

**INTERLOCAL AGREEMENT BETWEEN THE CITIES
OF
LACEY, OLYMPIA, TUMWATER, AND YELM
ESTABLISHING THE CAPITAL METRO INDEPENDENT INVESTIGATION TEAM
(CMIIT)**

The purpose of this Agreement is to establish a multi-agency team that is available to Member Agencies to investigate use of force incidents involving a law enforcement officer that result in death, substantial bodily harm or Great Bodily Harm, along with other incidents determined to benefit from independent investigation.

RECITALS:

WHEREAS, the Interlocal Cooperation Act permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities (RCW 39.34.010); and

WHEREAS, each party is authorized to contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: provided, that such contract shall be authorized by the governing body of each party to the contract and shall set forth the purpose, powers, rights, objectives and responsibilities of the contracting parties (RCW 39.34.080); and

WHEREAS, the people of the State of Washington have required, through passage of Initiative 940, that investigations into officer involved use of Deadly Force must be independent of the Involved Agency (RCW 10.114.011); and

WHEREAS, the Washington Mutual Aid Peace Officers Powers Act is intended to facilitate mutual aid and cooperative enforcement of the laws among general authority local, state and federal agencies (RCW 10.93.001(1)); and

WHEREAS, nothing herein is intended to in any way limit the authority of law enforcement to act in those circumstances set forth in RCW 10.93.070(1) through (6), and other applicable law, as now enacted or as hereafter amended; and

WHEREAS, WAC 139-12-020 defines an independent investigative team as, "A team of qualified and certified peace officer CMIIT Investigators, civilian crime scene specialists, and at least two nonlaw enforcement community representatives who operate completely independent of any Involved Agency to conduct investigations of police Deadly Force incidents. An IIT is created when multiple law enforcement agencies enter into a written agreement to investigate police use of Deadly Force incidents in their geographical regions. A single law enforcement agency may fulfill the independent investigative function, provided it is not the Involved Agency";

NOW THEREFORE, the Parties agree as follows:

1. MEMBER AGENCIES OF THE CAPITAL METRO INDEPENDENT INVESTIGATION TEAM (CMIIT)

The Member Agencies that make up the Capital Metro Independent Investigation Team (CMIIT) are the cities that operate the following departments:

Lacey Police Department
Olympia Police Department
Tumwater Police Department
Yelm Police Department

2. DEFINITIONS

- Critical Incident:** An incident in which a law enforcement employee is involved and:
- a) the law enforcement officer's use of Deadly Force results in Great Bodily Harm, Substantial Bodily Harm, or death of another person; or
 - b) there is an In Custody Death, excluding fatal injuries that occur while an inmate is under a physician's treatment for a disease or other natural condition and which does not involve custodial trauma or custodial suicide.
- CMIIT Commander:** The command level officer who responds to the scene of a Critical Incident and is responsible for all aspects of the investigative response; including developing objectives, managing operations, coordinating with other entities and applying resources and staff to accomplish objectives.
- Deadly Force:** Deadly Force means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury. RCW 9A.16.010.
- Great Bodily Harm:** Great Bodily Harm means bodily injury which creates a probability of death, or which causes significant serious permanent disfigurement, or which causes a significant permanent loss or impairment of the function of any bodily part or organ. RCW 9A.04.110
- CMIIT Supervisor:** An experienced CMIIT Investigator of supervisory rank who is in charge of the CMIIT investigative personnel at a Critical Incident and reports to the CMIIT Commander.
- In Custody Death:** The death of any person who is detained, arrested enroute to incarceration, or incarcerated in local facilities. Excluded are fatal injuries that occur while an inmate is under physician's treatment for a disease or other natural condition and which does not involve custodial trauma or custodial suicide.
- Involved Agency:** The agency that employs or supervises the officer(s) who used Deadly

Force or the agency in whose custody an In Custody Death occurred. There may be more than one "Involved Agency."

Involved Officer: A law enforcement officer who is alleged to have used the level of force that causes substantial bodily harm, Great Bodily Harm or death to another person.

Member Agency: An agency that is a party to this Agreement.

Public Information

Officer (PIO): A PIO is a person responsible for public updates regarding a Critical Incident.

Substantial Bodily

Harm: means bodily injury which involves a temporary but substantial disfigurement, or which causes a temporary but substantial loss or impairment of the function of any bodily part or organ, or which causes a fracture of any bodily part RCW 9A.04.110.

Venue Agency: The agency with primary territorial jurisdiction, as defined by RCW 10.93.020(7). The Venue Agency may also be the Involved Agency.

3. GOVERNANCE- JOINT BOARD/NO INDEPENDENT ENTITY CREATED

The CMIIT is governed by a Board of Directors (Board) composed of the Chief Law Enforcement Officer, or their designee, of each Member Agency that signs this Agreement. No independent entity is intended to be created by establishing this Board.

The Board will meet at least once per year and more often as needed.

Each Member Agency shall have one vote. The Board shall only take action with a quorum present, with a quorum being three of the four members. All Board actions and decisions will be approved and adopted by simple majority.

The Board must approve any protocols or guidelines developed for use by CMIIT for the investigation of Critical Incidents. The Board shall ensure that all protocols and guidelines are consistent with the applicable statutory requirements, standards, and definitions outlined in the Revised Code of Washington, primarily in Chapters 9A.16, 43.101, 10.114 RCW, as well as provisions of the Washington Administrative Code implementing applicable statutes. Where this Agreement, CMIIT protocols or guidelines conflict, state law controls.

4. AUTHORIZATION TO USE CMIIT

The decision to seek assistance of the CMIIT pursuant to this Agreement rests entirely with the Chief Law Enforcement Officer of the Involved Agency.

Member Agencies are not obligated to request that CMIIT investigate a Critical Incident occurring in their jurisdiction and may request that other agencies or resources conduct an independent investigation. In addition, Member agencies may request CMIIT for other than Critical Incidents but CMIIT will not conduct Administrative or Internal Investigations (i.e. non-criminal).

5. POSITIONS IN CMIIT

Member agencies may submit for the Board's consideration a list of qualified officers to fill the positions of the CMIIT. Training, a history of ethical behavior, and demonstrated impartiality are critical to maintain confidence in the investigation. The minimum selection and role requirements for each position shall be as outlined in Washington Administrative Code Chapter 139-12.

The CMIIT Commander and Assistant CMIIT Commander will each be from different Member Agencies. Any team member may be removed from CMIIT at any time with or without cause upon the determination of the CMIIT Commander or at the direction of their own agency.

CMIIT personnel from Member Agencies who are assigned to a CMIIT investigation shall be subject to the CMIIT chain of command for the duration of the initial call-out and for subsequent follow-up assignments related to the investigation.

A. CMIIT Commander

The CMIIT Commander will generally serve as the Incident Commander at a Critical Incident unless they are an employee of the Involved Agency.

If the CMIIT Commander is an employee of the Involved Agency, the Assistant CMIIT Commander will assume the role of Incident Commander for that investigation.

In the absence of or in the case of conflict where neither the CMIIT Commander nor Assistant CMIIT Commander serve, the Chief of the CMIIT Commander's agency shall determine who will serve as the Incident Commander.

The CMIIT Commander will be responsible for overall management and coordination of investigated incidents, except one involving their own agency, as well as the readiness and training of the unit. The CMIIT Commander must create and enforce firewalls, which is a process to prevent information sharing between the CMIIT from the Involved Agency, and train all team members to observe them to ensure no member of the CMIIT receives any compelled statements of the Involved Officer(s) or any investigative content that was informed by such compelled statements.

The CMIIT Commander will submit an annual written report to the Board which summarizes the previous year's activities and includes a review of activations, training and any lessons learned. The report should also identify any needs and establish goals for the coming year.

The CMIIT Commander shall appoint a PIO to provide public updates about the investigation approximately once per week, even if there is no new progress to report. The CMIIT Commander shall ensure that all public records of any investigation are kept with the CMIIT Commander's agency, who shall respond to public records requests for investigative records once the CMIIT is activated.

B. Assistant CMIIT Commander

The Assistant CMIIT Commander shall be from a Member Agency appointed by the Board. An Assistant CMIIT Commander assumes the CMIIT Commander's duties and responsibilities in the absence of the CMIIT Commander. The Assistant CMIIT Commander shall not be from the same agency as the CMIIT Commander.

C. CMIIT Investigative Supervisor

The Board will appoint a CMIIT Investigative Supervisor on 2 year rotating basis from the ranks of qualified supervisory personnel of the Member Agencies.

The CMIIT Supervisor will generally supervise the CMIIT Investigators at a Critical Incident in consultation with the CMIIT Commander unless the CMIIT Supervisor is an employee of the Involved Agency.

If the CMIIT Investigative Supervisor is absent or has a conflict, another qualified investigative supervisor from a non-Involved Agency may serve as the CMIIT Investigative Supervisor.

D. CMIIT Investigators

CMIIT Investigators are officers who are currently or have previously served in an agency's investigative unit. Member agencies agree to provide their CMIIT Investigators with training on the following core topics prior to their assignment to CMIIT or as soon as reasonably possible:

- I. Interview and interrogation
- II. Homicide investigation
- III. Officer-involved shooting investigation

Upon activation for investigation of a Critical Incident, assigned CMIIT Investigators will immediately respond and will be assigned tasks at the direction of the CMIIT Commander through the CMIIT Investigative Supervisor.

6. COMMUNITY REPRESENTATIVES (2)

The Involved Agency agrees to provide the CMIIT with two non-law enforcement Community Representatives to ensure investigation transparency. Member agencies agree that each Community Representative will meet, at a minimum, the following criteria:

- I. Pass a criminal background check
- II. Sign a confidentiality agreement (until a decline or criminal prosecution)
- III. Other selection criteria may be established by each agency and these additional selection criteria are not binding upon other Member Agencies.

7. ACTIVATION

The Chief Law Enforcement Officer of the Involved Agency, or their designee, shall request CMIIT activation using the procedures outlined in the CMIIT Protocols. The CMIIT Commander, or their designee, will contact Member Agencies to activate appropriate personnel to respond to a specific incident.

When activated, the CMIIT will respond to the staging location designated by the Venue Agency. Member Agencies recognize that follow-up meetings and additional investigative work will be required, after the initial call-out, to complete the investigation. The CMIIT personnel assigned to an investigation shall remain available from the time of the call out until deactivated by the CMIIT Commander. Member Agencies will ensure that every reasonable effort is made to allow CMIIT personnel to meet necessary commitments.

8. INDEPENDENT INVESTIGATION

- A. The CMIIT Commander shall have exclusive authority to conduct the independent investigation and will determine which CMIIT members and resources will be used to investigate each incident.
- B. Pursuant to RCW 10.114.001 and WAC 139-12-030, no member of an Involved Agency shall participate in any way in the investigation with the exception of the following:
 - I. Specialized equipment belonging to the Involved Agency may not be used by the CMIIT unless: 1 - no reasonable alternative exists; 2 - the equipment is critical to carrying out the independent investigation; and 3 - the use is approved by the CMIIT commander. If the equipment is used, the nonlaw enforcement community representatives on the CMIIT must be notified about: 1 - why it needs to be used; and 2 - the steps taken to appropriately limit the role of any Involved Agency personnel in facilitating the use of that equipment.
 - II. No information about the ongoing independent investigation of police use of Deadly Force will be shared with any member of the Involved Agency, except limited briefings given to the chief or sheriff of the Involved Agency about the progress of the investigation so that they can manage the internal administrative investigation and communicate with their community about the progress of the investigation.
 - III. If the Chief or Sheriff of the Involved Agency requests that the CMIIT release the body cam video or other investigation information of urgent public interest, the CMIIT Commander should honor the request with the agreement of the prosecutor of jurisdiction.
- C. Nothing shall preclude an officer employed by the Involved Agency from:
 - I. Acting as a first responder to the scene of the incident;

- II. Providing or facilitating medical assistance to any injured person;
- III. Helping to secure the scene; or
- IV. Participating in a search for, or pursuit of, any persons suspected of a crime related to the incident.

9. CONFLICT OF INTEREST

At the onset of a CMIIT activation, the CMIIT Commander, in consultation with Member Agencies, shall determine whether any actual or potential conflict of interest exists that would undermine public confidence in the impartiality and independence of the investigation and will take necessary steps to eliminate conflicts of interest.

Conflicts of interest include, but are not limited to, instances where a member of the CMIIT investigative team is in a familial, business or close, personal relationship with an Involved Officer. Absent other factors, mere acquaintance with an Involved Officer is not a conflict of interest for the purpose of recusing a CMIIT Investigator.

The CMIIT Commander and/or the chief law enforcement officer of the Involved Agency may order the recusal of any CMIIT Investigator, or take necessary action to ensure the impartiality of the investigation.

Member agencies shall have an on-going responsibility to notify the CMIIT Commander and the chief law enforcement officer of the Involved Agency of any newly discovered information related to a conflict of interest.

10. RESPONSIBILITIES OF THE INVOLVED AGENCY

If a law enforcement officer has been injured and transported to a hospital, the Involved Agency will be responsible for coordinating security and assistance at the hospital.

At the request of the CMIIT Commander, the Involved Agency will identify an Agency Liaison who will be responsible for coordinating with the CMIIT Commander regarding necessary logistical issues, if any, with the understanding that there is a firewall system in place and with the understanding that the Involved Agency is affirmatively advised not to furnish any "prohibited content" to the CMIIT. This Agency Liaison will be a command or mid-level personnel who was not directly involved with the incident itself.

11. RESPONSIBILITIES OF VENUE AGENCY

The Venue Agency shall ensure proper crime scene protection. This includes, but is not limited to, immediately securing the crime scene, controlling access into the crime scene, and recording the names of individuals who have entered the crime scene and taking reasonable steps to identify and protect perishable evidence. Written reports shall be provided by all personnel who enter a designated crime scene.

The Venue Agency shall allow use of work space and equipment as needed by the CMIIT.

The Venue Agency requesting the CMIIT will identify an incident liaison for the duration of the investigation. This will be a command or mid-level personnel who was not directly involved with the incident itself. They will assist the CMIIT Commander with any requests for special support such as equipment, food, water, shelter, and transportation within its abilities and available resources.

12. WAGE & BENEFIT RESPONSIBILITIES OF MEMBER AGENCIES

Each Member Agency shall pay all wages and benefits due any of its employees providing services under this Agreement, including overtime pay, worker's compensation benefits and all other regular benefits received by the officer, in the same manner as when those employees are on duty working directly for their employing agency.

13. EQUIPMENT AND SUPPLIES

Each Member Agency agrees to supply its own personnel with the necessary supplies to participate in CMIIT (notebooks, cameras, tapes, electronic media, pens, etc.).

Each Member Agency shall remain responsible for the ordinary wear and tear and routine maintenance of its respective equipment, used in support of this Agreement.

Each Member Agency will be responsible for repairing or replacing its equipment that may be damaged during an investigation. If the cost is substantial, the agency whose equipment was damaged may request to share the expense with other members but no Member Agency is obligated to contribute.

14. EXPENSES

Each Member Agency shall budget for and finance its operations unless a separate agreement is approved regarding a specific investigation. All regular personnel and operational costs related to the investigation shall be the individual responsibility of each Member Agency providing staff to the CMIIT.

Prior to incurring extraordinary costs associated with travel, specialized equipment, testing, investigative or other expenses not otherwise specifically authorized in the budget of each Member Agency, the CMIIT Commander will consult with the Chief Law Enforcement Officer of the Involved Agency for authorization.

15. MEDIA RELATIONS

The CMIIT Commander will select a spokesperson for the incident from a non-involved agency who will act as PIO. The selection of this spokesperson does not preclude other agency heads from participating in news conferences, press releases or other media opportunities.

Member agencies recognize the importance of speaking with one voice and not releasing information prematurely or which could hinder the investigation. The Involved Agency, the Venue agency and the CMIIT Commander should consult with the appointed PIO on the content of news releases or intended press conference statements prior to their dissemination to the media.

16. CONTRACT REPRESENTATIVES/NOTICES

The contract representative for each agency is the Police Chief. Any notice required to be given pursuant to this Agreement shall be to the party at the address listed below and shall become effective three days following the date of deposit in the United States Postal Service.

City of Lacey, ATTN: Police Chief
420 College Street SE,
Lacey, WA 98503
360-459-4333

City of Olympia, ATTN: Police Chief
P.O. Box 1967
Olympia, WA 98507-1967
360-753-8300

City of Tumwater, ATTN: Police Chief
555 Israel Road SW
Tumwater, WA 98501
(360) 754-4200

City of Yelm, ATTN: Police Chief
206 McKenzie Street
Yelm, WA 98597
360-458-5701

17. TERM

This Agreement shall take effect once signed by all governing bodies of each the Member Agencies. The Agreement shall be renewed automatically on the annual anniversary of the date of the last signature affixed to the Agreement, subject to termination as set forth herein.

18. TERMINATION/WITHDRAWAL

Any party to this Agreement may withdraw from the Agreement with the withdrawing party's Contract Representative providing a minimum of thirty (30) days written notice to the other Contract Representatives.

19. SUPPLEMENTAL AUTHORITY

This Agreement shall be construed as supplemental authority and not as limiting any preexisting authority of the parties with respect to mutual aid.

20. WAIVER

The failure of any party to enforce a provision of this Agreement shall not constitute a waiver of that or any other term of this Agreement.

21. SEVERABILITY

It is the intent of the parties that if any part, term, or provision of this Agreement is ruled invalid, the remaining portions of the Agreement shall continue in full force and effect.

Whenever possible, each provision of this Agreement shall be interpreted in such a way as to be effective and valid under applicable law.

22. AMENDMENTS

This Agreement may only be amended in writing and signed by each party's governing body.

23. INDEMNIFICATION

The parties to this Agreement each agree to defend, indemnify and hold the other, their officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including reasonable attorney fees, arising out of or in connection with each entity's respective performance of its responsibilities under this Agreement, except to the extent such injuries and damages are caused by the negligence of one of the other parties.

24. GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

25. PUBLIC RECORDS

A. Records. Each Member Agency shall retain its own public records as a member of the Board and/or CMIIT and shall respond to any records request submitted to their agency seeking records of the agency's work either as a part of the Board or a part of a CMIIT, with the sole exception of CMIIT Investigation Records which are solely kept by another Member Agency as a part of the independent investigation into an investigation pursuant to this Agreement.

B. CMIIT Investigation Records. Public records requests for records of an investigation conducted by the CMIIT shall be directed to the CMIIT Commander for the CMIIT Commander's Agency to respond. Any Member Agency receiving a request for CMIIT investigation records related to a specified CMIIT investigation will try to provide notification and a copy of the request to the the CMIIT Commander and City Clerk of the Member Agency that performed the investigation. The Member Agency receiving the initial request will, if possible, communicate with the requester to inform them that the requested records are kept by and must be obtained from the CMIIT Commander's Agency directly.

26. PUBLIC ACCESS TO AGREEMENT

Prior to its entry into force, this Agreement shall be posted on the websites of the parties or other electronically retrievable public source or, alternatively, filed with the Thurston County Auditor's Office as set forth in RCW 39.34.040.

27. RATIFICATION

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

28. COUNTERPARTS

This agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

IN WITNESS WHEREOF, the parties by the signatures of their authorized representatives have executed this Agreement effective on the date shown by each signature.

City of Lacey

Scott Spence 01/28/2021

Scott Spence, City Manager

Robert Almada 01/28/2021

Robert Almada, Interim Chief of Police

APPROVED AS TO FORM:

David Schneider 01/25/2021

David Schneider, City Attorney

City of Olympia

Steven J Burney 01/29/2021

Steven J. Burney, City Manager

Aaron Jelcick 01/29/2021

Aaron Jelcick, Interim Chief of Police

APPROVED AS TO FORM:

Annaliese Harksen

Annaliese Harksen, Deputy City Attorney

City of Tumwater

Pete Kmet 01/28/2021

Peter Kmet, Mayor

Jon Weiks 01/29/2021

Jon Weiks, Chief of Police

APPROVED AS TO FORM:

Karen Kirkpatrick 01/28/2021

Karen Kirkpatrick, City Attorney

City of Yelm

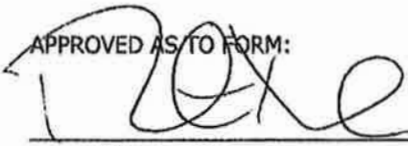


J.W. Foster, Mayor



Todd Standl, Chief of Police

APPROVED AS TO FORM:



Brent Dille, City Attorney