

**PROFESSIONAL SERVICES AGREEMENT
FOR
POLICE AUDITOR**

This Professional Services Agreement ("Agreement") is effective as of the date of the last authorizing signature affixed hereto. The parties ("Parties") to this Agreement are the City of Olympia, a Washington municipal corporation ("City"), and Ogden Murphy Wallace, PLLC, a Washington professional limited liability company ("Consultant").

A. The City seeks the temporary professional services of a skilled independent consultant capable of working without direct supervision, in the capacity of police auditor services; and

B. Consultant has the requisite skill and experience necessary to provide such services.

NOW, THEREFORE, the Parties agree as follows:

1. Services.

Consultant shall provide the services more specifically described in Exhibit "A," attached hereto and incorporated by this reference ("Services"), in a manner consistent with the accepted practices for other similar services, and when and as specified by the City's representative.

2. Term.

The term of this Agreement shall commence upon the effective date of this Agreement and shall continue until the completion of the Services, but in any event no later than one year from the effective date of this Agreement ("Term"). This Agreement may be extended for additional periods of time upon the mutual written agreement of the City and the Consultant.

3. Termination.

Prior to the expiration of the Term, this Agreement may be terminated immediately, with or without cause by the City.

4. Compensation.

A. Total Compensation. In consideration of the Consultant performing the Services, the City agrees to pay the Consultant an amount not to exceed Thirty Thousand and No/100 Dollars (\$30,000) at hourly rates described in Exhibit A.

B. Method of Payment. Payment by the City for the Services will only be made after the Services have been performed, a voucher or invoice is submitted in the form specified by the City, and the same is approved by the appropriate City representative. Payment shall be made within thirty (30) days after receipt of such voucher or invoice.

C. Consultant Responsible for Taxes. The Consultant shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement.

5. Contract Managers.

The Parties agree that all formal communications about this Agreement, contract deliverables, accomplishments, regulatory oversight, invoicing, and requests for amendment must be coordinated directly between the Consultant and City's Contract Manager unless otherwise approved in writing by the City. The contract managers are identified as follows:

Ogden Murphy Wallace, PLLC

Tara L. Parker
901 Fifth Avenue, Suite 3500
Seattle WA 98164-2008
tparker@omwlaw.com
206.447.2263

City of Olympia

Debbie Sullivan
PO Box 1967
Olympia WA 98507-1967
dsulliva@ci.olympia.wa.us
360.753.8499

Additional Staff Contact:

Joan M Wyant, Legal Assistant
jwyant@omwlaw.com
206.718.5968

Connie Cobb, Senior Program Specialist
ccobb@ci.olympia.wa.us
360.753.8451

6. Compliance with Laws.

Consultant shall comply with and perform the Services in accordance with all applicable federal, state, and City laws including, without limitation, all City codes, ordinances, resolutions, standards, and policies, as now existing or hereafter adopted or amended.

7. Assurances.

The Consultant affirms that it has the requisite training, skill and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities, including but not limited to being registered to do business in the City of Olympia by obtaining a City of Olympia business registration.

8. Independent Contractor/Conflict of Interest.

It is the intention and understanding of the Parties that the Consultant is an independent contractor and that the City shall be neither liable nor obligated to pay Consultant sick leave, vacation pay or any other benefit of employment, nor to pay any social security or other tax which may arise as an incident of employment. The Consultant shall pay all income and other taxes due. Industrial or any other insurance that is purchased for the benefit of the City, regardless of whether such may provide a secondary or incidental benefit to the Consultant, shall not be deemed to convert this Agreement to an employment contract. It is recognized that Consultant may be performing professional services during the Term for other parties; provided, however, that such performance of other services shall not conflict with or interfere with Consultant's ability to perform the Services. Consultant agrees to resolve any such conflicts of interest in favor of the City.

9. Equal Opportunity Employer.

A. In all Consultant services, programs or activities, and all Consultant hiring and employment made possible by or resulting from this Agreement, there shall be no unlawful discrimination by Consultant or by Consultant's employees, agents, subcontractors or representatives against any person based on any legally protected class status including but not limited to: sex, age (except minimum age and retirement provisions), race, color, religion, creed, national origin, marital status, veteran status, sexual orientation, gender identity, genetic information or the presence of any disability, including sensory, mental or physical handicaps; provided, however, that the prohibition against discrimination in employment because of disability shall not apply if the particular disability prevents the performance of the essential functions required of the position.

This requirement shall apply, but not be limited to the following: employment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Consultant shall not violate any of the terms of Chapter 49.60 RCW, Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973 or any other applicable federal, state or local law or regulation regarding nondiscrimination. Any material violation of this provision shall be grounds for termination of this Agreement by the City and, in the case of the Consultant's breach, may result in ineligibility for further City agreements.

B. In the event of Consultant's noncompliance or refusal to comply with the above nondiscrimination plan, this Agreement may be rescinded, canceled, or terminated in whole or in part, and the Consultant may be declared ineligible for further agreements or contracts with the City. The Consultant, shall, however, be given a reasonable time in which to correct this noncompliance.

C. To assist the City in determining compliance with the foregoing nondiscrimination requirements, Consultant must complete and return the *Statement of Compliance with Nondiscrimination* attached as Exhibit B.

10. Confidentiality.

Consultant agrees not to disclose any information and/or documentation obtained by Consultant in performance of this Agreement that has been expressly declared confidential by the City. Breach of confidentiality by the Consultant will be grounds for immediate termination.

11. Indemnification/Insurance.

A. Indemnification / Hold Harmless. Consultant shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees, and volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually

negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

B. Insurance Term. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

C. No Limitation. Consultant's maintenance of insurance as required by the Agreement shall not be construed to limit the liability of the Consultant to the coverage provided by such insurance, or otherwise limit the City's recourse to any remedy available at law or in equity.

D. Minimum Scope of Insurance. Consultant shall obtain insurance of the types described below:

1. Automobile Liability insurance covering all owned, non-owned, hired, and leased vehicles. Coverage shall be at least as broad as ISO occurrence form (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage.

2. Commercial General Liability insurance shall be at least as broad as ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, stop gap liability, personal injury, and advertising injury. The City shall be named as an additional insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed for the City using an additional insured endorsement at least as broad as ISO CG 20 26.

3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

4. Professional Liability insurance appropriate to the Consultant's profession.

E. Minimum Amounts of Insurance. Consultant shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

3. Professional Liability insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

F. Other Insurance Provisions. The Consultant's Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, that they shall be primary insurance as respect the City. Any Insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

G. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

H. Verification of Coverage. Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work.

I. Notice of Cancellation. The Consultant shall provide the City with written notice of any policy cancellation, within two (2) business days of their receipt of such notice.

J. Failure to Maintain Insurance. Failure on the part of the Consultant to maintain the insurance as required shall constitute a material breach of contract, upon which the City may, after giving five (5) business days' notice to the Consultant to correct the breach, immediately terminate the Agreement or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the City on demand, or at the sole discretion of the City, offset against funds due the Consultant from the City.

K. City's Full Access to Consultant Limits. If the Consultant maintains higher insurance limits than the minimums shown above, the City shall be insured for the full available limits of Commercial General and Excess or Umbrella liability maintained by the Consultant, irrespective of whether such limits maintained by the Consultant are greater than those required by this Agreement or any certificate of insurance furnished to the City evidences limits of liability lower than those maintained by the Consultant.

12. Work Product.

Any deliverables identified in the Scope of Work or otherwise identified in writing by the City that are produced by Consultant in performing the Services under this Agreement and which are delivered to the City shall belong to the City. Any such work product shall be delivered to the City by Consultant at the termination or cancellation date of this Agreement, or as soon thereafter as possible. All other documents are owned by the Consultant.

13. Treatment of Assets.

A. Title to all property furnished by the City shall remain in the name of the City.

B. Title to all nonexpendable personal property and all real property purchased by the Consultant, the cost of which the Consultant is entitled to be reimbursed as a direct item of cost under this Agreement, shall pass to and vest in the City, or if appropriate, the state or federal department supplying funds therefor, upon delivery of such property by the Consultant. If the Consultant elects to capitalize and depreciate such nonexpendable personal property in lieu of claiming the acquisition cost as a direct item of cost, title to such property shall remain with the Consultant. An election to capitalize and depreciate or claim acquisition cost as a direct item of cost shall be irrevocable.

C. Nonexpendable personal property purchased by the Consultant under the terms of this Agreement in which title is vested in the City shall not be rented, loaned or otherwise passed to any person, partnership, corporation/association or organization without the prior expressed written

approval of the City or its authorized representative, and such property shall, unless otherwise provided herein or approved by the City or its authorized representative, be used only for the performance of this Agreement.

D. As a condition precedent to reimbursement for the purchase of nonexpendable personal property, title to which shall vest in the City, the Consultant agrees to execute such security agreements and other documents as shall be necessary for the City to perfect its interest in such property in accordance with the "Uniform Commercial Code--Secured Transactions" as codified in Article 9 of Title 62A, the Revised Code of Washington.

E. The Consultant shall be responsible for any loss or damage to the property of the City including expenses entered thereunto which results from negligence, willful misconduct, or lack of good faith on the part of the Consultant, or which results from the failure on the part of the Consultant to maintain and administer in accordance with sound management practices that property, to ensure that the property will be returned to the City in like condition to that in which it was furnished or purchased, fair wear and tear excepted.

F. Upon the happening of loss or destruction of, or damage to, any City property, the Consultant shall notify the City or its authorized representative and shall take all reasonable steps to protect that property from further damage.

G. The Consultant shall surrender to the City all property of the City within thirty (30) days after rescission, termination or completion of this Agreement unless otherwise mutually agreed upon by the parties.

14. Books and Records.

The Consultant agrees to maintain books, records, and documents which sufficiently and properly reflect all direct and indirect costs related to the performance of the Services and maintain such accounting procedures and practices as may be deemed necessary by the City to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject, at all reasonable times, to inspection, review or audit by the City, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

Records owned, used, or retained by the City that meet the definition of a "public record" pursuant to RCW 42.56.010 are subject to disclosure under Washington's Public Records Act. Should the Consultant fail to provide records created or used by Consultant in its work for the City within ten (10) business days of the City's request for such records, Consultant shall indemnify, defend, and hold the City harmless for any public records judgment, including costs and attorney's fees, against the City involving such withheld records.

15. Non-Appropriation of Funds.

If sufficient funds are not appropriated or allocated for payment under this Agreement for any future fiscal period, the City will not be obligated to continue the Agreement after the end of the current fiscal period, and this Agreement will automatically terminate upon the completion of all remaining Services for which funds are allocated. No penalty or expense shall accrue to the City in the event this provision applies.

16. General Provisions.

A. Entire Agreement. This Agreement contains all of the agreements of the Parties with respect to any matter covered or mentioned in this Agreement and no prior agreements shall be effective for any purpose.

B. Modification. No provision of this Agreement, including this provision, may be amended or modified except by written agreement signed by the Parties.

C. Full Force and Effect; Severability. Any provision of this Agreement that is declared invalid or illegal shall in no way affect or invalidate any other provision hereof and such other provisions shall remain in full force and effect. Further, if it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, the provision appears to conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

D. Assignment. Neither the Consultant nor the City shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

1. If the Consultant desires to assign this Agreement or subcontract any of its work hereunder, the Consultant shall submit a written request to the City for approval not less than fifteen (15) days prior to the commencement date of any proposed assignment or subcontract.

2. Any work or services assigned or subcontracted for hereunder shall be subject to each provision of this Agreement.

3. Any technical/professional service subcontract not listed in this Agreement, which is to be charged to this Agreement, must have prior written approval by the City.

4. The City reserves the right to inspect any assignment or subcontract document.

E. Successors in Interest. Subject to the foregoing Subsection, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs and assigns.

F. Attorney Fees. In the event either of the Parties defaults on the performance of any term of this Agreement or either Party places the enforcement of this Agreement in the hands of an attorney, or files a lawsuit, the prevailing party shall be entitled to its reasonable attorneys' fees, costs and expenses to be paid by the other Party.

G. No Waiver. Failure or delay of the City to declare any breach or default immediately upon occurrence shall not waive such breach or default. Failure of the City to declare one breach or default does not act as a waiver of the City's right to declare another breach or default.

H. Governing Law. This Agreement shall be made in and shall be governed by and interpreted in accordance with the laws of the State of Washington.

I. Authority. Each individual executing this Agreement on behalf of the City and Consultant represents and warrants that such individuals are duly authorized to execute and deliver this Agreement on behalf of the Consultant or the City.

J. Notices. Any notices required to be given by the Parties shall be delivered at the addresses set forth below. Any notices may be delivered personally to the addressee of the notice or may be deposited in the United States mail, postage prepaid, to the address set forth below. Any notice so posted in the United States mail shall be deemed received five (5) business days after the date of mailing.

K. Captions. The respective captions of the Sections of this Agreement are inserted for convenience of reference only and shall not be deemed to modify or otherwise affect any of the provisions of this Agreement.

L. Performance. Time is of the essence in performance of this Agreement and each and all of its provisions in which performance is a factor. Adherence to completion dates set forth in the description of the Services is essential to the Consultant's performance of this Agreement.

M. Remedies Cumulative. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to the City at law, in equity or by statute.

N. Counterparts. This Agreement may be executed in any number of counterparts, which counterparts shall collectively constitute the entire Agreement.

O. Equal Opportunity to Draft. The parties have participated and had an equal opportunity to participate in the drafting of this Agreement, and the Exhibits, if any, attached. No ambiguity shall be construed against any party upon a claim that that party drafted the ambiguous language.

P. Venue. All lawsuits or other legal actions whatsoever with regard to this agreement shall be brought in Thurston County, Washington, Superior Court.

Q. Ratification. Any work performed prior to the effective date that falls within the scope of this Agreement and is consistent with its terms is hereby ratified and confirmed.

R. Certification Regarding Debarment, Suspension, and Other Responsibility Matters.

1. By signing the agreement below, the Consultant certifies to the best of its knowledge and belief, that it and its principles:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;

b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission or fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of

federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph 1.b. of this certification; and

d. Have not within a three (3) year period preceding this application/proposal had one or more public transactions (federal, state, or local) terminated for cause or default.

2. Where the Consultant is unable to certify to any of the statements in this certification, such Consultant shall attach an explanation to this proposal.

5. Early Retirement from the State of Washington- Certification. By signing this form, you certify that no one being directly compensated for their services pursuant to this Agreement has retired from the Washington State Retirement System using the 2008 Early Retirement Factors with restrictions on returning to work.

I certify that I am authorized to execute this Agreement on behalf of the Consultant.

Ogden Murphy Wallace , PLLC

City of Olympia

By: _____
Karen M. Sutherland
ksutherland@omlaw.com

By: _____
Debbie Sullivan
dsulliva@ci.olympia.wa.us

Date of Signature: _____

Date of Signature: _____

APPROVED AS TO FORM:

Deputy City Attorney

Exhibit "A"
Scope of Work

The Police Auditor will be responsible for the following:

1. Reviewing police professional standards investigations relating to complaints about the Police Department or its employees to determine if the investigations meet the standard of being complete, thorough, objective, and fair.
2. Reviewing all complaints about police employees that allege the use of excessive or unnecessary force, civil rights violations, or bias. Review of all reported uses of force within the Department as defined in Olympia Police Department General Order 1.4. General Order 1.4 is incorporated as Exhibit "C".
3. Providing an impartial review of the Police Department's internal investigative process and verification of the Department's compliance with established policy and procedures.
4. Filing a mid-year and annual report with the City Council, with a copy to the City Manager which lists the complaint type, whether additional investigation was requested, the response, and a finding on each complaint case audited indicating whether the investigation met established standards or failed to meet established standards. Each report shall give an analysis of key trends and patterns, and recommendations for revisions.
5. Being available to address questions at Council meetings when the mid-year and annual reports are presented.

Hourly rates shall be billed according to the following rates not to exceed the \$30,000 contract amount:

Tara Parker	\$320 per hour
Karen Sutherland	\$385 per hour
Beth Van Moppes	\$385 per hour

Section 16.B. of the Agreement provides that modification of its terms must be in writing and signed by both parties. The parties may amend the scope of work, compensation, or other terms as needed and agreed upon in writing and signed by both parties.

Invoices shall detail staff name associated with number of hours, rate per hour, and a summary of work billed for.

Invoices should be to **City of Olympia** and may be emailed to Connie Cobb at ccobb@ci.olympia.wa.us or if U.S. Mail is preferred mailed to:

City of Olympia
Attn: Connie Cobb
PO Box 1967
Olympia WA 98507-1967

A current certificate of insurance with appropriate coverage and additional insured endorsement(s) as outlined in Section 11 Indemnification/Insurance on pages 3-5 must be on file with the City in order for invoices to be paid.

Exhibit "B"

STATEMENT OF COMPLIANCE WITH NONDISCRIMINATION REQUIREMENT

The Olympia City Council has made compliance with the City's *Nondiscrimination in Delivery of City Services or Resources* ordinance (OMC 1.24) a high priority, whether services are provided by City employees or through contract with other entities. It is important that all contract agencies or vendors and their employees understand and carry out the City's nondiscrimination policy. Accordingly, each City agreement or contract for services contains language that requires an agency or vendor to agree that it shall not unlawfully discriminate against an employee or client based on any legally protected status, which includes but is not limited to: race, creed, religion, color, national origin, age, sex, marital status, veteran status, sexual orientation, gender identity, genetic information, or the presence of any disability. Listed below are methods to ensure that this policy is communicated to your employees, if applicable.

- Nondiscrimination provisions are posted on printed material with broad distribution (newsletters, brochures, etc.).
- Nondiscrimination provisions are posted on applications for service.
- Nondiscrimination provisions are posted on the agency's web site.
- Nondiscrimination provisions are included in human resource materials provided to job applicants and new employees.
- Nondiscrimination provisions are shared during meetings.

Failure to implement at least two of the measures specified above or to comply with the City of Olympia's nondiscrimination ordinance constitutes a breach of contract.

By signing this statement, I acknowledge compliance with the City of Olympia's nondiscrimination ordinance by the use of at least two of the measures specified above.

(Signature)

(Date)

Karen M. Sutherland

Print Name of Person Signing

Alternative Section for Sole Proprietor: I am a sole proprietor and have reviewed the statement above. I agree not to discriminate against any client, or any future employees, based on any legally protected status.

(Sole Proprietor Signature)

(Date)

Exhibit "C"
Olympia Police Department (OPD) General Order 1.4
USE OF FORCE Revised 12/18

Last Revised: 02-01-2017

SUBJECT: USE OF FORCE

This order consists of the following numbered sections:

- 1.4.1 Use of Force Policy
- 1.4.2 Deadly Force
- 1.4.3 Other Force Tools
- 1.4.4 Use of Force in the Jail
- 1.4.5 Unauthorized Practices
- 1.4.6 Rendering Aid after Use of Force
- 1.4.7 Use of Force Reporting
- 1.4.8 Supervisor Checklists
- 1.4.9 Summary Reporting and Retention
- 1.4.10 Review of Deadly Force
- 1.4.11 Removal from Duty (traumatic incidents)

Use of Force Definitions

I. Definitions

- A. "Force" is the use of power to affect an individual's behavior including defensive tactics, other force tools, and lethal force. The application of force shall be in direct proportion to an appropriate objective. The term does not include escorting or handcuffing a person with no or minimal resistance.
- B. "Progressive application of force" is the escalation of the use of force according to a pattern that correlates subject action to officer response, based on a combination of logic and law.
- C. "Personal weapons" are body parts used to gain or regain control, or to impede non-compliance or resistance.
- D. "Imminent threat" is a risk of harm that is perceived as menacing, impending, or proximate in nature by a reasonable officer. IE: it is about to occur.
- E. "Immediate threat" is a risk of harm that is occurring or will be accomplished without delay. IE: it is taking place right now.
- F. The "reasonable officer standard" is a standard of professional conduct based on the philosophy that another officer, with like or similar training and experience, facing like or similar circumstances, would act in the same way or use similar judgment.
- G. "Compliant" behavior is behavior by a subject that is cooperative and responsive to lawful commands.

- H. "Actively resistant" behavior is behavior by a subject that is non-compliant and that involves physically evasive movements to defeat an officer's attempt at control, including bracing, tensing, or verbally communicating an intention to avoid being taken into or retained in custody.
- I. "Actively Aggressive" behavior is behavior by a subject that is non-compliant and that involves a threat or step toward the act of an assault, coupled with the present ability to carry out the threat or assault, which reasonably indicates that an assault or injury to any person is imminent.
- J. "Other force tools" are specialty devices designed to be deployed to render subjects non-threatening with a low probability of serious physical injury or death.
 - 1. "Oleoresin Capsicum" also referred to as "OC" is a non-lethal aerosol spray made with a pepper derivative used to impair a subject.
 - 2. "Kinetic energy impact munitions" are flexible and non-flexible impact projectiles intended to incapacitate a subject with minimal potential for causing death or serious physical injury. There are a number of projectiles manufactured that qualify as kinetic energy impact projectiles.
 - 3. "Large bore launchers" are projectile launchers used to deliver a variety of less lethal projectiles. The Department-approved 12-gauge shotgun is also utilized to deliver less lethal munitions.
 - 4. A "pepper-ball delivery system" is a multi-shot delivery system for oleoresin capsicum that utilizes .68 caliber frangible projectiles.
 - 5. A "conducted energy weapon" (CEW) is a weapon that controls and overrides the body's central nervous system by using propelled wired to conduct electrical energy to subject.
- K. "Defensive tactics" is the use of physical force including the use of personal weapons to kick, punch, strike, or affect pain compliance. Defensive tactics does not include the use of other force tools.
- L. "Deadly force" is the application of force, by any means, that is reasonably likely to cause death or serious physical injury. Deadly force includes the use of firearms; or impact weapons and kinetic energy impact munitions intentionally aimed at the neck and head. Deadly force does not include application of force not reasonably likely to cause death or serious physical injury that unexpectedly results in such an outcome.
- M. "Serious physical injury" (as described in *Tennessee v. Garner*) is an injury that involves substantial risk of death, major permanent disfigurement, or protracted loss/impairment of the function of any body part or organ.
- N. "Qualified medical assistance" includes members of any county or municipal fire service, ambulance service or health care facility who are employed and trained to administer first aid treatment.

- P. "Primary targets" are areas of the body that present minimal risk for serious injury or death.
- Q. "Secondary targets" are areas of the body that have an increase but limited potential for serious injury or death.
- R. "Tertiary targets" are areas of the body that present the highest risk for serious injury or death.

1.4.1 Use of Force Policy

- I. Olympia Police Department personnel may use force when necessary, to gain compliance with lawful directions, accomplish arrests, overcome resistance to arrest, protect persons from serious physical injury or death (RCWS 9A.16.020), or to restore or maintain discipline in the jail. Staff will use only the amount of force reasonably necessary to control or otherwise subdue individuals.
- II. Protection of life is more important than apprehension of criminal offenders or the protection of property. The responsibility to protect life includes an employee's own life. The Department recognizes that the safety of innocent citizens and officers takes priority over the safety of subjects engaged in criminal or suicidal behavior.
- III. Use of force shall be consistent with Department training and follow the reasonable officer standard.
- IV. Progressive application of force and the reasonable officer standard should be considered when making use of force decisions. Use of force decisions should consider:
 - A. The severity of the crime at hand
 - B. Whether there is an immediate threat and amount of time available to make a decision
 - C. Known offender history
 - D. The levels of suspect resistance, suspect's behavioral cues, the number of officers and/or offenders present
 - E. The availability of other options
- V. When safe under the totality of circumstances and time and circumstances permit, officers shall use advisements, warnings, verbal persuasion, and other tactics in order to reduce the need to use force. Officers should consider other factors including, but not limited to:
 - A. Medical conditions
 - B. Mental impairment
 - C. Development disability
 - D. Physical limitation
 - E. Language barrier

F. Drug interaction

G. Behavioral crisis

VI. Olympia Police Department personnel who are trained in the use of other force tools may use them to de-escalate potentially violent confrontations and provide additional alternatives to the use of deadly force. Other force tools are an important component of this agency's less lethal force equipment. Officers are authorized to employ other force tools in accordance with provisions of this policy and this Department's overall policy on use of force.

VII. The application of force should be adjusted appropriately as situations stabilize, control is gained, and threat subsides.

VIII. Confrontations often occur in environments that are unpredictable, uncertain, tense and rapidly evolving. Tools and tactics that are outside the use of force policy and/or Department training may need to be employed. Such departure from policy is permitted, as long as the tools and tactics employed meet the standard of reasonableness described in 1.4.1 (IV).

IX. Every officer is required by virtue of his/her position as a peace officer to intervene in any situation where he/she reasonably believes another officer is making an unjustifiable arrest, using excessive force, or committing any Constitutional violation. When a reasonable opportunity exists for doing so, officers shall intervene in such instances and prevent harm from occurring. The required intervention may take the form of one or both of the following actions: 1) strongly cautioning the other officer(s), or 2) physically restraining the other officer(s), and immediately reporting the incident to the on-duty supervisor without delay. [see 26.1.1 (III)Q]

X. In certain circumstances, police vehicles can be used in a manner which constitutes an application of force. [see 4.1]

XI. In certain circumstances, police service dogs can be used in a manner which constitutes an application of force. [see 47.1]

1.4.2 Deadly Force

I. Deadly force may be employed when necessary to protect the officer or others from what he/she reasonably believes is a threat of death or serious physical injury.

II. When considering whether to use deadly force to apprehend a person for the commission of a crime, an officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the applicable circumstances are the following:

A. When a suspect threatens a police officer or another person with a weapon or displays a weapon in a manner that could reasonably be considered threatening, and when the involved officer reasonably believes the suspect to be presently able to do him/her or another person serious physical harm; or

B. When there is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm to a person.

C. Under these circumstances, if feasible, some warning should be given.

III. When deadly force is used, employees present at the scene will determine if any person or property incurred injury or damage, request necessary qualified emergency medical assistance, request a supervisor to the scene, and remain at the scene if uninjured until receiving direction from a supervisor.

IV. When an employee uses deadly force, the employee is not required to discuss the incident with anyone other than his/her immediate supervisor and an assigned investigator. Upon arrival at a scene where use of deadly force has taken place, employees will provide information to representatives of the Department needed to secure the scene, identify witnesses, and follow-up and apprehend any perpetrators of the crime who may be at large or other exigent circumstances. See Directive OP-16-001, Public Safety Statement Procedure.

V. When deadly force is used, the supervisor will respond immediately, assure the scene is secured, and provide notification to the Detective Lieutenant and Chain of Command. The supervisor shall maintain custody of the weapon by designating a second officer to assist in maintaining the chain of custody until such time as the Officer-Involved Critical Incident Team assumes responsibility for the investigation.

VI. Generally, whenever an employee's actions or use of force in an official capacity, or while using Department equipment, results in death or very serious injury to another, that employee will be placed in a temporary administrative assignment pending an administrative review. The Chief of Police may exercise discretion and choose not to place an employee in an administrative assignment in any case.

1.4.3 Other Force Tools Revised 12/18 Revised 12-21-18

I. Olympia Police Department commissioned staff are only authorized to use other force tools and munitions approved by the Chief. Corrections Officers are only authorized to carry the CEW, OC spray, and OC fogger.

II. Officers should make decisions to use less lethal weaponry with the potential for injury in mind. Less lethal projectiles are delivered to subject target areas based on circumstances and established safety priorities as defined in Section 1.4.1 II.

III. Department-approved less lethal munitions are appropriate for deployment when circumstances allow time for effective deployment.

IV. Corrections Officers and Patrol Officers assigned as uniformed first responders will carry two less lethal tools when actively engaged in performance of duties.

V. Department-approved other force tools include:

A. Kinetic Energy Impact Munitions:

1. Kinetic Energy Impact Munitions are approved by the Department and are to be fired from 12-gauge shotguns or large bore launchers.

2. When firing Kinetic Energy Impact Munitions, the head and neck should not be intentionally targeted unless deadly force is justified.
3. Large bore launchers may be deployed when authorized to do so by the shift supervisor.

B. Oleoresin Capsicum (OC)

1. The Department authorizes the use of oleoresin capsicum in spray, foam, fog, and projectile form.
2. When deploying OC in the projectile form from a compressed gas launcher, the operator must recognize the potential risk of injury to the subject, and should avoid intentionally targeting the head, neck, spine, and groin.

C. Crowd Management Munitions:

1. The Training Office will maintain the list of Crowd Management Munitions approved by the Chief.
2. Commissioned staff may deploy approved pyrotechnic and irritant munitions only in an outdoor environment, in accordance with training, and when approved by the shift supervisor.

D. Impact Weapons:

1. Commissioned staff may use impact weapons to include the expandable baton and wooden baton when reasonable and necessary in accordance with training.
2. Commissioned staff should not intentionally target the head, neck, or spine when using impact weapons unless deadly force is justified.

E. Conductive Energy Weapons (CEW):

1. CEWs should only be used against subjects who are exhibiting actively resistant or actively aggressive behavior that creates an immediate threat of harm to themselves or others. Officers may use the probe mode or drive stun mode method of deployment. Each cycle of the device is a use of force; any subsequent application should be independently justifiable and considered against other force options.
2. Unless it would endanger the safety of an officer or another person, Officers should announce the intended use of the CEW to give the individual a chance to voluntarily comply and provide other officers and individuals with a warning.
3. Officers will not intentionally aim for the head, neck, chest, or groin.
4. The CEW should not be used to apprehend fleeing subjects unless the subject poses an imminent threat to public safety.

5. The CEW is further restricted under the following circumstances unless the person is armed with a dangerous weapon and is an immediate threat of harm to themselves or others, or the person cannot be safely controlled with other available options:

- a) Females known to be or are obviously pregnant.
- b) Individuals who are obviously elderly or young children obviously less than 12 years of age.
- c) Individuals known to be or are obviously medically fragile.
- d) Individuals who have been recently sprayed with alcohol-based OC spray or are in close proximity to or contaminated with flammable liquid or gasses.
- e) For crowd control purposes.
- f) Restrained subjects unless resistance poses an immediate threat to the safety of the Officer or others.
- g) Individuals whose position or activity significantly increases the person's risk of sustaining serious physical injury (e.g., falls from above standing height, operating vehicles in or near a pool or body of water).

6. After a CEW deployment:

- a) Officers will remove CEW probes if the removal can be done safely in accordance with CEW training. Officers will arrange for removal of the probes by trained medical personnel at a hospital or medical clinic if probes are embedded in soft tissue areas such as the eyes, neck, genitals, face, or female breasts.
- b) Officers shall place probes into a container appropriate for bio-hazard sharps.
- c) A supervisor will download the device information and the deploying Officer will attach the report to the Use of Force Checklist.

1.4.4 Use of Force in the Jail

I. Olympia Police Department staff will never use force as a means of punishment. Staff will evaluate the need for force when determining the amount of force to be used. Staff will develop a plan and summon additional assistance prior to the use of force when the situation allows.

II. Corrections Officers may use the restraint chair to prevent an inmate from injuring themselves or others when less restrictive alternatives would be ineffective. Use of the restraint chair is considered a use of force. Staff will ensure inmates in the restraint chair are segregated from other inmates. Staff will ensure the inmate is released from the restraint chair as soon as possible or as soon as the risk to themselves or others no longer exists. Staff will notify a Jail Sergeant if the inmate needs to stay in the restraint chair for longer than two hours.

A. Corrections Officers shall sue a Restraint Chair Log and make a log entry every 15 minutes when an inmate is placed in the restraint chair. Staff will directly observe the inmate every 15 minutes to ensure the restraints are properly applied and ensure the safety and well-being of the inmate. The Restraint Chair Log will be forwarded with the incident report and Supervisor Checklist.

B. Corrections Officers will consider feasibility of removing one arm from restraints to provide water and food if the inmate's behavior requires restraint for longer than four hours. The Jail Sergeant must approve use of the restraint chair for longer than four hours and shall consider medical or mental health assessments when an inmate is in the restraint chair for longer than four hours

C. Corrections Officers shall inspect and clean the restraint chair after each use.

III. Firearms, knives, batons, and kinetic impact energy impact munitions are not allowed in the jail except in extreme circumstances, as defined in General Order 1.4.1.

IV. With the exception of OC and CEW, employees are not allowed to carry other force tools in the jail.

1.4.5 Unauthorized Practices

I. Unauthorized weapons and force tools shall not be carried or used by Department employees in the course of performing their duties. The following practices and tools are unauthorized, except in extreme circumstance, as described in 1.4.1(VIII):

A. Discharging a firearm when there is substantial danger to innocent bystanders.

B. Discharging a firearm at or from a moving vehicle.

C. Discharging a firearm as a warning.

D. Use of carotid restraint holds and/or a Lateral Vascular Neck Restraint hold.

E. Brass knuckles, sap, or sap gloves.

1.4.6 Rendering Aid After Use of Force

I. Qualified medical assistance is to be summoned after force is used if:

A. A person has sustained an obvious injury.

B. A person complains of injury.

C. An employee or supervisor requests that medical treatment be provided.

D. A person who receives a repeated or prolonged exposure to the CEW (three consecutive applications or a one-time exposure of 15 seconds or more).

II. Hospital transport and clearance is required for:

- A. A person who is struck with a kinetic energy munition.
- B. A person who is bitten by a police service dog.
- C. CEW probes embedded in soft tissue areas such as the eyes, neck, genitals, face, or female breasts.

III. When a person has been directly exposed to OC, staff will take steps to decontaminate the exposed individual as soon as possible after the event in accordance with training.

IV. Following Use of Force incidents, officers will monitor subjects for symptoms of excited delirium, including respiratory problems, loss of consciousness, excessive body heat, or profuse sweating and call for qualified medical assistance if symptoms are observed.

1.4.7 Use of Force Reporting

I. When force is applied, officers must be able to articulate how that force was reasonable and how it conformed to the law; officers will document use of force.

II. Employees shall report uses of force to a supervisor as soon as practical in the following circumstances:

- A. Whenever an employee discharges a firearm or points a firearm at a person.
- B. Whenever an employee deploys other force tools.
- C. Whenever an employee uses defensive tactics or takes a subject to the ground.
- D. Whenever a suspect, as a result of an application of force:
 - 1. Incurs an obvious injury or complains of an injury; or
 - 2. Requires or requests medical treatment.
- E. Whenever a police service dog bites a person.

III. When a subject is detained in handcuffs and later released without arrest or referral to the Prosecutor for charging, the employee will document the event in an Incident Report or in a Field Incident Report.

1.4.8 Use of Force – Supervisor’s Report

I. A supervisor creates an entry into the RMS Use of Force module in any of the following circumstances:

- A. Whenever an employee reports a use of force as described in 1.4.7(II).
- B. Whenever, in the opinion of a supervisor, an incident occurs that has significant potential for a claim or litigation against the City.

C. Whenever an employee is involved in a vehicular pursuit.

II. Use of Force reports are completed by the responsible supervisor as soon as possible after the incident. The supervisor shall review the incident and determine if the use of force was reasonable, necessary, and within policy, and if any follow-up action is necessary. The review shall include contributing factors and actions before and after the use of force incident.

A. Use of Force review:

1. Each patrol Use of Force report is forwarded to the Team Lieutenant.
2. Each corrections Use of Force report will be forwarded to the Jail Manager.
3. Each manager will review the incident and determine if the use of force was reasonable, necessary, and within policy, and if any follow-up action is necessary.
4. The review shall include contributing factors and actions before and after the sue of force incident.
5. Each Use of Force report will be reviewed by the defensive-tactics supervisor designated by the Chief. Following reviews, the Use of Force reports are maintained in the RMS system, with oversight from the Professional Standards Lieutenant.

1.4.9 Summary Reporting and Retention

I. The Professional Standards Lieutenant will produce a report for the first three quarters of the calendar year, summarizing the Use of Force report activity for the quarter. The Professional Standards Lieutenant will produce an annual report in the fourth quarter of each calendar year, summarizing all Use of Force report activity for the year.

II. Command staff will review the summary reports to determine if there are patterns or trends that indicate training, supervision, or policy needs.

1.4.10 Review of Deadly Force

I. The Olympia Police Department will objectively evaluate the use of deadly force and/or any use of force that results in death or serious injury by its members to ensure that the use of force was within Department policy and was consistent with Department training standards.

II. To fully evaluate a use of force involving deadly force, a Review Board will be established.

III. Review Board – Composition

The Deputy Chief or his/her designee will select five Use of Force Review Board members:

- A. Command representative
- B. Training Sergeant
- C. A member of the community

D. A member of the community

E. An officer

1. The officer being evaluated will submit three names to the Deputy Chief in order of preference.

2. The Deputy Chief will choose one of the three officers to sit on the Review Board.

3. The Deputy Chief will provide an explanation to the officer under review if his/her choice is not consistent with the officer's order of preferences.

F. Department instructor of different rank than the involved employee, for the type of weapon, device, or technique used.

G. The senior ranking command representative will serve as chairperson.

H. Each role is not required to be staffed independently of the others. For example, a sergeant could also be a Use of Force instructor.

IV. Review Board – Use

A. A Use of Force Review Board will be convened when the use of force is likely to, or results in, very serious injury or death of another.

B. The Chief of Police may request the Use of Force Review Board to investigate and review the circumstances surrounding any use of force event.

C. The Deputy Chief or his/her designee will convene the Use of Force Review Board as necessary. It will be the responsibility of the on-duty supervisor of the involved employee to notify his/her supervisor of any incidents requiring Board review.

V. Review Board Responsibilities

A. The Use of Force Review Board is empowered to conduct an administrative review and inquiry into the circumstances of an incident.

B. The Board members may request further investigation, request reports be submitted for the Board's review, and request the involved employee or witnesses to testify. The involved employee will be notified of the meeting of the Board and may choose to have a union and/or legal representative be present through all phases of the review process.

C. The Chief of Police will determine whether the Board should delay its review until after completion of any criminal investigation, review by any prosecutorial body, filing of criminal charges, and/or a decision not to file criminal charges or any other action. The Board should be provided all relevant available material from these proceedings for its consideration.

D. The review shall be based upon those facts which were reasonably believed or known by the officer at the time of the incident, applying any legal requirements, Department policies, procedures, and approved training to those facts. Facts later discovered, but unknown to the officer at the time of the use of force being reviewed shall neither justify nor call into question an officer's decision regarding the use of force.

E. Any questioning of the involved employee conducted by the Board will be in accordance with Department policies, current labor agreements, and any applicable state or federal law.

F. The Board does NOT have the authority to recommend discipline.

VI. Review Board Findings

A. The Board shall make one of the following recommended findings:

1. The employee's actions were within Department policy.
2. The employee's actions were in violation of Department policy.

B. A recommended finding requires a majority vote of the Board.

C. The Board may also recommend additional investigation or review, training reviews to consider whether training should be developed or revised, and/or review of policies.

D. The Board chairperson will submit a written recommendation to the Chief of Police that includes the recommended finding, how and why the Board reached the recommended finding, and any training and/or policy considerations the Board feels should be reviewed.

E. The Chief of Police shall review the recommendation, make a final determination as to whether the employee's actions were within policy, and will determine whether any additional actions, investigations, or reviews are appropriate.

F. At the conclusion of any additional review, copies of all relevant reports and information will be filed with the Chief of Police.

1.4.11 Removal from Duty (Traumatic Incidents) Revised 10/18

I. When death results from the use of deadly force or any critical incident, the involved employee shall be placed immediately on administrative leave by the shift supervisor.

II. When serious physical injury results from the use of deadly force or any critical incident, the involved employee may be placed on administrative leave by the shift supervisor.

III. When an employee has been placed on administrative leave pursuant to 1.4.11(I or II), the Chief of Police will determine if:

A. The employee should report to full duty on his/her regular assignment;

B. The employee needs additional recuperation time;

C. Modifications to the employee's regular duties should be considered in order to facilitate the employee's timely return to full productivity.

IV. When an employee is involved in a use of force incident that results in death or serious injury, the Department shall make psychological assistance available to the employee and his/her co-workers. This assistance may be through the City Employee Assistance Program, the Department psychologist, or the employee's health care provider, at the employee's choice. In a circumstance where a police officer or employee is killed in the line of duty, Department procedures regarding such an event are employed [see General Order 22.2.10 and the Line of Duty Death Handbook].