

MEMORANDUM OF UNDERSTANDING
BETWEEN THE OFFICE OF ACCOUNTABILITY AND TRANSPARENCY AND
THE CITY OF PHOENIX POLICE DEPARTMENT

This Memorandum of Understanding (“Agreement”) is made and entered into by and between the City of Phoenix Office of Accountability and Transparency (“OAT”) and the Phoenix Police Department (“PPD”), (collectively referred to as the “Parties”).

RECITALS

WHEREAS the Phoenix City Council passed Chapter 20 of the Phoenix City Code (the “Code”) that established the OAT in 2021, with amendments to the ordinance in 2024; and

WHEREAS the Ordinance authorizes the OAT to review PPD administrative investigations or civilian complaints regarding policy, rules, and training issues; and

WHEREAS the Parties desire to enter into an agreement that will facilitate efficient and timely sharing of information between them and ensure compliance with existing regulations; and

WHEREAS it is the desire of the Parties to work together for mutual benefit to the public, community, the City, and all personnel involved in the fulfillment of the Code objectives.

THEREFORE, IT IS MUTUALLY AGREED THAT,

I. PURPOSE

- A. The Purpose of this Agreement is to establish a formal understanding of the respective responsibilities of each of the Parties whereby each can meet its obligations under the Code without unnecessary disturbance of other City operations; and
- B. To provide an environment for constructive interaction between the Parties that advances the objectives of public safety, accountability, and transparency in service to the community of the City of Phoenix.

II. TERM AND TERMINATION

This Agreement shall commence on the date that it is signed by the Parties and continue for one year, or as mutually agreed to extend in writing.

III. DEFINITIONS

- A. Confidential Information: Includes Personal Identifying Information (PII) as defined by City rules and regulations, all information that is protected by law from being disclosed without permission, including information about individuals, medical, and employment information, and information that is intended for restricted use and not freely available to the public or otherwise determined confidential or private by law. Determinations for confidential or private information shall align with Arizona Attorney General guidelines, “Public officials and employees should review the confidentiality provisions that affect their areas of responsibility

to avoid disclosure of confidential information.” See generally, Arizona Public Records Law, compiled by AZ Ombudsman Citizens Aide 2023 Edition.

- B. **Completed or Finalized Investigations:** Investigations or reports that have been officially discontinued or the matter that is the subject of the investigation has exhausted all appeals or of which the time for filing appeal has expired, in accordance with City policy and state law. See A.R.S. § 38-1109.
- C. **Draft Report:** Is a preliminary version of a report that involves an incomplete investigation and requires final approval. A Draft Report is not intended to be determinative or conclusive and is subject to change for added clarity, completeness, or correction.
- D. **Mandatory Oversight Incident:** Includes all subsections of P.C.C. Ch. 20 Sec. 20-6. Specifically, all officer-involved shootings; deaths in-custody; any duty-related incidents resulting in serious bodily injury; incidents in which Department personnel are under investigation for or charged with offenses against persons under Arizona law; incidents in which a Phoenix police officer is under investigation for any misdemeanor or local law violation where use of force or threatened use of force is an element in the crime; and when requested to do so by the Phoenix City Manager or their designee.
- E. **Review:** A formal assessment or examination of an administrative police investigation.
- F. **Serious Bodily Injury or Serious Physical Injury:** Includes physical injury that creates a reasonable risk of death, or that causes serious and permanent disfigurement, serious impairment of health or loss of protracted impairment of the function of any bodily organ or limb. Due to the nature and required timing of assessment involved with matters related to this Agreement, serious bodily injury or serious physical injury may include extreme physical pain, protracted and obvious disfigurement, or protracted loss of impairment of the function of a body part, organ, or mental faculty.(A.R.S. § 13-105 (39); Ninth Circuit Committee on Model Jury Instructions, *Manual of Model Criminal Jury Instructions*, Instruction No. 8.9 (2022)). The term Serious Physical Injury (SPI) will be used for the purposes of this document.

IV. RESPONSIBILITIES OF THE PARTIES

A. MATTERS OF MANDATORY OVERSIGHT

1. PPD is required to notify OAT of Mandatory Oversight Incidents listed in the Code and OAT is required to conduct a review after the investigation is conducted by the Department.
2. For the purposes of this Agreement PPD agrees to provide notification of Mandatory Oversight Incidents to OAT as soon as PPD Professional Services Bureau (PSB) receives notice of the event but not later than 72 hours after the Department Learns of the incident.

B. MATTERS OF DISCRETIONARY OVERSIGHT

1. PSB will provide a bi-weekly list (the “List”) that will suffice as notice of matters of “Discretionary Oversight” as described in Sec. 20-7 of the Code. The following information will be included on the List:

a. PSB will provide information regarding the nature of the investigation of which the employee has been investigated, such as the specific statute number for the misdemeanor or felony crimes as indicated on the police report or charging document, and if a decision not to submit or charge has been made. For example: "A.R.S. § 13-1203 (A) (1) Domestic Violence (DV), MCAO declined prosecution."

b. The release of additional information of incidents contained on the List may need to be determined on a case-by-case basis and it may be determined that the release of additional information specific to a single case may not be in the best interest of the City or may conflict with current law. In the event of a disagreement, the Parties agree that the information will be withheld until the disagreement is resolved.

2. PPD will provide OAT with a monthly list of Completed Investigations. The list will include the incident date, the investigation completion date, the nature of the investigation, and the result of the investigation, including if the allegations were sustained or unfounded.
3. OAT will notify PPD of it intends to review a Discretionary Oversight incident within 72 hours of the determination.

C. INFORMATION EXCHANGE

1. All information shared between the Parties under this agreement shall comply with applicable local, state, and federal laws. Each Party agrees to implement and maintain any necessary safeguards to ensure compliance. If confidential information is inadvertently or mistakenly provided or accessed, the Party mistakenly providing the information or the Party mistakenly accessing the information will notify the other Party upon the discovery and immediately seek to cooperatively remedy the mistake.
2. PPD will provide OAT with reasonable notice of interviews of witnesses and officers that stem from Mandatory incidents. OAT review of the interview may occur by reviewing the audio and/or visual recordings. If OAT observes an interview, OAT will not be in the room and will not be able to ask questions or intervene in the interview. PPD will provide audio and/or visual recordings of interviews when they become available to PSB and if disclosure of the recordings does not violate state law. The Parties agree that if disclosure will compromise or otherwise be detrimental to an investigation and result in irreparable harm, they will work cooperatively to determine the earliest time the review of the interview can occur.
3. Information, materials, and evidence not held or created by PSB will be provided to OAT by PPD's Public Records Service Bureau (PRSB). OAT will submit requests to PRSB and PRSB will prioritize OAT requests, including dedicating a full-time administrative position to timely fulfill OAT requests.
4. If OAT requests information that contains sensitive, confidential, or private information, the Parties will work cooperatively to determine an alternative method or media to provide the information to OAT if possible.

5. Records Retention and Sharing. The Parties agree that OAT, as a department of the City of Phoenix, is not the custodian of records nor the designated records management liaison for PPD records, HRD records, or records created and maintained by other City departments, offices, or boards or commissions (collectively, records of “non-OAT departments”). OAT does not have approval authority or oversight of the release of any records related to non-OAT departments, including but not limited to, investigation documents, recordings, case evidence, legal pleadings, employment records, databases, training materials, papers, communications in any form, reports, photos, etc. Portions of records that are not reviewed when reviewing investigations may be used by OAT during presentations to the Civilian Review Board (CRB). Use in a CRB meeting will comply with redaction requirements for public use. Materials obtained and used for OAT reports, if not contained or attached to the official OAT report itself, remain the responsibility of the City and the records-creating department to maintain, produce or destroy according to records processing laws including those for retention schedules, open meetings, and public records. To the extent copies of non-OAT records are used for OAT reports, in full or in part, OAT will defer to the department that created and maintains the original record as to which portions of that department’s record are privileged, sensitive, or protected information. OAT will create and follow the records retention schedule for maintaining and purging non-OAT records within OAT’s custody. Except for those portions memorialized with an OAT report, in no event will copies of records of non-OAT departments be kept by OAT for more than three years beyond the destruction schedule for the original record.
6. OAT will receive copies of records in an accessible format and will not keep or maintain original records that were not created by OAT.
7. OAT agrees that PII, especially that of victims and witnesses of crimes, is highly sensitive and subject to protection from public disclosure. OAT agrees that only general locations will be included in public records that OAT creates. For example, “the 200 block of West Washington Street.” OAT also agrees that it will release information to the public in accordance with Arizona law as it pertains to PII, confidentiality, and privacy.
8. If information requested by OAT is unavailable for any reason, PPD shall notify OAT of the unavailability and will coordinate with OAT to find an alternative means of accessing the or provide an expected date of availability of the information.
9. PPD will provide access to Power DMS to OAT employees who participate in report drafting and review. OAT agrees that accessing restricted policies will be limited to reviewing such policies within the PowerDMS system and OAT employees will not save, capture, download, or share restricted policies.
10. PPD will provide information and evidence via Evidence.com to OAT and the CRB. The Parties agree that if PPD discloses information or evidence that should not have been disclosed and OAT or the CRB can reasonably identify that the information or evidence should not have been disclosed, the OAT employee or CRB member will immediately notify the OAT director and not attempt to access the information or evidence. The OAT director will notify PSB of the inadvertent disclosure so it can be removed and advise all OAT

employees and CRB members to immediately delete any downloads or saved files related to the inadvertent disclosure.

11. OAT will have access to training at the Phoenix Police Academy with the following limitations:

a. OAT employees and CRB members will not have access to training or information that is considered attorney/client privilege or confidential;

b. OAT employees and CRB members will not have access to training that is deemed dangerous or that involves physical or psychological exertion that would require clearance from a medical or mental health professional;

c. If an OAT employee or CRB member desires to attend training at the police academy, OAT shall notify the Training Bureau at least five (5) workdays prior to their desired attendance date. Civilian visitors to the Police Academy campus will be required to sign a waiver of liability that has been approved by the City, as described below. The Police Chief, or their designee, is the final authority on approval to attend any training.

i. If a CRB member desires to attend training at the Police Academy, they shall notify the OAT CRB liaison who will coordinate with the Training Bureau, consistent with the process described in this section.

ii. Civilian visitors to the Police Academy campus will be required to sign a waiver of liability that has been approved by the City. The signed waiver must be provided to the Advanced Training Lieutenant and the Training Commander at the time of the request. The contact for the waiver will be the Assistant City Attorney assigned to PSB, or the Assistant Chief Counsel or Chief Counsel assigned to Public Safety.

12. The Parties agree that upon receipt of a formal complaint by public individuals to OAT, OAT agrees to forward the complaint to PSB as soon as practicable, but no more than five (5) business days, for further review and investigation if applicable. OAT will forward the complaint after receiving confirmation that the complainant requested OAT to forward the complaint to PSB. If the current process is changed, the Parties will memorialize the new process in writing to avoid confusion and ease transition.

D. MONITORING REPORTS

1. OAT agrees that it will not include PII or any information considered private or confidential in Monitoring reports. OAT agrees that Monitoring reports will include only general geographic locations, as referenced above.

2. OAT will notify PPD no less than fourteen (14) days in advance of the public release of specific OAT reports, including the PSB or Department case number, the nature of the incident, OAT's thorough and complete determination, and any recommendations. Whenever possible, OAT will provide advance notice

3. OAT agrees that it will provide specific information in referencing issues it identifies in reviews of investigations that will adequately provide PPD with the information necessary to address potential areas of improvement.
4. When appropriate, the Parties will mark the referenced point in time of Body Worn Camera footage included in their report. The Parties agree that they will work cooperatively and provide the other Party the opportunity to include additional information or added reference points when necessary.
5. In addition to the requirements of Sec. 20-13 of the Code, PPD shall provide a written response within thirty (30) days, and shall include in their response, where applicable:
 - a. whether the consideration of appropriate action shall require additional PPD review;
 - b. whether PPD disagrees, in whole or in part, with the recommendations and the factual basis for any disagreement; and
 - c. whether despite agreement with the recommendation, there is no appropriate action available to be taken and the reasoning for the determination.

E. MEDITATION

1. Mediation will allow community members an opportunity to address and resolve their concerns and police an opportunity to build community trust and improve community relations in a deescalated setting. Mediation via a facilitated conversation conducted by skilled, neutral mediators allows both parties to hear the other's perspective, determine underlying issues, recognize the impact of the incident that led to the community member's complaint.
2. OAT and PPD will work together to jointly establish a mediation protocol and program for community member complaints, guided by best practices.
3. To the extent allowed by law, OAT and PPD will offer mediation as a confidential, voluntary alternative to the traditional complaint and disciplinary process for the categories of community member complaints and policy violations defined in the mediation protocol and program documents. The documents will be added as an addendum to this Agreement when completed.

F. ADDITIONAL TERMS AND CONDITIONS

1. The Parties will work in good faith to resolve disputes arising from this Agreement in a timely and reasonable manner and will not deliberately hinder the goals and objectives of the other Party.
2. When a complaint received by OAT from a member of the public or an employee of PPD contains a specific and verifiable allegation of retaliation against a **non-supervisory** PPD employee, OAT shall notify the Department of the complaint, via PSB, within 72 hours. Notification will be made in the form of a Retaliation Complaint Notification. The notification will include: the name of the complainant; the date the complaint was received; the specific

conduct alleged, including all available dates, times, and locations; and the name of the PPD employee against whom the allegation is made. If the complaint is made against a **PPD supervisor**, OAT shall notify PSB and the City Manager, or the City Manager's designee.

3. When a complainant makes a retaliation allegation and indicates a desire to remain anonymous, immediate disclosure by OAT to PSB shall be limited to: the date the complaint was received; the specific conduct alleged including available dates, times, and locations; and the name of the PPD employee against whom the allegation is made.

4. If a retaliation complaint is against an individual that is in the chain of notification, the OAT Director will notify that individual's direct supervisor in a separate communication and remove that individual from the Complaint Referral email.

5. The Parties agree to meet at least monthly to provide communication and discuss the Parties' performance of this Agreement.

6. Interagency Liaisons. The Parties will each designate an interdepartmental liaison to ensure timely sharing of information and response to time-sensitive questions. Time-sensitive matters that require action by either of the Parties must be brought to the attention of the liaisons when the OAT Director or Police Chief are unavailable.

7. The Parties agree to cooperatively seek clarification of information provided to avoid misunderstanding amongst themselves and with the public release of information.

8. No disagreement shall be brought before the City Manager for resolution without having first been discussed between the Parties at the monthly meeting. The meeting must include the Director of OAT, or their designee, and the Police Chief, or their designee. Any resolution of issues within the terms of this Agreement may result in a written addendum to this Agreement.

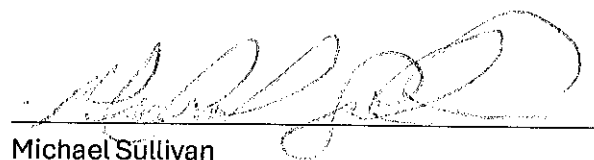
G. CIVILIAN REVIEW BOARD (CRB)

1. OAT will require all members of the Civilian Review Board to sign an agreed-upon sensitive material and Confidentiality Notice prior to each member's active participation on the Board and prior to disclosures from PPD in any form. OAT will be responsible for maintaining the Notices and will immediately notify the PSB Commander if a Board member has violated confidentiality rules.

2. OAT will identify documents and evidence to be provided by PPD to the CRB for review of OAT reports and PPD responses. OAT will provide the list of documents and evidence to PPD upon publication of each OAT report. PPD will disclose the listed documents and evidence to CRB no later than the time of the Department's response, and at a minimum, thirty (30) days in advance of the scheduled CRB meeting at which the report and response will be heard.

3. Members of the CRB will not have access to Evidence.Com without signing the Confidentiality Notice.

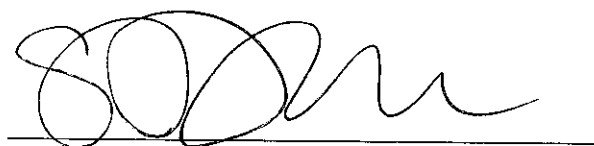
Agreed and signed to by:



Michael Sullivan
Interim Chief, Phoenix Police Department

4-17-25

Date



Shannon Johanni
Director, Office Accountability and Transparency

4/17/25

Date

Date