

**MEMORANDUM OF UNDERSTANDING BETWEEN THE SAN FRANCISCO
DISTRICT ATTORNEY’S OFFICE AND THE SAN FRANCISCO POLICE
DEPARTMENT REGARDING THE INVESTIGATION OF OFFICER-INVOLVED
SHOOTINGS, SERIOUS USES OF FORCE AND IN-CUSTODY DEATHS, AND USES
OF FORCE RESULTING IN SERIOUS BODILY INJURY**

I. PREAMBLE

Peace officers perform a vital and often dangerous job in our communities. Situations will occur where peace officers must use force, including, at times, deadly force. However, the community expects that such force will may be used only when reasonable and necessary under the totality of the circumstances. When peace officers use deadly force or force resulting in serious bodily injury, the public has a right to expect that a thorough and neutral examination will be conducted.

The San Francisco District Attorney’s Office (“SFDA”) and the San Francisco Police Department (“SFPD”) (collectively “the Parties”) agree that SFDA personnel will immediately respond to the scene of SFPD officer involved shootings and investigate them, as well as investigate in-custody deaths and certain Covered Incidents where uses of force result in serious bodily injuries as defined in Section II.B. of this Memorandum of Understanding (“MOU”). The policies and procedures to be followed are set forth in this Memorandum of Understanding (“MOU”).

PURPOSE

The purpose of this MOU is to outline the agreement between SFPD and SFDA regarding the procedures for the criminal investigation of “Covered Incidents” to determine if an officer committed a criminal offense.

II. TERMS AND DEFINITIONS

- A. **Officers:** For purposes of this MOU, the term “officer” shall mean any person employed by SFPD, who meets the definition set forth in California Penal Code § 830.61.
- B. **Covered Incidents:** For the purposes of this MOU, “Covered Incidents” shall mean Any of the following incidents where-in SFPD officers are acting under color of law or color of authority: (1) officer-involved shootings[†]; (2) in-custody deaths; and (3) uses of force resulting in serious bodily injury, as outlined below:

[†]-Assembly Bill No. 1506 (AB No. 1506), which went into effect on July 1, 2021, gives the California Department of Justice jurisdiction over certain incidents that fall under this category of covered incidents. Nothing in this Memorandum of Understanding (“MOU”) is meant to contravene AB No. 1506. The San Francisco District Attorney’s Office shall lead the independent investigation and assessment of whether SFPD personnel committed any violations of criminal law during a Covered Incident, unless and until it is legally determined otherwise pursuant to AB 1506.

1. *Officer-Involved Shooting*: An officer's discharge of a firearm, with or without physical injury or death to a person, or a negligent discharge that results in physical injury or death of a person. For purposes of this MOU, Covered Incidents do **NOT** **not** include an officer's discharge of a firearm (i1) that is intended to kill a dangerous or wounded animal; (ii2) that is intended to signal help for an urgent purpose; (iii3) that is unintended and does not cause injury or death to a person; (iv4) that occurs outside the borders of the City and County of San Francisco; or (v5) that occurs as a training, sporting or recreational activity.

The Department of Justice has jurisdiction over all officer-involved shootings resulting in the death of an unarmed civilian, in accordance with California Government Code § 12525.3(b)(1) ("AB 1506").

2. *In-Custody Death*: Any death that occurs when a person is restrained by an on-duty SFPD officer by means of (i1) physical restraints and/or any use of force, as defined by SFPD policy; (ii2) detention or confinement in an SFPD vehicle; or (iii3) detention or confinement in a jail or detention facility while in custody of an SFPD officer.
3. *Uses of Force*: Any uses of force **(1) directly causing** resulting in injury that **requiring**s admission to the hospital or **(2)** upon an SFPD supervisory evaluation, as outlined in [General Order 5.01](#) (Use of Force **Policy and Proper Control of a Person**), that the use of force appears unreasonable and resulted in serious bodily injury.

"Serious bodily injury" is defined in the California Penal Code, section § 243(f)(4), as a serious impairment of physical condition, including, but not limited to, loss of consciousness, concussion, bone fracture, protracted loss or impairment of function of any bodily member or organ, a wound requiring extensive suturing, **and or** serious disfigurement. **"Admission to the hospital" occurs when a subject is administratively admitted for inpatient care by a medical professional. It does not include emergency room care or a Welfare & Institutions Code § 5150 hold.**

Whenever there is a question of whether an incident meets the criteria of this MOU, an SFPD supervisory officer shall consult, as soon as practicable, with the SFPD Commanding Officer of Risk Management, who will consult with the on-call SFDA personnel to determine if a Covered Incident investigative response is appropriate.

- C. **Ancillary Parallel Criminal Investigation**: Notwithstanding the SFDA's investigation to determine whether an officer committed a criminal offense during any Covered Incident, SFPD shall retain the authority to conduct ancillary criminal investigations. An "ancillary criminal investigation" is a criminal investigation of conduct by non-law enforcement personnel. Should there be an ancillary criminal investigation, including but not limited to underlying criminal activity that preceded or occurred at the same time as the covered incident or an on-going investigation outside of the covered incident, that investigation shall remain with SFPD. **A criminal investigation into conduct of a**

person who is not an SFPD officer. That conduct may occur prior to, during, or after the Covered Incident or be related to an on-going investigation outside of the Covered Incident.

- D. **Administrative Investigation:** An non-criminal investigation conducted by SFPD administrative investigators to determine whether any involved SFPD personnel violated any general order, regulation, policy, or other workplace rule during the Covered Incident. These investigations are administrative in nature only.

III. SEPARATION OF CRIMINAL AND ADMINISTRATIVE INVESTIGATIONS

SFDA² and SFPD³ will jointly and cooperatively investigate all any Covered and Parallel Incidents. SFDA's role will be to lead the independent investigation and the independent assessment of ~~whether SFPD personnel committed any violations of criminal law during a~~ the Covered Incident, determining ~~whether SFPD personnel committed any violations of criminal law.~~ Independent of SFDA, SFPD's role will be to conduct ancillary criminal and administrative investigations of a Covered Incident. SFPD will lead the Parallel Criminal Investigation. SFPD Internal Affairs Division⁴ investigators will lead administrative investigations. The Parties SFDA and SFPD will coordinate their respective investigations and work cooperatively to ensure that all evidence and investigative results are shared when legally permissible. It is the intent of the Parties to complete their respective investigations as quickly as possible, consistent with the primary goal of conducting thorough and objective reviews of the facts.

~~SFPD has the responsibility to address several issues. As to any ancillary criminal investigations, SFPD will determine whether criminal law violations occurred. In any administrative investigations, SFPD will determine whether departmental policies were followed. Thus, SFPD may conduct its administrative review and investigation concurrently with all criminal investigations into a Covered Incident.~~

During the course of an administrative inquiry investigation, a law enforcement agency is authorized by law to may compel its officers to give statements regarding matters that are subject(s) of the administrative investigation. (*Public Safety Officers Procedural Bill of Rights Act* ("POBRA"), Government Code §§ 3300-3313.) However, the law limits the admissibility of such a compelled statement in a criminal prosecution. (*See, e.g., Kastigar v. United States, 406 U.S. 441, 460 (1972).*) In order to safeguard the integrity of the criminal investigation and

² The use of SFDA in this document refers to the SFDA Independent Investigations Bureau (IIB) which is the unit within the SFDA's Office that responds to the scene, investigates the Covered Incident, and independently evaluates possible criminal conduct by peace officers and prosecutes any Covered Incidents described above.

³ The SFPD Investigative Services Division (ISD) is the unit within the SFPD that investigates all peace officer criminal misconduct, Parallel Criminal Investigations described above, and any case as designated by the Chief of Police. This division is independent, walled off from the rest of the SFPD, and falls under the Risk Management Office. ISD is the investigative division that responds to Covered Incidents, is responsible for assisting and coordinating the investigation with IIB into the Covered Incident and investigates the Parallel Investigation.

⁴ The SFPD Internal Affairs Division (IAD) is the unit within the SFPD that is tasked with administrative investigations of SFPD employees for violations of policy.

any potential prosecution. Therefore, the administrative investigation **file** must be **kept** separate from the **any** criminal investigation. **Criminal investigators shall not be present during any administrative interview. SFPD shall not provide SFDA with compelled statements unless done so specifically pursuant to an SFDA request through Penal Code § 832.7(a).**

~~Assistant district attorneys and inspectors from SFDA will respond to the scene and will lead the criminal investigation into the covered incident, with assistance from the SFPD. The primary objective of SFDA's investigation is to accurately, thoroughly, and objectively investigate the incident and to determine the potential criminal liability, or lack thereof, of SFPD officers involved in a Covered Incident.~~

IV. DEPARTMENT OF POLICE ACCOUNTABILITY

SFDA and SFPD acknowledge that pursuant to Prop D, the Department of Police Accountability ("DPA") is responsible for "conducting a timely and complete [administrative] investigation of any incident occurring within the City and County of San Francisco in which a member of the uniformed ranks of the San Francisco Police Department discharges a firearm resulting in the physical injury or death of a person, even if the discharge is accidental." (S.F. Admin Code § 96.11.)

V. INVESTIGATION RESPONSIBILITIES

A. NOTIFICATION REQUIREMENTS-Notification Responsibilities

~~Immediately u~~Upon occurrence or discovery of a Covered Incident in San Francisco, SFPD shall **promptly** notify the on-call SFDA Officer-In-Charge. SFPD shall provide the on-call SFDA Officer-In-Charge with a brief summary of all the *known* facts ~~known at the time~~, including: the location of the incident, the location of the command post, suggested access routes, and any safety concerns. **If appropriate under Government Code § 12525.3(b)(1), SFPD shall notify the California Department of Justice.**

Whenever there is a question of whether an incident meets the criteria of this MOU, an SFPD supervisory officer shall consult, as soon as practicable, with the SFPD Commander of the Risk Management Office, who will consult with the on-call SFDA personnel to determine if a Covered Incident investigative response is appropriate.

B. AT THE SCENE At the Scene

~~SFPD shall remain the lead agency responsible for securing the location, collecting all physical evidence, and photographing and diagramming the scene; thereby maintaining the chain of custody and proper processing of all evidence.~~ **Assistant district attorneys and inspectors from SFDA will respond to the scene and lead the criminal investigation into the Covered Incident, with assistance from the SFPD. The investigation will be conducted in a manner consistent with the laws of evidence in a criminal proceeding. The Parties** Both parties agree and understand that SFPD will be in command of and direct the activities of all SFPD personnel

and SFDA will be in command of and direct the activities of all SFDA personnel. SFDA and SFPD criminal investigative responsibilities at the crime scene locations are as follows:

1. *SFPD responsibilities:*
 - a. **Secure the scene and, absent exigent circumstances, preserve evidence without moving or changing its final resting place or original condition.** *SFPD will be responsible for photographing the scene and collecting all physical evidence; thereby maintaining the chain of custody and proper processing of all evidence.*
 - b. **SFPD will begin to identify all involved parties and locate all witnesses to the event pending the arrival of SFDA personnel.**
 - c. **When circumstances allow, on-scene supervisors shall, pursuant to [SFPD Policy](#), obtain a public safety statement from the involved officers.⁵**
 - d. **All SFPD officers directly involved in, or witness to, a Covered Incident shall be directed not to communicate with each other about the incident to maintain the integrity of their statements. Sequester involved-officers at a safe location, where they may have access to counsel. When feasible, sequester all witness officers.**
 - e. **Detailed photographs should be taken of the involved-officers at the sequestered location with the officers' equipment and uniform on their person as it was when the Covered Incident occurred.**
 - f. *Ensure that SFDA personnel have access to the scene of the Covered Incident once approved by the ranking member of the unit on scene that is responsible for the investigation.*
 - g. **Assign SFPD personnel to participate in all criminal interviews with SFDA.**
 - h. *The SFPD ranking member, or their designee, shall brief the ranking member of SFDA of all relevant information known at the time including:*
 - i. *The names and current locations of the officers who were involved in, or witness to, the incident.*
 - ii. *The names, addresses, and current location of all civilian witnesses to the incident, **including witnesses who did not remain at the scene.***
 - iii. *The statements of the officers, including any public safety statements.*

⁵ **A compelled public safety statement must be analyzed pursuant to *Kastigar*, 406 U.S. at 460 and *Lybarger v. City of Los Angeles* 40 Cal.3rd 822 (1985).**

- iv. *The physical evidence discovered, including body-worn camera recordings or other audio or video recordings.*
 - v. *The medical condition of any injured parties **and their locations.***
- i. *Promptly provide SFDA with access to body-worn camera and other video or audio evidence as it becomes available.*
2. *SFDA responsibilities:*
- a. Check into the crime scene with the officer maintaining the crime scene log upon arrival and before departure.
 - b. Lead all interviews related to the criminal investigation of a Covered Incident. SFPD investigators shall participate in and ask questions related to any ancillary **Parallel eCriminal iInvestigations** during such interviews.
 - c. When feasible, advise investigating SFPD personnel about criminal legal issues as they relate to SFDA's **either the Covered or Parallel** investigation.
 - d. Record their observations.
 - e. **Immediately notify SFPD of witnesses and/or evidence discovered at the scene by SFDA personnel, independent of what SFPD has located and provided to SFDA.**
 - f. Consult with SFPD investigative personnel regarding the collection of evidence.
 - g. Conduct an independent investigation of the facts and circumstances of the Covered Incident, which may include independent analyses **analysis** of evidence collected and logged by SFPD and witness interviews.

SFPD responsibilities:

The SFPD ranking member, or his or her designee, shall brief the ranking member of SFDA personnel of/on the following:

- A. ~~*All relevant information known at the time.*~~
- B. ~~*The names and current locations of the officers who were involved in, or witnesses to, the incident.*~~
- C. ~~*The names, addresses, and current location of all civilian witnesses to the incident.*~~
- D. ~~*The statements of the officers, including any "public safety statements."*~~

- E. ~~The physical evidence discovered, including any Body Worn Camera recordings or other audio or video recordings.~~
- F. ~~The medical condition of any injured parties.~~
- G. ~~Promptly provide SFDA with access to body worn camera and other video evidence as it becomes available.~~
- H. ~~Ensure that SFDA personnel have access to the scene of the Covered Incident once approved by the ranking police member of the unit on scene that is responsible for the investigation.~~

VI. MEDICAL EVIDENCE

When medical personnel determine an individual shall be transported to a medical facility, SFDA and SFPD shall attempt to question the medical personnel who treated the individual and make efforts to preserve evidence.

SFDA personnel should remain at the scene of a fatal shooting or in-custody death until Medical Examiner's personnel arrives and completes their on-scene investigation.

DEPARTMENT OF POLICE ACCOUNTABILITY

~~SFDA and SFPD acknowledge that pursuant to Prop D, the Department of Police Accountability (DPA) is responsible for "conducting timely and complete [administrative] investigation of any incident occurring within the City and County of San Francisco in which a member of the uniformed ranks of the San Francisco Police Department discharges a firearm resulting in the physical injury or death of a person, even if the discharge is accidental." S.F. Admin. Code § 96.11.~~

VII. INTERVIEWS OF CIVILIAN WITNESSES

SFDA personnel, along with SFPD, shall **The Parties will** make every attempt to locate, identify, and interview all potential witnesses to the incident. **The Parties shall also inform each other of any witnesses separately discovered.**

SFDA ~~personnel~~ will lead interviews of all civilian witnesses related to the Covered Incident. SFPD investigators shall **will** participate in and may ask questions related to any ancillary criminal investigations **the Parallel Investigation** during such interviews. **SFPD will lead interviews of civilian witnesses related to the Parallel incident when that portion is not contemporaneous to the Covered Incident, unless the witness can share information that logically relates to the use of force in the Covered Incident, in which case SFDA will then lead the interviews.** In addition, SFDA investigative personnel shall ascertain from SFPD officers at the scene the names, addresses, and contact information of any civilian witnesses who cannot or will not remain at the scene.

The Parties shall make every effort to jointly interview civilian witnesses. All witnesses shall be interviewed separately from each other by investigative personnel **witnesses** to maintain the integrity of their statements. All interviews shall be electronically recorded by both SFPD and

SFDA, unless the civilian witness refuses to be electronically recorded – in which case parties will take notes which will be shared with each other.

If either SFPD or SFDA interviews a witness alone (e.g., where there are concerns that a located witness may be difficult to track down again for a joint interview) the interviewing party shall inform the non-participating party of the existence of the interview and provide a copy of the recording as soon as possible and no later than two business days after the interview, unless the party designates the interview as Protected Material as outlined below.

VIII. INTERVIEWS OF SFPD OFFICERS

~~Prior to interview, a~~ All SFPD officers directly who are involved in, or witness to, a the Covered Incident shall be physically sequestered from one another and directed not to communicate with each other to maintain the integrity of their statements. ~~All SFPD officers who are witnesses to the incident shall be separately interviewed. The interviews shall take place as soon as practicable after the incident and shall be electronically recorded. The interviews shall take place either at the San Francisco District Attorney’s Office, the San Francisco Police Officers’ Association’s Office, or at the San Francisco Police Department’s Headquarters.~~

A. Criminal Investigations

1. Police ~~Officers~~ have the same rights and privileges regarding ~~criminal~~ investigations into Covered Incidents as ~~other citizens~~ civilians under investigation.
2. SFPD may not take punitive action against an employee for exercising their constitutional rights. ~~SFDA personnel shall lead criminal interviews of all SFPD personnel involved in a Covered Incident, with SFPD participation, when SFPD deems necessary, to conduct any ancillary criminal investigations. SFPD will have no more than two investigators question an officer at any given time. SFDA shall have one investigator and one attorney present during and participating in the questioning, unless circumstances indicate otherwise.~~
3. ~~Officers have the right to consult with representatives and/or support personnel prior to interviews and to have their representative present during criminal investigation interviews. Representatives are usually lawyers or union officials, while supporters are usually spouses, co-workers, friends, or clergypersons. SFDA personnel shall advise an officer at the outset of the interview that the interview concerns a criminal matter and is voluntary and the officer is free to leave at any time, consistent with California v. Beheler.~~
4. ~~SFDA acknowledges that~~ *General Order 10.11 (Body Worn Cameras)* applies to SFPD officers, so long as *General Order 10.11* is in effect and is not superseded by state law. ~~No punitive action can be taken by the Employer Agency against the~~

~~interviewee if he/she exercises his or her right against self incrimination when speaking with investigators.~~

5. SFDA will lead criminal interviews of all SFPD personnel involved in a Covered Incident, with SFPD participation, when SFPD deems necessary, to conduct any **Parallel** Criminal Investigation. SFPD will have no more than two investigators question an officer at any given time. SFDA shall have one investigator and one attorney present during and participating in the questioning unless circumstances indicate otherwise. ~~If the interview is or becomes a custodial interrogation, the officer will be so advised. Miranda is applicable if and when the interview becomes a custodial interrogation.~~
6. SFDA personnel shall advise an officer at the outset of the interview that the interview concerns a criminal matter and is voluntary and the officer is free to leave at any time, consistent with *California v. Beheler*, 463 U.S. 1121 (1983). ~~Officers have the right to consult with representatives and/or support personnel prior to interviews and to have their representatives present during criminal investigation interviews. Representatives are usually lawyers or union officials, while supporters are usually spouses, co-workers, friends, or clergy persons.~~
7. ~~If the interview is or becomes a custodial interrogation, the officer will be so advised~~ **consistent with** *Miranda v. Arizona*, 384 U.S. 436 (1966). ~~SFDA acknowledges that the Police Commission's General Order 10.11 (DGO 10.11), concerning body worn cameras, applies to SFPD officers, so long as General Order 10.11 is in effect and is not superseded by state law.~~
8. SFPD administrative **IAD** investigators shall not be physically present **in the interview room** during criminal interviews. However, SFPD administrative **IAD** investigators may monitor criminal interviews, either through visual observation and audible reception of the interview through the glass or through observation or real-time video or closed-circuit transmission of the criminal interview.

B. Administrative Investigations

1. If an officer chooses not to make a voluntary statement **in the criminal investigation**, SFPD may **the Commander of the Risk Management Office must** notify SFDA **of their intent to conduct a** ~~before compelling~~ the officer to submit to an interview.
2. If an officer is subjected to a compelled interview, the officer will be provided with all rights afforded under the Public Safety Officers' Procedural Bill of Rights Act and the *Lybarger* cases.
3. Administrative interviews shall be conducted pursuant to SFPD General Orders, including General Order 10.11 (DGO 10.11), concerning body-worn cameras.

MEDICAL EVIDENCE

~~SFDA personnel should remain at the scene of a fatal shooting or in custody death until the Medical Examiner's personnel arrives and completes its on-scene investigation. When medical personnel determines an individual shall be transported to a medical facility, SFDA and SFPD personnel shall attempt to question the medical personnel who treated the individual and make efforts to preserve evidence.~~

IX. EVIDENCE/CASE MANAGEMENT SYSTEM

The sharing of information between the Parties is critical to ensuring that anyone, civilian or officer, under criminal investigation who is the subject of a search or arrest warrants or is prosecuted is provided with potential exculpatory evidence collected by either the SFDA or the SFPD during the investigation process of the Covered and Parallel incident.

The Parties will maintain and preserve all evidence gathered during their respective investigations and all documentation of such investigation. The Parties shall designate materials as either "Evidentiary" or "Protected," defined as follows:

- A. ***Evidentiary Materials:*** All evidence collected, received, or otherwise discovered during the investigation. Evidentiary Materials include, **but are not limited to, reports, statements, chronological reports, digital recordings (video or audio), photographs, and the identities of witnesses.**
- B. ***Protected Materials:*** All **Evidentiary Material** upon which **a person or party** has an articulable and reasonable legal basis to claim privilege or protection, or materials which could create a legitimate security risk or risk to subsequent criminal prosecutions if disclosed.
- C. **Privileged attorney work product: Attorney work product must be limited to "core" work product. (Pen. Code § 1054.6; Code of Civ. Proc. § 2018.030(a).)**

SFDA and SFPD agree upon the following uniform document identification system, case index, and production schedule for Evidentiary Material from the Covered and Parallel investigation:

1. **Each side will Bates stamp or numerically identify each item of Evidentiary Material in their respective possession (whether "Protected" or not).**
2. **Evidentiary Material created, collected, or maintained by the SFPD will be Bates stamped or numerically identified and also contain "SFPD" in the prefix. Evidentiary Material created, collected, or maintained by the SFDA will be Bates stamped or numerically identified and also contain "SFDA" in the prefix. This will ensure each item is clearly identified and can be tracked back to the producing party.**

3. Each Party will maintain a running index of the evidentiary items they have Bates stamped and numerically identified. The index will list the Bates numbers of the evidentiary item and a brief description of each set of documents for ease of review.
4. Bates stamps and numerical identification of Evidentiary Material shall occur within 5 business days of either party receiving evidentiary material and shall be simultaneously documented in the index.
5. If either Party asserts that any Evidentiary Material should be “Protected” (and not disclosed) those items must still be Bates stamped, included in the index with a brief description, and the basis for the “Protected” status (e.g. privilege) must be set out in the index. This allows each party to know if materials are being withheld by either side.
6. Unless prohibited by law, copies of all materials provided shall be unredacted and unaltered, except for the addition Bates numbers or numerical identifiers. The basis for any redactions must be set out in the index.
7. Evidentiary Materials should be produced to each party as soon as possible after information becomes available, and shall be produced no later than 5 business days after Bates stamping and indexing. The production shall include the index of materials produced. This is an ongoing obligation which permits the Covered Incident and Parallel Investigation to proceed simultaneously and will allow either party to request clarification of reports or conduct any additional investigation if required.
8. All materials produced by the SFPD to the SFDA pursuant to Penal Code § 832.7 shall be prominently watermarked “privileged and confidential 832.7 materials” in addition to the Bates stamping previously described.

*Any requests by SFDA for additional crime scene investigation, forensic analysis, or laboratory tests **including retesting of evidentiary items, analysis, and reports by SFPD subject matter experts, must** be made in writing (letter via email) to the Commander of the Risk Management Office.⁶*

*All requests by the SFDA’s Independent Investigations Bureau (“IIB”) for **personnel or background files, or information** related to **cases** that are not **part of the** Covered **or Parallel** incident as defined by this MOU shall be made in writing (**letter via email**) to the Commander of the Risk Management Office.*

⁶ The Commander of the Risk Management Office is the person who oversees both ISD and IAD and, as a single point of contact, can ensure that all requests for additional information are handled in a timely manner.

X. COMPLETION OF INVESTIGATIONS AND MEET AND CONFER

The Parties will attempt to complete the criminal investigations within six (6) months of the Covered Incident. SFDA will notify SFPD, in writing, when it **believes** the investigation of a Covered Incident will take longer than six months to complete.

Additionally, IIB's Managing Attorney and the Commander of the Risk Management Office shall meet and confer quarterly regarding the status of the Parties' respective investigations.

XI. PRESENTATION OF PARALLEL CRIMINAL INVESTIGATION

When seeking prosecution for the Parallel Criminal Investigation, ISD will present its case to the Chief Assistant District Attorney for referral to the appropriate charging unit within the criminal division. ISD must notify IIB of its presentation of the case within twenty-four hours. To ensure a consistent flow of information, IIB must seek a copy of presented case related to the Parallel Criminal Investigation and confer with the SFDA unit that is reviewing the Parallel investigation for filing. This is to ensure that any decision to file a criminal case in the Parallel matter will not detrimentally impact the investigation and independent assessment of the Covered Incident.

JOINT TRAININGS

~~SFPD and SFDA will endeavor to conduct joint training regarding Covered Incidents and other related issues.~~

INVESTIGATIVE REPORTS

~~It is the intent of SFDA and SFPD to complete their respective reviews of Covered Incidents as quickly as possible, consistent with the primary goal of conducting thorough and objective reviews of the facts.~~

~~As the criminal investigation proceeds, and as the information becomes available, copies of all reports, statements, forensic analysis, chronological records, digital recordings (video, audio, photos), and any other information received by SFPD shall be forwarded to the assigned SFDA personnel. This procedure will permit SFDA's review process to proceed simultaneously with the investigation, and it will permit SFDA to request SFPD to clarify reports or conduct any additional investigation, if required. Any requests by SFDA for additional crime scene investigation, forensic analysis or laboratory tests shall be made in writing to the Commanding Officer of the Risk Management Office. Upon written request by SFDA, SFPD shall promptly provide copies of all materials as permitted by applicable law. Unless prohibited by law, copies of all materials provided by SFPD shall be unredacted and unaltered, except they may include Bates numbering in the footer of each page.~~

~~All requests by the SFDA's Independent Investigations Bureau (IIB) for materials, evidence, forensic analysis or laboratory tests that are related to investigations that are not covered incidents as defined by this MOU, or part of an active investigation with SFPD Investigations Bureau, shall be made in writing to the Commanding Officer of the Risk Management Office.~~

~~In any event, SFDA and SFPD shall endeavor to complete the criminal investigation within six (6) months of the Covered Incident, depending on the complexity of the investigation. SFDA will notify SFPD, in writing, when it is determined the investigation will take longer than six months to complete.~~

~~As the criminal investigation proceeds, and as any investigative information that is relevant to the ancillary investigation becomes available, the SFDA shall provide that investigative information to the Officer in Charge of ISD as soon as practicable and as legally permissible. SFDA shall also inform the Officer In Charge of ISD of significant investigatory milestones including: (1) case closures; (2) issuance of arrest warrants or indictments, when legally permissible and as promptly as circumstances reasonably permit; and (3) declination letters.~~

~~Should the SFDA subpoena a member of the Investigative Services Division (ISD) for an evidentiary hearing, the ISD member may contact the SFDA member who issued the subpoena and the SFDA member shall inform the member of the scope of their testimony in order to assist the member's preparation.~~

DISCLOSURE OF SFDA INVESTIGATIVE MATERIALS

~~SFDA shall maintain and preserve all evidence it gathers during its investigation of a Covered Incident and all documentation of such investigation. SFDA shall designate materials as either "Evidentiary" or "Protected," which are defined as:~~

- ~~1. *Evidentiary Materials: All evidence collected, received, or otherwise discovered during the course of the investigation. For illustration purposes only, "Evidentiary Materials" includes photographs, videos, the identities of witnesses to a Covered Incident, and factual portions of recorded statements of witnesses to a Covered Incident, to the extent that SFDA does not have an articulable and reasonable legal basis to believe that disclosure of the Evidentiary Materials will create a legitimate security risk or risk to subsequent criminal prosecutions.*~~
- ~~2. *Protected Materials: All materials upon which SFDA has an articulable and reasonable legal basis to claim privilege or protection, or materials which could create a legitimate security risk or risk to subsequent criminal prosecutions if disclosed.*~~

~~Upon declination of criminal charges or upon completion of all prosecutions relating to the investigation, SFDA shall review all of its investigative materials and provide all previously undisclosed Evidentiary Materials and, at its discretion, any appropriate Protected Materials to SFPD within thirty (30) days.~~

XII. FINAL ACTION

~~At the conclusion of SFDA's the investigation of a Covered Incident, ~~the District Attorney or his/her designee, SFDA~~ shall review and analyze all the evidence to determine whether ~~any~~ the SFPD officer acted unlawfully. ~~If the District Attorney declines to file criminal charges, the District Attorney or his/her designee shall notify the SFPD of the findings in writing. If the~~~~

~~District Attorney decides to file criminal charges, or a grand jury returns an indictment, the SFDA shall, as promptly as circumstances reasonably permit and if legally permissible, inform the Chief of Police of the decision. All charging documents shall identify the applicable arresting officer or officers. If the SFDA intends to arrest an officer, SFDA shall notify the Officer in Charge of ISD. At the SFDA's discretion, SFPD will undertake the process for taking the officer into custody and booking. SFPD will diligently undertake the custodial process and update the SFDA as circumstances reasonably permit, until the process has been completed.~~ SFDA's policies regarding crime charging are set forth in the 2016 CDAA Professionalism Manual, which states in ~~p~~ertinent part:

The prosecutor should [file criminal charges] only if the following four (4) basic requirements are satisfied:

1. There has been a complete investigation and thorough consideration of all pertinent information.
2. There is legally sufficient, admissible evidence of corpus delicti.
3. There is legally sufficient, admissible evidence of the accused's identity as the perpetrator of the crime.
4. The prosecutor has considered the possibility of conviction by an objective fact finder hearing the admissible evidence.

The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after hearing all the evidence available to the prosecutor at the time of charging and after hearing the most plausible, reasonably foreseeable defense that could be raised under the evidence presented to the prosecutor. (See Uniform Crime Charging Standards, CDAA 1989.)

If SFDA declines to file charges, SFDA shall notify the Chief of Police of its findings in writing.

If SFDA decides to file criminal charges, or a grand jury returns an indictment, SFDA shall immediately inform the Chief of Police, or in their absence the Acting Chief of Police, of the decision. If SFDA intends to arrest an officer, SFDA shall notify the Commander of the Risk Management Office. All charging documents must identify the applicable arresting officers. At SFDA's discretion, SFPD may undertake the process for taking the officer into custody and booking. SFPD will diligently undertake the custodial process and update SFDA as circumstances reasonably permit until the process has been completed.

XIII. JOINT TRAININGS

SFPD and SFDA will conduct at least two joint trainings per year regarding Covered Incidents and other related issues.

XIV. CONFIDENTIAL DISPUTE RESOLUTION

The Parties agree to meet within five (5) business days, to attempt to resolve any disagreement over this MOU or the designation of any Protected Materials. If the Parties are unable to resolve the disagreement, the dispute shall be submitted either to the mutually agreed upon arbitrator for dispute resolution or the Parties may jointly request advice or assistance from the City Attorney's Office.

The Parties shall agree to a retained arbitrator by either mutual agreement or by striking names on a list and consulting with the City Attorney's Office. The order of striking will be determined by lot. On a yearly basis, either party may request a new arbitrator. Arbitration costs shall be borne by both parties. The Parties agree that the resolution process will be confidential to the extent permitted by law. The arbitrator will be empowered to conduct an in camera, confidential review of either party's documents and provide a written advisory opinion regarding the dispute.

XV. DURATION OF MOU

Effective Date: This MOU shall be effective on July 27, 2021.

Duration of MOU: This MOU agreement shall remain in full force and effect for a period of two (2) years, ~~or until~~

This agreement may be terminated by the District Attorney or the Chief of Police, ~~after providing fifteen days' written notice to the other party. If there is any disagreement regarding the implementation of the provisions contained in this MOU, both parties agree to immediately meet, no later than five (5) business days thereafter, to resolve this disagreement.~~ Termination may only occur following the dispute resolution process outlined above.

Effective Date: This MOU shall be effective on [DATE].

IN WITNESS WHEREOF, the parties hereto have executed this MOU as indicated below.

Chesa Boudin Brooke Jenkins, District Attorney

Date:

William Scott, Chief of Police

Date: