including the specific reasons for the Monitor's conclusion that the audit was non-compliant with the requirements of paragraph C69.

*Paragraph C36 – Security Screening of Prisoners*

The AT determined that the DPD is not yet in compliance with paragraph C36 based primarily on inadequate implementation of security screening procedures that included behavior based criteria; lack of uniformed procedures for ensuring documented communication between consecutive shifts; and 0% documentation evidencing that security screening information was documented and communicated between consecutive shifts.

The Monitor's findings from the supplemental onsite inspections support the audit findings described above. During these inspections, the Monitor observed that the DPD lacked a uniform procedure for ensuring documented communication between consecutive shifts.<sup>94</sup> As a result, the DPD is not complying with the paragraph C36 requirement that security screening information is documented and communicated between consecutive shifts (subparagraph C36b) However, the Monitor continues to withhold a determination of compliance with the paragraph C36 requirements to establish protocols based upon objective, behavior-based criteria for identifying suspected crime partners, vulnerable, assaultive or special management prisoners who should be housed in observation cells or single-occupancy cells (subparagraph C36a) pending the outcome of discussions between the parties and the Monitor regarding the requirements for an objective behavior-based criteria for screening detainees and making housing assignments.<sup>95</sup>

*Paragraph C37 – Cell Check Policies*

The AT determined that the DPD is not yet in compliance with paragraph C37 based primarily on the following:

- Cell checks were performed at least twice per hour in 35% of the Detention Cell Check Logs (DCCLs) that were reviewed, failing to meet the 94% requirement for compliance.
- Cell checks were accurately and regularly performed in 93% of the Mental Health High Risk Monitoring Logs reviewed, falling just short of the greater than 94% requirement for compliance.

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<sup>94</sup> The Monitor observed and was informed by several DPD staff that the agency has authorized the use of an electronic version of the Desk Blotter. The Monitor observed no accompanying policy that directs staff in the use of the blotter as a tool to document communicated security screening information between consecutive shifts. The Monitor will continue to assess the development of this DPD initiative and comment as necessary.

<sup>95</sup> On September 27, 2007, after the end of the quarter, the DOJ wrote a letter to the City on this issue. After consulting with its expert, the DOJ noted that although the language of provisions C36a and b do not specifically require that the City obtain criminal history checks on detainees, the DOJ and its consultant strongly support this best practice, as it is necessary to ensure detainee safety. The DOJ went on to point out that paragraph C35 requires that the DPD ensure a reasonable level of safety of staff and prisoners through the use of appropriate security administration procedures. The correspondence also made recommendations for revisions to the DPD's security screening form. The Monitor has previously recommended that the DPD run criminal history checks on detainees and make revisions to the form.

The Monitor's review of DCCLs during the supplemental onsite inspections in each district support the audit findings described above. These reviews also revealed that holding cell staff are documenting the number of detainees in the holding cells by gender, but continue to document minimal and general information regarding the condition of the detainees.

*Paragraph C38 – Observation Cell Policy*

The AT determined that the DPD complied with the paragraph C38 requirement to provide continual direct on-site remote observation of all observation cells that are occupied. The Monitor's findings from the supplemental onsite inspections support these audit findings.

During these inspections, the Monitor also noted that the DPD uses observation cells to house detainees who do not require continual direct or on-site remote observation when the other cells are full. However, the DPD could not demonstrate a notification procedure and communication process that assures that holding cell staff know when constant observation is required for detainees in observation holding cell versus when other detainees are being held in observation cells due to capacity issues. See related recommendation below.

Based on the foregoing, the Monitor finds that the DPD is in compliance with paragraph C38, but is not yet in compliance with the requirements of paragraphs C35, C36b and C37. The Monitor is withholding a determination of compliance with paragraph C36a.

*Recommendation*

Although the Monitor agrees with the AT's conclusion that the DPD is in compliance with paragraph C38, the Monitor is concerned about that the DPD does not have a notification procedure and communication practice in place that assures that holding cell staff know when constant observation is required for detainees in observation holding cell versus when other detainees are being held in observation cells due to capacity issues. Although this is not specifically required by the Consent Judgment, as long as the DPD continuously observes all detainees held in observation holding cells no matter what their status, the Monitor recommends that the DPD establish such procedures and practices in order to prevent a situation where holding cell staff fail to recognize the need to provide continual direct or on-site remote observation of a detainee, thus jeopardizing the safety of the detainee.

## V. ENVIRONMENTAL HEALTH AND SAFETY POLICIES

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This section of the COC CJ (paragraphs C39-46) requires the DPD to develop and implement environmental health and safety policies for all facilities that maintain holding cells. These procedures and policies are to be designed to ensure the cleanliness and maintenance of the cell block areas to ensure the safety of DPD prisoners.

The Monitor has concluded that the DPD is in compliance with paragraphs C44 and C46, which respectively require the DPD to ensure that lighting in all cell block areas is sufficient to reach 20 foot-candles of illumination at desk level and in personal grooming areas and that all Hepa-Aire purifiers comply with the Michigan Occupational Safety and Health Agency standards.<sup>96</sup>

The Monitor last assessed the DPD's compliance with paragraphs C39-45 during the quarter ending February 28, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraphs C39-45 – Cleanliness of Cells; Development of Cleaning Policy; Maintenance Policy; Heating and Ventilation; Cell Block Repairs; Lighting; Access to Toilets and Potable Water*

Paragraph C39 requires the DPD to ensure that all holding cells are cleaned immediately and, thereafter, are maintained in a clean and sanitary manner.

Paragraph C40 requires the DPD to design and implement a cleaning policy for all holding cells. This policy will require routine cleaning and supervisory inspection of the holding cells and nearby areas.

Paragraph C41 requires the DPD to design and implement a maintenance policy for all holding cells that requires timely performance of routine maintenance, as well as the documentation of all maintenance requests and responses in an auditable log.

Paragraph C42 requires the DPD to provide adequate heating and ventilation for all buildings containing holding cells.

Paragraph C43 requires the DPD to repair all broken or malfunctioning lighting, toilets, sinks and windows in holding cells and observation cells.

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<sup>96</sup> The Monitor will not assess compliance with paragraph C44 again unless alterations are made to the lighting fixtures or other conditions arise that affect the sufficiency of the lighting in the cell block areas. The Monitor will not assess compliance with paragraph C46 again unless Hepa-Aire purifiers are re-installed in buildings containing holding cells.

Paragraph C44 requires the DPD to ensure that lighting in all cell block areas is sufficient to reach 20 foot-candles of illumination at desk level and in personal grooming areas.

Paragraph C45 requires the DPD to provide all prisoners with reasonable access to toilets and potable water 24 hours-a-day.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs C39-35 during the quarter ending February 28, 2007, finding that the DPD was in compliance with paragraphs C39 and C42-45 but not yet in compliance with paragraphs C40-41. The compliance assessments were based on random unannounced onsite inspections of DPD buildings containing holding cells conducted by the Monitor, as well as the findings contained in the *Environmental Health and Safety (EH&S) Audit* submitted by the DPD on January 31, 2007.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraphs C39-45, the Monitor reviewed the *EH&S Audit* submitted by the DPD in July 31, 2007, which was required by subparagraph C70. The Monitor also conducted supplemental onsite inspections of all DPD buildings containing holding cells.<sup>97</sup>

The *EH&S Audit* included compliance assessments of the requirements of paragraphs C39-45 and the related DPD policies. The Monitor reviewed the audit report, work plan, and audit working papers related to the audit. The Monitor concluded that the audit was compliant with the requirements of paragraph C70 and the Monitor was able to rely upon the audit's findings.<sup>98</sup>

The following reflects the Monitor's and AT's findings:

#### *Paragraph C39 – Cleanliness of Cells*

The AT determined that the DPD was in compliance with the requirements of paragraph C39, as the holding cells were maintained in a clean and sanitary manner. The Monitor's findings from the supplemental onsite inspections generally support these audit findings. During an inspection of one district,<sup>99</sup> the Monitor observed debris (empty juice containers, half eaten food, papers) in empty holding cells, and the hallways of the holding cell area were dirty and in need of sweeping

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<sup>97</sup> Refer to the *Current Assessment of Compliance* for paragraphs C35-38 for information regarding the times and locations of these inspections, as well as the activities conducted during the inspections.

<sup>98</sup> Refer to the *Current Assessment of Compliance* for paragraph C70 for information regarding the Monitor's assessment of the audit.

<sup>99</sup> The Northeastern District.

and mopping. The Monitor inquired about the unsanitary conditions and was informed that a large number of detainees had to be served a meal and prepped for court, which impacted the staff's ability to immediately clean the cells after they were emptied. In the remaining districts, the Monitor found that all of the holding cells and surrounding areas were maintained in a clean and sanitary manner.

*Paragraph C40 – Development of Cleaning Policy*

The AT determined that the DPD is not yet in compliance with the requirements of paragraph C40, as 18% of the cleaning logs included in the sample were missing. This failed to meet the greater than 94% requirement for compliance.<sup>100</sup> The AT reviewed the cleaning logs that were available and identified missing cleaning and supervisor inspection entries.

During the supplemental onsite inspections, the Monitor interviewed DPD personnel regarding the existence of a regular cleaning schedule and their knowledge of the policy (Directive 305.4), reviewed the most recent entries in the cleaning log to determine if the cleaning schedule is being followed and documented, and visually inspected each holding cell and the surrounding areas for cleanliness. As described above,<sup>101</sup> with the exception of one district, the Monitor found that the holding cells and surrounding areas were clean and free of debris. However, the Monitor noted that cleaning logs selected for review were missing and there were multiple missing cleaning and supervisor inspection entries in the logs that were obtained and reviewed.

*Paragraph C41 – Maintenance Policy*

The AT found that the DPD is not yet in compliance with paragraph C41, as 27% of the maintenance logs included in the sample were missing. This failed to meet the greater than 94% requirement for compliance.<sup>102</sup>

The Monitor's findings from the supplemental onsite inspections support these audit findings. The Monitor interviewed supervisors and holding cell staff at each district about their practices related to submitting and tracking maintenance request and determined that the process is not consistent from district to district. Staff indicated that inoperable or broken equipment was reported to a supervisor and the supervisor either reported the problem to the Compliance Liaison Officer or sent a notice to maintenance staff via an email. Staff stated the broken equipment was noted in the maintenance log but tracked via email records. No formal tracking and documentation process was described or identified.

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<sup>100</sup> Because of the missing logs, the AT could not conduct a statistical assessment of the quality of the cleaning documents; however, the AT did conduct supplemental testing of the quality that was not statistically valid.

<sup>101</sup> See Current Assessment of Compliance for paragraph C39.

<sup>102</sup> As with paragraph C40, because of the missing logs, the AT could not conduct a statistical assessment.

*Paragraph C42 – Heating and Ventilation*

The AT determined that the DPD is in compliance with the requirements of this paragraph. The AT found that 100% (111 of 111) of the holding cells inspected had temperatures within the required 66-80 degrees Fahrenheit range. The AT also identified that there were no reported changes or malfunctions in the DPD systems for all buildings containing holding cells since the time of the most recent inspection by the independent contractor, who determined that the system provides adequate ventilation.

During the supplemental on-site inspections, the Monitor determined that the holding cell areas of each district were within the acceptable temperature range of 66-80 degrees Fahrenheit.<sup>103</sup>

*Paragraph C43 – Cell Block Repairs*

The AT determined that the DPD is in compliance with the requirements of paragraph C43, as 100% of all the light fixtures, light bulbs, sinks, toilets, and windows in the holding cells were operable or intact. The Monitor's findings from the supplemental onsite inspections support these audit findings. The Monitor determined that 100% of all light fixtures, sinks, toilets, and windows were either operable or intact; only 2 out of 111 light bulbs were not in working order.

*Paragraph C44 – Lighting*

The AT determined that the DPD is in compliance with the requirements of paragraph C44 based on onsite inspections that measured the lighting, using a LUX Meter, within varying areas within all of the individual cells and within the surrounding areas of all buildings containing holding cells. As described above, the Monitor has concluded that the DPD is in compliance with paragraph C44 and will not re-assess compliance with the paragraph unless alterations are made to the lighting fixtures or other conditions arise that affect the sufficiency of the lighting in the cell block areas.

*Paragraph C45 – Access to Toilets and Potable Water*

The AT determined that the DPD was in compliance with the requirements of paragraph C45, as 100% (111 of 111) of the holding cells are equipped with operable self-contained toilets and sink units with drinking fountain spigots that provide detainees with access to potable water and a toilet 24 hours a day.

The Monitor's findings from the supplemental onsite inspections support the audit findings described above. The Monitor reviewed assignment logs and interviewed staff and verified that

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<sup>103</sup> The Monitor has suggested that the AT conduct onsite inspections during time periods with more extreme conditions (hotter and colder temperatures) and/or have the ventilation systems recertified. Refer to recommendation included in the Monitor's assessment of the Environmental Health and Safety Audit (paragraph C70).

the DPD was continuing its practice of having at least one detention officer present at all times in the holding cell areas and that water is available to the prisoners either through sinks in the individual holding cells or by having cups and water available to the prisoners upon request.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraphs C39, C42 (both subparagraphs C42a and b), and C43-45; the Monitor finds that the DPD remains in compliance with the policy requirements of paragraphs C40 and C41, but is not yet in compliance with implementation requirements of these paragraphs.

## **VI. POLICIES CONCERNING PERSONS WITH DISABILITIES**

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This section of the COC CJ (paragraphs C47-48) requires the DPD to develop and implement appropriate policies concerning persons with disabilities for all facilities that maintain holding cells. These procedures and policies are to be designed to ensure the detainees with disabilities are provided with appropriate facilities and care.

The Monitor last assessed the DPD's compliance with paragraphs C47-48 during the quarter ending May 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending February 29, 2008.

## **VII. FOOD SERVICE POLICIES**

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This section of the COC CJ comprises paragraphs C49-50. It requires the DPD to develop and implement a comprehensive new food service policy with the assistance and approval of a qualified dietician and sanitarian. The new program must ensure that food is prepared and served in a sanitary manner, and that prisoners are fed on a regular basis. In addition, the program must ensure that all prisoners are provided with an alternative meal if they are unable to eat the standard meal for religious or dietary reasons.

The Monitor last assessed the DPD's compliance with paragraphs C49-50 during the quarter ending February 28, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### **Paragraphs C49-50 – Food Storage and Service, Development and Implementation of Food Service Policies**

Paragraph C49 requires the DPD to ensure that food is stored and served in a sanitary manner and in compliance with state and local health codes. The DPD's efforts to ensure that food is stored and served in a sanitary manner are also dependent on its implementation of the comprehensive food service policy required by paragraph C50.

Paragraph C50 requires the DPD to develop and implement a comprehensive food service policy, which must be reviewed and approved, in writing, by a qualified sanitarian. Under this policy, the meal plan must be initially reviewed and approved, in writing, by a qualified dietician. It must also be reviewed and approved, in writing, by a qualified dietician at least once a year, and prior to implementing any revisions to the program. In addition, all food must be stored and handled in a sanitary manner, all prisoners must be provided with an alternative meal selection and food must be provided to all detainees who are held over six hours.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs C49-50 during the quarter ending February 28, 2007, finding the DPD in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraphs. The Monitor conducted onsite inspections of holding cells and reviewed the *Food Service Audit* submitted by the DPD on January 31, 2006. The Monitor found that the holding cell staff were not adhering to the specified feeding schedule and documentation requirements of the paragraphs.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraphs C49-50, the Monitor reviewed the *Food Service Audit* submitted by the DPD in July 31, 2007, which was required by subparagraph C71. The Monitor also conducted supplemental onsite inspections of all DPD buildings containing holding cells.<sup>104</sup>

The *Food Service Audit* included compliance assessments of the requirements of paragraphs C49-50 and the related DPD policies. The Monitor reviewed the audit report, work plan, and audit working papers related to the audit. The Monitor concluded that the audit was compliant with the requirements of paragraph C71 and that the Monitor was able to rely upon its findings.<sup>105</sup>

The following reflects the Monitor's and AT's findings:

#### *Paragraph C49 - Food Storage and Service*

The AT determined that the DPD is not yet in compliance with the requirements of paragraph C49, based on the following findings:

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<sup>104</sup> Refer to the Current Assessment of Compliance for paragraphs C35-38 for information regarding the times and locations of these inspections, as well as the activities conducted during the inspections.

<sup>105</sup> Refer to the Current Assessment of Compliance for paragraph C71 for information regarding the Monitor's assessment of the audit.

- The AT calculated a 93% compliance rate with the requirement to ensure that the food service area was free from contaminants or debris that could possibly result in unsanitary conditions, just short of the greater than 94% required for compliance.
- There were no expiration dates on the stored juice containers designated to be served to detainees.
- Holding cell supervisors failed to review the Cleaning and Inspection of Detention Refrigerator Logs for completeness and accuracy.
- The AT determined that the districts were 0% compliant with the requirement that the DPD document the temperature at all required times, and 20% compliant with the requirement that the DPD document the cleaning of refrigerators.

The Monitor's findings from the supplemental onsite inspections support the audit findings described above. The Monitor generally observed sanitary conditions in the food storage and serving areas, although the Monitor did observe a collection of boxes, papers and other items in the food storage areas at two districts that could eventually contribute to unsanitary conditions. The Monitor also observed non-food service-related items on the food service cart during a time when meals were not being served. Additionally, at one district the food service cart was not cleaned (wiped down) before or after a food service activity. The Monitor also observed the lack of an expiration dates on the stored juice containers designated to be served to detainees.

In addition, the Monitor observed two separate district refrigerator temperatures above the maximum allowable temperature of 41 degrees Fahrenheit: the Monitor recorded a refrigerator temperature of 43 degrees Fahrenheit at one district and 45 degrees Fahrenheit at another.

Lastly, the Monitor determined that holding cell supervisors failed to accurately review and approve the Cleaning and Inspection of Detention Refrigerator Logs for completeness and accuracy. Specifically, the Monitor noted supervisors approved logs that were missing cleaning and inspection entries without explanation.

#### *Paragraph C50 - Development and Implementation of Food Service Policies*

The AT determined that the DPD is not yet in compliance with the requirements of paragraph C50 based on the following findings:

- The DPD is not ensuring that all detainees who are held in DPD custody over six hours are provided regular, adequate and timely meals throughout their detainment. The AT could not verify that any of the sampled detainees received meals in accordance with this paragraph.
- The DPD is not ensuring that detainees arrested between the hours of 10:00 p.m. and 12:00 a.m. are provided meals shortly after intake. The AT could not verify that any of the sampled detainees received meals in accordance with this requirement.

- The DPD is not ensuring that all detainees that are conveyed to and returned from a hospital facility were provided with a meal upon their return. The AT could not verify that any of the sampled detainees received food service during their stay at the hospital facility or upon their return to a DPD district.
- The AT could not verify that any of the sampled detainees conveyed to a hospital facility for treatment and provided prescription medication requiring food prior to taking the medication were actually provided meals in accordance with the requirement.
- The DPD achieved 87% compliance with the requirement to serve meals in accordance with the feeding schedule of 6 a.m., noon, 6 p.m. and 10 p.m., falling short of the 94% or greater rate that is required for compliance.

The Monitor's findings from the supplemental onsite inspections support the audit findings described above. The Monitor identified instances of DPD holding cell staff not adhering to the specified schedule of food service to detainees, as described within the Food Service policy. Additionally, the Monitor noted that the DPD failed to completely document the required information on the Daily Detainee Meal and Hygiene Items Logs.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with the implementation requirements of paragraphs C49-50.

## VIII. PERSONAL HYGIENE POLICIES

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This section of the COC CJ comprises paragraph C51 only. The Monitor last assessed the DPD's compliance with paragraph C51 during the quarter ending February 28, 2007. The Monitor again assessed the DPD's compliance with this paragraph during the current quarter. The results of our current assessment follow.

### *Paragraph C51 – Availability of Personal Hygiene Items*

Paragraph C51 requires the DPD to provide all prisoners with access to personal hygiene items such as soap, toothbrushes, toilet paper, comb, deodorant and feminine hygiene products. The DPD must implement this provision within one month of the effective date of the COC CJ.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C51 during the quarter ending February 28, 2007, finding the DPD in compliance with the policy requirements but not yet in compliance with the implementation requirements of this paragraph. The Monitor conducted onsite inspections of all DPD buildings that contain holding cells to determine if adequate supplies of the requisite personal hygiene items were available to the detainees. The Monitor found that, with the exception of combs in one District and anti-bacterial towelettes in another, personal hygiene products were available in all Districts. Interviews with holding cell detainees revealed that the procedures for distributing personal hygiene products were inconsistent, with some officers passing items upon request and others passing items out automatically during feeding. The DPD's *Food Service Audit* submitted on January 31, 2007, although found to be non-compliant, appropriately concluded that the DPD was not yet in compliance with paragraph C51.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph C51, the Monitor reviewed the *Food Service Audit* submitted by the DPD in July 31, 2007, which was required by subparagraph C71. The Monitor also conducted onsite inspections of all DPD buildings containing holding cells.<sup>106</sup>

The *Food Service Audit* included compliance assessments of the requirements of paragraph C51 and the related DPD policies. The Monitor reviewed the audit report, work plan, and audit

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<sup>106</sup> Refer to the Current Assessment of Compliance for paragraphs C35-38 for information regarding the times and locations of these inspections, as well as the activities conducted during the inspections.

working papers related to the audit. The Monitor concluded that the audit was compliant with the requirements of paragraph C71 and that the Monitor was able to rely upon its findings.<sup>107</sup>

The following reflects the Monitor's and AT's findings:

The AT determined that the DPD is in compliance with the requirements of paragraph C51, as 100% of the DPD district facilities with holding cells maintain an adequate supply of hygiene kits and individual personal hygiene items. Staff indicated that the items are made available to detainees upon request. The audit noted that DRH does not maintain a supply of personal hygiene kits, but hospital staff indicated that individual personal hygiene items are available and are provided upon request.

The Monitor's findings from the supplemental onsite inspections support the audit findings described above. The Monitor observed an adequate supply of hygiene kits and individual personal hygiene items at each of the five districts with holding cells. DPD staff at each district was consistent regarding the distribution of personal hygiene items, stating that the items are made available upon request and towelettes are offered to each detainee during food service. In addition, signage indicating the availability of personal hygiene items to detainees was posted in an area visible to detainees in four of the five districts with holding cells.

Based on the foregoing, the Monitor finds the DPD in compliance with the requirements of paragraph C51.

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<sup>107</sup> Refer to the Current Assessment of Compliance for paragraph C71 for information regarding the Monitor's assessment of the audit.

## IX. USE OF FORCE AND RESTRAINTS POLICIES

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This section of the COC CJ (paragraphs C52-54) requires the DPD to revise its policies regarding prisoners and comply with the DPD's UOF policies and procedures for any UOF on prisoners in holding cells. In addition, the DPD must not handcuff prisoners to benches for longer periods of time than are necessary. The DPD is required to submit its revised UOF policies to the DOJ for review and obtain DOJ's approval.

The Monitor last assessed the DPD's compliance with paragraphs C52-54 during the quarter ending February 28, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

### *Paragraphs C52-53 – Use of Force on Prisoners in Holding Cells Policies; Prisoner Policies*

Paragraph C52 states that the DPD shall require that any use of force on prisoners in holding cells complies with the DPD's use of force policies and procedures.

Paragraph C53 states that the DPD shall revise and augment its policies regarding prisoners.

### *Background*

The DPD submitted a *UOFHC Investigations Audit*, required by subparagraph C65a, to the Monitor on the required due date of January 31, 2007. Due to the number of audits submitted on this due date, the Monitor had not yet completed its evaluation of this audit. As a result, the Monitor deferred its assessment of the DPD's compliance with paragraphs C52-53, indicating that it would conduct these assessments in conjunction with its review of this audit.

The Monitor previously found that the DPD was in compliance with the policy requirements of paragraphs C52-53.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph C52-53, the Monitor reviewed the incidents included in the *UOFHC Audit*,<sup>108</sup> which was submitted by the DPD on July 31, 2007 to address the requirements of subparagraph C65a.<sup>109</sup> This audit identified and evaluated a total of

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<sup>108</sup> Refer to the *Current Assessment of Compliance* for subparagraph C65a in this report for the Monitor's evaluation of the *UOFHC Audit*.

<sup>109</sup> The Monitor intended to use the DPD's audit of this topic submitted on January 31, 2007; however the Monitor opted to use the DPD's more recent audit submitted on July 31, 2007.

eight UOF incidents that occurred from February through June 2007.<sup>110</sup> The audit evaluated whether the DPD is complying with various policies and procedures when uses of force occur in a holding cells. Some of the policies and procedures addressed by the AT included Directive 304.2, *Use of Force*, Directive 04-7, *Use of Force/Detainee Injuries or Allegations of Injuries Reporting and Investigating*, and Directive 305.4, *Holding Cell Areas*.

The Monitor's review of these eight UOF incidents revealed that the DPD is not adequately implementing the above policies with regard to uses of force in holding cells. Specifically, in one of the eight (12.5%) incidents reviewed, officers used inappropriate force, and in two of the eight (25%) incidents, involved officers did not report the use of force or notify a supervisor immediately following the incident.<sup>111</sup> Regarding the requirements of paragraph C53, the Monitor determined that in three of the eight (37.5%) incidents, officers either did not take appropriate precautions when dealing with recalcitrant prisoners and/or did not notify a supervisor prior to using force on a prisoner confined to a cell. Additionally, in all eight (100%) incidents, the supervisors involved did not assess the need for and direct the uses of force, where possible, prior to their occurrence and/or did not ensure the incidents were videotaped.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with the implementation requirements of paragraphs C52-53.

### *Paragraph C54 – Prisoners in Handcuffs*

Paragraph C54 states that the DPD shall not handcuff prisoners to benches for longer periods of time than are necessary.

### *Background*

The DPD submitted a *UOFHC Investigations Audit Report*, required by subparagraph C65a, to the Monitor on the required due date of January 31, 2007. Due to the number of audits submitted on this due date, the Monitor had not yet completed its evaluation of this audit. As a result, the Monitor deferred its assessment of the DPD's compliance with paragraph C54 during the quarter ending February 28, 2007, indicating that it would conduct this assessment in conjunction with its review of this audit.

The Monitor previously found that the DPD was in compliance with the policy requirements of paragraph C54.

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<sup>110</sup> For Command Investigations the time period was February through March 2007 and the AT reviewed five investigations; for FI investigations the time period was April through June 2007 and the AT reviewed three investigations.

<sup>111</sup> In one of these incidents, no action (either non-disciplinary or disciplinary) was taken against the officer for not reporting the UOF once the investigation was conducted.

### *Current Assessment of Compliance*

Although the *UOFHC Investigations Audit* previously covered paragraph C54, the Monitor determined that the most recent submissions of this audit, on January 31, 2007 and July 31, 2007, did not include this paragraph. The Monitor was unaware that the DPD AT no longer planned to include paragraph C54 in this audit.

In its Sixteenth Quarter Status Report, the City and the DPD indicated that the DPD continues to utilize the Handcuff to Object (H2O) Form (DPD 670) “to capture the exact time that a detainee is handcuffed to a fixed object and the exact time that the detainee is un-handcuffed from this fixed object.” The DPD indicated that as of the date of its status report, the OCR had not received a H2O form specifying that an arrestee had been handcuffed to a fixed object. Based upon the fact that no forms were submitted, the DPD concluded that the DPD is not in the practice of handcuffing arrestees to fixed objects while in DPD custody. However, a previous UOFHC Audit, submitted on July 31, 2006, as well as the Monitor’s review of tapes from the holding cells areas in previous quarters, found that although arrestees were not observed being handcuffed to objects for periods longer than three hours, there were arrestees who were in fact handcuffed to fixed objects for a period of time.

During the quarter ending February 28, 2006, the Monitor found that the DPD had effectively disseminated the policy that covers this paragraph. However, training has not been given on the requirements of this paragraph since that time. The Monitor is also unaware of any training or instruction being provided on the use of the H2O form. Finally, the Monitor has not received an inspection report from the DPD that indicates that the department has internally evaluated its compliance with the implementation requirements of this paragraph.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with the implementation requirements of paragraph C54.

## **X. INCIDENT DOCUMENTATION, INVESTIGATION AND REVIEW**

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This section of the COC CJ (paragraphs C55-57) requires the DPD to comply with its general incident investigation policies, UOF investigation policies and prisoner injury investigation policies in connection with all UOF, injuries and in-custody deaths occurring to prisoners in holding cells. The DPD is required to provide its revised UOF policies to the DOJ for review and to obtain DOJ’s approval.

The Monitor last assessed the DPD’s compliance with paragraphs C55-57 during the quarter ending February 28, 2007. The Monitor again assessed the DPD’s compliance with these paragraphs during the current quarter. The results of our current assessments follow.

**Paragraph C55-56 – Prisoners Use of Force Investigations; Use of Force on Prisoners in Holding Cells Investigations**

Paragraph C55 states that the DPD shall require that all uses of force, injuries to prisoners and in-custody deaths occurring in the DPD holding cells are investigated in compliance with the DPD's general incident investigation policies.

Paragraph C56 states that the DPD shall require that all uses of force occurring in DPD holding cells are reported and investigated in compliance with the DPD's use of force investigation policies.

***Background***

The DPD submitted a *UOFHC Investigations Audit* Report, required by subparagraph C65a, to the Monitor on the required due date of January 31, 2007. Due to the number of audits submitted on this due date, the Monitor had not yet completed its evaluation of this audit. As a result, the Monitor deferred its assessment of the DPD's compliance with paragraphs C55-56, indicating that it would conduct this assessment in conjunction with its review of this audit.

The Monitor previously found that the DPD was in compliance with the policy requirements of paragraphs C55-56.

***Current Assessment of Compliance***

In order to assess the DPD's compliance with paragraphs C55-56, the Monitor evaluated the *UOFHC Audit* submitted by the DPD on July 31, 2007. As described in the *Current Assessment of Compliance* for paragraphs C52-53, this audit evaluated eight investigations of UOF incidents that occurred in holding cells to determine whether the DPD is complying with various policies and procedures when the use of force occurs in a holding cell.

The audit included compliance assessments of the requirements of paragraphs C55-56 and the related DPD policies. The Monitor reviewed the audit report, work plan, and audit working papers related to the audit. The Monitor concluded that the audit was compliant with the requirements of subparagraph C65a, and the Monitor was able to rely upon the audit's findings.<sup>112</sup>

The audit found that the DPD is not adequately implementing the above policies with regard to investigations of uses of force in holding cells. Specifically, the command investigations did not contain all of the required details within the investigative reports, such as those related to evidence, witnesses, interviews and medical treatment provided. The investigations also did not

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<sup>112</sup> Refer to the *Current Assessment of Compliance* for paragraph C65a for information regarding the Monitor's assessment of the audit.

indicate that a canvass of the holding cell/holding cell area was conducted. This resulted in a lack of identified civilian witnesses to the use of force incidents and a lack of civilian witness interview statements.

Additionally, the audit found that the investigation reports are not being completed in a timely manner; supervisors are not requesting extensions for investigations not completed in the appropriate time; and supervisors are not reviewing holding cell videos to discover and substantiate findings pertaining to use of force incidents. The audit also found that reviewing supervisors are not thoroughly reviewing and evaluating investigations.

These findings indicate that although Directives 04-7 and 305.4 have been disseminated, the DPD has not yet implemented the policies contained therein. Furthermore, training on this policy and training directive has not yet taken place.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with the implementation requirements of paragraphs C55-56.

### *Paragraph C57 – Prisoner Injuries*

Paragraph C57 states that the DPD shall require that all injuries to prisoners occurring in DPD holding cells are reported and investigated in compliance with the DPD's prisoner injury investigation policies.

### *Background*

The DPD submitted a *Prisoner Injury Investigations Audit* Report, required by subparagraph C65b, to the Monitor on the required due date of January 31, 2007. Due to the number of audits submitted on this due date, the Monitor had not yet completed its evaluation of this audit. As a result, the Monitor deferred its assessment of the DPD's compliance with paragraph C57, indicating that it would conduct this assessment in conjunction with its review of this audit.

The Monitor previously found that the DPD was in compliance with the policy requirements of paragraph C57.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph C57, the Monitor evaluated the *PIHC Audit*,<sup>113</sup> which was submitted by the DPD in January 31, 2007. This audit identified and

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<sup>113</sup> Refer to the *Current Assessment of Compliance* for subparagraph C65b in this report for the Monitor's evaluation of the *PIHC Audit*.

evaluated a total of five PIHC investigations of incidents that occurred from August 1, 2006 through September 30, 2006,<sup>114</sup> and evaluated whether the DPD is complying with various policies and procedures when the uses of force occur in holding cells. The policies and procedures addressed by the AT included Directive 04-7, *Use of Force/Detainee Injuries or Allegations of Injuries Reporting and Investigating*, and Directive 305.4, *Holding Cell Areas*.

The audit included compliance assessments of the requirements of paragraph C57 and the related DPD policies. The Monitor reviewed the audit report, work plan, and audit working papers related to the audit. The Monitor concluded that the audit was compliant with the requirements of subparagraph C65b, and the Monitor was able to rely upon the audit's findings.<sup>115</sup>

The audit found that the DPD is not adequately implementing the above policies with regard to investigations of prisoner injuries in holding cells. Specifically, and similar to the UOFHC investigations above, the PIHC investigations did not contain all of the required details within the investigative reports, such as those related to evidence, witnesses, and interviews. The investigations also did not indicate that a canvass of the holding cell/holding cell area was conducted. Lastly, the FI and Joint Incident Shooting Team (JIST) investigations did not ensure that interviews were tape-recorded when required.

These findings indicate that although Directives 04-7 and 305.4 have been disseminated, the DPD has not yet implemented the policies contained therein. Furthermore, training on this policy and training directive has not yet taken place.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with the implementation requirements of paragraph C57.

## XI. EXTERNAL COMPLAINTS

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This section of the COC CJ (paragraphs C58-59) requires the DPD to comply with its external complaint and investigation policies when responding to all external complaints and incidents occurring in holding cells.

The Monitor last attempted to assess the DPD's compliance with paragraphs C58-59 during the quarter ending May 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending November 30, 2007.

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<sup>114</sup> For Command Investigations the time period was February through March 2007 and the AT reviewed five investigations, and for FI investigations the time period was April through June 2007 and the AT reviewed three investigations.

<sup>115</sup> Refer to the *Current Assessment of Compliance* for paragraph C65b for information regarding the Monitor's assessment of the audit.

## XII. GENERAL POLICIES

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This section of the COC CJ (paragraphs C60-61) requires the DPD to ensure that all terms are clearly defined in all policies that are developed, revised, and augmented, and to make proposed policy revisions available to the community.

The Monitor last assessed the DPD's compliance with paragraphs C60-61 during the quarter ending May 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending November 30, 2007.

## XIII. MANAGEMENT AND SUPERVISION

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This section of the COC CJ (paragraphs C62-72) requires the DPD to operate its holding cells in compliance with its comprehensive risk management plan and to routinely evaluate the operation of the holding cells to minimize the risks to its staff and prisoners. The DPD must evaluate such operations through the use of video cameras and via regularly scheduled semi-annual<sup>116</sup> audits that assess and report on issues affecting the safety and well-being of DPD personnel and prisoners in the DPD's holding cells.<sup>117</sup>

### *Paragraph C62 – Evaluation of Holding Cells*

Paragraph C62 requires the DPD to routinely evaluate the operation of the holding cells to minimize the risk of harm to staff and prisoners.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C62 during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance. During that quarter, the Monitor received copies of OCR inspections of the operations of the holding cells conducted in November 2006. Although the inspections appeared to cover various relevant COC CJ topics, the inspection reports did not adequately cover all of the information that could potentially minimize risk of harm to staff and prisoners. For example, the inspection report for the Western, Northwestern and Southwestern Districts contained information about the video cameras in processing areas (paragraph C64) for only the Northwestern District. Also, the reports did not

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<sup>116</sup> On October 4, 2004, at the request of the parties, the Court amended the audit schedule in the COC CJ by requiring the DPD's COC CJ audits to be completed semi-annually with the first and second audits due by January 31 and August 31, 2004, and subsequent audits due by January 31, 2005 and every six months thereafter.

<sup>117</sup> The topics covered by these audits include: UOF; injuries to prisoners and allegations of misconduct in holding cells; fire detection, suppression and evacuation; emergency preparedness; medical/mental health; detainee safety; environmental health and safety; and food service.

include consistent questions or cover consistent topics with respect to each district, making it difficult to make comparisons district-by-district. Lastly, it appears that the inspections were attempting to report “discrepancies” that were found, as opposed to evaluating the entire operation and reporting both positive and negative findings. Reporting in the latter manner would enable DPD management to readily compare findings from report to report and identify if areas or issues were omitted from a report.

### *Current Assessment of Compliance*

During the current quarter, the Monitor did not receive copies of any inspections conducted by OCR relevant to this paragraph. The DPD has indicated that it is revising its inspection forms and process to achieve additional consistency throughout the Department.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph C62.

### *Paragraph C63 – Risk Management Plan*

Paragraph C63 requires the DPD to operate the holding cells in compliance with the DPD’s comprehensive risk management plan including implementation of:

- c. the Risk Management Database (discussed in paragraphs U79-90);
- d. the performance evaluation system (discussed in paragraph U91);
- e. the auditing protocol (discussed in paragraph U92);
- f. regular and periodic review of all DPD policies; and
- g. regular meetings of DPD management to share information and evaluate patterns of conduct by DPD that potentially increase the DPD’s liability.

### *Background*

The requirements of paragraph C63 mirror those of paragraph U78.

The Monitor last assessed the DPD’s compliance with paragraph C63 during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance with subparagraphs C63a, c and e and was in compliance with subparagraph C63d; the Monitor had not yet evaluated the DPD’ compliance with subparagraph C63b.<sup>118</sup>

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<sup>118</sup> Refer to the *Background* section for paragraph U78 for information regarding the reasons for these compliance findings.

### *Current Assessment of Compliance*

As described in the *Current Assessment of Compliance* for paragraph U78, above, the Monitor found that the DPD is not yet in compliance with subparagraphs U78a, c and e and is in compliance with subparagraph U78d. The Monitor has not yet re-evaluated the DPD's compliance with subparagraph U78b. As a result, the Monitor finds that the DPD is not yet in compliance with subparagraphs C63a, c and e and is in compliance with subparagraph C63d. The Monitor has not yet re-evaluated the DPD's compliance with subparagraph C63b.

### *Paragraph C64 – Video Cameras – Holding Cells*

Paragraph C64 states that the DPD policy on video cameras shall be revised and augmented to require:

- a. the installation and continuous operation of video cameras in all prisoner processing areas of DPD holding cells within one year of the effective date of the COC CJ;
- b. supervisors to review videotapes of all incidents involving injuries to a prisoner or an officer, UOF and external complaints;
- c. that the DPD retain and preserve videotapes for at least 90 days, or as long as necessary for incidents to be fully investigated; and,
- d. that the DPD conduct and document periodic random reviews of prisoner processing area camera videotapes for training and integrity purposes and conduct periodic random surveys of prisoner processing area video recording equipment to confirm that it is in proper working order.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C64 during the quarter ending February 28, 2007, finding that the DPD was in compliance with the policy requirements but not yet in compliance with the implementation requirements of the paragraph. The Monitor determined that inspection reports received from the DPD regarding the requirements of the paragraph provided insufficient detail regarding whether the specific requirements of subparagraph C64a. In addition, the DPD indicated that the OCR was still in the process of developing a systematic review process of video tapes that would comply with the requirements of subparagraphs C64b-d. Lastly, training had not yet occurred on the requirements of this paragraph and the *Supervisory Leadership and Accountability* lesson plan that would incorporate the requirements of paragraph 64 did not contain sufficient detail about the requirements of the paragraph.

### *Current Assessment of Compliance*

The Monitor submitted another document request on July 9, 2007 requesting information to assist in evaluating the DPD's compliance with the requirements of paragraph 64. The DPD's initial response was on August 15, 2007, with a follow up response on August 23, 2007, answering additional questions from the Monitor. The DPD indicated that the Video Review Protocol and related forms have been revised and will be submitted to the Monitor once its internal review is completed. Since the review protocol has not been finalized and disseminated, training has not yet taken place on the requirements of this paragraph. The Monitor requested but did not receive any DPD inspection reports related to this paragraph. The inspection reports would evaluate whether the DPD is implementing the requirements of paragraph C64.

Based on the foregoing, the Monitor finds that the DPD remains in compliance with the policy requirements but is not yet in compliance with the implementation requirements of paragraph C64.

### *Paragraph C65 – Audits of UOF, Prisoner Injuries and Misconduct Investigations in Holding Cells*

Paragraph C65 requires the DPD to conduct regularly scheduled semi-annual audits covering all DPD units and Commands (including a sample of Command, IAD and Homicide Section investigations) that investigate a) uses of force, b) prisoner injuries, and c) allegations of misconduct in holding cells.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C65 during the quarter ending May 31, 2007, finding that the *UOFHC Audit* submitted on January 31, 2007 was not yet in compliance with the requirements of subparagraph C65a, and finding that the *(PIHC Audit* and the *Allegations of Misconduct in Holding Cells Audit* submitted on January 31, 2007 were in compliance with the requirements of subparagraphs C65b and C65c, respectively. The Monitor found the *UOFHC Audit* to be non-compliant because of deficiencies in both the assessment of UOF investigations and in the audit report.

## *Current Assessment of Compliance*

### *Subparagraph C65a – Holding Cells Use of Force Investigations Audit*

In order to assess the DPD's compliance with subparagraph C65a, the Monitor reviewed the *UOFHC Audit Report* submitted by the DPD's AT on July 31, 2007. The Monitor also assessed the audit work plan, fieldwork and working papers related to this audit.<sup>119</sup>

The Monitor's findings, which were discussed with the DPD's AT, are highlighted below:

- The AT reviewed all UOF investigations involving UOFs in holding cells from February through June 2007.<sup>120</sup> The AT conducted thorough testing to ensure a complete population and reported the systemic problems identified as a result of that testing. The resultant population included five Command and three FI investigations. All investigations were tested (i.e. sampling was not employed) due to the small number of investigations.
- The DPD's AT submitted the report on a timely basis. The report was well-formatted, organized and comprehensive. The Monitor noted a few typographical errors within the detailed report and within the Executive Summary section, which were discussed with and agreed to by the AT; however, these errors did not significantly affect the quality of the audit or the AT's overall conclusions.
- The AT properly included assessments of all substantive paragraphs related to this topic and identified deficiencies within all eight investigations. As a result of this testing, the AT found the DPD in overall non-compliance with all of the primary substantive paragraphs reviewed (paragraphs U14-19, U25-36, C52-53, and C55-56) except for paragraphs U25-26, Adherence to Chemical Spray Policy and U31, Adherence to the Garrity Protocol.<sup>121</sup>
- The AT appropriately assessed whether or not investigators evaluated the use of force as required by subparagraph U32f, and properly evaluated the appropriateness of the investigators' conclusions as required by subparagraph C65e. As part of this assessment, the AT appropriately evaluated the reasonableness of the officer's actions regarding the level of force used based on the facts articulated within the officer's UOF report and related arrest report.
- The Monitor was able to reconcile the findings reported to the supporting work papers and reports and the conclusions reached for each objective. The AT sufficiently tested each of

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<sup>119</sup> The Monitor reviewed all eight investigations evaluated by the AT in this audit.

<sup>120</sup> For Command Investigations the time period was February through March 2007 and for FI investigations the time period was April through June 2007.

<sup>121</sup> In some cases, the AT also found that although the DPD was not yet in overall compliance with certain paragraphs, the investigations complied with some of the requirements within those paragraphs, and appropriately reported such.

the objectives and relevant paragraphs. The Monitor concurred with all of the AT's reported conclusions.

Based on the foregoing, the Monitor finds the DPD in compliance with subparagraph C65a.

*Subparagraph C65b – Prisoner Injuries in Holding Cells Audit*

As of the end of the current quarter, the DPD had not submitted a *PIHC Audit Report* required by subparagraph UC65b.

Based on the foregoing, the Monitor finds that the DPD is not in compliance with subparagraph C65b.

*Subparagraph C65c – Allegations of Misconduct in Holding Cells Audit*

On July 31, 2007, the DPD submitted an *Allegations of Misconduct in Holding Cells Audit*, which was combined with the UOF CJ required audit of the same topic.<sup>122</sup> The Monitor began its review of the audit report and on August 6, 2007 requested the audit working papers and planning documents for this audit. The Monitor received these working papers on August 28, 2007, three days prior to the end of the quarter. As a result, the Monitor had not completed its evaluation of this audit or the DPD's compliance with subparagraph C65c as of the end of the current quarter.

**Paragraph C66 – Holding Cell Compliance Committee Responsibilities**

Paragraph C66 requires the DPD to form a HCCC that is responsible for assuring compliance with the relevant provisions of the COC CJ. This paragraph also requires the HCCC to conduct regularly scheduled semi-annual audits of all facilities that house holding cells to evaluate and report upon compliance with the fire detection, suppression and evacuation program as detailed in the COC CJ.<sup>123</sup>

***Background***

The Monitor last assessed the DPD's compliance with subparagraph C66a during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance. Although all six audits required to be conducted by the HCCC were submitted by the DPD during that quarter, the HCCC's involvement during the conduct of the audits was limited or, for at least one of the audits, non-existent. In addition, through a review of the audits' findings, the Monitor noted that many of the COC CJ policies had not yet been implemented.

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<sup>122</sup> See the Current Assessment of Compliance for subparagraph U94c for further information.

<sup>123</sup> The scope of such audits must include an evaluation of the smoke detectors and sprinklers, the back-up power systems, and the DPD's fire equipment.

The Monitor last assessed the DPD's compliance with subparagraph C66b during the quarter ending May 31, 2007, finding the DPD in compliance. The Monitor determined that the *Fire Safety Audit Report* submitted by the DPD on the required due date of January 31, 2007, was appropriately conducted by the HCCC and was a quality and thorough audit.

### *Current Assessment of Compliance*

#### *Subparagraph C66a - HCCC to Assure Compliance with the COC CJ*

During the current quarter, five of six audits required to be conducted by the HCCC<sup>124</sup> were submitted by the DPD.<sup>125</sup> The HCCC had submitted all required audits since July 2006; consequently, the one audit not submitted by July 31, 2007 represents a set back for the HCCC. The Monitor has not yet completed its evaluation of all five audits submitted; however, of the three<sup>126</sup> audits evaluated thus far, one was determined to be non-compliant due to qualitative deficiencies. The Monitor has determined that the HCCC was adequately involved in the three audits evaluated.

Until such time as the HCCC has carried out its responsibility of assuring compliance with the COC CJ through the completion of quality HCCC-required audits by the required due dates, the DPD will be unable to achieve compliance with subparagraph C66a.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with subparagraph C66a.

#### *Subparagraph C66b - HCCC Fire Safety Audit*

The DPD submitted the *Fire Safety Practices and Policies Audit Report* to the Monitor on the due date of July 31, 2007, finding that the Department is not in compliance with paragraphs C14-19 and is compliant with paragraphs C20 and C21. The Monitor began its review of the audit report and on August 6, 2007 requested the audit planning documents for this audit. The Monitor received these documents from the AT on August 14, 2007 and is currently reviewing them. In mid-September 2007, the Monitor had a preliminary meeting with the AT in relation to its evaluation of the audit. The Monitor has not yet completed its evaluation of this audit or the DPD's compliance with subparagraph C66b.

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<sup>124</sup> Paragraphs C66-71 specifically require the HCCC to conduct the audits. The HCCC submitted the *Fire Safety Practices and Policies, Emergency Preparedness Program and Policies, Detainee Safety Policies, Environmental Health and Safety, and Food Service and Personal Hygiene Practices Audits*. The HCCC did not submit the *Medical and Mental Health Care Policies Audit*

<sup>125</sup> Refer to the Current Assessments of Compliance of each respective audit paragraph for further details.

<sup>126</sup> The Monitor completed its review of the *Detainee Safety, the Environmental Health and Safety and the Food Service Programs Audits*. Refer to the Current Assessment of Compliance of each respective audit paragraph for further details.

### **Paragraph C67- Audit of Emergency Preparedness Program**

Paragraph C67 requires the HCCC to conduct regularly scheduled semi-annual audits of the DPD's Emergency Preparedness Program (EPP) for all DPD buildings that contain holding cells.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C67 during the quarter ending May 31, 2007, finding the DPD in compliance. The Monitor determined that the *Emergency Preparedness Program Audit* submitted by the DPD on January 31, 2007 was appropriately conducted by the HCCC and was a quality and thorough audit.

#### ***Current Assessment of Compliance***

The DPD submitted the *Emergency Preparedness Program Audit Report* to the Monitor on the due date of July 31, 2007, finding that the Department was not yet in compliance with all paragraphs tested, namely C23-25. The Monitor began its review of the audit report and on August 6, 2007 requested the audit working papers and planning documents for this audit. The Monitor received these documents from the AT on August 17, 2007 and is currently reviewing them. In mid-September 2007, the Monitor had a preliminary meeting with the AT in relation to its evaluation of the audit. The Monitor has not yet completed its evaluation of this audit or the DPD's compliance with subparagraph C67.

### **Paragraph C68 – Audit of Medical/Mental Health Programs and Policies**

Paragraph C68 requires the HCCC to conduct regularly scheduled semi-annual audits of the DPD's medical/mental health programs and policies for all DPD buildings that contain holding cells.

#### ***Background***

The Monitor last assessed the DPD's compliance with the requirements of paragraph C68 during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance. The Monitor determined that the *Medical and Mental Health Care Programs and Policies Audit Report* submitted by the DPD on January 31, 2007 was not conducted by the HCCC, as specifically required by paragraph C68 and the DPD's Audit Protocol.

#### ***Current Assessment***

As of the end of the current quarter, the DPD had not submitted a *Medical and Mental Health Care Programs and Policies Audit Report*, as required by paragraph C68 and due by July 31, 2007.

Based on the foregoing, the Monitor finds that the DPD is not in compliance with paragraph C68.

### **Paragraph C69 – Audit of Detainee Safety Programs and Policies**

Paragraph C69 requires the HCCC to conduct regularly scheduled semi-annual audits of the DPD's detainee safety programs and policies for all DPD buildings containing holding cells.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C69 during the quarter ending May 31, 2007, finding that the DPD was not yet in compliance, as the *Detainee Safety Program and Policies Audit Report* submitted on January 31, 2007 had not been conducted by the HCCC as required and there were qualitative deficiencies with the audit.

#### ***Current Assessment of Compliance***

In order to assess the DPD's compliance with paragraph C69, the Monitor reviewed the *Detainee Safety Programs and Policies Audit* submitted by the DPD on July 31, 2007. The Monitor also conducted an assessment of the audit population of detainee screening forms,<sup>127</sup> and reviewed the audit matrices, work plan and other related audit working papers.

The Monitor's findings, which were discussed with the DPD's AT, are highlighted below:

- This audit was submitted on the required due date of July 31, 2007 and was conducted by members of both the DPD AT and the HCCC, as specifically required by paragraph C69. The audit also properly included all of the substantive paragraphs related to this topic. Overall, the AT found that the DPD is not yet in compliance with paragraphs C35-37 and C77 and is in compliance with paragraph C38.
- Although the AT correctly reported that the DPD was not yet in compliance with the overall requirements regarding proper housing, the Monitor disagreed with the AT's assessment of the *Cell Assignment Detainee Security Screening Form* in connection with five of the first 14 detainees reviewed. For three detainees, the AT incorrectly indicated that it could not determine if the detainees were properly housed due to incomplete forms; the AT should have concluded that these detainees were "not properly housed."<sup>128</sup> The AT also incorrectly

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<sup>127</sup> Since the DPD AT stopped testing at +/-10%, the Monitor reviewed the detainee screening forms and cell check logs for 100% of the sample of detainees selected for review by the AT. Additionally the Monitor reviewed all of the HCCC audit matrices, including those used in conducting the on-site observations of the intake process.

<sup>128</sup> The AT reasoned that the detainees' refusal to answer certain questions made it impossible to determine if they were properly housed. However, the screening form itself contains instructions that require the supervisor reviewing the form to assign the detainee to a single occupancy cell if the detainee refuses to answer questions. In these

concluded that one detainee was properly housed even though no level of supervision was indicated on the Medical and Mental Health Screening forms.<sup>129</sup> Lastly, the AT incorrectly determined that one of the 14 detainees placed into a bullpen was not properly housed even though the screening form contained no indications that the detainee had special needs.

- Although the audit matrices were well-formatted and contained extensive detail, the auditor's completion of the matrices was inaccurate. For example, in some cases, the comments that explain the auditor's reasoning for specific findings did not correlate to the answers or subjects being reviewed.<sup>130</sup> Additionally, the audit matrices and audit report contained differing numbers of detainees reviewed.
- The Monitor identified significant reporting errors throughout the audit report and supporting documentation. As examples, the audit report inconsistently and incorrectly reported the number of forms and logs that were reviewed, and contained contradictory statements in the detailed findings regarding whether or not mental health logs demonstrated if cell checks were being accurately and regularly performed on observation cells every 15 minutes, as required.
- The Monitor noted several formatting errors within the audit report, such as the table of contents missing several sections, a lack of consistent references for paragraphs, objectives and dates of inspections tested.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with paragraph C69.

### **Paragraph C70 – Audits of Environmental Health and Safety Program**

Paragraph C70 requires the HCCC to conduct regularly scheduled semi-annual audits covering all DPD buildings that contain holding cells of environmental health and safety program.

#### ***Background***

The Monitor last assessed the DPD's compliance with paragraph C70 during the quarter ending February 28, 2007, finding the DPD in compliance. The Monitor determined that the *EH&S Audit* submitted by DPD for the semi-annual period ending January 31, 2007 was appropriately conducted by the HCCC and was a quality and thorough audit.

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particular instances, the supervisor had not documented that these detainees should be "assigned" to a single occupancy cell on the form, but rather indicated "normal" housing.

<sup>129</sup> The AT noted this deficiency within their working papers, but did not include it in the reported findings regarding proper housing.

<sup>130</sup> For example, when discussing the training requirements, the AT referenced a comment/reason which says "the cell check log could not be located."

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph C70, the Monitor reviewed the *EH&S Audit* submitted by the DPD on July 31, 2007 and the related audit work plan. The Monitor also conducted an assessment of the audit fieldwork and working papers related to this audit.<sup>131</sup>

The Monitor's findings, which were discussed with the DPD's AT, are highlighted below:

- The audit was submitted by the DPD in a timely manner on July 31, 2007, and was conducted by members of the HCCC, as required by paragraph C70, along with members of the DPD AT.
- The AT appropriately determined early on that the DPD was not in compliance with the requirement to document cleaning and maintenance (due to a large number of missing cleaning and maintenance logs). The AT then conducted additional testing of the available logs and included the findings in an appendix in order to provide District COs with information to facilitate remedial action. The Monitor commends the AT for conducting this additional testing.
- The Monitor was able to reconcile the findings reported to the supporting work papers and reports and the conclusions reached for each objective. Additionally, the Monitor's independent onsite inspections supported the AT's findings. As such, the Monitor concurred with all of the AT's reported conclusions, namely that the DPD is in compliance with paragraphs C39 and C42-45 and is not yet in compliance with paragraphs C40-41.
- The audit properly included all of the substantive paragraphs related to this topic, and also included an assessment of training even though it was not required.
- The audit methodology, including the time periods selected for review, the population determination, and the sampling techniques sufficiently tested each of the objectives and relevant paragraphs.
- This audit report was improved from prior reports, as it was easier to understand and contained very few typographical errors. The Executive Summary was concise and well-written. Within the body of the audit report, the findings related to exceptions identified during the audit were appropriately reported by Command.
- The AT made appropriate recommendations within the audit where the DPD was not in compliance.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph C70.

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<sup>131</sup> The AT's audit did not include a review of the related documents due to the fact that many of the cleaning and maintenance logs were missing. Therefore, the Monitor's review did not include a review or sampling of documents but rather consisted of a review of all audit working papers and independent onsite inspections to verify the AT's conclusions.

### *Monitor's Recommendations*

The prior four audits of this topic have consistently tested for heating and ventilation (paragraph U42) during the Spring and Fall months, when the temperatures may not have been a factor, and the HCCC continues to rely upon a ventilation report issued by LA Mechanical Contractors, dated January 16, 2006, in concluding that the ventilation is sufficient in all building containing holding cells. The Monitor recommends that the AT consider alternate methods to assess these requirements going forward. During meetings with the AT and HCCC audit team, the Monitor suggested that the AT conduct onsite inspections during time periods with more extreme conditions (hotter and colder temperatures) and/or have the ventilation systems recertified.

### *Paragraph C71 – Audits Food Service Program and Policies*

Paragraph C71 requires the HCCC to conduct regularly scheduled semi-annual audits covering all DPD buildings that contain holding cells of the food service program.

### *Background*

The Monitor last assessed the DPD's compliance with paragraph C71 during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance. Although the DPD submitted the *Food Service Program Audit Report* on the required due date of January 31, 2007, the Monitor determined that the audit was non-compliant with paragraph C71 based on the limited involvement by the HCCC and a number of deficiencies in the quality of the audit.

### *Current Assessment of Compliance*

In order to assess the DPD's compliance with paragraph C71, the Monitor reviewed the *Food Service Program Audit* submitted by the DPD on July 31, 2007. The Monitor reviewed selected audit working papers, including the audit work plan, matrices and other related documents, such as daily detainee hygiene and meal logs, weekly detainee refrigerator cleaning logs and inspection reports.<sup>132</sup>

The Monitor's findings, which were discussed with the DPD's AT, are highlighted below:

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<sup>132</sup> Since the DPD AT stopped testing at +/-10% the Monitor reviewed the Daily Detainee Meal and Hygiene Logs for 100% of the sample of detainees selected for review by the AT. Additionally the Monitor reviewed all of the HCCC audit matrices used in conducting the on-site inspections and the Weekly Detainee Refrigerator Cleaning and Inspection Logs reviewed by the AT.

- This DPD's AT submitted this audit in a timely manner on July 31, 2007. The audit was conducted by members of the AT with the involvement of the HCCC, as specifically required by paragraph C71.<sup>133</sup>
- The audit tested all of the required substantive paragraphs. The AT selected appropriate populations for each objective and used equivalent or more current periods than those used in prior audits. The AT also increased the number of inspections at each district from one inspection per District to three inspections per District, allowing for a larger amount of data and a broader time period upon which to assess the Department's performance.
- The findings were supported by well-organized work papers that reconciled to the underlying schedules and conclusions in the audit report. The Monitor concurred with the AT's findings for each objective, namely that the DPD is not in compliance with paragraphs C49 and C50, and in compliance with paragraph C51.
- The AT tested to see if alternative meals were provided to detainees during its inspections and reviews of documentation of daily detainee feeding logs; however, in all instances, provision of an alternative meal was not applicable. Although the AT observed that the alternative meals were available, they have not yet tested whether detainees who require alternative meals have received those meals.<sup>134</sup>
- In assessing compliance with the requirement that personal hygiene items are available to all detainees, the AT changed its approach by only basing its assessment upon data collected from the inspections, rather than also including the findings from its review of the Daily Detainee Meal and Hygiene items logs, which document distribution of personal hygiene kits and other hygiene items. While the Monitor concurs with the AT that assessing the Department based on the inspections meets the requirements of the COC CJ, such an approach does not provide the Department with feedback regarding whether policy requiring documentation of distribution of personal hygiene items is being followed.<sup>135</sup>
- Although the audit report was easier to understand, more concise, and better organized than prior audit reports, the Monitor identified several statements/tables within the audit report that the Monitor had questioned in the prior audit but were not changed/improved upon in

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<sup>133</sup> During this audit, two of every three inspections were conducted by the HCCC or the Detroit Department of Health and Wellness Promotion (DDHWP) Food Sanitation Section. The DDHWP reviews and approves the Detainee Feeding Policy; its members are also members of the HCCC.

<sup>134</sup> The Monitor and the AT discussed ways of testing this requirement and issues related to this. The AT is going to meet with the HCCC and consider alternative ways of testing this requirement.

<sup>135</sup> See related recommendation, below. Based on a limited review by the Monitor, it appears that the documentation of distribution of personal hygiene items is minimal, at best.

this audit. While not a compliance issue, the Monitor is concerned that the AT did not address some of these reporting issues.<sup>136</sup>

- The Monitor commends the AT for reporting concerns other than those that fell strictly under the requirements of paragraph C71, such as juveniles who were held for more than six hours or other detainees who were held for more than 48 hours.

Based on the foregoing, the Monitor finds the DPD in compliance with paragraph C71.

### *Recommendations*

In order to provide feedback to the Department regarding the implementation of the policy requiring the distribution of hygiene items, the Monitor recommends that the AT review documentation of such distribution products and report the results of this review as an “Other Related Matter.”

In assessing whether detainees received food after taking medication that is required to be taken with food, the AT relied upon a log that indicates if prescription drugs are required, but does not provide information regarding the type of medication or if the medication is required to be taken with food. The Monitor recommends that the AT consult with HCCC and medical staff to determine a means to assess which medications must be taken with food, and the extent to which this occurred.

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<sup>136</sup> The AT used the audit report issued January 31, 2007 as the template for the current audit report, which helps to make report preparation more efficient. Although the prior audit report was significantly improved from prior reports, it contained a number of reporting deficiencies. A list of these items was provided to the AT.

#### XIV. TRAINING

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This section of the COC CJ (paragraphs C73-78) requires the DPD to provide all detention officers with comprehensive training, maintain individual training records, provide training in key areas such as emergency response, intake and medical protocols, safety programs, maintenance protocols, and food preparation and delivery protocols.<sup>137</sup>

The Monitor last assessed the DPD's compliance with paragraph C74 during the quarter ending May 31, 2007. The Monitor is scheduled to again assess the DPD's compliance with this paragraph during the quarter ending February 29, 2008. The Monitor last assessed the DPD's compliance with paragraphs C73 and C75-78 during the quarter ending February 28, 2007. The Monitor again assessed the DPD's compliance with these paragraphs during the current quarter. The results of our current assessments follow.

**Paragraphs C73; C75-78 – Training of Detention Officers Emergency Preparedness Training; Mental/Health Screening Program Testing; Detainee Safety Programs and Polices; Environmental Health and Hygiene Training**

Paragraph C73 directs the DPD to provide comprehensive pre-service and in-service training to all detention officers.

Paragraph C75 directs the DPD to provide all detention officers, supervisors of detention officers and members of the Holding cell compliance committee with annual training in emergency preparedness. Such training shall include drills and substantive training in the following topics:

- emergency response plans and notification responsibilities
- fire drills and use of fire extinguishers and other fire suppression equipment
- key control drills and key control policies and procedures
- responding to emergency situations, including scenarios detention officers likely will experience

Paragraph C76 directs the DPD to provide all detention officers, supervisors and members of the Holding Cell Compliance Committee with annual training in the medical/metal health screening programs and polices. Such training shall include and address the following topics:

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<sup>137</sup> Refer to the UOF CJ training section in this report for additional information regarding DPD training-related issues.

- prisoner intake procedures and medical and mental health protocols, including protocols for transferring or housing prisoners with infectious diseases, disabilities and/or requiring increased monitoring
- recoding, updating and transferring prisoner health information and medications
- the prescription medication policy, including instructions on the storage, recording and administration of medications
- examples of scenarios faced by detention officers illustrating proper intake screening and action in response to information regarding medical and mental health conditions

Paragraph C77 directs the DPD to provide all detention officers, supervisors and members of the Holding Cell Compliance Committee with annual training in detainee safety programs and policies. Such training shall include and address the following topics:

- the security screening program, including protocols for identifying and promptly and properly housing suspected crime partners, vulnerable, assaultive or special management prisoner
- protocols for performing, documenting and obtaining supervisory review of holding cell checks
- protocols concerning prisoners in observation cells, including protocols for direct and continual supervision, for spotting potential suicide hazards and providing appropriate clothing
- examples of scenarios faced by detention officers illustrating appropriate security screening, segregation and monitoring techniques.

Paragraph C78 directs the DPD to provide all detention officers, supervisors and members of the Holding Cell Compliance Committee with annual training in environmental health and safety and hygiene. Such training shall include and address the following topics:

- Cell block cleaning and maintenance protocols
- Sanitary food preparation and delivery protocols.

### *Background*

The Monitor last assessed the DPD's compliance with paragraphs C73 and C75-78 during the quarter ending February 28, 2007, finding that the DPD was not yet in compliance with any of these paragraphs. The DPD had not submitted appropriate documentation in connection with the requirements of these paragraphs. In addition, the DPD was conducting custodial detention training on an ongoing basis, despite the fact that the lesson plan for the training had not been approved by the Monitor.

### *Current Assessment of Compliance*

As with our previous assessment of compliance with these paragraphs, the DPD has yet to submit to the Monitor appropriate documentation in connection with the requirements of these paragraphs, including lesson plans for the Monitor's review and approval. The Monitor understands that the DPD is still conducting custodial detention training on an ongoing basis, despite the fact that the lesson plan for the current training has not been submitted to or approved by the Monitor.

According to the DPD's Sixteenth Quarter Status report, the DPD's CDDT has identified deficiencies in the *Detention Officer Training Lesson Plan*, and is currently in the process of revising it. These revisions will be based upon general TA and recommendations and evaluations provided by the Monitor from other recently reviewed lesson plans.

Based on the foregoing, the Monitor finds that the DPD is not yet in compliance with the requirements of paragraphs C73 and C75-78.

## **XV. MONITORING AND REPORTING**

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Paragraph C94 requires the DPD to reopen for further investigation any investigation the Monitor determines to be incomplete, subject to certain restrictions. See paragraph U139, which is the corresponding paragraph in the UOF CJ, for information regarding the requirements of this paragraph.

## CONCLUSION

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The assessments this quarter, both by the Monitor and the DPD's AT, reveal that the City and the DPD have not yet effectively implemented the vast majority of the policies and procedures that are applicable to the paragraphs that were assessed this quarter. Training and instruction remain as key factors to the effective implementation of these policies and procedures.

In order to provide a mechanism for giving the City and the DPD more credit for progress made on the road toward achieving substantial compliance, the Monitor has implemented one new finding and two new terms to describe their efforts. The finding is one of partial compliance. And the terms are "notable progress" and "significant progress." This finding and these terms will be implemented as described in the Introduction section of the report. It is our hope that they will provide the City and the DPD with the credit they deserve while seeking to achieve substantial compliance with all of the substantive paragraphs in the Consent Judgment.

Sheryl Robinson Wood  
Independent Monitor

October 15, 2007

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**APPENDIX A:**

**Acronyms Frequently Utilized in Quarterly Reports Issued by the Independent Monitor for the DPD**

Following is a listing of acronyms utilized in the Independent Monitor's Quarterly Reports.

<b>ACRONYM</b>	<b>DEFINITION</b>
A&D	Arrest and Detention
AT	Audit Team
BOPC	Board of Police Commissioners
BOR	Board of Review
BRT	Board Review Team
CALEA	Commission on Accreditation for Law Enforcement Agencies
CAN report	Corrective Action Needed report
CCR	Citizen Complaint Report
CDDT	Curriculum Design and Development Team
CEPP	Comprehensive Emergency Preparedness Program
CFD	Critical Firearm Discharge
CI	Chief Investigator
City	City of Detroit
CLBR	Command Level Board of Review
CLFRT	Command Level Force Review Team
CLO	Compliance Liaison Officer
CME	Confidential Medical Envelopes
CMMHSP	Comprehensive Medical and Mental Health Screening Program

CO	Commanding Officer
COC CJ	Conditions of Confinement Consent Judgment
CRD	Civil Rights Division
CRIB	Civil Rights Integrity Bureau
CSU	Communications Systems Unit
DA	Disciplinary Administration
DAS	Disciplinary Administration Section
DCCL	Detention Cell Check Log
DDHWP	Detroit Department of Health and Wellness Promotion
DDOH	Detroit Department of Health
DFD	Detroit Fire Department
DFF	Detainee File Folders
DFO	Detention Facility Officer
DHWP	Detroit Health and Wellness Promotion
DIF	Detainee Intake Form
DOJ	Department of Justice
DPD	Detroit Police Department
DPR	Daily Prisoner Report
DRH	Detroit Receiving Hospital
ECD	Emergency Communications Division
EPP	Emergency Preparedness Program
FI	Force Investigation
FIS	Force Investigation Section

FIU	Force Investigation Unit
FRT	Force Review Team
FSP	Fire Safety Program
GAS	Government Auditing Standards
HCCC	Holding Cell Compliance Committee
IACP	International Association of Chiefs of Police
IA	Internal Affairs
IAD	Internal Affairs Division
IAS	Internal Affairs Section
ICD	Internal Controls Division
IM	Independent Monitor
IMAS	Interim Management Awareness System
ITS	Information Technology Services
JIST	Joint Incident Shooting Team
LP	Lesson Plan
MAS	Management Awareness System
MCOLES	Michigan Commission on Law Enforcement Standards
MIF	Medical Intake Form
MIOSHA	Michigan Occupational Safety and Health Administration
MITN	MCOLES Information and Tracking System
MSP	Michigan State Police
OCI	Office of the Chief Investigator
OIC	Officer in Charge

OCR	Office of Civil Rights
PAB	Professional Accountability Bureau
PAIR	Police Action Incident Report
PCR	Preliminary Complaint Report
PDO	Police Detention Officer
PSA	Public Service Announcement
RFP	Request for Proposals
RMB	Risk Management Bureau
RMG	Risk Management Group
SCBA	Self-Contained Breathing Apparatus
SIR	Supervisor's Investigation Report
SME	Subject Matter Expert
SMT	Senior Management Team
SOP	Standard Operating Procedure(s)
TA	Technical Assistance
USAO	United States Attorney's Office
UOF	Use(s) of Force
UOF CJ	Use of Force and Arrest and Witness Detention Consent Judgment
WCPO	Wayne County Prosecutor's Office
WCSO	Wayne County Sheriff's Office
WIQD	Witness Identification and Questioning Documentation