MEMORANDUM OF AGREEMENT BETWEEN THE U.S. DEPARTMENT OF JUSTICE AND THE CITY OF CLEVELAND REGARDING HOLDING CELL FACILITIES OPERATED BY THE CLEVELAND DIVISION OF POLICE

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I. DEFINITIONS

1. As used in this Memorandum of Agreement ("Agreement"):

   a. The term "auditable form" or "auditable log" means a discrete record of the relevant information maintained separate and independent of blotters and other forms maintained by the CDP.

   b. The term "CDP" means the Cleveland Division of Police, its agents, officers and employees (both sworn and unsworn).

   c. The term "cell check" means direct visual observation of detainees by CDP employees.

   d. The term "City" means the City of Cleveland, Ohio including its agents, officers and employees.

   e. The term "Collective Bargaining Agreements" means the labor agreements by and between the City and the Cleveland Police Patrolmen's Association, Lodge Number 8 of the Fraternal Order of Police, and the Ohio Patrolmen's Benevolent Association House of Corrections Guards in effect on the effective date of this Agreement.

   f. The term "detainee" means any individual in CDP custody housed in a holding cell facility.

   g. The term "detention officer" means both sworn and unsworn individuals employed by the CDP whose duties include the supervision and care of detainees.

   h. The term "DOJ" means the United States Department of Justice and its agents and employees.

   i. The term "effective date" means the day this Agreement is signed by all parties.

   j. The term "holding cell" means any room or area in which individuals in CDP custody are confined, including within the Central Prison Unit and within police Districts One, Two, Four, Five, and Six.

k. The term "including" means "including, but not limited to."

l. The term "parties" means the DOJ and the City.

m. The term "qualified medical professional" means an individual who is currently licensed by the State of Ohio to deliver the health care services they have undertaken to provide.

n. The term "qualified mental health professional" means an individual who is currently licensed by the State of Ohio to deliver the mental health services they have undertaken to provide.

o. The term "shall" means that the provision imposes a mandatory duty.

p. The term "supervisor" means a sworn CDP employee at the rank of sergeant or above and non-sworn employees with oversight responsibility for CDP employees.

II. GENERAL PROVISIONS

2. This Agreement is effectuated pursuant to the authority granted the DOJ under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141").

3. Although the DOJ alleges that the City and the CDP are engaging in a pattern or practice of conduct resulting in unconstitutional conditions of confinement in the holding cell facilities, the City denies these allegations. The parties agree that by entering into this Agreement, the City does not admit liability under federal, state, or local law and that the City does not admit to any finding of fact or conclusion of law contained within this Agreement. The parties agree that the provisions of this Agreement are a reasonable, lawful, and fundamentally fair resolution of this matter.

4. The DOJ agrees to forego the filing of any claim relating to conditions of confinement in the holding cell facilities accrued as of the effective date of this Agreement under Section 14141. Nothing in this Agreement, including ¶¶ 42-45, shall preclude the DOJ from filing any other claims, including claims pursuant to Section 14141.

5. Nothing in this Agreement is intended to modify or supercede any of the provisions of State or local law, including the City Charter. Nothing in this Agreement is intended to alter the Collective Bargaining Agreements or impair the collective bargaining rights of employees under State and local law. The DOJ and the City have attempted to draft this Agreement to avoid impairing the rights of the Cleveland Police Patrolmen's Association, Lodge 8 of the Fraternal Order of Police, and the Ohio Patrolmen's Benevolent Association House of Corrections Guards under the Collective Bargaining Agreements. However, a determination that any such right is impaired shall not relieve the City of its obligations under this Agreement.

6. The DOJ's investigation, conducted with the full cooperation of the City, included interviews and meetings with CDP command staff, sworn officers, unsworn personnel, and institutional guards; representatives of the Cleveland Law Department and the Department of Public Safety; representatives of the Police Review Board and the Office of Professional Standards; leaders of the Cleveland Police Patrolmen's Association, Lodge Number 8 of the Fraternal Order of Police, and Counsel for the Ohio Patrolman's Benevolent Association House of Corrections Guards; and community members and representatives of civil rights organizations. The DOJ's investigation included a review of documents related to numerous uses of force and deaths in CDP holding cells. The DOJ and its experts also toured all of the CDP's holding cells. In addition to analyzing specific incidents, the DOJ examined CDP's management practices, including its policies, training curricula, supervisory procedures, and disciplinary system.

7. During the investigation, in keeping with the Attorney General's pledge to provide entities subject to Section 14141 investigations technical assistance, the DOJ made recommendations for changes to the CDP's policies and procedures in informal discussions with the CDP, in the form of a technical assistance letter dated June 4, 2003, and in meetings with CDP command staff regarding the substance of the technical assistance letter. The CDP is currently in the process of revising its policies and procedures to address the issues identified by the DOJ. As a result of the City's and the CDP's high level of voluntary cooperation and willingness to implement meaningful change without the need for litigation, the DOJ and the City believe this Agreement, rather than contested litigation, represents the

best opportunity to address the DOJ's concerns.

8. Nothing in this Agreement is intended to alter the lawful authority of the CDP to provide security for the public and staff from detainees in a manner consistent with the requirements of the Constitutions and laws of the United States and the State of Ohio.

9. Nothing in this Agreement is intended to amend or supercede any of the provisions of any other agreement between the parties.

10. This Agreement shall constitute the entire integrated agreement of the parties regarding the conditions of confinement in the CDP holding cells. With the exception of the technical assistance letter described in ¶ 7, no prior drafts or prior or contemporaneous communications, oral or written, shall be relevant or admissible for purposes of determining the meaning of any provisions in the Agreement in any litigation or any other proceeding.

11. This Agreement is binding upon the parties, by and through their officials, agents, employees, and successors. This Agreement is enforceable only by the parties. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the City or its officials, employees, or agents for their conduct or the conduct of CDP officers; accordingly, it does not alter legal standards governing any such claims, including those under Ohio law. This Agreement does not authorize, nor shall it be construed to authorize, access to any City, CDP, or DOJ documents by persons or entities other than the DOJ and the City.

12. The City is responsible for providing necessary support to the CDP to enable it to fulfill its obligations under this Agreement.

13. The City, by and through its officials, agents, employees, and successors, shall not engage in a pattern or practice of conduct by employees of the CDP that deprives detainees of rights, privileges, or immunities secured or protected by

the Constitution or laws of the United States.

III. SUICIDE-PREVENTION POLICIES AND PROCEDURES

14. The CDP shall ensure the adequate identification of, and response to, detainees at risk for suicide.

15. The CDP represents that it has developed and implemented adequate suicide-prevention policies and procedures. These suicide-prevention policies and procedures shall be subject to DOJ review and approval, as described in ¶ 37. The CDP shall continue to implement adequate suicide-prevention policies and procedures.

16. The CDP shall designate an adequate number of cells to be suicide-resistant cells. The CDP shall further ensure that:

    a. cells that are identified as suicide-resistant shall comply with generally accepted professional standards, including be as free as possible of protrusions and physical conditions that increase the risk of suicide; and
    b. detainees identified as being at risk for suicide are housed only in suicide-resistant cells.

IV. MEDICAL AND MENTAL-HEALTH-CARE POLICIES AND PROCEDURES

17. The CDP shall ensure the adequate identification of, and response to, detainees' serious medical and/or mental health needs.

18. The CDP shall ensure that CDP holding cell facilities are adequately staffed with medical and mental health professionals, including, but not limited to, physicians and nurses.

19. The CDP represents that it has developed and implemented adequate medical and mental-health policies, procedures, and protocols. These policies, procedures, and protocols shall be subject to DOJ review and approval, as described in ¶ 37. The CDP shall continue to implement adequate medical and mental-health policies, procedures, and protocols.

20. The CDP represents that its medical and mental-health policies, procedures, and protocols have been approved in writing by qualified medical and mental health

professionals. These policies, procedures, and protocols shall be reviewed and approved in writing by qualified medical and mental-health professionals at least every year and prior to any revisions to the policies, procedures, and protocols.

V. FIRE-SAFETY AND EMERGENCY-PREPAREDNESS POLICIES AND PROCEDURES

21. The CDP represents that it has developed and implemented comprehensive fire-detection, suppression, emergency-preparedness and evacuation policies and procedures for the Central Prison Unit. These policies and procedures shall be subject to DOJ review and approval, as provided in ¶ 37. The CDP shall develop and implement comprehensive fire detection, suppression, emergency-preparedness, and evacuation policies and procedures for the holding cells located in Districts One, Two, Four, Five, and Six, and shall submit these policies and procedures for DOJ review and approval within 90 days of the effective date of this Agreement.

VI. DETAINEE-SAFETY POLICIES AND PROCEDURES

22. The CDP represents that it has developed and implemented adequate security-administration policies and procedures to provide for the reasonable safety of staff and detainees. These policies and procedures shall be subject to DOJ review and approval, as provided in ¶ 37. The CDP shall continue to implement adequate security-administration policies and procedures to provide for the reasonable safety of staff and detainees.

23. The CDP shall house detainees who require special observation only in cells that can be directly observed by CDP staff at their posts.

24. The CDP shall require that all in-custody deaths occurring in the CDP holding cells are investigated by the Use of Deadly Force Investigation Team and the Cuyahoga County Coroner's Office as required by Ohio law.

VII. ENVIRONMENTAL-HEALTH AND SAFETY POLICIES AND PROCEDURES

25. The City shall ensure that all holding cells are cleaned immediately to remove all health hazards.

26. The City represents that it has developed and implemented cleaning policies and procedures for all holding cells. These policies and procedures shall be subject to DOJ review and approval as provided by ¶ 37. The City shall continue to implement cleaning policies and procedures for all holding cells.

27. The City shall repair all broken or malfunctioning lighting, toilets, sinks, and windows in holding cells in which detainees are housed within 90 days of the effective date of this Agreement.

28. The CDP shall ensure detainees have reasonable access to showers and that shower facilities are maintained in a sanitary condition.

VIII. MANAGEMENT AND SUPERVISION

29. The CDP shall routinely evaluate the operation of the holding cells, including implementation of:

    a. an auditing protocol;
    b. regular and periodic review of all CDP policies; and
    c. regular meetings of CDP management to share information and evaluate patterns of conduct by the CDP that potentially increase the CDP's liability.

30. The CDP shall designate a person or persons who shall be responsible for assuring compliance with the requirements of this Agreement. Within 90 days of the effective date of this Agreement, the CDP shall submit for review and approval of the DOJ a plan describing the methodology that shall be utilized to conduct regularly scheduled quarterly audits in all buildings containing holding cells to evaluate compliance with:

    a. the suicide-risk screening procedure and the suicide-precautions protocol;

b. the fire-detection, suppression, emergency-preparedness, and evacuation policies and procedures;
c. medical/mental-health policies and procedures;
d. detainee-safety policies and procedures; and
e. environmental-health and safety policies and procedures.

IX. TRAINING

31. The CDP shall provide comprehensive pre-service and annual in-service training to all detention officers, supervisors and persons designated pursuant to ¶ 30 on the policies and procedures implemented pursuant to this Agreement.

32. The CDP shall create and maintain individual training records for all detention officers, documenting the date and topic of all pre-service and in-service training completed on or after the effective date of this Agreement.

33. The CDP shall develop and implement training curricula in:

a. fire safety and emergency preparedness;
b. medical/mental-health/suicide-prevention policies and procedures;
c. detainee-safety policies and procedures; and
d. environmental health, safety and hygiene.

These curricula shall be submitted for DOJ review and approval within 120 days of the effective date of this Agreement.

X. MONITORING, IMPLEMENTATION, AND ENFORCEMENT

34. For the duration of this Agreement, the City shall provide the DOJ and its consultants with full and unimpeded access to all staff, detainees, facilities, and documents (including databases) that are relevant to evaluate compliance with this Agreement. DOJ shall retain any non-public information in a confidential manner and shall not disclose any non-public information to any person or entity, other than a party, absent reasonable written notice to the City and either the City Director of Law's written consent or a court order authorizing disclosure. This Agreement does not authorize, nor shall it be construed to authorize, access to any CDP documents by persons or entities other

than the DOJ or the City.

35. During the term of this Agreement, and subject to record retention requirements and procedures imposed by state or local law, the City and the CDP shall maintain all records documenting compliance with this Agreement and all documents required by or developed pursuant to this Agreement. The City and the CDP shall maintain all files regarding investigations of police action and incidents in holding cells for at least ten years from the date of the incident. The City and the CDP shall maintain an officer's training records during the officer's employment with the CDP and for three years thereafter (unless required by applicable law to be maintained for a longer period of time).

36. Within 90 days of the effective date of this Agreement, unless another time frame is specified in this Agreement, the City and the CDP shall implement each and every provision of this Agreement.

37. Except as otherwise provided in this Agreement, for every policy, procedure, protocol, and curriculum subject to DOJ review and approval pursuant to this Agreement, the policy, procedure, protocol, or curriculum shall be provided to DOJ within 10 days of the effective date of this Agreement. DOJ shall review those policies, procedures, protocols, and curriculum to assess whether they are consistent with the substantive requirements set forth in Exhibit A to this Agreement, and timely approve those which comply with the requirements of Exhibit A. If DOJ finds that the CDP policy, procedure, protocol, or curriculum is not consistent with the requirements of Exhibit A, DOJ shall promptly notify the CDP and provide technical assistance in revising the policy, procedure, protocol, or curriculum.

38. Any proposed revisions to DOJ reviewed and approved CDP policies, procedures, protocols, or curricula shall be provided for review and approval by the DOJ at least 30 days prior to their promulgation by facsimile copy and U.S. mail.

39. The parties agree to defend the provisions of this Agreement. The parties shall notify each other of any court or administrative challenge to this Agreement.

40. Failure by the parties to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of

its right to enforce other deadlines or provisions of this Agreement.

41. If any unforeseen circumstance occurs which causes a failure to carry out timely any requirements of this Agreement, the CDP and/or the City shall notify the DOJ in writing within 20 calendar days of the time that the CDP and/or the City becomes aware of the unforeseen circumstance and its impact on the CDP and/or the City's ability to perform under the Agreement. The notice shall describe the cause of the failure to perform and the measures taken to prevent or minimize the failure. The CDP and the City shall implement all reasonable measures to avoid or minimize any such failure.

42. This Agreement is enforceable through specific performance in the United States District Court for the Northern District of Ohio, Eastern Division.

43. In the event the City fails to fulfill any obligation under this Agreement, DOJ shall, prior to initiating any court proceeding to remedy such failure, give written notice of the failure to the City. The City shall have 60 days from receipt of such notice to cure the failure. At the end of the 60-day period, in the event DOJ determines that the failure has not been cured, DOJ may, without further notice to the City, file an action in the United States District Court for the Northern District of Ohio, Eastern Division (the "Federal Court Action") against the City for breach of contract and may seek specific performance and any other appropriate form of relief.

44. In connection with the Federal Court Action:

    a. the City shall stipulate to in personam jurisdiction and venue in the United States District Court for the Northern District of Ohio, Eastern Division;
    b. the City agrees that service by hand delivery of the summons, complaint, and any other documents required to be filed in connection with the initiation of the Federal Court Action upon the Director of Law, with a copy to the Department of Public Safety, will be deemed good and sufficient service upon the City; and
    c. the parties agree to an expedited trial of the Federal Court Action.

45. In the event the Court finds that the City has engaged in a material breach of the Agreement, the parties hereby stipulate that they will move jointly for the Court to enter the Agreement and any modifications as an order of the Court and to retain jurisdiction over the Agreement to resolve any and all disputes arising out of the Agreement.

XI. TERMINATION

46. This Agreement shall terminate three years after the effective date of this Agreement provided that at that time the DOJ has not filed suit to enforce any of the provisions of this Agreement or if the City no longer operates any holding cell facilities, whichever is earlier.

XII. MISCELLANEOUS

47. If any provision of this Agreement is held unenforceable, then such provision shall be construed to reflect the parties' intention. All remaining provisions of this . Agreement shall remain in full force and effect.

48. This Agreement shall be posted on the web site of the Special Litigation Section of the Civil Rights Division of the DOJ.

49. The City and the CDP agree that they shall not retaliate against any person because that person has filed or may file a complaint, provided information or assistance, or participated in any other manner in an investigation or proceeding relating to this Agreement.

50. The parties may jointly agree, in writing, to modify this Agreement.

FOR THE CITY OF CLEVELAND AND CLEVELAND DIVISION OF POLICE:

Sanford Watson
Director of Public Safety
City of Cleveland

Edward F. Lohn, Chief
Cleveland Division of Police

I approve the form and correctness of this Agreement:

Subodh Chandra
Director of Law
City of Cleveland

FOR THE DEPARTMENT OF JUSTICE:

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EXHIBIT A

SUBSTANTIVE REQUIREMENTS FOR CDP POLICIES, PROCEDURES, PROTOCOLS AND CURRICULA

I. SUICIDE PREVENTION

1. The CDP's suicide-prevention policies, procedures, and protocols, at a minimum, shall include: suicide-risk screening policies and procedures; suicide precautions protocols; policies and procedures for updating and disseminating information regarding detainees at risk for suicide; policies and procedures regarding intervention in the event of a suicide attempt; and policies and procedures for monitoring detainees who are at risk for suicide.

2. The CDP's suicide-risk screening policies and procedures, at a minimum, shall:

   a. contain appropriate questions that enable the CDP to identify detainees at risk for suicide;
   b. require the CDP to follow a standard suicide-risk assessment procedure for each individual upon entering CDP custody; and
   c. require that screening be conducted within an appropriate time of entering CDP custody and through a verbal exchange between the detainee and a detention officer who was not involved in the arrest of the detainee.

3. The CDP's suicide-precautions protocol, at a minimum, shall identify the specific actions the CDP shall take in response to the information acquired during detainee screening or detention, including appropriate monitoring of individuals identified as suicide risks, removing suicide hazards, and the provision of appropriate clothing, such as paper gowns or suicide smocks.

4. The CDP's policies and procedures for updating and disseminating information regarding detainees at risk for suicide, at a minimum, shall require that information about a detainee identified as a suicide risk is:

   a. immediately and readily available to all relevant medical and transporting personnel;

b. appropriately updated to incorporate any additional relevant information acquired during his/her detention;
c. documented and communicated between consecutive shifts; and
d. transported with detainees who are transferred to another facility.

5. The CDP's policies and procedures, at a minimum, shall detail the appropriate intervention of CDP staff during and following a suicide attempt.

6. The CDP's policies and procedures for monitoring detainees who are at risk for suicide, at a minimum, shall include protocols for placing detainees on 15 minute, five minute, or continuous suicide watch which shall clearly describe the factors to be used to determine the level of monitoring necessary.

II. MEDICAL AND MENTAL-HEALTH-CARE

1. The CDP's medical and mental-health-care policies, procedures, and protocols, at a minimum, shall include: medical protocols regarding the CDP's response to specific medical information; policies and procedures regarding infectious disease control; policies and procedures regarding medical records; policies and procedures regarding medication; and policies and procedures regarding medical and mental-health screening.

2. The CDP's medical protocols, at a minimum, shall identify the specific actions the CDP shall take in response to the medical information acquired during detainee medical and mental health screening or detention, including the need for emergency or non-emergency treatment for serious medical or mental-health needs, hospitalization, prescription medication, and/or intensive monitoring.

3. The CDP's policies and procedures regarding infectious disease control, at a minimum, shall:

   a. establish appropriate housing for detainees believed to have infectious diseases; and
   b. mandate measures the CDP shall take to prevent the spread of infectious diseases, including proper

handling and disposal of bio-hazardous material.

4. The CDP's policies and procedures governing maintenance of detainee medical records, at a minimum, shall require that detainee medical records:

   a. are established after the detainee's medical and mental health screening described in ¶ 19 of the Memorandum of Agreement and that this record be immediately and readily available to all relevant medical and transporting personnel in a manner consistent with the relevant federal and state confidentiality statutes;
   b. are appropriately updated to incorporate any additional relevant information acquired during his/her detention;
   c. include current information about a detainee's medication and medical conditions; and
   d. travel with detainees who are transferred to another facility.

5. The CDP's medication policies and procedures, at a minimum, shall require that:

   a. the CDP distribute to detainees only medications that have been prescribed;
   b. the CDP distribute medications as prescribed and not rely on inmates to identify their need for prescription medication;
   c. all detainee medications be stored in a secure location and travel with detainees that are transferred;
   d. the CDP record relevant information regarding the administration of prescription medication on an auditable form;
   e. injected medications are administered as prescribed and in a safe and hygienic manner by qualified persons; and
   f. unused medications prescribed to detainees are provided to them upon their release.

6. The CDP's policies and procedures regarding detainee medical and mental health screening, at a minimum, shall:

   a. enable the CDP to identify individuals with serious medical or mental-health conditions, including infectious diseases, chronic conditions,

disabilities, ambulatory impairments, mental health conditions, and drug/alcohol withdrawal;

b. require that the CDP follow a standard intake procedure for each individual entering CDP custody;

c. require that intake screening be conducted within an appropriate time after entering CDP custody and through a verbal exchange between the CDP and detainees; and

d. incorporate all health information pertaining to a detainee acquired by the arresting or transporting officers.

III. FIRE SAFETY AND EMERGENCY PREPAREDNESS

1. The CDP's fire-safety policies and procedures, at a minimum, shall ensure that:

   a. detainees in holding cells have an adequate means of reporting emergency conditions to CDP staff immediately;

   b. all fire exits and emergency-exit routes are cleared of debris and/or stored property to permit full access;

   c. all fire-exit doors are operable; and

   d. all fire extinguishers are operable and in good working order.

2. The CDP's key-control policies and procedures, at a minimum, shall ensure that all staff are able to manually unlock all holding-cell doors in the event of a fire or other emergency.

IV. DETAINEE SAFETY

1. The CDP's detainee-safety policies, procedures and protocols, at a minimum, shall include: security-classification policies and procedures; policies and procedure regarding routine cell-checks; and population-management policies and procedures.

2. The CDP's detainee security-classification policies and procedures, at a minimum, shall:

   a. establish procedures based upon objective, behavior-based criteria for identifying detainees who require special management, including detainees who are: crime partners, vulnerable,

predatory, intoxicated, or persons with mental illness or mental retardation, who should be separated or housed in observation cells or single-occupancy cells; and

b. before placing a detainee in an occupied cell or assigning a cellmate to a detainee, the CDP shall review the security classification information to assess whether the contemplated movement or assignment would create a risk of serious harm to a detainee.

3. The CDP's detainee-safety policies and procedures, at a minimum, shall require the performance, documentation, and review of routine cell-checks by CDP staff in all holding cells to detect, prevent, or stop harm to detainees, including inmate violence, suicidal behavior, and medical emergencies. At a minimum, these procedures shall require:

   a. that cell checks on the general population are performed at least twice per hour and that cell checks on detainees in observation cells are performed every 15 minutes, unless more frequent or constant supervision is required; and
   b. detention officers to document relevant information regarding the performance of cell checks in an auditable log.

4. The CDP's population management policies and procedures, at a minimum, shall ensure adequate security staffing for the detainee population.

V. ENVIRONMENTAL HEALTH AND SAFETY POLICIES AND PROCEDURE

1. The CDP's policies and procedures, at a minimum, shall require routine cleaning and supervisory inspection of the holding cells and nearby areas.

2. The City's policies and procedures for the maintenance of all CDP holding cells, at a minimum, shall require timely performance of routine maintenance and the documentation of all maintenance requests and responses in an auditable log.