

FIRST ADDENDUM TO THE FEBRUARY 5, 2018 MEMORANDUM OF UNDERSTANDING BETWEEN THE CALIFORNIA DEPARTMENT OF JUSTICE AND THE CITY AND COUNTY OF SAN FRANCISCO, ACTING THROUGH THE MAYOR’S OFFICE AND SAN FRANCISCO POLICE DEPARTMENT

On February 5, 2018, the City and County of San Francisco (“the City”) acting through the Mayor’s Office and the San Francisco Police Department (“SFPD”) and the California Department of Justice (“Cal DOJ”), collectively referred herein as “the Parties,” entered into a Memorandum of Understanding (“MOU”). The purpose of the February 5, 2018, MOU was to evaluate and report on SFPD’s implementation of the 272 recommendations made by the United States Department of Justice Office of Community Oriented Policing Services following its collaborative reform process and report on its assessment on SFPD (“US DOJ Report”). This First Addendum (“Addendum”) supersedes all prior agreements and extends the terms of the February 5, 2018, MOU until April 1, 2024.

RECITALS

1. This Addendum incorporates by reference the recitals set forth in the MOU entered into on February 5, 2018.
2. To date, there have been two progress reports authored by Hillard Heintze (the “Consultant”) ¹ and the California Department of Justice. The first progress report was issued on May 16, 2019, and the second on March 4, 2020.
3. On November 13, 2020, SFPD and Cal DOJ agreed in writing to extend the MOU to April 30, 2021. Pursuant to this agreement, SFPD agreed to submit information to Cal DOJ demonstrating substantial compliance with 20 recommendations of the US DOJ Report every month through April 30, 2021.
4. By April 30, 2021, SFPD submitted 253 recommendations to Cal DOJ for review for substantial compliance. As of the date of this Addendum, Cal DOJ has found SFPD in substantial compliance with 245 recommendations (“Substantially Compliant Recommendations”).
5. As of the date of this Addendum, there are eight recommendations that SFPD has submitted to Cal DOJ for review for substantial compliance that Cal DOJ and the Consultant have determined are in progress (“Recommendations in Progress”). Those recommendations are as follows: 26.1, 28.1, 28.4, 28.5, 30.3, 30.4, 35.3, and 40.6.
6. As of the date of this Addendum, there are an additional 19 recommendations that SFPD has not submitted for review (“Remaining Recommendations”). The Remaining Recommendations are as follows: 1.1, 20.1, 20.2, 20.3, 20.4, 21.1, 22.1, 39.1, 40.2, 41.1, 48.1, 48.2, 55.2, 68.1, 69.2, 69.3, 79.1, 79.2, and 79.3.

¹ Hillard Heintze has since been acquired by Jensen Hughes, Inc.

7. The City and SFPD are committed to implementing the Remaining Recommendations, obtaining substantial compliance with the Recommendations in Progress, and ensuring SFPD continues to maintain substantial compliance with the Substantially Compliant Recommendations.
8. The City and SFPD agree to extend the February 5, 2018 MOU for the purposes of having the Consultant evaluate and report on SFPD's implementation of the Remaining Recommendations and the Recommendations in Progress, as well as monitoring SFPD's ability to maintain implementation of those recommendations deemed Substantially Compliant as of the date of this Addendum.
9. Under the terms and conditions of the February 5, 2018 MOU or this Addendum, Cal DOJ is not exercising its authority under California Civil Code, section 52.3, subdivision (b). Cal DOJ agrees that this Addendum is a collaborative reform effort and is not a pattern or practice investigation.

THEREFORE, THE PARTIES MUTUALLY AGREE:

1. Review and Monitor

- a. The City and SFPD will implement the Remaining Recommendations and submit those recommendations to Cal DOJ for review. The City and SFPD will also provide additional documentation demonstrating substantial compliance with any of the Recommendations in Progress, if requested by Cal DOJ. This work will be done pursuant to a timetable and work plan referenced in Section 2, subdivision (b) below.
- b. Cal DOJ will serve as the independent third-party reviewer of SFPD's implementation of the Remaining Recommendations and the Recommendations in Progress. As agreed upon on in the MOU and this Addendum, the standard of review for Cal DOJ's evaluation of SFPD's implementation of the recommendations and subsequent monitoring of completed recommendations is substantial compliance.
- c. Cal DOJ will serve as the independent third-party monitor of the Substantially Compliant Recommendations. Cal DOJ will continue to work with the Consultant as set forth in Section 2, subparagraphs (a) - (f) below on this monitoring.
- d. Cal DOJ will work with the Consultant to report to the public on SFPD's progress in effectively and timely implementing the reforms referenced in the US DOJ Report, and specifically on SFPD's implementation of the Remaining Recommendations and the Recommendations in Progress, and its ability to maintain the reforms described in the Substantially Compliant Recommendations. Copies of any reports will, upon issuance, be provided to SFPD, the City, and the Police Commission.
- e. In serving as the independent third-party reviewer and monitor, Cal DOJ will not supplant the roles and responsibilities of the City; SFPD, including its Chief of Police; Police Commission; or City boards, commissions, or officials.
- f. Under this Addendum, it is imperative that Cal DOJ have access to highly confidential and sensitive information. The information disclosed under this

Addendum is “official information” under California Code of Evidence, section 1040 and disclosure to Cal DOJ under this Addendum shall not constitute waiver of the privilege as provided for under California Government Code, section 6254.5, subdivision (e). The Parties also agree that Cal DOJ’s input resulting from its review of SFPD’s implementation prior to Cal DOJ’s public report shall also be subject to the aforementioned provisions and will in addition be treated by the Parties as drafts and recommendations of Cal DOJ. These privileges will allow and foster the type of open and frank discussion between the Parties that will ensure the effective implementation and monitoring of the 272 recommendations in the US DOJ Report. Nothing in this provision is intended to preclude Cal DOJ from issuing periodic public reports as provided in Section 2, subparagraph (f) below and consistent with the confidentiality and privilege concerns set forth in this subparagraph.

2. Consultant

- a. In accordance with City laws and policies, SFPD will continue to work with the independent third-party Consultant, who will continue to assist Cal DOJ with its role under this Addendum. The Consultant developed the initial 272 Recommendations, and has been working on the implementation and providing technical assistance under the February 5, 2018 MOU between all Parties. Changing consultants at this point in the process would not be productive or cost effective. SFPD and Cal DOJ will work together to develop the scope of work that is mutually agreeable to all Parties. The duties of the Consultant shall include, but are not limited to:
 1. Assisting Cal DOJ (in consultation with the City and SFPD) as it evaluates and reports on the implementation of the reforms, including the development and review of any necessary plans, policies or procedures;
 2. Assisting Cal DOJ in providing SFPD technical advice, excluding legal advice; and
 3. Preparing and submitting independent reports to Cal DOJ assessing the City and SFPD’s implementation of the reforms.
- b. Within 90 days of the date of the execution of the Addendum, SFPD, Cal DOJ and the Consultant will develop a mutually agreeable work plan that sets forth the following:
 1. Timetables and deadlines for the implementation of the various reforms based on the Parties’ prioritization of the Remaining Recommendations and the Recommendations in Progress; and
 2. The general process by which the Consultant and Cal DOJ will evaluate whether SFPD is in substantial compliance with the Remaining Recommendations, any Recommendations in Progress that require additional supporting documentation demonstrating substantial compliance, and SFPD’s ability to maintain its implementation of the Substantially Compliant Recommendations. Methods of evaluation may include, but are not limited to, reviews, audits, interviews, observations, and document review.

- c. The City and SFPD agree to fully cooperate with Cal DOJ and the Consultant as they report on the implementation of the reforms, and, except to the extent prohibited by law, will provide Cal DOJ and the Consultant with access to relevant information. The Parties agree Cal DOJ and the Consultant will have the complete access to information, including, but not limited to, the following:
 - 1. Interviews, on a confidential basis or otherwise, with any sworn and unsworn employees of SFPD or the City, and assistance with interviews of personnel in other City departments and County agencies. SFPD shall provide suitable facilities and arrange for such interviews to be conducted under conditions satisfactory to Cal DOJ and the Consultant;
 - 2. Compilation of statistics, reports, and any other information that may be directly related to the matters that are governed by the Addendum, including but not limited to access to academics or other third-party consultants that the City or SFPD partner with concerning SFPD's policing; and
 - 3. Access to SFPD records, files, and papers maintained to the extent that such access is directly related to the matters governed by the Addendum and not prohibited by law.
- d. SFPD will participate in regular status meetings with Cal DOJ and/or the Consultant.
- e. The City and SFPD agree that SFPD will submit each plan, policy or procedure that SFPD develops or implements under the US DOJ Report to Cal DOJ for its review. Cal DOJ will timely review said plans, policies, and/or procedures and will provide its first recommendations, comments, or edits to SFPD within 60 calendar days. The Parties agree to engage in a meet and confer process concerning any disagreements or points needing clarification. If Cal DOJ does not provide a response within 60 days, SFPD need not wait to implement the proposed plans, policies, and/or procedures.
- f. Working with the Consultant, Cal DOJ will report to the public regarding the status of SFPD's implementation of the reforms governed by the Addendum, including whether Cal DOJ has determined that a particular reform has substantially complied with the recommendation.
- g. Upon written notice to the other Party, any Party has the right to initiate a meet and confer process regarding the performance of the Consultant retained pursuant to this Addendum. Upon receipt of such notice, all Parties agree to meet and confer within 30 days to discuss in good faith the reason for concern and steps to remedy. If the reasons for concern are not resolved, Cal DOJ may request that SFPD find an alternative Consultant to fulfill the role and responsibilities set forth in Section 2 of the Addendum.

3. Applicable Costs to the City

SFPD will pay for all costs for the services of the Consultant, including those services provided to Cal DOJ. SFPD will ensure that there are sufficient funds available to accomplish the objective of this Addendum. There is no cost to SFPD for Cal DOJ's services.

4. Open-Lines of Communication

- a. The Parties agree to work collaboratively and in good faith in executing their responsibilities under this Addendum.
- b. SFPD agrees to assign a primary point of contact for Cal DOJ within SFPD's Command Staff for the duration of this Addendum.

5. Terms of Addendum

- a. All terms and provisions from the original MOU also apply to this Addendum.
- b. This Addendum to the MOU shall be effective upon its execution of all Parties and shall continue until April 1, 2024, provided Section 3 survives the term of this MOU.
- c. If any Party wishes to terminate the Addendum prior to its expiration, it shall initiate a meet and confer process regarding the Party's concerns upon written notice to the other parties. Upon receipt of such notice, all Parties agree to meet within 30 days to discuss the reason for concern and steps to remedy. If the Parties are unable to reach a mutually agreeable resolution, any Party may terminate the Addendum with no fewer than 15 days' notice by providing notice of such in writing.

6. Severability

If any one or more of the words, phrases, sentences, clauses or sections contained in this Addendum is deemed invalid, then it shall not affect the enforceability of the remaining portions of this Addendum or any part thereof, all of which are inserted conditionally on their being valid in law, and, in the event that any one or more of the words, phrases, sentences, clauses, or sections contained in this Addendum shall be declared invalid, this Addendum shall be construed as if such invalid word or words, phrase or phrases, sentence or sentences, clause or clauses, or section or sections had not been inserted.

7. Waiver

Cal DOJ reserves the right to exercise the powers vested in the Attorney General by the California Constitution and state statutory law. The City and SFPD agree to waive any claim for breach or default of this Addendum that might arise from the Attorney General's exercise of such authority.

8. Entire Agreement

This Addendum contains the entire agreement of the Parties with respect to the subject matter of this Addendum, and supersedes all prior negotiations, agreements, and understandings with respect thereto. This Addendum may only be amended in a written document executed by the Parties.

9. Signing Authority

By signing this Addendum, the persons executing this Addendum represent that they have the capacity and authority to execute this Addendum as the representatives of their respective agency, and to bind their respective agency to the terms of this Addendum.

10. Counterparts and Facsimile Signatures

- a. This Addendum and any and all other documents or instruments referred to herein may be executed with counterpart signatures, all of which taken together shall constitute an original without the necessity of all Parties signing each document.
- b. This Addendum may also be executed by signatures or electronic transmittal documents in lieu of an original or machine generated or copied document.

ROB BONTA, ATTORNEY GENERAL OF THE
STATE OF CALIFORNIA

Dated:

By:

Nancy A. Beninati
Supervising Deputy Attorney General

CITY OF SAN FRANCISCO

Dated:

William Scott
Chief of Police

Dated:

London Breed
Mayor

Dated:

Approved as to form
Alicia Cabrera
Deputy City Attorney