



City of Tukwila
*Community Services
 and Safety Committee*

- ◆ Kate Kruller, Chair
- ◆ Thomas McLeod
- ◆ Cynthia Delostrinos Johnson

<u>Distribution:</u>	
K. Kruller	Mayor Ekberg
T. McLeod	D. Cline
C. Delostrinos Johnson	R. Bianchi
D. Quinn	C. O'Flaherty
	A. Youn
	L. Humphrey

AGENDA

MONDAY, JULY 27, 2020 – 5:30 PM
 FOSTER CONFERENCE ROOM
 (6300 Building, Suite 100)

**THIS MEETING WILL NOT BE CONDUCTED AT CITY FACILITIES
 BASED ON THE GOVERNOR'S PROCLAMATION 20-28.**

**THE PHONE NUMBER FOR THE PUBLIC TO LISTEN TO THIS
 MEETING IS: 1-253-292-9750, Access Code 209002899#**

Item	Recommended Action	Page
1. BUSINESS AGENDA		
a. A 3-year contract for school speed zone automated safety cameras. <i>Bruce Linton, Police Chief</i>	a. Forward to 8/10 C.O.W. and 8/17 Regular Mtg.	Pg.1
b. Follow up to review of Police Department Use-of-Force Policy. <i>Bruce Linton, Police Chief</i>	b. Discussion only.	Pg.35
2. MISCELLANEOUS		

Next Scheduled Meeting: *August 10, 2020*



The City of Tukwila strives to accommodate individuals with disabilities.
 Please contact the City Clerk's Office at **206-433-1800** (TukwilaCityClerk@TukwilaWA.gov) for assistance.



INFORMATIONAL MEMORANDUM

TO: Public Safety Committee
FROM: Bruce Linton, Chief of Police
BY: Bruce Linton, Chief of Police
CC: Mayor Ekberg
DATE: 07/09/2020
SUBJECT: School Speed Zone Automated Safety Camera Contract

ISSUE

A contract between the City of Tukwila and NovaGlobal, Inc. to install and assist the city in the administration and operation of systems to monitor and report school zone speed violations, in accordance with applicable laws and ordinances, is required to conduct school speed zone enforcement.

BACKGROUND

Ordinance No. 2612 codified in [Chapter 9.53 \(link\)](#) of The Tukwila Municipal Code authorized the use of automated traffic safety cameras in school speed zones pursuant to the authority granted to it under RCW 46.63.

The [Informational Memo dated 7/10/19 \(link\)](#) describes the School Speed Zone Program in great detail. Additional background about the City Council's decision-making process can be found in the [7/22/19 Committee of the Whole \(link\)](#) and [8/5/19 Regular Meeting \(link\)](#) minutes.

NovaGlobal was selected as the contract awardee after successfully demonstrating the requisite expertise in implementing and managing Automated Traffic Enforcement Programs during the Request for Proposal (RFP) process.

ANALYSIS

Using automated safety cameras will increase efficiencies in the areas of traffic enforcement, education and the overall traffic and pedestrian safety within our city. They will provide more efficient service with no immediate additional FTE's. Traffic Safety cameras are non-discriminatory, and the Tukwila Municipal Court has indicated that it maintains the authority, will consider, and mitigate the financial impact of fines to our vulnerable community with alternative enforcement strategies.

NovaGlobal will collaborate with the police department to initiate pre-operational outreach prior to system implementation. The Tukwila Police Department reached out to the community over time and garnered the support leading up to the approval of [Ordinance 2612 \(link\)](#).

- Former Public Safety Committee
- Tukwila School Board
- Community Oriented Police Citizens Advisory Board
- Tukwila International Boulevard Action Committee
- Equity and Social Justice Committee
- Tukwila Reporter Newspaper
- Hazelnut Publication
- City of Tukwila Website linked to Police Department Website

FINANCIAL IMPACT

Consistent with normal Red-Light and School Zone Camera Vendor business models, there are no upfront costs. The equipment is leased from the vendor, and the program is self-funding (two citations per day per camera will mitigate the lease costs). Pricing for NG Safety systems relating to fixed speed photo enforcement shall be as follows:

- \$3,999.00 per system per month, with less than 400 citations issued by the City per month.
- \$4,900.00 per system per month, with between 400 and 800 citations issued by the City per month.
- \$5,700.00 per system per month, with more than 800 citations issued by the City per month.

This is a 3-year contract, and the per-year contractual cost would range from approximately \$96,000 to 137,000 based on the pricing range associated with the volume levels indicated above.

RECOMMENDATION

Forward to the Council for approval of the 3-year Pilot Program proposal for the School Speed Zone Cameras to the August 10, 2020 Committee of The Whole Meeting and subsequent August 17, 2020 Regular Meeting.

ATTACHMENTS

Services Agreement Between the City of Tukwila and NovaGlobal, Inc.

**SERVICES AGREEMENT
BETWEEN THE CITY OF TUKWILA, WASHINGTON
AND NOVOAGLOBAL, INC. FOR
TRAFFIC INFRACTION DETECTION & ENFORCEMENT PROGRAM**

This **AGREEMENT** (the “**Agreement**”) made this ____ day of March, 2020, by and between NovoaGlobal, Inc. (formerly known as Sensys America, Inc.), a Delaware corporation having a place of business at 8018 Sunport Drive, Suite 203, Orlando, Florida 32809 (“**NG**”), and the City of Tukwila, a municipal corporation of the State of Washington, having an address at 6200 Southcenter Boulevard, Tukwila, WA 98188 (the “**City**” and together with NG, the “**Parties**” and each singularly a “**Party**”).

WITNESSETH:

WHEREAS, pursuant to the Municipal Code of the City of Tukwila, Washington, Title 9: Automated Traffic Safety Cameras in School Zones, Chapter 9.53, §9.53 as amended, the City may implement an automated photo enforcement program;

WHEREAS, NG has the knowledge, possession, and ownership of certain equipment, licenses and processes, referred to collectively as the NG Safety System (the “**System(s)**”);

WHEREAS, the City desires to use the Systems to monitor and enforce school zone speed violations in accordance with applicable laws and ordinances;

WHEREAS, the Parties desire to enter into this Agreement, whereby NG will (i) install and assist the City in the administration and operation of the Systems, as described in more detail on *Exhibit A* to this Agreement at the locations within the City’s jurisdiction, and provide to the City the services (the “**Services**”), all as more fully described on *Exhibit A*, and (ii) in connection with the Services, license certain software and lease certain equipment to the City.

NOW, **THEREFORE**, in consideration of the mutual terms, covenants, and conditions contained herein, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **RECITALS AND EXHIBITS.** The foregoing recitals are true and correct and are hereby incorporated in *haec verba*. All exhibits attached to this Agreement contain additional terms of this Agreement and are hereby incorporated in *haec verba*.
2. **SERVICES**
 - 2.1. NG agrees to install and provide to the City for the Term, the Systems (the “**Equipment**”) and software (the “**Software**”) to be supplied and installed by NG in accordance with *Exhibit A* (including the provision of all construction drawings, permit applications and other documents required by applicable law for the

installation and operation of the System(s)). In addition, if and to the extent set forth in *Exhibits A, B, C, and D*, NG shall also supply to the City:

- 2.1.1. Citation preparation processes that assist the City in complying with current applicable City, State, and Federal law;
 - 2.1.2. Training of personnel designated by the City involved with the operation of the Systems and/or the enforcement and disposition of citations;
 - 2.1.3. Expert witness testimony regarding the operation and functionality of the System; and
 - 2.1.4. Other support services for the System as set forth in *Exhibit A*.
- 2.2. If and to the extent the City has or obtains during the Term custody, possession or control over any of the Equipment or Software, the City agrees:
- 2.2.1. Such Software, if manufactured or licensed by NG, is supplied under the license set forth in *Exhibit B* (the “**License**”) to which the City agrees;
 - 2.2.2. Such Software, if manufactured by third parties, is supplied under third-party licenses accompanying the Software, which licenses the City acknowledges receiving and to which it hereby agrees; and
 - 2.2.3. Such Equipment is supplied under the lease terms set forth in *Exhibit C* (the “**Lease**”) to which the City hereby agrees.
- 2.3. The City understands and agrees that (i) NG may, subject to the prior approval of the City, which approval shall not be unreasonably delayed, conditioned or withheld, subcontract with third parties for the provision or installation of part or parts of the Systems or Services and (ii) installation of the Systems requires the City’s cooperation and compliance with NG’ reasonable instructions (including but not limited to City’s provision of the personnel, equipment, engineering plans, and other resources as described in *Exhibit A* or as otherwise reasonably requested by NG) and reasonable access by NG (or such third parties) to City premises and systems and (iii) the City will provide all of the foregoing in Section 2.3(ii) to NG.
- 2.4. The City understands and agrees that the Systems will be owned by NG (or its designees). The City shall use its best efforts to assist NG to identify any third-party who is responsible for damage to the Systems or any part thereof.
- 2.5. NG shall coordinate its work with the City’s Police and Public Works Departments.

3. **TERM**

- 3.1. The effective date of this Agreement shall be the date first written above (the “**Effective Date**”). The initial term (the “**Initial Term**”) of this Agreement, the

License and the Lease shall begin upon the Effective Date, following full execution of the Agreement by the Parties, and shall continue until the third (3rd) anniversary of the Installation Date (the “**Installation Date**”).

- 3.2. The City shall have the option to extend this Agreement, the License and the Lease for two (2) additional three (3) year terms (each, a “**Renewal Term**”), on the same terms and conditions specified herein except that the amounts due pursuant to Section 5 hereof shall be adjusted in accordance with the change in the Consumer Price Index – All Urban Consumers – U.S. City Average (“**CPI**”) by multiplying said amounts by the percentage change in the CPI from the beginning of the immediately preceding term to the end of the immediately preceding Term. (Each Renewal Term, if any, together with the Initial Term, the “**Term**”). The “**Installation Date**” shall be the latest date that a System becomes installed and operational at any of the originally selected locations described in Sections 1.A or 1.B of *Exhibit A*.

4. **TERMINATION AND EXPIRATION**

- 4.1. This Agreement may be terminated by mutual written consent of the Parties.
- 4.2. This Agreement may be terminated for cause, by either Party if the other Party fails in any material way to perform its obligations under the Agreement or otherwise defaults in the performance of any obligation under this Agreement and such failure or default continues for more than forty-five (45) days after written notice thereof to the defaulting Party.
- 4.3. NG may terminate this Agreement, without liability, on thirty (30) days advance written notice if NG concludes in its reasonable discretion that (i) potential or actual liability of NG to third parties (other than persons claiming to own Intellectual Property required for the operation of the System) arising out of or in connection with the System makes the program impractical, uneconomical or impossible to continue.
- 4.4. The City may terminate this Agreement on thirty (30) days advance written notice if the City concludes in its reasonable discretion that (i) potential or actual liability of the City to third parties arising out of or in connection with the System makes the program impractical, uneconomical, legally contested or impossible to continue; and/or (ii) the Systems cannot be installed.
- 4.5. Upon termination or expiration of this Agreement, either for default or because it has reached the end of its term, the Parties recognize that the City will have to process violations in the “pipeline,” and that NG accordingly must assist the City in this accord. Accordingly, the Parties shall take the following actions during the

wind-down period, and shall have the following obligations, which obligations shall survive termination or expiration of the Agreement:

4.5.1. The City shall cease using the Software and Equipment in its possession, custody or control and shall (a) immediately allow NG a reasonable opportunity to remove such Equipment not to exceed sixty (60) days and (b) immediately deliver to NG or irretrievably destroy, or cause to be so delivered or destroyed, any and all copies of such Software in whatever form and any written or other materials relating to such Software in the City's possession, custody or control and within sixty (60) days deliver to NG a certification thereof.

4.5.2. Unless directed by the City not to do so, NG shall continue to process all images taken by the City before termination and provide all services associated with processing in accordance with this Agreement, and shall be entitled to reasonable fees specified in the Agreement as if the Agreement were still in effect.

4.6. Notwithstanding anything to the contrary contained herein, or in the License or the Lease, but except as provided in Section 21, the License and the Lease shall terminate upon the termination or expiration of this Agreement.

5. FEES AND PAYMENT

The City agrees to pay NG a monthly fee as follows (the "**Monthly Fees**"):

5.1. **Monthly Fees** (pro-rated for any partial month) as described in *Exhibit D* (Compensation & Pricing) in arrears with respect to each approach at which a System has been installed. Such payment shall commence on the first business day of the month following Commencement of Operations of each System and shall continue on the first business day of each month for the Term or until this Agreement is sooner terminated or such payment is modified in accordance with Section 3.2. For purposes of this Agreement, "**Commencement of Operations**" shall mean the first full day that the System captures events for processing and issuance of notices of violation.

5.2. The City, being a Municipal Corporation, shall pay sales tax in accordance with WAC 458-20-189. Accordingly, NG shall add sales tax to the invoices provided to the City in compliance with Washington State Law.

5.3. In the event that the United States Postal Service increases applicable First Class Mail and/or Certified Mail postage, NG may invoice the City for the increased postage actually paid by NG in connection with this Agreement. For example, if

First Class Mail postage were increased by \$0.02, and NG mailed 1,000 notices, NG would invoice the City \$20.00.

- 5.4. Payment of all fees and other charges owed pursuant to this Agreement is due as set forth above, and, to the extent invoice is required, within forty-five (45) days after receipt of the invoice. Invoices will be sent to the City at:

SafetyCams@TukwilaWa.gov

- 5.5. Notwithstanding anything in this Agreement to the contrary, if amounts due to NG pursuant to Section 5.1 in any month during the Term plus any amounts due to NG pursuant to this Section 5.5 (“**Monthly Photo Enforcement Fees**”) exceed the revenue generated by operation of the Systems and actually received by the City during that same month (“**Monthly Photo Enforcement Revenue**”) then the City shall pay to NG for such month only the amount of Monthly Photo Enforcement Revenue. In such case, the difference between Monthly Photo Enforcement Fees and Monthly Photo Enforcement Revenue (a “**Payment Shortfall**”) shall be accumulated and added to the Monthly Photo Enforcement Fees for the following month. Payment Shortfalls, if any, shall accumulate from month-to-month until paid in full, provided that under no circumstances shall the City ever be required to make a payment of Monthly Photo Enforcement Fees to NG except from Monthly Photo Enforcement Revenue. At the final expiration of this Agreement (last day of validity of the agreement including any extensions) any accumulated Payment Shortfalls shall be forfeited.

6. RESPONSIBILITIES OF THE CITY

- 6.1. The City shall provide NG with any “as built” drawings in electronic format that are available at no cost to the City and shall consider for approval NG’s engineering drawings.
- 6.2. The City shall not levy any fees. However, if municipal ordinance requires the assessment of fees by the City, said assessment shall be limited to permit fees as required by the City’s Municipal code. The City does not control fees for Public Utilities or electrical permits for service. Levy of those fees for permits regarding electrical service are outside the scope of this contract.
- 6.3. The City shall diligently prosecute citations in court at its own expense. NG shall, at its own expense, participate in any proceeding challenging the use of the System, the validity of the System’s results, and/or use of the U.S. Mail to deliver a citation.

- 6.4. The City will cooperate with NG in obtaining electrical connections at the roadside and NG shall pay all costs associated with such connection and shall pay for all power required by the System.
- 6.5. To allow for proper operation of the System, when known to the City, the City shall provide NG with advance written notice of any modifications proposed to roadways after installation of a System. In the event any such roadway modification requires a material change to the System, the City shall pay the costs reasonably incurred by NG to adapt the affected video monitoring system(s) or fixed speed enforcement unit(s) to make such video monitoring system(s) or fixed speed enforcement unit(s) compatible therewith. Notwithstanding the above, NG makes no guarantee that it will be able to make any such adaptation. In the event that NG is unable to adapt the affected System, then both parties shall be relieved of any further obligations under this Agreement with respect only to the affected System.
- 6.6. During the Term, except as expressly permitted by this Agreement the City shall not use the System, or allow the System's use by a third party, without the prior written permission of NG.

7. LIMITED WARRANTY AND LIMITATION ON DAMAGES

- 7.1. NG warrants that the System's functionality will conform in all material respects to the description of the System set forth on *Exhibit A*.
- 7.2. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, NG HEREBY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE SERVICES AND SYSTEM, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, NON-INTERFERENCE WITH ENJOYMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES IMPLIED FROM ANY COURSE OF DEALING OR USAGE OF TRADE. THE CITY ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY PROVIDED HEREIN NO OTHER WARRANTIES HAVE BEEN MADE TO MUNICIPALITY BY OR ON BEHALF OF NG OR OTHERWISE FORM THE BASIS FOR THE BARGAIN BETWEEN THE PARTIES.
- 7.3. The City acknowledges and agrees that:
 - 7.3.1. The Systems may not detect every speeding violation;
 - 7.3.2. Since the System may flag as a violation conduct that is in fact not a violation, the output of the System will require review, analysis and

approval by personnel appropriately qualified and authorized by the City under applicable law prior to the issuance of any citation;

- 7.3.3. The System has no control over, and relies on the proper functioning of equipment provided by entities other than NG;
- 7.3.4. The proper functioning of the System requires the City's full and complete compliance with the Systems' operating instructions, which it hereby agrees to do; and
- 7.3.5. NG shall not be responsible for the configuration and/or operation of any intersection traffic light systems and NG shall have no liability or obligations with respect thereto.

8. INDEMNIFICATION AND INSURANCE

- 8.1. NG shall at all times comply with all federal, state and local laws, ordinances and regulations and shall comply with the maintenance procedures and manufacturer's recommendations for operation of the Systems which affect this Agreement and shall defend, indemnify and hold harmless the City against any claims, injuries, damages, losses, or suits including attorney fees, arising from NG's violation of any such laws, ordinances and regulations or any claims arising from NG's performance of this Agreement, including as a result of the negligence, recklessness, or willful misconduct of NG, its officers and directors, agents, attorneys, and employees, but excluding any employees or agents of City.
- 8.2. NG agrees to indemnify, defend, and hold harmless the City from any and all claims, damages, injuries, losses, or suits including attorney fees, by a third party arising from either (a) a finding that the System infringes any validly issued United States patent or (b) NG's willful misconduct, recklessness, or negligence, provided that such claim of damages, except for injuries and damages caused by the sole negligence of the City, which is not attributable to (i) any act or omission set forth in Section 8.3 or (ii) any third-party software or other third-party products used with, required for use of, or supplied under their own names with or as part of the System. If, as a final result of any litigation of which NG is obligated to indemnify, the use of the System by the City is prevented, in whole or in part, by an injunction, NG's sole obligation to the City as a result of such injunction shall be, at NG's option, either to (i) replace such part as has been enjoined, or (ii) procure a license for NG or the City to use same, or (iii) remove same and terminate this Agreement at no additional cost to the City.
- 8.3. 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 NG and the City, its officers, officials, employees, and volunteers, the NG's liability hereunder shall be only to the extent of the NG's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the NG'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.

- 8.4.** Notwithstanding anything in this Agreement to the contrary, NG assumes no obligation or liability for any claim of damages (including the payment of reasonable attorneys' fees) by a third party arising from or related to (i) any modification of the System made by the City, (ii) the sole negligence or willful misconduct of the City, (iii) the failure to function properly of any hardware, software or equipment of any kind used by, in or on behalf of the City (other than that supplied by NG), or (iv) the review and analysis of the System data output by the City personnel for citation preparation.
- 8.5.** The rights of the City to seek indemnification under this Section 8 shall be conditioned upon (i) the City notifying NG promptly upon receipt of the claim or action for which indemnification is sought and (ii) the City's full cooperation with NG in the settlement or defense of such claim or action at no cost to the City. The City agrees not to charge NG for the time of the City's personnel engaged in such cooperation. Such cooperation shall include, but not be limited to, the City providing access for, and permission to, NG for the purpose of the replacement of such part or parts of Systems as NG may deem necessary or desirable. The City may participate in the defense of any indemnified matter through counsel of its own choice and at its own expense provided that NG shall remain in, and responsible for, control of the matter. This Section 8 states the entire liability and obligation and the exclusive remedy of the City with respect to any actions or claims (i) of alleged infringement relating to or arising out of the subject matter of this Agreement or (ii) otherwise the subject of this paragraph.
- 8.6.** NG shall maintain the following minimum scope and limits of insurance:
 - 8.6.1.** Comprehensive general liability insurance with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate. 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, stop-gap, products-completed operations, independent contractors, personal injury and advertising injury, and liability assumed under an insured contract. The City shall be named as an additional insured under NG'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. Workers Compensation coverage as required by the Industrial Insurance laws of the State of Washington; and

- 8.6.2. Comprehensive Automobile Liability Insurance for all owned, non-owned and hired automobiles and other vehicles used by NG with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident. Automobile Liability insurance shall cover all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- 8.6.3. Other Insurance Provision. 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 with respect to 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 be contributed or combined with it.
- 8.6.4. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- 8.6.5. 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 Contractor before commencement of the work. Upon request by the City, the Consultant shall furnish certified copies of all required insurance policies, including endorsements, required in this Agreement and evidence of all subcontractors' coverage.
- 8.6.6. Notice of Cancellation. The Consultant shall provide the City with written notice of any policy cancellation, within two business days of their receipt of such notice.
- 8.6.7. 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 business days notice to the Consultant to correct the breach, immediately terminate the contract 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.

8.7. The City shall be named as additional insured on the comprehensive general liability policies provided by NG under this Agreement. NG shall require any subcontractors doing work under this Agreement to provide and maintain the same insurance, which insurance shall also name the City and its officers, employees, and authorized volunteers as additional insured.

8.8. Certificates showing NG is carrying the above described insurance, and evidencing the additional insured status specified above, shall be furnished to the City within thirty (30) calendar days after the date on which this Agreement is made. Such certificates shall show that the City shall be notified of all cancellations of such insurance policies. NG shall forthwith obtain substitute insurance in the event of a cancellation.

8.9. All insurance required by express provision of this Agreement shall be carried only in responsible insurance companies licensed to do business in the State of Washington and shall name as additional insured the City. NG will furnish the City with Certificates of Insurance and applicable endorsements for all such policies promptly upon receipt of them. NG may effect for its own account insurance not required under this Agreement.

9. CHANGE ORDERS OR ADDITIONAL SERVICES. Changes to Services and additional Systems may be added to this Agreement by mutual consent of the Parties in writing as an addendum to this Agreement. The City and NG agree that should legislation or local ordinance be enacted to enable new photo enforcement solutions within the City's jurisdiction, the City shall have the option to negotiate services and fees and issue a change order to cover such services.

9.1. The City will appoint a project manager, which shall be an administrative ranked City Police Officer who will have oversight of the installation and implementation of the NG systems. The project manager has the authority to make daily operational management decisions. Only the Mayor or his/her designee has the authority to authorize additional systems exceeding the original agreement, change orders, request additional services, and extensions.

10. CONFIDENTIAL AND PROPRIETARY INFORMATION; PUBLIC RECORDS LAW COMPLIANCE.

10.1. The Parties agree that they shall comply with the public records disclosure provisions of the Revised Code of Washington, Chapter 42.56, Public Records Act and RCW 46.63.170(1)(g).

10.2. NG agrees that:

- 10.2.1.** All information obtained by NG through operation of the Systems shall be made available to the City at any time during the Tukwila Municipal Court's normal business hours which are 08:30am to 5:00pm pacific time, excluding Proprietary Information not reasonably necessary for the prosecution of citations or fulfillment of the City's obligations under this Agreement.
- 10.2.2.** It shall not use any information acquired from the performance of the Services contemplated in this Agreement, including without limitation, information with respect to any violations, violators, information obtained from recorded images or information concerning the City's law enforcement activities for any purpose other than for the benefit of the City.
- 10.2.3.** No information given by NG to the City will be of a confidential nature, unless specifically designated in writing as "**Proprietary Information**" and expressly exempt from public records disclosures required by the Revised Code of Washington, Chapter 42.56, Public Records Act.
- 10.2.4.** As used in this Agreement, the term "Proprietary Information" shall mean all trade secrets or confidential or proprietary information designated as such by NG, whether letter or by the use of an appropriate proprietary stamp or legend, prior to or at the time any such trade secret or confidential or proprietary information is disclosed by NG to the City. In addition, the term "**Proprietary Information**" shall be deemed to include: (a) any notes, analyses, compilations, studies, interpretations, memoranda or other documents prepared by the Recipient which contain, reflect or are based upon, in whole or in part, any Proprietary Information furnished to the Recipient.
- 10.2.5.** The City shall use the Proprietary Information only for the purpose of fulfilling its duties hereunder (the "**Purpose**") and such Proprietary Information shall not be used for any other purpose without the prior written consent of NG. "Purpose" shall be deemed to not include any disclosure of the Proprietary Information to any person or entity. The City shall hold in confidence, and shall not disclose to any person or entity, any Proprietary Information nor exploit such Proprietary Information for its own benefit or the benefit of another without the prior written consent of NG.
- 10.2.6.** Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not prohibit the City from disclosing Proprietary Information to the extent required in order for the City to comply with

applicable laws and regulations, provided that the City provides prior written notice of such required disclosure to NG.

11. INDEPENDENT CONTRACTOR; NO AGENCY.

11.1. It is understood that NG is an independent contractor and not an agent or employee of the City for any purpose including, but not limited to, federal tax and other state and federal law purposes. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto. Neither Contractor nor any employee of Contractor shall be entitled to any benefits accorded City employees by virtue of the services provided under this Agreement. The City shall not be responsible for withholding or otherwise deducting federal income tax or social security or contributing to the State Industrial Insurance Program, or otherwise assuming the duties of an employer with respect to the Contractor, or any employee of the Contractor. NG specifically assumes responsibility for payment of all federal, state and local taxes imposed or required of NG under unemployment insurance, Social Security and income tax laws for the duration of this contract. NG shall be solely responsible for any worker's compensation insurance required by law and shall provide the City with proof of insurance upon demand. The parties agree that the City shall not:

- 11.1.1.** Pay dues, licenses or membership fees for NG;
- 11.1.2.** Require attendance by NG, except as otherwise specified herein;
- 11.1.3.** Control the method, manner or means of performing Services under this Agreement, except as otherwise specified herein; or
- 11.1.4.** Restrict or prevent NG from working for any other Party.

11.2. Neither Party has the right or the power to enter into any contract or commitment on behalf of the other Party, including entering into agreements with third parties, exercising incidents of ownership with respect to property owned by the Party or executing contracts binding upon the other Party.

12. NOTICES.

12.1. Any notices or demands which, under the terms of this Agreement or under any statute, must or may be given or made by NG or the City shall be in writing and shall be given or made by personal service, first class mail, FedEx, or by certified or registered mail to the Parties at the following addresses:

Notices to the City of Tukwila shall be sent to the following address:

City Clerk, City of Tukwila

6200 Southcenter Blvd

Tukwila, WA 98188

Notices to NG shall be sent to the following address:

NovoaGlobal, INC

8018 Sunport Drive Suite 203

Orlando, FL 32809

- 12.2.** Except as otherwise specified, all notices, payments and reports hereunder shall be deemed given and in effect as of the date of mailing or transmission, as the case may be, when sent by next day delivery or courier service, postage pre-paid, or three (3) days after the date of mailing when sent by first class mail, postage pre-paid, addressed in all such cases to the Parties as set forth in section 12.1, above, in each case to the President of NG or the Mayor of the City.
- 13. ASSIGNMENT.** Except as specifically provided in this Agreement, neither Party may assign, or delegate performance of its obligations under, this Agreement, without prior express written consent of the other Party, except that NG may assign or otherwise encumber this Agreement, the License and the Lease for the purpose of obtaining financing; provided, however, that this Agreement may be assigned to any Person that acquires all or substantially all of NG' assets in one transaction.
- 14. AMENDMENT AND MODIFICATION.** This Agreement may be modified or amended from time to time by the Parties, provided, however, that no modification or amendment hereto shall be effective unless it is stated in writing, specifically refers to this Agreement and is executed on behalf of both Parties.
- 15. NON WAIVER.** The failure of either Party to require performance of any provision of this Agreement shall not affect the right to subsequently require the performance of such provision or any other provision of this Agreement. The waiver of either Party of a breach of any provision shall not be taken or held to be a waiver of any subsequent breach of that provision or any subsequent breach of any other provision of this Agreement.
- 16. FORCE MAJEURE.** Neither Party shall be liable to the other for failure or delay in meeting any obligations hereunder which arises in whole or in part from causes which are unforeseen by, or beyond the control of, such Party, including without limitation, acts of God or of a public enemy, acts of terrorism, acts of the Government (other than the City in the case of the City) in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, acts or omissions of (i) non-

subcontractor third-parties and (ii) third party equipment, telecommunications and software suppliers, and unusually severe weather. When any such circumstance(s) exist, NG shall have the right, in its sole discretion, to allocate its available production, deliveries, services, supplies and other resources among any and all buyers (whether or not including the City), as well as among departments and affiliates of NG, without any liability to the City.

17. DISPUTE RESOLUTION AND REMEDIES.

17.1. All disputes arising out of or in connection with the Agreement shall be attempted to be settled through good-faith negotiation between the City's appointed Project Manager and the President of NG, followed, if necessary, within thirty (30) calendar days, by professionally-assisted mediation. Any mediator so designated must be acceptable to each party and must be a certified mediator in the State of Washington. The mediation will be conducted as specified by the mediator and agreed upon by the Parties. The Parties agree to discuss their differences in good faith and to attempt, with the assistance of the mediator, to reach an amicable resolution of the dispute. The mediation will be treated as a settlement discussion and therefore will be confidential. The mediator may not testify for either party in any later proceeding relating to the dispute. No recording or transcript shall be made of the mediation proceedings. Each party will bear its own costs in the mediation. The fees and expenses of the mediator will be shared equally by the Parties.

17.2. Failing resolution through negotiation or mediation, all actions, disputes, claims and controversies under common law, statutory law or in equity of any type or nature whatsoever, whether arising before or after the date of this Agreement, and whether directly or indirectly relating to: (a) this Agreement and/or any amendments and addenda hereto, or the breach, invalidity or termination hereof; (b) any previous or subsequent agreement between the parties; and/or (c) any other relationship, transaction or dealing between the parties (collectively the "**Disputes**"), will be subject to and resolved by binding arbitration pursuant to the Commercial Arbitration Rules of American Arbitration Association. Any award or order rendered by the arbitrator may be confirmed as a judgment or order in any state or federal court of competent jurisdiction within the federal judicial district which includes the residence of the Party against whom such award or order was entered. The prevailing Party in any arbitration shall be entitled to reasonable attorney fees and costs.

18. GOVERNING LAW; JURISDICTION; VENUE. The parties agree that this Agreement is consummated, entered into, and delivered in King County, Washington. Notwithstanding conflicts of laws provisions, this Agreement has been and is to be governed by, construed,

interpreted and enforced in accordance with the laws of the State of Washington. In the event that any litigation is commenced by either party to enforce this Agreement, the action will be filed and litigated, if necessary, solely and exclusively in a court of competent jurisdiction located in King County, Washington. The parties waive any and all rights to have this action brought in any place other than King County, Washington, under applicable venue laws. The Parties hereby irrevocably waive any and all rights to have this action brought in any place other those stated herein. The Parties hereby irrevocably waive any claim that any such action has been brought in an inconvenient forum.

19. ATTORNEY’S FEES AND COSTS. In the event arbitration is commenced to enforce this Agreement, costs of said suit including reasonable attorney’s fees in all proceedings, trials, investigations, appearances, appeals and in any bankruptcy proceeding or administrative proceeding shall be paid to the prevailing Party by the other Party.

20. DISCRIMINATION PROHIBITED. NG, with regard to the work performed by it under this Agreement, will not discriminate on the grounds of race, religion, creed, color, national origin, age, veteran status, sex, sexual orientation, gender identity, marital status, political affiliation, the presence of any disability, or any other protected class status under state or federal law, in the selection and retention of employees or procurement of materials or supplies.

21. GENERAL AND MISCELLANEOUS.

21.1. Time shall be of the essence of this Agreement.

21.2. In this Agreement, wherefore the singular and masculine are used, they shall be construed as if the plural or the feminine or the neuter had been used, where the context or the party or parties so requires, and the rest of the sentence shall be construed as if the grammatical and the terminological changes thereby rendered necessary had been made.

21.3. Paragraph headings are provided as an organizational convenience and are not meant to be construed as material provisions of this Agreement.

21.4. Preparation of this Agreement has been a joint effort of the Parties and the resulting document shall not, solely as a member of judicial construction, be construed more severely against one of the parties than the other.

21.5. This Agreement may be executed in counterparts, each constituting a duplicate original, but such counterparts shall constitute one and the same Agreement.

21.6. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement from and after the Effective Date.

- 21.7.** Each Party to this Agreement agrees to do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged and delivered, all such further acts, and assurances in a manner and to the degree allowed by law, as shall be reasonably requested by the other party in order to carry out the intent of and give effect to this Agreement. Without in any manner limiting the specific rights and obligations set forth in this Agreement or illegally limiting or infringing upon the governmental authority of the City, the Parties declare their intention to cooperate with each other in effecting the purposes of this Agreement, and to coordinate the performance of their respective obligations under the terms of this Agreement.
- 21.8.** Except as set forth in this Agreement and the Exhibits hereto, no representation, statement, understanding or agreement, whether written or oral, has been made and there has been no reliance on anything done, said or any assumption in law or fact with respect to this Agreement for the duration, termination or renewal of this Agreement other than as expressly set forth in this Agreement and there has been no reliance upon anything so done or said that in any way tends to change or modify the terms or subject matter of this Agreement or to prevent this Agreement from becoming effective.
- 21.9.** This Agreement supersedes any agreements and understandings, whether written or oral, entered into by the Parties hereto prior to the Effective Date of this Agreement.
- 22. SURVIVABILITY.** Termination or expiration of this Agreement shall not relieve either Party of their respective obligations, which are expressly noted to survive termination or expiration or under the following sections which shall survive termination and expiration: Sections 4.5, 5, 7.2, 7.3, 8, 10, 17, 18, 19, 20, and this Section 21. Sections 4, 7 and 8 (but only to the extent Section 8 corresponds to Sections of the Agreement which survive) of the License and Sections 3, 4, 5, 6, 7 and 8 (but only to the extent Section 8 corresponds to Sections of the Agreement which survive) of the Lease shall survive any expiration or termination of this Agreement, the License or the Lease.
- 23. SEVERABILITY.** If any covenant or provision of this Agreement is, or is determined to be, invalid, illegal or unenforceable by a court of competent jurisdiction, then such covenant or provision will be ineffective only to the extent of such prohibition or invalidity. All remaining covenants and provisions of this Agreement shall nevertheless remain in full force and effect, and no covenant or provision of this Agreement shall be deemed to be dependent upon any covenant or provision so determined to be invalid, illegal or unenforceable unless otherwise expressly provided for herein. The invalidity of any provision of this Agreement or any covenant herein contained on the part of any party shall not affect the validity of any other provision or covenant hereof or herein contained which shall remain in full force and effect.

24. Each party acknowledges that it has read this Agreement and understands the terms and conditions herein. Further, the Parties have caused this Agreement to be executed on its behalf by the authorized officer whose signature appears below under its name, to be effective as of the date written above.

IN WITNESS WHEREOF, the Parties hereto have set their hands by their duly authorized representatives as of the day and year first above written.

NovoaGlobal, Inc.

Carlos Lofstedt
President and CEO

City of Tukwila, Washington

Allan Ekberg
Mayor

EXHIBIT A SERVICES

NG shall provide the City with the Systems. In connection with furnishing the Systems, NG shall provide the following to the City, each of which is more fully described below:

1. SITE INSTALLATION PLANNING; DESIGN AND EQUIPMENT INSTALLATION
2. TRAINING AND SUPPORT
3. CITATION PREPARATION AND PROCESSING SERVICES
4. MAINTENANCE
5. PUBLIC EDUCATION CAMPAIGN
6. EXPERT WITNESS TESTIMONY AND COURT TRAINING
7. REPORTING

1. **SITE INSTALLATION PLANNING, DESIGN AND EQUIPMENT INSTALLATION**

1.1. *The Systems.*

1.1.1. NG will initially install two (2) Systems (which shall remain property of NG), monitoring such locations as the City and NG shall mutually agree. Up to fifty (50) additional Systems may be added at the option of the City with NG's consent. None of the quantities mentioned under this paragraph shall be interpreted as mandatory quantities. The actual quantities to be installed can only be approved by the City. The installation of any system will require the written approval of the Mayor or his/her designee. Each System shall comprise of equipment capable of monitoring violations at a single approach to a school zone for up to five lanes of traffic. NG will install new Systems upon mutual agreement of the Parties. School zone fixed speed enforcement systems will conduct enforcement while beacon systems are in an activated state within the identified school zone. NG will ensure school zone fixed speed enforcement systems are integrated with City's school zone flashing beacons, if present.

1.1.2. Automated traffic safety cameras shall only take pictures of the vehicle and vehicle license plate. The image must not display the face of the driver or of passengers in accordance with RCW 46.63.170(1)(d).

1.1.3. The Systems shall include all equipment located on each roadway or in the right of way, telecommunications equipment, and Software and shall have the capability of transferring images from the roadside in accordance with RCW 46.63.170 to be accessed at the City's Police Department processing facility.

- 1.1.4. Substitution, Relocation, or Addition of a Site. If NG or the City reasonably determines that one or more sites selected for installation of a System is not for any reason appropriate for the System (and such determination is made at least fifteen (15) days prior to the commencement of installation of the System at any such location), then alternate location(s) may be substituted by written consent of the Parties. If the average monthly violation collected from any individual system does not meet the level required for the individual system to be cost neutral for a period of twelve (12) consecutive months, the City shall have the right to request relocation of the system to a more effective location. This request must be in writing and before twenty four (24) months of the expiration of the contract or any of its extensions. In response to said request, NG shall have the option to comply with the request, reduce the fee temporarily, or permanently reduce the fee to a level equal to the violation (revenue) collected from that individual system.
- 1.1.5. Timeframe for Installation of the System. NG shall install and activate the Systems in accordance with an installation timeline to be mutually agreed to by NG and the City, which installation shall conclude within sixty (60) days after all necessary permits and approvals are received by NG. NG shall endeavor to install the System in accordance with the schedule set forth in the Implementation Plan. The City agrees that the estimated dates of installation and activation of the System set forth in the Implementation Plan are subject to delay based on conditions beyond the control of NG and are not guaranteed.
- 1.1.6. Installation/Ownership of the System. NG shall procure, install and provide support of installed equipment at each of the agreed upon locations. As between NG and the City, all components for the System will remain the property of NG.

1.2. Installation

- 1.2.1. NG shall submit plans and specifications to the City for review and approval.
- 1.2.2. All cameras and other equipment shall be enclosed in lockable, weather and vandal-resistant housing. All wiring shall be internal to equipment (not exposed) and if commercially reasonable and if capacity exists, underground in existing conduits, except where required to directly interface with existing electrical service. Separate conduits or other methods, as approved by the City or electrical service provider, may be used by NG if existing conduit(s) are at capacity.

- 1.2.3. NG will not enter City’s traffic signal control boxes without permission and/or authorization of the City’s Public Works Department.
 - 1.2.4. The provision, installation, and maintenance of all necessary electronic system communication equipment will be the sole responsibility of NG.
 - 1.2.5. The System may be mounted on or utilize support of existing traffic signal poles, arms or other City-owned structures where possible, subject to City review and approval.
 - 1.2.6. The System poles, foundations, signs, and new infrastructure, as required, shall conform to applicable law.
- 1.3. Restoration of Roadways and/or Right of Way. Upon termination or expiration of the Agreement, NG shall remove the System and restore the affected public facilities including returning the roadway and/or right of way to their original condition; provided, however, that NG shall not be required to remove any conduit, in-ground fixture, underground wiring or other infrastructure that will require excavation or demolition. All costs incurred by NG thereby will be the responsibility of NG.
- 1.4. Compliance with Law. NG shall design and install the System in compliance with all currently existing federal, state and local laws and regulations. NG covenants and agrees that its Systems shall, at all times, comply with all applicable laws, regulations, rules and orders (“Legal Requirements”). NG shall continuously monitor the status of such Legal Requirements to ensure continuous compliance. In the event of any change in the Legal Requirements, NG shall modify or replace (at its sole cost) all or any portion of its non-compliant Systems. Any such modification shall be effected by NG in a reasonable period of time (not to exceed ninety (90) days for modification or one hundred eighty (180) days for complete system replacement) and NG’s failure to effect such modification or replacement in a timely manner shall be grounds for the City to terminate this Agreement for cause. Any such termination shall not relieve NG of its obligation to restore each site to its original condition.
2. **TRAINING OF CITY PERSONNEL.** After System installation, NG shall provide up to eight (8) hours of training for up to ten (10) persons at two (2) sessions at the City’s facilities to acquaint City personnel with System operation. Training shall consist of instructional and operational training as well as hands-on equipment exercises with an instructor. All necessary training materials and documentation will be provided by NG at NG’s expense. NG shall make all such training services available to the City prior to the end of the thirty (30) day period following the Installation Date. If the City requests additional courses or training, NG shall provide these on a cost reimbursement basis.

Additionally, NG will provide and maintain a web-based training service that includes basic operation instructions as well any system or procedure changes to ensure continuity for court personnel and law enforcement end users.

3. CITATION PREPARATION AND PROCESSING SERVICES

- 3.1. Citation Preparation and Processing. NG shall (1) perform the initial review of all data generated at the roadside, (2) process and format violations utilizing a computerized traffic citation program that shall store all information required for citation processing required by state law, local law, and in accordance with court of jurisdiction's specifications, and (3) transfer the citations to the Police Department's computer for review and decision on whether or not to issue a citation. If NG is permitted by applicable law or regulation to do so, NG shall also review all Washington State Department of Licensing information and print and mail citation forms. NG shall pay all mailing and postage costs, and such other miscellaneous costs and expenses as may be reasonably necessary to issue a citation and deliver it by U.S. mail. To the extent required by applicable law, NG shall obtain a certification of mailing issued by the U.S. Post Office. Notwithstanding anything to the contrary in the foregoing provisions of this Section 3.1, NG will shall not process nor support any citations not captured by the System and/or approved by the City.
- 3.2. Officer Discretion. NG recognizes and agrees that the decision to issue or dismiss a citation shall be the sole and exclusive decision of a sworn officer of the City's Police Department. In no event shall any NG employee or representative have the ability to authorize or dismiss any citations.
- 3.3. Mailing of Citations. Citations shall be mailed to the violator as soon as is reasonably practicable, and in no event longer than ten (10) business days after being approved by the City and NG has been notified of such approval. The form of citation shall be subject to the approval of the City.
- 3.4. Cooperation With Police and the Courts. NG shall be responsible for, and pay for, the cost of issuing and the mailing citations in accordance with applicable law. NG shall coordinate with the City and the courts and shall comply with the applicable law and court procedures regarding the mailing and other requirements necessary for the issuance and processing of traffic citations. All citations shall be reviewed and approved by the City's Police Department prior to mailing. In addition, NG will cooperate with the courts to set up the necessary communications systems for processing. It is agreed that the Tukwila Municipal Court will be solely responsible for processing delinquent notices.

- 3.5. With respect to each violation authorized by the City, within five (5) business days after NG's receipt of such authorization, NG shall file with the Tukwila Municipal Court, a copy (electronic or otherwise) of the citation. NG acknowledges that Washington State law requires all citations be filed within five days of issuance (i.e., date signed by Police Officer) or the infraction is subject to dismissal under court rule. Filing of citations within five days of issuance shall be considered a material provision of this Agreement. This paragraph only applies in case that the City chooses to use JIS. If the City elects to use NG's Back Office then no filing would be required.
- 3.6. Rental car and business vehicles. NG will coordinate with the City and Courts to establish an acceptable procedure to streamline and coordinate the processing, notification, and accountability of rental car violation and corporate vehicle violations.
- 3.7. Preparation of Evidence Packages. NG shall provide electronic copies of evidence packages in such form as may be reasonably agreed upon with the courts to enable the City to enforce its citations in court.
- 3.8. Access to License Information. NG shall maintain the ability to access the license information and the registered owner residence address for all U.S. registered vehicles, and the per-request fee for information, if any, shall be paid by NG. If possible, NG will identify rental vehicle and corporate vehicle violations to migrate and merge original violation with rental and business nomination for appropriate processing needs. If NG is unable to access such information, NG shall provide the make and license plate number of each violator to the City, which will obtain and input the information into the System, or provide such information to NG within a reasonable period of time.
- 3.9. Numbering System. NG, in coordination with the City, shall develop and implement an independent numbering system for automated safety camera speeding citations. This numbering system should be at least 9 digits and start with the two letters SC (denoting Safety Camera). The final 7 digits should be numeric.
- 3.10. Transmission of Information. NG shall make all citation information available to the City via an electronic file using comma separated value files on a secure FTP site. NG shall maintain a documented chain of custody for all electronically transmitted information while the information is under NG's control.

4. MAINTENANCE

- 4.1. Maintenance of System. Except as provided herein, NG shall Maintain the System (as such term is defined below); provided however, that NG shall not be responsible

for any maintenance, repair or replacement required as a result of (i) the negligence or intentional act of the City, its employees, agents or independent contractors (other than NG) and/or (ii) any equipment or software not provided by NG. NG shall maintain a maintenance log that documents all service issues. To “Maintain the System” shall mean to keep the System in a state of operation such that the System’s functionality and operation conforms in all material respects to the description of the System set forth in this Exhibit. All problems shall be documented, and repairs commenced within seventy-two (72) business hours after the time NG receives notice thereof. NG shall also install all software revisions for Systems as and when developed and made commercially available by NG. NG is responsible to ensure systems are operational. NG will repair and upgrade as needed, including any vandalized equipment, and maintain a reasonably clean appearance and in a graffiti-free condition. Graffiti shall be removed within 7 days of notice to NG.

- 4.2. Equipment Checks. When possible, NG shall perform remote camera and equipment checks to confirm proper operation of computers, cameras and communications network. In-field camera equipment inspection will be done as needed or when remote camera and equipment checks are not possible. The System shall have the capability of on-line monitoring of all cameras in each school zone.
- 4.3. NG will conduct routine testing, evaluation, and monitor the system to ensure the system is operational. If a deficiency, malfunction, or failure of the system is detected, NG will notify the City’s Police Department within 72 hours by written or electronic notification. If the system cannot be restored or repaired to full functional capability within 7 consecutive calendar days, NG will reduce the fee to reflect the time the system is deficient, malfunctioning, or failing. The fee reduction shall be applied to the affected billing cycle and continue until the system is restored to full operation. This reduction shall be identified on the billing statement to the City’s Police Department.

5. PUBLIC EDUCATION CAMPAIGN

- 5.1. Public Awareness Program. NG shall assist the City with a Public Awareness Program. Such assistance shall consist of:
 - 5.1.1. Paying for and installing all signage required by State law and local ordinance or as otherwise required by resolution of the City’s Council
 - 5.1.2. Reasonable assistance for a media event to launch the community education program

- 5.1.3. Preparing, publishing, and printing brochures in as many languages as possible, but at least in English and Spanish
- 5.1.4. A reasonable amount of training for City staff.
- 5.1.5. Providing a multi-lingual (including English and Spanish) toll-free customer service hotline which shall be staffed sufficiently during all regular business hours.

6. EXPERT WITNESS TESTIMONY AND COURT TRAINING

- 6.1. Expert Witness Testimony. NG shall provide expert witness testimony at its sole expense, as necessary, to testify regarding the accuracy and technical operation of the System as necessary for court challenges to the operation of the System.
- 6.2. Court Training. NG shall conduct a one-day workshop-orientation session for Municipal Court judges (and/or their designees), hearing officers, other appropriate court officials and the City prosecutor. NG will provide and maintain a web-based training service to the City that includes information regarding basic operation and any system or procedure changes to ensure continuity for court staff end users.

7. REPORTING

- 7.1. Bi-Monthly Report. NG shall submit to the City a Bi-Monthly Report on project results within fifteen (15) days after the end of two-week period and provide web access to such reports.
- 7.2. Monthly Report. NG shall submit to the City's Public Works Department a monthly Report on statistical information regarding traffic volumes, average speed, and traffic congestion within thirty (30) days after the end of calendar month. Web access to such reports shall also be provided to City's Public Works Department.
- 7.3. Annual Report. NG shall submit an annual report of the number of citations issued for each camera system and any other relevant information about the automated traffic safety cameras the City deems appropriate for the City's web page.
- 7.4. Additional Reports or Information. Any other reports and information are not part of the Agreement and the preparation and delivery of any other such reports or information may result in additional fees.
- 7.5. Database. NG shall maintain a database with the following information per violation:
 - 7.5.1. Location, date and time

- 7.5.2. Speed of vehicle
 - 7.5.3. Vehicle description including license plate state and number
 - 7.5.4. Applicable vehicle code section violated (if available to NG)
 - 7.5.5. Citation prepared or reason for not preparing citation (if available to NG)
 - 7.5.6. Registered vehicle owner's name and address, and related information required to prepare citations where violation is made by a driver other than registered owner (if available to NG) (i.e., Affidavit of Non-Liability)
 - 7.5.7. Status of citation (outstanding, cancelled, reissued, paid, bail forfeited, traffic school, warrants issued, etc.) (if available to NG)
- 7.6. NG shall maintain, at its sole expense, all records, including, but not limited to all video recordings, which it generates or receives as a result of the performance of services pursuant to the Agreement for the period of time required by, and otherwise in accordance with, the Revised Code of Washington, Chapter 42.56, Public Records Act and Revised Code of Washington 46.63.170 as same may be amended from time to time. Upon receipt of a request from the City for a copy of any record being maintained by NG, NG shall provide the requested record to the City within a reasonable time following such request, but in no event later than seven (7) days following the date the request is received by NG.
- 7.7. Additional Services (if requested by the City in writing):
- 7.7.1. School Zone Assessment Program. NG will generate a video-based analysis of school zones designed to evaluate the frequency of school zone speed violations for each approach to the targeted school zone. The video media will contain up to 16 hours of video monitoring assuming the equipment remains installed at the school zone during the course of monitoring, but not to exceed three consecutive calendar days. A report summarizing the results, along with the media generated will be provided to the City. There is no charge for the initial 16 approaches or any future system placement requests to be evaluated by NG pursuant to this Agreement.

EXHIBIT B
LICENSE AGREEMENT FOR NG SAFETY SYSTEM SOFTWARE

This LICENSE AGREEMENT (the “License”) is part of an agreement (the “Agreement”) (to which a copy of this License is attached as Exhibit B) between the City named in the Agreement and NovoaGlobal, Inc. (“NG”) for the NG software product identified above, which includes computer software and may include associated media, printed materials, and “online” or electronic documentation (the “SOFTWARE PRODUCT”). The SOFTWARE PRODUCT also includes any updates and supplements to the original SOFTWARE PRODUCT provided to the City by NG. Any software provided along with the SOFTWARE PRODUCT that is associated with a separate license agreement is licensed to the City under the terms of that license agreement. By execution of the Agreement, the City has agreed to be bound by the terms of this License. Such agreement by the City is an express condition to its ability to use the SOFTWARE PRODUCT.

1. GRANT OF LICENSE. The SOFTWARE PRODUCT is licensed, not sold. This License grants the City only the following rights: The City may use those copies of the SOFTWARE PRODUCT as installed by NG on its network (“Network”).
2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS. The City may not reverse engineer, decompile, or disassemble the SOFTWARE PRODUCT, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. The SOFTWARE PRODUCT is licensed as a single product. Its component parts may not be separated for use on more than one computer unless so installed by NG. The City may not rent, lease, transfer or lend the SOFTWARE PRODUCT. This License does not grant the City any rights in connection with any trademarks or service marks of NG. Without prejudice to any other rights, NG may terminate this License if the City fails to comply with the terms and conditions of this License.
3. SUPPORT SERVICES AND UPGRADES. NG may provide the City with support services related to the SOFTWARE PRODUCT (“Support Services”). Use of Support Services is governed by the Agreement. Any supplemental software code provided to the City as part of the Support Services shall be considered part of the SOFTWARE PRODUCT and subject to the terms and conditions of this License. With respect to technical information the City provides to NG as part of the Support Services, NG may use such information for its business purposes, including for product support and development. In particular, NG will not utilize such technical information in a form that personally identifies the City or any motor vehicle, tag or person. If the SOFTWARE PRODUCT is labeled as an upgrade, the City must be properly licensed to use a product identified by NG as being eligible for the upgrade in order to use the SOFTWARE PRODUCT. A SOFTWARE PRODUCT labeled as an upgrade replaces and/or supplements the product that formed the basis for the City’s eligibility for the upgrade. The City may use the resulting upgraded product only in accordance with the terms of this License. If the SOFTWARE PRODUCT is an upgrade of a component of a package of

software programs that the City licensed as a single product, the SOFTWARE PRODUCT may be used and transferred only as part of that single product package and may not be separated for use on more than one computer.

4. COPYRIGHT. All title and intellectual property rights in and to the SOFTWARE PRODUCT (including but not limited to any images, photographs, animations, video, audio, music, text, and “applets” incorporated into the SOFTWARE PRODUCT), the accompanying printed materials, and any copies of the SOFTWARE PRODUCT are owned by NG or its suppliers. As between the City and NG, all title and intellectual property rights in and to the images and information which may be generated through use of the SOFTWARE PRODUCT is the City’s property. All rights not expressly granted are reserved by NG.
5. BACKUP COPY. After installation of one copy of the SOFTWARE PRODUCT pursuant to this License, the City may keep the original media on which the SOFTWARE PRODUCT was provided by NG solely for backup or archival purposes. If the original media is required to use the SOFTWARE PRODUCT on the COMPUTER, the City may make one copy of the SOFTWARE PRODUCT solely for backup or archival purposes. Except as expressly provided in this License, the City may not otherwise make copies of the SOFTWARE PRODUCT or the printed materials accompanying the SOFTWARE PRODUCT.
6. COMPLIANCE WITH LAW AND EXPORT RESTRICTIONS. The City represents and agrees that it does not intend to and will not use, disseminate or transfer in any way the SOFTWARE PRODUCT in violation of any applicable law, rule or regulation of the United States, or any State of the United States or any foreign country of applicable jurisdiction. Without limiting the foregoing, the City agrees that it will not export or re-export the SOFTWARE PRODUCT to any country, person, entity or end user subject to U.S. export restrictions. The City specifically agrees not to export or re-export the SOFTWARE PRODUCT: (i) to any country to which the U.S. has embargoed or restricted the export of goods or services, which currently include, but are not necessarily limited to Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria, or to any national of any such country, wherever located, who intends to transmit or transport the products back to such country; (ii) to any end-user who the City knows or has reason to know will utilize the SOFTWARE PRODUCT or portion thereof in the design, development or production of nuclear, chemical or biological weapons; or (iii) to any end-user who has been prohibited from participating in U.S. export transactions by any federal agency of the U.S. government.
7. OTHER PROVISIONS. Sections 3, 4, 7, 10, 17, 18, 19, 20, and 22 of the Agreement are hereby incorporated by reference as if herein set forth in full.

EXHIBIT C
LEASE AGREEMENT FOR NG SAFETY SYSTEMS

This LEASE AGREEMENT (the “Lease”) is part of an agreement (the “Agreement”) (to which a copy of this Lease is attached as Exhibit C) between the City named in the Agreement (“City”) and NovoaGlobal, Inc (“NG”) (collectively, the “Parties”). The Parties hereto agree as follows:

1. LEASE. NG hereby leases to the City and the City hereby leases from NG, subject to the terms and conditions of this Lease, such items of System equipment (together with all attachments, replacements, parts, additions, substitutions, repairs, accessions and accessories incorporated therein and/or affixed thereto, the “Equipment”) that the City obtains possession, custody or control of pursuant to the Agreement.
2. USE AND LOCATION. The Equipment shall be used and operated by the City only in connection with the operation of the System by qualified employees of and in accordance with all applicable operating instructions, and applicable governmental laws, rules and regulations. The City shall not part with control or possession of the Equipment without NG’s prior written consent.
3. CONDITION. NG shall maintain the Equipment in good condition and working order in accordance with Section 4 of Exhibit A. The City shall not damage the Equipment or make any alterations, additions or improvements to the Equipment without NG’s prior written consent unless such alterations, additions or improvements do not impair the commercial value or the originally intended function or use of the Equipment and are readily removable without causing material damage to such Equipment so as to return the Equipment to its original state, less ordinary wear and tear. Any alteration, addition or improvement not removed prior to the return of the Equipment shall without further action become the property of NG, provided, however, that any alterations, additions and improvements which would reduce the value of the Equipment must be removed prior to the return of such Equipment.
4. RETURN. Upon the expiration or earlier termination of the Agreement, the City shall allow NG reasonable access to remove the Equipment at NG’s expense.
5. OWNERSHIP, LIENS. The Equipment is and shall at all times be the property of NG. The City agrees to take all action necessary or reasonably requested by NG to ensure that the Equipment shall be and remain personal property. Nothing in this Lease, the Agreement or any Exhibit shall be construed as conveying to the City any interest in the Equipment other than its interest as a lessee hereunder. If at any time during the term hereof, NG wishes to place on the Equipment labels, plates or other markings evidencing ownership, security or

other interest therein, the City shall allow NG reasonable access therefore and keep the same displayed on the Equipment.

6. NO CITY SUBLEASE; ASSIGNMENT. The City shall not assign or in any way dispose or otherwise relinquish possession or control of all or part of its rights or obligations under this lease or enter into any sub-lease of all or any part of the equipment without the prior written consent of NG.
7. OTHER PROVISIONS. Sections 3, 4, 7, 10, 17, 18, 19, 20, and 22 of the Agreement are hereby incorporated by reference as if herein set forth in full.

EXHIBIT D
COMPENSATION AND PRICING

MONTHLY FEE

Pricing for NG Safety Systems relating to fixed speed photo enforcement shall be as follows:

- \$3,999.00 per system per month, with less than 400 citations issued by the City per month.
- \$4,900.00 per system per month, with between 400 and 800 citations issued by the City per month.
- \$5,700.00 per system per month, with more than 800 citations issued by the City per month.

NG acknowledges school zone fixed speed photo enforcement systems will only function during specified times throughout the day and in accordance with City's flashing beacon system, if available.

Additionally, NG acknowledges that schools often take breaks for more than seven (7) consecutive calendar days. These school breaks do not constitute a temporary suspension, as defined below. Consequently, NG shall bill the City monthly fees for all months of the year, but shall reduce the monthly fees for all School Zone Systems by twenty five percent (25%).

Temporary Suspensions. In the event construction by the City causes a disruption of service under the Agreement, upon NG's written request, the term of the Agreement may be extended at the City's sole discretion. For every two (2) months, (per individual system) of disrupted service the Agreement can be extended for a one-month period.

BUSINESS ASSUMPTIONS FOR ALL PRICING OPTIONS

1. Except where a balance remains unpaid due to a deficit in the gross cash received as described herein, City agrees to pay NG within forty-five (45) days after the invoice is received. A monthly late fee of 1.5% is payable for amounts remaining unpaid sixty (60) days from date of invoice or monthly report if such delay is the responsibility of the City.
2. Required Payment Convenience Fees will not be considered to be revenue received and are the responsibility of the violator.
3. Required Refund Fees will not be considered to be revenue received and are the responsibility of the violator.
4. Violations sent to a collection agency will have an additional charge as negotiated with the chosen collection agency in mutual agreement with the City and the applicable court.



INFORMATIONAL MEMORANDUM

TO: Tukwila Community Services and Safety Committee
FROM: Bruce Linton, Chief of Police
BY: Bruce Linton, Chief of Police
CC: Mayor Ekberg
DATE: 06/19/2020

SUBJECT: Tukwila Police Use-Of-Force Policy Review

ISSUE

The #8CantWait police use-of-force reform proposal and campaign has been communicated and shared across the country at the speed of social media in the 21st century. Many agencies are scrambling to adopt significant changes to their use-of-force policies to meet the demands of their respective communities, while agencies with foresight have been making minor adjustments to fully address the rapidly evolving movement towards change. If you are an agency that embraced 21st Century Policing five years ago, you are way ahead in the race to effect change.in the six pillars of 21st Century Policing.

I intend to work in parallel with the Community Services and Safety Committee as I review and (when necessary) adjust the current Tukwila Use-of-Force Policies in consideration of the communicated reform proposals. A copy of the Tukwila Police Department Policy is attached absent the recent directive suspending the use of the Vascular Neck Restraint (VNR) except when an officer is faced with a deadly force situation.

The Tukwila Police Department uses the Lexipol policy for the State of Washington. Lexipol provides fully developed, state-specific law enforcement policies researched and written by subject matter experts and vetted by attorneys. Policies are based on nationwide standards and are the leading content, policy and training platform for public safety and local government, enabling first responders and leaders to better protect their communities and reduce risk. (Policy Attached)

During the use-of-force policy review, I intend to review and consider recommendations from the 2017 National Consensus Policy and Discussion Paper on Use of Force. (Attached).

BACKGROUND

President Obama's Task Force on 21st Century Policing report features 6 pillars:

1. Building Trust & Legitimacy
2. Policy and Oversight
3. Technology & Social Media

4. Community Policing & Crime Reduction
5. Training & Education
6. Officer Wellness & Safety

Since 2016, The Tukwila Police Department have embraced this philosophy that essentially is foundational to today's discussion on police reform. If you look at the police department goals during the last three years of my tenure, you will notice a common theme where each year at least several pillars were representative of the goals selected.

Surveying the environment, anticipating change, and setting a course to navigate that change has been our strategic roadmap. As we examine our policies and practices, balanced against the #8CantWait police reform proposal, I can report that we are on the right path. I will not stop moving forward because I believe there is always room for improvement.

THE #8CantWait police reform proposal calls for:

1. The banning of chokeholds and strangleholds.
2. Required de-escalation using communication, distance, and eliminating the need to use force.
3. Required verbal warning before shooting at a civilian.
4. Requirement to exhaust all other reasonable means before resorting to deadly force.
5. Required intervention by officers to stop excessive use of force and required reporting of these incidents to a supervisor.
6. Banned shooting at moving vehicles, which can be a dangerous and ineffective tactic.
7. Required use of force continuum that limits the types of force/weapons that can be used to respond to specific types of resistance.
8. Required comprehensive reporting when force is used against civilians.

An analysis grounded in the 21st Century pillars will show that The Tukwila Police Department Policies on the use-of-force are balanced and address each of the #8CantWait reform proposals.

ANALYSIS:

GUIDING PRINCIPLES OF THE TUKWILA USE-OF-FORCE POLICY:

As stated in our policy manual, the department recognizes and respects the value of all human life and dignity without prejudice to anyone. Vesting officers with the authority to use reasonable force and to protect the public welfare requires monitoring, evaluation, and a careful balancing of all interests.

The Tukwila Police Department use-of-force policy guidelines provide a basis for officers to make professional, moral, and legal decisions based on a reasonable standard set by the U.S. Supreme court.

The constitutional requirement for the use-of-force by an officer calls for an objective reasonableness standard. Proper and reasonable use of force is measured by the leading case on use of force which is the 1989 Supreme Court decision in *Graham v. Connor*. The Court held, "...that all claims that law enforcement officers have used excessive force – deadly or not – in the course of an arrest, investigatory stop, or other seizure of a free citizen should be analyzed under the Fourth Amendment and its objective reasonableness standard..." This standard is evaluated by a three-pronged test.

1. The severity of the crime at issue
2. Whether the suspect poses an immediate threat to the safety of the officers or others
3. Whether the suspect is actively resisting arrest or attempting to evade arrest by flight

Other factors used to determine the reasonableness of force is listed in the Tukwila policy manual under 300.3.2.

The #8CantWait police reform proposals, along with other important topics are addressed in the following paragraphs:

USE-OF-FORCE CONTINUUMS:

The National Consensus Policy on Use of Force clearly communicate the pitfalls of use-of-force continuums beginning with the use of the term "continuum." It is often interpreted to mean that an officer must begin at one end of a range of use-of-force options and then systematically work his or her way through the types of force that follow on the continuum, such as less-lethal force options, before finally resorting to deadly force. To maintain the safety of both the officer and others, an officer might need to transition from one point on the continuum to another, without considering the options in between in a linear order. For instance, when faced with a deadly threat, it is not prudent to expect an officer to first employ compliance techniques, followed by an electronic control weapon, and only then use his or her firearm. For this reason, the use of a continuum is strongly discouraged. Instead, force models are preferred that allow officers to choose a level of force that is based on legal principles, to include the option

of immediately resorting to deadly force where reasonable and necessary. The Tukwila Police Department does not use or recommend a use-of-force continuum. The constitutional requirement for the use-of-force by an officer calls for an objective reasonableness standard.

BODY-WORN CAMERAS:

The Tukwila Police Department led the way for the full implementation of the bodycam in 2017 after we partnered with Axon to complete a national pilot program which integrated in-car video, bodycams and taser deployments. We led the way in the state of WA with full implementation because it was important to the agency to maintain a level of transparency with our diverse community with the focus on building trust.

USE-OF-FORCE TRACKING & STATISTICS:

We believe that after the bodycam implementation in 2017, we saw a 50% reduction in the use-of-force. Careful monitoring over the years provides for the basis of training and adjustment in our use-of-force practices. Monitoring begins with a review of each officer's use of force, first by the supervisor, then the command staff. Each use of force is logged into The Administrative Investigations Management (AIM) database where all uses of force, complaints and Internal Investigations are completed and saved. The use of the database allows for easy retrieval of statistics and more importantly, there is an early warning/intervention component designed to alert command staff of an officer's use of force that meets a certain criteria set by the agency.

DUTY TO INTERCEDE:

Tukwila Police policy states that, in addition to making the scene secure, officers present have a duty to intercede if they witness excessive force. If an officer believes another officer use or is using force that does not appear reasonable, they need to bring the situation to a safe resolution and report the use of force to a supervisor.

CRISIS INTERVENTION TACTICS:

Officers should consider that taking no action or passively monitoring the situation may be the most reasonable response to a mental health crisis.

Once it is determined that a situation is a mental health crisis and immediate safety concerns have been addressed, responding members should be aware of the following considerations and should generally:

- Evaluate safety conditions.
- Introduce themselves and attempt to obtain the person's name.
- Be patient, polite, calm, courteous and avoid overreacting.
- Speak and move slowly and in a non-threatening manner.
- Moderate the level of direct eye contact.
- Remove distractions or disruptive people from the area.
- Demonstrate active listening skills (e.g., summarize the person's verbal communication).
- Provide for sufficient avenues of retreat or escape should the situation become volatile.

Responding officers generally should not:

- Use stances or tactics that can be interpreted as aggressive.
- Allow others to interrupt or engage the person.
- Corner a person who is not believed to be armed, violent or suicidal.
- Argue, speak with a raised voice, or use threats to obtain compliance.

FORCE DE-ESCALATION:

The agency has been forward leaning in force de-escalation. During the conversation regarding I-940, the legislative mandate for the de-escalation of force, we resourced and coordinated a mandatory de-escalation training taught by a National Leading Law Enforcement Consulting Firm.

Our goal during 2018 was to build trust and legitimacy through community engagement. As we moved forward in making great strides in our efforts to reduce uses-of-force within the Tukwila Police Department, we recognized that de-escalation training and tactics is an important line of effort in reducing use-of-force incidents.

After the Law Enforcement Training and Safety Act (LETSA) was passed, Tukwila Police Department registered three Scenario-Based Trainers to attend the first iteration of the Criminal Justice Training Commission (CJTC) Patrol Tactics Instructor Course geared to teach officers the tactics of integrating de-escalation training into the use-of-force curriculum. Our recently certified instructors are working on current programming and I expect the first 8-hour module will be approved by the CJTC and trained in the 3rd quarter of 2020. If this timeline is accomplished, I believe we will (again) lead the state in LETSA de-escalation training requirements. Clear language will be added to the policy directing de-escalation tactics as required by the state mandated LETSA.

LESS LETHAL FORCE:

Tukwila Less lethal force options range from impact weapons, launched chemical weapons, Oleoresin Capsicum (OC)/Pepper Spray, Kinetic Energy Projectiles/Weapons and Conducted Energy Weapons (Tasers) and use of impact weapons such as the baton or Kinetic Energy Weapons such as less lethal launched impact rounds.

This department is committed to reducing the potential for violent confrontations. Kinetic energy projectiles, when used properly, are less likely to result in death or serious physical injury and can be used to de-escalate a potentially deadly situation

Use of impact weapons, kinetic energy weapons, the Taser in the probe mode and the use of OC constitute a significant level of force that must be justified by a strong governmental interest that compels the employment of such force.

A verbal warning of the intended use of the device should precede its application unless it would otherwise endanger the safety of officers or when it is not practicable due to the circumstances. The purpose of the warning is to give the individual a reasonable opportunity to voluntarily comply and to warn other officers and individuals that the device is being deployed.

Officer's may use CED's in the following circumstances:

1. When a subject causes an immediate threat of harm to officers or others; or

2. When public safety interests dictate that a subject must be taken into custody, and the level of resistance presented by the subject is likely to cause injury to the officer or the subject if hands-on control tactics are used.

Mere flight from a pursuing officer without other known circumstances or factors, is not good cause for the use of the CED to apprehend an individual.

Training in the proper and ethical use of all less lethal force options is required prior to use.

VASCULAR NECK RESTRAINT:

A choke hold is the physical restriction of a person's airway which disrupts their breathing. A lateral vascular neck restraint (VNR) is not a choke hold; regardless, it is confused with the term "choke hold." A VNR is the temporary disruption of the blood flow to the brain by compression of the carotid arteries. It normally takes 4-10 seconds with proper application to render a person unconscious which allows for safe compliant handcuffing avoiding injury to the officer and arrestee. Regardless of the success of this safe technique, the negative response from the community regarding its use (often purported as a "choke hold") has made its use untenable.

I suspended the VNR pending a full review and potential adjustment in consideration of the concerns surrounding its use unless the officer's life is at risk. When trained and used properly, the VNR allows an officer to safely take a resistive/assaultive subject into custody without having to use other intermediate level force such as punches, baton strikes, Taser applications, or impact weapons, which are all less lethal options. VNR when professionally trained and applied by a skilled officer and regulated, will temporarily subdue the combative subject resulting in no injuries to officers and the arrestee.

Continued use of the VNR will be difficult if not impossible; however, I believe law enforcement will lose a viable de-escalation tool because of mis-information associated with improper and untrained use of the variant called the "choke hold" which resulted in the deaths of several subjects.

DEADLY FORCE APPLICATIONS:

The Tukwila Police policy states that deadly force is justified to protect oneself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury.

An officer may use deadly force to stop a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit, a felony involving the infliction or threatened infliction of serious bodily injury or death, and the officer reasonably believes there is an imminent risk of serious bodily injury or death to any other person if the subject is not immediately apprehended.

Under the above circumstances, a verbal warning should precede the use of deadly force, where feasible.

SHOOTING AT OR FROM MOVING VEHICLES:

Shots fired at or from a moving vehicle are rarely effective. Tukwila Police use-of-force policy states that, Officers should move out of the path of an approaching vehicle instead of discharging their firearm at the vehicle or any of its occupants.

An officer should only discharge a firearm at a moving vehicle or its occupants when the officer reasonably believes there are no other reasonable means available to avert the threat of the vehicle, or if deadly force other than the vehicle is directed at the officer or others.

Officers should not shoot at any part of a vehicle to disable the vehicle.

REPORTING THE USE OF FORCE:

Any use of force by a member of this department shall be documented promptly (by the end of shift, unless approved by a supervisor), completely and accurately in a case report and on a Use of Force Report form.

APPLICATION OF HANDCUFFS:

Handcuffs, including temporary nylon or plastic cuffs, may be used only to restrain a person's hands to ensure officer safety. Although recommended for most arrest situations, handcuffing is discretionary and not an absolute requirement of the Department. Officers should consider handcuffing any person they reasonably believe warrants that degree of restraint. However, officers should not conclude that to avoid risk every person should be handcuffed regardless of the circumstances.

While conducting non-compliant handcuffing where a subject is face down on the ground, officers shall not place a knee on the subject's neck. A knee can be placed on the upper portion of the subject back while most of the officer's body weight is concentrated on the opposite knee resting on the ground. This technique avoids damage to the subject's neck caused by prolonged compression while it assists with stabilizing a non-compliant subject while speedily applying restraints. As soon as the restraints are applied, the subject should be assisted up and placed in a sitting position inside of a vehicle.

ANNUAL MANAGEMENT ANALYSIS OF THE USE OF FORCE:

The commander with oversight of the use-of-force training cadre shall compile and analyze the data from use-of-force reports. The intent of the analysis is to identify patterns or trends that could indicate training needs or policy modifications. A report of this analysis shall be prepared for Assistant Chief of Police.

RENDERING MEDICAL AID:

Medical aid shall be obtained for any person who exhibits signs of physical stress, who has sustained a visible injury, or expresses a complaint of injury or continuing pain, or who was rendered unconscious. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored until he/she can be medically assessed.

RESPONSIBILITIES FOR IMMEDIATE MEDICAL CARE:

Whenever practicable, members should take appropriate steps to provide initial medical aid (e.g., first aid, CPR and use of an automated external defibrillator (AED)) in

accordance with their training and current certification levels. This should be done for those in need of immediate care and only when the member can safely do so.

RECOMMENDATION

What police need is support in the following areas.

1. Funding for cognitive/emotional intelligence training such as the Cognitive Command C2 training for officers. Cognitive training has scientifically proven that an officer's mental faculties are pragmatically more important than the weapons on her or his tool belt and it can improve an officer's control of self, others, and the environment during a critical situation to improve officer/citizen safety.
2. Funding the integration of Mental Health Professionals in our patrol function to respond to persons in crisis who are suffering from Mental Illnesses with the intent to unburden the police as opposed to defunding the police.
3. Funding to support the integration of the legislative mandated training because of LETSA. LETSA calls for 24 additional hours of training in scenario-based de-escalation training and 16 hours of implicit bias, Crisis Intervention, and other training such as Cognitive Command Training.

Attachments:

[Tukwila Police Department Policy Manual](#) (link)

The National Consensus Policy on Use of Force



NATIONAL
CONSENSUS
POLICY AND
DISCUSSION
PAPER ON USE OF
FORCE

October 2017

POLICY

This National Consensus Policy on Use of Force is a collaborative effort among 11 of the most significant law enforcement leadership and labor organizations in the United States (see back panel for list). The policy reflects the best thinking of all consensus organizations and is solely intended to serve as a template for law enforcement agencies to compare and enhance their existing policies.

I. PURPOSE

The purpose of this policy is to provide law enforcement officers with guidelines for the use of less-lethal and deadly force.

II. POLICY

It is the policy of this law enforcement agency to value and preserve human life. Officers shall use only the force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others. Officers shall use force only when no reasonably effective alternative appears to exist and shall use only the level of force which a reasonably prudent officer would use under the same or similar circumstances.

The decision to use force “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officer or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.”

In addition, “the ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight...the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.”¹

This policy is to be reviewed annually and any questions or concerns should be addressed to the immediate supervisor for clarification.

III. DEFINITIONS

DEADLY FORCE: Any use of force that creates a substantial risk of causing death or serious bodily injury.

LESS-LETHAL FORCE: Any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another.

OBJECTIVELY REASONABLE: The determination that the necessity for using force and the level of force used is based upon the officer’s evaluation of the situation in light of the totality of the circumstances known to the officer at the time the force is used and upon what a reasonably prudent officer would use under the same or similar situations.

SERIOUS BODILY INJURY: Injury that involves a substantial risk of death, protracted and obvious disfigurement, or extended loss or impairment of the function of a body part or organ.

DE-ESCALATION: Taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary. De-escalation may include the use of such techniques as command presence, advisements, warnings, verbal persuasion, and tactical repositioning.

EXIGENT CIRCUMSTANCES: Those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical

1 *Graham v. Connor*, 490 U.S. 386 (1989).

2 Based on the definition from *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.²

CHOKER HOLD: A physical maneuver that restricts an individual's ability to breathe for the purposes of incapacitation. This does not include vascular neck restraints.

WARNING SHOT: Discharge of a firearm for the purpose of compelling compliance from an individual, but not intended to cause physical injury.

IV. PROCEDURES

A. General Provisions

1. Use of physical force should be discontinued when resistance ceases or when the incident is under control.
2. Physical force shall not be used against individuals in restraints, except as objectively reasonable to prevent their escape or prevent imminent bodily injury to the individual, the officer, or another person. In these situations, only the minimal amount of force necessary to control the situation shall be used.
3. Once the scene is safe and as soon as practical, an officer shall provide appropriate medical care consistent with his or her training to any individual who has visible injuries, complains of being injured, or requests medical attention. This may include providing first aid, requesting emergency medical services, and/or arranging for transportation to an emergency medical facility.
4. An officer has a duty to intervene to prevent or stop the use of excessive force by another officer when it is safe and reasonable to do so.
5. All uses of force shall be documented and investigated pursuant to this agency's policies.

B. De-escalation

1. An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training whenever possible and appropriate before resorting to force and to reduce the need for force.
2. Whenever possible and when such delay will not compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime, an officer shall allow an individual time and opportunity to submit to verbal commands before force is used.

C. Use of Less-Lethal Force

When de-escalation techniques are not effective or appropriate, an officer may consider the use of less-lethal force to control a non-compliant or actively resistant individual. An officer is authorized to use agency-approved, less-lethal force techniques and issued equipment

1. to protect the officer or others from immediate physical harm,
2. to restrain or subdue an individual who is actively resisting or evading arrest, or
3. to bring an unlawful situation safely and effectively under control.

D. Use of Deadly Force

1. An officer is authorized to use deadly force when it is objectively reasonable under the totality of the circumstances. Use of deadly force is justified when one or both of the following apply:
 - a. to protect the officer or others from what is reasonably believed to be an immediate threat of death or serious bodily injury
 - b. to prevent the escape of a fleeing subject when the officer has probable

cause to believe that the person has committed, or intends to commit a felony involving serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to the officer or another if the subject is not immediately apprehended

2. Where feasible, the officer shall identify himself or herself as a law enforcement officer and warn of his or her intent to use deadly force.³

3. Deadly Force Restrictions

a. Deadly force should not be used against persons whose actions are a threat only to themselves or property.

b. Warning shots are inherently dangerous. Therefore, a warning shot must have a defined target and shall not be fired unless

(1) the use of deadly force is justified;

(2) the warning shot will not pose a substantial risk of injury or death to the officer or others; and

(3) the officer reasonably believes that the warning shot will reduce the possibility that deadly force will have to be used.

c. Firearms shall not be discharged at a moving vehicle unless

(1) a person in the vehicle is threatening the officer or another person with deadly force by means other than the vehicle; or

(2) the vehicle is operated in a manner deliberately intended to strike an officer or another person, and all other reasonable means of defense have been exhausted (or are not present or practical), which includes moving out of the path of the vehicle.

d. Firearms shall not be discharged from a moving vehicle except in exigent circumstances. In these situations, an officer must have an articulable reason for this use of deadly force.

e. Choke holds are prohibited unless deadly force is authorized.⁴

E. Training

1. All officers shall receive training, at least annually, on this agency's use of force policy and related legal updates.

2. In addition, training shall be provided on a regular and periodic basis and designed to

a. provide techniques for the use of and reinforce the importance of de-escalation;

b. simulate actual shooting situations and conditions; and

c. enhance officers' discretion and judgment in using less-lethal and deadly force in accordance with this policy.

3. All use-of-force training shall be documented.

³ *Tennessee v. Garner*, 471 U.S. 1 (1985).

⁴ Note this prohibition does not include the use of vascular neck restraints.

Every effort has been made to ensure that this document incorporates the most current information and contemporary professional judgment on this issue. However, law enforcement administrators should be cautioned that no "sample" policy can meet all the needs of any given law enforcement agency.

Each law enforcement agency operates in a unique environment of court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements that must be considered, and should therefore consult its legal advisor before implementing any policy.

DISCUSSION PAPER

This *Discussion Paper on the National Consensus Use of Force Policy* is a collaborative effort among 11 of the most significant law enforcement leadership and labor organizations in the United States. The paper reflects the best thinking of all Consensus organizations and is intended to provide background information for law enforcement agencies to consider when implementing the *National Consensus Policy on Use of Force* in their own agencies.

I. INTRODUCTION

Managing uses of force by officers is one of the most difficult challenges facing law enforcement agencies. The ability of law enforcement officers to enforce the law, protect the public, and guard their own safety and that of innocent bystanders is very challenging. Interactions with uncooperative subjects who are physically resistant present extraordinary situations that may quickly escalate. Ideally, an officer is able to gain cooperation in such situations through the use of verbal persuasion and other de-escalation skills. However, if physical force is necessary, an officer's use of force to gain control and compliance of subjects in these and other circumstances must be objectively reasonable.

While the public generally associates law enforcement use of force with the discharge of a firearm, use of force includes a much wider range of compliance techniques and equipment. These less intrusive, but more common uses of force may range from hand control procedures to electronic control weapons, pepper aerosol spray, or various other equipment and tactics.

A. National Consensus Policy on Use of Force

In recognition of the increased focus on law enforcement use of force, in April 2016, the International Association of Chiefs of Police and the Fraternal Order of Police convened a symposium to discuss the current state of policing, in general, and use of force, in particular, inviting several of the leading law enforcement leadership and labor organizations to attend. The United States Supreme Court has provided clear parameters regarding the use of force. However, how this guidance is

operationalized in the policies of individual law enforcement agencies varies greatly. This creates a landscape where each agency, even neighboring jurisdictions, are potentially operating under differing, inconsistent, or varied policies when it comes to the most critical of topics.

Symposium members decided to address these disparities by creating a policy document on use of force that can be used by all law enforcement agencies across the country. The goal of this undertaking was to synthesize the views of the participating organizations into one consensus document that agencies could then use to draft or enhance their existing policies. The final product, the *National Consensus Policy on Use of Force (Consensus Policy)*, was published in January 2017.

The *Consensus Policy* incorporates the most current information and contemporary professional judgment and is designed to provide a framework of critical issues and suggested practices from which agencies can develop their own use-of-force policies. *It is not intended to be a national standard by which all agencies are held accountable, and agencies are not required to institute the Consensus Policy.*

Rather, chief executives should use the document as a guideline, while taking into account the specific needs of their agencies, to include relevant court rulings, state laws, local ordinances, regulations, judicial and administrative decisions, and collective bargaining agreements. Many chief executives might wish to make their own policies more restrictive than the *Consensus Policy*. As with any policy, before implementing these suggested guidelines, agencies should consult their legal advisors.

This paper is designed to accompany the *Consensus Policy* and provide essential background material and supporting documentation to promote greater understanding of the developmental philosophy and implementation guidelines for the *Consensus Policy*. Chief executives should use the information contained herein to better inform their decisions on whether to implement the various directives found in the *Consensus Policy* in their own agencies.

B. Scope of Policy

Law enforcement agencies must provide officers with clear and concise policies that establish well-defined guidelines on the use of force. It is essential that officers have a complete understanding of agency policy on this critical issue, regularly reinforced through training. Therefore, a use-of-force policy should be concise and reflect clear constitutional guidance to adequately guide officer decision making. Policies that are overly detailed and complex are difficult for officers to remember and implement and, as such, they create a paradox. While they give officers more detailed guidance, they can also complicate the ability of officers to make decisions in critical situations when quick action and discretion are imperative to successful resolutions. The *Consensus Policy* is purposefully short and provides the necessary overarching guidelines in a succinct manner, while restricting force in certain situations.

Some agencies may choose to develop separate policies on less-lethal versus deadly force. However, law enforcement use of both deadly and less-lethal force is governed by the same legal principles and, therefore, the *Consensus Policy* elects to address the entire spectrum of force in one document. While the development of individual policies on the use of specialized force equipment is a prudent approach, the legal grounds for selection and application of any force option applied against a subject should be based on the same legal principles cited in the *Consensus Policy*.

It is also not the intended scope of either the *Consensus Policy*, or this discussion document, to

address issues relating to reporting use-of-force incidents; training of officers in the handling, maintenance, and use of weapons; investigation of officer-involved shooting incidents; officer post-shooting trauma response; and early warning systems to identify potential personnel problems. Instead, agencies are urged to develop separate policies addressing each of these topics.

II. Legal Considerations

Use of force may have potential civil and criminal consequences in state or federal courts or both. As scores of these actions have demonstrated, the scope and the wording of agency policy can be crucial to the final resolution of such cases. It should be emphasized that liability can arise for an involved officer; the law enforcement agency; agency administrator(s); and the governing jurisdiction.

At a minimum, agency policy must meet state and federal court requirements and limitations on the use of force, with the U.S. Constitution forming the baseline for the establishment of rights. While states cannot take away or diminish rights under the U.S. Constitution, they can, and often do, expand upon those rights. In such cases, law enforcement administrators must establish an agency policy that meets the more stringent use-of-force guidelines of their state constitution and statutory or case law interpreting those provisions. It is strongly recommended that this and other policies undergo informed, professional legal review before they are sanctioned by the agency.

A. Use of Policy in Court

Courts vary as to whether agency policy can be introduced and carry the same weight as statutory law. However, in some cases, it may be permissible to introduce at trial the issue of officer noncompliance for whatever weight and significance a jury feels appropriate. Law enforcement administrators should develop strong and definitive policies and procedures without fear that they might prove prejudicial to a future court assessment of an officer's conduct. In fact, by adopting a use-

of-force policy in clear and unequivocal terms, agencies can prevent more serious consequences for themselves, their officers, and their jurisdiction.

B. Federal Guidelines for Use of Force

There are two landmark decisions by the United States Supreme Court that guide law enforcement use of force: *Tennessee v. Garner* and *Graham v. Connor*.¹ Following is a brief review of each case.

Tennessee v. Garner. In *Garner*, a Memphis, Tennessee, police officer, acting in conformance with state law, shot and killed an unarmed youth fleeing over a fence at night in the backyard of a house he was suspected of burglarizing. The court held that the officer's action was unconstitutional under 42 U.S.C. 1983, stating that "such force may not be used unless it is necessary to prevent the escape and the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others."²

The court ruled that apprehension by the use of deadly force is a seizure subject to the Fourth Amendment's reasonableness requirement. Thus, even where an officer has probable cause to arrest someone, it may be unreasonable to do so through the use of deadly force.

Graham v. Connor. In *Graham*, a diabetic man seeking to counter the effects of an insulin reaction entered a convenience store with the intent of purchasing some orange juice. After seeing the line of people ahead of him, Graham quickly left the store and decided instead to go to a friend's house. An officer at the store, Connor, determined Graham's behavior to be suspicious and proceeded to follow and then stop the car in which Graham was a passenger. Graham was subsequently handcuffed and received multiple injuries, despite attempts to inform Connor and the other responding officers of his medical condition. Graham was released once Connor confirmed that

no crime had been committed in the store, but later filed suit alleging excessive use of force.

The court ruled that claims of law enforcement excessive use of force must be analyzed using an "objective reasonableness" standard. Specifically, the court stated "[t]he Fourth Amendment 'reasonableness' inquiry is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation."³

C. Defining a Reasonable Use of Force

The potential of civil or criminal litigation involving deadly force incidents also necessitates close scrutiny of the language employed in a use-of-force policy by legal authorities. Law enforcement administrators should work closely with knowledgeable attorneys in determining the suitability of the use-of-force policy to their local requirements, needs, and perspectives. Deliberation over phrasing or word usage might seem inconsequential or excessive, but such terms can, and do, have significant consequences in a litigation context.

The use of commonly employed terms and phrases, even though well intentioned, can cause unexpected and unnecessary consequences for the officer and the agency. For example, phrases like "officers shall exhaust all means before resorting to the use of deadly force" present obstacles to effective defense of legitimate and justifiable uses of force. Such language in a policy can unintentionally impose burdens on officers above those required by law.

1 *Tennessee v. Garner*, 471 U.S. 1 (1985); *Graham v. Connor*, 490 U.S. 386 (1989).

2 *Garner*, 471 U.S. 1.

3 *Graham*, 490 U.S. at 396–397.

The foregoing discussion is not meant to suggest that law enforcement agency policy must be established only with potential litigation in mind. On the contrary, law enforcement administrators should use language that properly guides officers' decision-making consistent with agency goals and values while also protecting the officer, the agency, and the community from unnecessary litigation. There is value in using verbiage from statutes, case law, and regulations in policy as a means of providing officers with clearer guidance.

Training should effectively translate the general guiding principles of agency policy and operational procedures into real-world scenarios through understanding and practice. Training shares an equal importance in agency efforts to control and manage the use of force and, as such, can have a significant impact on an agency's efforts to defend the use of force in court or other contexts.

III. Overview

A. Guiding Principles

It should be the foremost policy of all law enforcement agencies to value and preserve human life. As guardians of their communities, officers must make it their top priority to protect both themselves and the people they serve from danger, while enforcing the laws of the jurisdiction. However, there are situations where the use of force is unavoidable. In these instances, officers must "use only the amount of force that is objectively reasonable to effectively bring an incident under control, while protecting the safety of the officer and others."⁴ Introduced in *Graham*, the "objectively reasonable" standard establishes the necessity for the use and level of force to be based on the individual officer's evaluation of the situation considering the totality of the circumstances.⁵ This evaluation as to whether or not force is justified is based on what was reasonably believed by the officer, to include what information

others communicated to the officer, *at the time the force was used* and "upon what a reasonably prudent officer would use under the same or similar circumstances." This standard is not intended to be an analysis after the incident has ended of circumstances not known to the officer at the time the force was utilized.

The totality of the circumstances can include, but is not limited to, the immediate threat to the safety of the officer or others; whether the subject is actively resisting; the time available for the officer to make decisions in circumstances that are tense, uncertain, and rapidly evolving; the seriousness of the crime(s) involved; and whether the subject is attempting to evade or escape and the danger the subject poses to the community. Other factors may include prior law enforcement contacts with the subject or location; the number of officers versus the number of subjects; age, size, and relative strength of the subject versus the officer; specialized knowledge skill or abilities of the officer; injury or level of exhaustion of the officer; whether the subject appears to be affected by mental illness or under the influence of alcohol or other drugs; environmental factors such as lighting, terrain, radio communications, and crowd-related issues; and the subject's proximity to potential weapons.

The decision to employ any force, including the use of firearms, may be considered excessive by law and agency policy or both, if it knowingly exceeded a degree of force that reasonably appeared necessary based on the specific situation. It is important to note that in *Graham*, the U.S. Supreme Court recognized that law enforcement officers do not need to use the minimum amount of force in any given situation; rather, the officer must use a force option that is reasonable based upon the totality of the circumstances known to the officer at the time the force was used. Use-of-force decisions are made under exceedingly varied scenarios and often on a split-second basis. Based on this fact,

4 ASCIA, CALEA, FOP, FLEOA, IACP, HAPCOA, IADLEST, NAPO, NAWLEE, NOBLE, and NTOA, *National Consensus Policy on Use of Force*, January 2017, 2, http://www.theiacp.org/Portals/0/documents/pdfs/National_Consensus_Policy_On_Use_Of_Force.pdf.

5 *Graham*, 490 U.S. at 396.

state and federal courts have recognized that law enforcement officers must be provided with the necessary knowledge and training to make such decisions, in addition to attaining proficiency with firearms and other less-lethal force equipment and force techniques that may be used in the line of duty.

B. De-Escalation

De-escalation is defined as “taking action or communicating verbally or non-verbally during a potential force encounter in an attempt to stabilize the situation and reduce the immediacy of the threat so that more time, options, and resources can be called upon to resolve the situation without the use of force or with a reduction in the force necessary.”⁶ The term de-escalation can be viewed as both an overarching philosophy that encourages officers to constantly reassess each situation to determine what options are available to effectively respond, as well as the grouping of techniques designed to achieve this goal. In most instances, the goal of de-escalation is to slow down the situation so that the subject can be guided toward a course of action that will not necessitate the use of force, reduce the level of force necessary, allow time for additional personnel or resources to arrive, or all three.

De-escalation is not a new concept and has been part of officer training for decades. Historically, de-escalation has been employed when officers respond to calls involving a person affected by mental illness or under the influence of alcohol or other drugs. In these situations, an officer is instructed to approach the individual in a calm manner and remain composed while trying to establish trust and rapport. Responders are taught to speak in low, or nonthreatening tones, and use positive statements such as “I want to help you” intended to aid in the process of calming the subject. Awareness of body language is also significant. For example, standing too close to an angry or agitated person might cause them to feel threatened.

Another de-escalation technique is tactical repositioning. In many cases, officers can move to another location that lessens the level of danger. An example is an incident involving an individual with a knife. By increasing the distance from the individual, officers greatly reduce the risk to their safety and can explore additional options before resorting to a use of force, notwithstanding the need to control the threat to others.

Many of these steps—speaking calmly, positioning oneself in a nonthreatening manner, and establishing rapport through the acknowledgment of what the person is feeling—are easily transferred from Crisis Intervention Training for persons affected by mental illness to de-escalation encounters with people in general. While these tactics are recommended steps, officers must continually reassess each situation with the understanding that force may be necessary if de-escalation techniques are not effective.

One concern with de-escalation is that it can place officers in unnecessary danger. By overemphasizing the importance of de-escalation, officers might hesitate to use physical force when appropriate, thereby potentially resulting in an increase in line-of-duty deaths and injuries. Consequently, it should be stressed that de-escalation is not appropriate in every situation and officers are not required to use these techniques in every instance. If the individual poses a threat of injury or death to the officer or another, the officer must be permitted to use the level of force necessary to reasonably resolve the situation.

Agencies should strive to encourage officers to consider how time, distance, positioning, and especially communication skills may be used to their advantage as de-escalation techniques and as potential alternatives to force and to provide training on identifying when these techniques will be most useful to mitigate the need for force.

6 *National Consensus Policy on Use of Force*, 2.

C. Force Models

The variety of compliance options available to law enforcement officers in a confrontational setting can be referred to as a force model. Using the variety of different options found in this model, officers are expected to employ only a degree of force that is objectively reasonable to gain control and compliance of subjects. Some agencies may refer to this as the use-of-force continuum. However, the use of the term “continuum” is often interpreted to mean that an officer must begin at one end of a range of use-of-force options and then systematically work his or her way through the types of force that follow on the continuum, such as less-lethal force options, before finally resorting to deadly force. In reality, to maintain the safety of both the officer and others, an officer might need to transition from one point on the continuum to another, without considering the options in between in a linear order. For instance, when faced with a deadly threat, it is not prudent to expect an officer to first employ compliance techniques, followed by an electronic control weapon, and only then use his or her firearm. For this reason, the use of a continuum is strongly discouraged. Instead, force models are preferred that allow officers to choose a level of force that is based on legal principles, to include the option of immediately resorting to deadly force where reasonable and necessary.

As noted previously, many law enforcement agencies prefer to develop separate less-lethal and deadly force policies. In addition to the comments previously made on this topic, there are several other reasons why the *Consensus Policy* combines these into a single use of force policy. But perhaps most importantly, integrating both deadly and less-lethal force guidelines into one policy serves to illustrate and reinforce for the officer the concept of the use of force as an integrated, or response, model. By placing both sets of guidelines under one heading, an officer consulting the policy is

encouraged to view force on a broader, more integrated conceptual basis.

Effective guidance for law enforcement officers on use of force, whether with firearms or by other means or tactics, must recognize and deal with force in all its forms and applications and with the officer’s ability to adjust his or her response as the subject’s behavior changes.

Whether an agency chooses to adopt a force model or continuum, the various levels of force must be defined and the guidelines for their use must be clearly outlined in agency policy and reinforced by training. Policies must also enumerate and address all force options permitted by the agency. Per the *Consensus Policy*, these levels should include less-lethal force and deadly force.

D. Defining Deadly and Less-Lethal Force

The *Consensus Policy* employs the terms deadly force and less-lethal force. Deadly force is defined as “any use of force that creates a substantial risk of causing death or serious bodily injury.”⁷ The most common example of deadly force is the use of a handgun or other firearm.

Less-lethal force is “any use of force other than that which is considered deadly force that involves physical effort to control, restrain, or overcome the resistance of another.”⁸ This includes, but is not limited to, an officer’s use of come-along holds and manual restraint, as well as force options such as electronic control weapons, pepper aerosol spray, and impact projectiles. It does not include verbal commands or other nonphysical de-escalation techniques.

The difference between deadly and less-lethal force is not determined simply by the nature of the force technique or instrument that is employed by an officer. Many force options have the potential to result in the death or serious bodily injury of a

7 *National Consensus Policy on Use of Force*, 2.

8 *Ibid.*

subject under certain circumstances. For example, a police baton, if used properly in accordance with professionally accepted training guidelines, is not likely to cause death. But it can result in the death of subjects when used inappropriately by an officer who lacks training, or in situations where blows are accidentally struck to the head or other vulnerable area of the body. The same could be said for a variety of other equipment used by law enforcement officers. Therefore, a key to understanding what separates deadly force from less-lethal force has to do with the likelihood that a given use of force will result in death, whether it involves a handgun or other weapon or even an object that may be close at hand.

Use of force that is likely to cause death or serious bodily injury is properly judged using a reasonable officer standard—how would a reasonably prudent law enforcement officer act under the same or similar circumstances?⁹ This standard is an objective test. That is, it is not based on the intent or motivation of the officer or other subjective factors at the time of the incident. It is based solely on the objective circumstances of the event and the conclusion that would be drawn by a “reasonable officer on the scene.”¹⁰

In determining the proper degree of force to use, officers are authorized to use deadly force to protect themselves or others from what is reasonably believed to be a threat of death or serious bodily harm. Officers have the option of using less-lethal force options where deadly force is not authorized, but may use only that level of force that is objectively reasonable to bring the incident under control.

E. Additional Definitions

Understanding of additional terms is helpful for the following discussion.

Exigent circumstances are “those circumstances that would cause a reasonable person to believe that a particular action is necessary to prevent physical harm to an individual, the destruction of relevant evidence, the escape of a suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.”¹¹

An *immediate, or imminent, threat* can be described as danger from an individual whose apparent intent is to inflict serious bodily injury or death and the individual has the ability and opportunity to realize this intention.

IV. PROCEDURES

A. General Provisions

The *Consensus Policy* begins by providing general guidance that holds true for all situations involving the use of force. First, officers must continually reassess the situation, where possible, and ensure that the level of force being used meets the objective reasonableness standard. In situations where the subject either ceases to resist or the incident has been effectively brought under control, the use of physical force should be reduced accordingly. If the level of force exceeds what is necessary to control a subject, then the officer can be subject to allegations of excessive force.

Physical force should not be used against individuals in restraints unless failure to do so would result in the individual fleeing the scene or causing imminent bodily injury to himself or herself, the officer, or another person. Damage to property should not be considered a valid reason to use force against an individual in restraints. There might also be instances where handcuffed individuals are able to run from officers in an attempt to escape. In these situations, physical force may be allowable per policy, but only the minimal amount of force

⁹ Serious bodily injury is defined as “injury that involves a substantial risk of death, protracted and obvious disfigurement, or extended loss or impairment of the function of a body part or organ.”

¹⁰ *Connor*, 490 U.S. at 396.

¹¹ Based on the definition from *United States v. McConney*, 728 F.2d 1195, 1199 (9th Cir.), cert. denied, 469 U.S. 824 (1984).

necessary to control the situation should be used—deadly force will almost always be prohibited in these cases.

As previously stated, the ultimate goal of law enforcement officers is to value and preserve human life. Therefore, the *Consensus Policy* requires officers to provide medical care to anyone who is visibly injured, complains of injury, or requests medical attention.¹² This should be undertaken after the officers have ensured that the scene is safe and it is practical to do so. In addition, officers should only provide care consistent with their training, to include providing first aid. Additional appropriate responses include requesting emergency medical services and arranging for transportation to an emergency medical facility.

When verbal commands are issued, the individual should be provided with a reasonable amount of time and opportunity to respond before force is used, with the understanding that such a pause should not “compromise the safety of the officer or another and will not result in the destruction of evidence, escape of a suspect, or commission of a crime.”¹³ This is to prevent instances where officers use force immediately following a verbal command without providing the subject with an opportunity to comply and might also apply in such situations where an electronic control weapon is used and the individual is physically incapable of responding due to the effects of the weapon.

While the *Consensus Policy* strives to prohibit excessive force, the reality is that excessive force can occur no matter how well-crafted the policy or extensive the training. In these situations, it is crucial that other officers at the scene intervene to prevent or stop the use of excessive force. By requiring a pro-active approach to these situations and encouraging accountability for all officers on the scene, agencies can work toward preventing excessive uses of force.

Finally, while it is not the scope of the *Consensus Policy* or this document to provide specific guidelines on these topics, agencies must develop comprehensive policies for documenting, investigating, and reviewing all uses of force. Agency transparency to the public regarding these policies will help to foster public trust and assure the community that agencies are aware of and properly responding to use of force by their officers. Moreover, force review will help to assure that agency policies are being followed and will give the agency the opportunity to proactively address deficiencies in officer performance or agency policy and training or both.

B. De-Escalation

Procedurally, whenever possible and appropriate, officers should utilize de-escalation techniques consistent with their training before resorting to using force or to reduce the need for force. In many instances, these steps will allow officers additional time to assess the situation, request additional resources, and better formulate an appropriate response to the resistant individual, to include the use of communication skills in an attempt to diffuse the situation. However, as previously stated, de-escalation will not always be appropriate and officers should not place themselves or others in danger by delaying the use of less-lethal or even deadly force where warranted.

C. Less-Lethal Force

In situations where de-escalation techniques are either ineffective or inappropriate, and there is a need to control a noncompliant or actively resistant individual, officers should consider the use of less-lethal force. In these cases, officers should utilize only those less-lethal techniques or weapons the agency has authorized and with which the officer has been trained. As with any force, officers may

¹² Note that “providing medical care” does not necessarily require that the officer administer the care himself or herself. In some situations, this requirement may be satisfied by securing the skills and services of a colleague, emergency medical personnel, etc.

¹³ *National Consensus Policy on Use of Force*, 3.

use only that level of force that is objectively reasonable to bring the incident under control. Specifically, the *Consensus Policy* outlines three instances where less-lethal force is justified. These include “(1) to protect the officer or others from immediate physical harm, (2) to restrain or subdue an individual who is actively resisting or evading arrest, or (3) to bring an unlawful situation safely and effectively under control.”¹⁴

As noted in the prior discussion of the force model, use of force can range widely. Therefore, law enforcement officers should have at their disposal a variety of equipment and techniques that will allow them to respond appropriately to resistant or dangerous individuals. The *Consensus Policy* does not advocate the use of any specific less-lethal force weapons. Instead, the appropriateness of any such weapon depends on the goals and objectives of each law enforcement agency in the context of community expectations. Less-lethal weapons and techniques are being continuously introduced, refined, and updated, so law enforcement administrators must routinely assess current options and select equipment that is appropriate for their agency. A critical element of that decision-making process is an assessment of the limitations of each device or technique, and environmental factors that might impact its effectiveness. However, it is suggested that law enforcement agencies ban the use of several types of less-lethal impact weapons that are designed to inflict pain rather than affect control. These include slapjacks, blackjacks, brass knuckles, nunchucks, and other martial arts weapons.

D. Deadly Force

Authorized Uses of Deadly Force. As with all uses of force, when using deadly force, the overarching guideline that applies to *all* situations is that the force must be “objectively reasonable under the totality of the circumstances.” The *Consensus Policy* identifies two general circumstances in which the use of deadly force may be warranted. The first instance is to “protect the officer or others from what is reasonably believed to be an immediate threat of death or serious bodily injury.”¹⁵ Second, law enforcement officers may use deadly force “to prevent the escape of a fleeing subject when the officer has probable cause to believe that the person has committed, or intends to commit a felony involving serious bodily injury or death, and the officer reasonably believes that there is an imminent risk of serious bodily injury or death to the officer or another if the subject is not immediately apprehended.”¹⁶ In such cases, a threat of further violence, serious bodily injury, or death must impose clear justification to use deadly force.

For example, use of deadly force would be justified in instances where an officer attempts to stop the escape of a fleeing violent felon whom the officer has identified as one who has just committed a homicide, and who is armed or is likely to be armed in light of the crime. However, the potential escape of nonviolent subjects does not pose the same degree of risk to the public or the officer, and use of deadly force to prevent his or her escape would not be justifiable under the *Consensus Policy*.

If a decision has been made to employ deadly force, a law enforcement officer must, whenever feasible, identify himself or herself, warn the subject of his or her intent to use deadly force, and demand that the subject stop. This requirement was made clear

¹⁴ *National Consensus Policy on Use of Force*, 3.

¹⁵ *National Consensus Policy on Use of Force*.

¹⁶ *Ibid.*

in the Garner decision. If issuing a verbal warning presents a heightened risk to the safety of the officer or another person, the officer may employ deadly force without delay.

Deadly Force Restrictions. Deadly force is prohibited when the threat is only to property. In addition, officers should avoid using deadly force to stop individuals who are only a threat to themselves, unless the individual is using a deadly weapon such as a firearm or explosive device that may pose an imminent risk to the officer or others in close proximity. If the individual is attempting to inflict self-harm with means other than a deadly weapon, the officer should consider less-lethal options and de-escalation techniques, if practical.

Warning Shots. Perhaps the most debated inclusion in the *Consensus Policy* is the allowance for warning shots. Their inclusion in the *Consensus Policy* should not prevent an agency from establishing a more restrictive policy on the topic. Defined as “discharge of a firearm for the purpose of compelling compliance from an individual, but not intended to cause physical injury,” warning shots are inherently dangerous.¹⁷ However, the *Consensus Policy* outlines very strict guidelines for their use in an effort to address this threat, while still providing latitude for officers to use this technique as a viable alternative to direct deadly force in extreme and exigent circumstances. The *Consensus Policy* states that warning shots must have a defined target, with the goal of prohibiting shots fired straight up in the air. In addition, warning shots should only be considered if deadly force is justified, so in response to an immediate threat of death or serious bodily injury, and when “the officer reasonably believes that the warning shot will reduce the possibility that deadly force will have to be used.”¹⁸ Finally, the warning shot must not “pose a substantial risk of injury or death to the officer or others.”¹⁹

Essentially, the intent of the *Consensus Policy* is to provide officers with an alternative to deadly force in the very limited situations where these conditions are met.

Shots Discharged at Moving Vehicles.²⁰ The use of firearms under such conditions often presents an unacceptable risk to innocent bystanders. Even if successfully disabled, the vehicle might continue under its own power or momentum for some distance thus creating another hazard. Moreover, should the driver be wounded or killed by shots fired, the vehicle might proceed out of control and could become a serious threat to officers and others in the area. Notwithstanding, there are circumstances where shooting at a moving vehicle is the most appropriate and effective use of force.

Officers should consider this use of deadly force only when “a person in the vehicle is immediately threatening the officer or another person with deadly force by means other than the vehicle,” or when the vehicle is intentionally being used as a deadly weapon and “all other reasonable means of defense have been exhausted (or are not present or practical).”²¹ Examples of circumstances where officers are justified in shooting at a moving vehicle include when an occupant of the vehicle is shooting at the officer or others in the vicinity or, as has happened recently, the vehicle itself is being used as a deliberate means to kill others, such as a truck being driven through a crowd of innocent bystanders. Even under these circumstances, such actions should be taken only if the action does not present an unreasonable risk to officers or others, when reasonable alternatives are not practical, when failure to take such action would probably result in death or serious bodily injury, and then only when due consideration has been given to the safety of others in the vicinity. In cases where officers believe that the driver is intentionally attempting

17 *National Consensus Policy on Use of Force*, 3.

18 *National Consensus Policy on Use of Force*, 4.

19 *Ibid.*

20 For information regarding United States Supreme Court cases addressing firing at a moving vehicle, see *Plumhoff v. Rickard*, 134 S. Ct. 2012 and *Mullenix v. Luna*, 577 U.S. ____ (2015) and the accompanying *amicus curiae* brief.

21 *National Consensus Policy on Use of Force*, 4.

to run them down, primary consideration must be given to moving out of the path of the vehicle. The *Consensus Policy* recognizes that there are times when getting out of the way of the vehicle is not possible and the use of a firearm by the officer may be warranted.

Shots Discharged from a Moving Vehicle.

When discussing whether or not officers should be permitted to fire shots from a moving vehicle, many of the same arguments can be made as firing at a moving vehicle. Most notably, accuracy of shot placement is significantly and negatively affected in such situations, thereby substantially increasing the risk to innocent bystanders from errant shots. Therefore, the *Consensus Policy* prohibits officers from discharging their weapons from moving vehicles unless exigent circumstances exist. In these situations, as with all instances where exigent circumstances are present, the officer must have an articulable reason for this use of deadly force.

Choke Holds. For the purposes of this document, a choke hold is defined as “a physical maneuver that restricts an individual’s ability to breathe for the purposes of incapacitation.”²² In the most common choke hold, referred to as an arm-bar hold, an officer places his or her forearm across the front of the individual’s neck and then applies pressure for the purpose of cutting off air flow. These are extremely dangerous maneuvers that can easily result in serious bodily injury or death. Therefore, the *Consensus Policy* allows their use only when deadly force is authorized.²³

E. Training

While it is crucial that law enforcement agencies develop a clear, concise policy regarding the use of force, it is equally important that officers are completely familiar with and fully understand the policy and any applicable laws. Therefore, officers

should receive training on their agency’s use-of-force policy and any accompanying legal updates on at least an annual basis. Training should also be provided on all approved force options and techniques permitted by agency policy, along with regular refresher training that includes a review of the policy and hands-on, practical training. In addition, officers should also receive regular and periodic training related to de-escalation techniques and the importance of de-escalation as a tactic, as well as training designed to “enhance officers’ discretion and judgment in using less-lethal and deadly force.”²⁴

Firearms training should simulate actual shooting situations and conditions. This includes night or reduced light shooting, shooting at moving targets, primary- or secondary-hand firing, and combat simulation shooting. Firearms training should attempt to simulate the actual environment and circumstances of foreseeable encounters in the community setting, whether urban, suburban, or rural. A variety of computer-simulation training is available together with established and recognized tactical, exertion, and stress courses.

Law enforcement administrators, agencies, and parent jurisdictions may be held liable for the actions of their officers should they be unable to verify that appropriate and adequate training has been received and that officers have successfully passed any testing or certification requirements. Accordingly, agencies must provide responsive training, and all records of training received by officers must be accurately maintained for later verification.

²² *National Consensus Policy on Use of Force*, 2.

²³ A note regarding choke holds—the vascular neck restraint is not included in the definition of “choke hold” and thus its use is not restricted to deadly force situations.

²⁴ *National Consensus Policy on Use of Force*, 4.

CONTRIBUTING ORGANIZATIONS

This document is the result of a collaborative effort among the following organizations.

