AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
JERRY L. DEMINGS, in his official capacity as ORANGE COUNTY SHERIFF

I. INTRODUCTION

1. The parties to this Agreement are the United States of America, represented by the United States Department of Justice ("DOJ"); and the Orange County Sheriff, JERRY L. DEMINGS ("Sheriff").

2. The Sheriff is an elected constitutional officer responsible for the operations of the Orange County Sheriff's Office. The Sheriff shall ensure that OCSO take all actions necessary to comply with the provisions of this Agreement.

3. On January 30, 2007, the United States notified then Orange County Sheriff, Kevin Beary, of its intention to investigate the use of conducted energy devices ("CEDs") by Deputy Sheriffs of the Orange County Sheriff's Office ("OCSO"), pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141.

4. On June 4-6, 2007 and November 14-15, 2007, the United States toured OCSO with expert law enforcement consultants. The United States has reviewed relevant OCSO policies, audited OCSO training classes, participated in ride-alongs, and conducted interviews with a cross-section of OCSO command staff, supervisors, and deputies.

5. OCSO cooperated with the investigation.

6. On August 20, 2008, the United States issued a Technical Assistance Letter to then Orange County Sheriff, Kevin Beary, which recommended certain practices and procedures to improve OCSO's written policies, training, and accountability processes pertaining to the use of CED weapons.

7. As early as August 20, 2008, and continuing to the present, the DOJ and the Orange County Sheriff's Office have worked together to revise and improve the existing OCSO policies and procedures. OCSO contends that it has made

considerable progress with improving OCSO’s written policies, training, and accountability processes pertaining to the use of CED weapons, but agrees that the determination of whether it has reached substantial compliance is subject to DOJ verification.

8. Sheriff Demings was elected Sheriff of Orange County in November 2008. Since taking office on January 6, 2009, Sheriff Demings has taken prompt and proactive steps to implement several of the recommendations made in the August 20, 2008 Technical Assistance Letter.

9. The DOJ recognizes the Sheriff's high level of cooperation and willingness to implement meaningful change without need for litigation. As a result of this cooperation the parties believe this Agreement represents the best opportunity to address the United States’ concerns with OCSO training and use of electronic control weapons. Neither the Sheriff's entry into this Agreement, nor the Sheriff’s decision to implement changes to OCSO policies and procedures, constitutes an admission by the Sheriff, OCSO, or any officer or employee of either, that they have engaged in any unconstitutional, illegal or otherwise improper activities or conduct.

10. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the Sheriff or his officials, employees, or agents for their conduct. This Agreement does not alter legal standards governing any such claims, including those standards established by Florida law.

11. Nothing in this Agreement is intended to alter any existing collective bargaining agreements, or equivalent thereof, between the Sheriff and the OCSO employee bargaining units or impair the collective bargaining rights, or the equivalent thereof, of employees in those units under state and local law.

12. It is the explicit intention of the Parties to this Agreement that this Agreement be binding on the Sheriff's successors, should the agreement exceed the length of Sheriff Demmings term as Sheriff.

II. DEFINITIONS

1. "OCSO" shall refer to the Orange County Sheriff's Office, Orange County, Florida.

2. "Sheriff" shall refer to the Orange County Sheriff and his or her agents, deputies, employees (sworn and unsworn), contractors, and successors in office.

3. "Deputy Sheriffs" or "deputies" shall refer to sworn law enforcement officers of the OCSO.

4. "DOJ" shall refer to the United States Department of Justice, which represents the United States in this matter.

5. "Subject" shall refer to the person against whom the ECW is deployed.

6. "Electronic Control Weapons" or "ECWs" shall refer to the electro-muscular disruption weapons employed by the OCSO. This term shall include all other names commonly associated with the weapon, including, "conducted energy devices," "CEDs," "TASERs," "Stingers," or "stun guns."

7. "Include" or "including" shall mean "include, but not limited to" or "including, but not limited to."

8. "AFID Confetti" or "Anti-Felon Identification Device" shall refer to the confetti that is expelled from the ECW cartridge when the ECW is deployed. An alpha-numeric identifier unique to the ECW cartridge is printed on each piece of confetti.

9. "Civilian Complaint" shall mean a complaint by a civilian about an alleged act or omission by agency personnel which, if substantiated, would constitute a violation of law or agency policy. This definition does not include a complaint of a non-criminal nature where the complainant refuses to identify himself and where the supervisor receiving or reviewing the complaint determines that it

cannot be followed up or the complaint is clearly not valid.

10. “Drive Stun Mode” or “Touch Mode” shall refer to the use of the ECW in which, the deputy removes the cartridge and presses the weapon against the subject’s body.

11. “Effective date” shall mean the date this Agreement is signed by all the parties.

12. “EIS Alert Functions” shall refer to the capability of OCSO’s Early Identification System to identify for the system’s user, those deputies with a higher than normal record of using force in the course of their law enforcement duties.

13. “EIS Database” shall refer to OCSO’s Early Identification System, which is a computer system designed to store use of force information and identify those deputies with a higher than normal record of using force in the course of their law enforcement duties.

14. “Excited Delirium” shall refer to a physical condition in which, a person may exhibit extreme agitation, bizarre and/or violent behavior, imperviousness to pain, exceptional strength and endurance, inappropriate nudity, extreme paranoia, and/or incoherent shouting.

15. “Muzzle” shall refer to the portion of the ECW where the air cartridge connects to the weapon’s barrel.

16. “OCSO ECW Policy” shall mean the OCSO General Order or Orders that cover ECW use.

17. “Passive subject” shall refer to any person that does not pose an immediate threat to the safety of the deputy or others, and does not resist a deputy’s commands by using physical force against the deputy or others. This definition shall include those persons who question a deputy’s commands in a non-violent and non-threatening manner and persons who are non-violently participating in public protest.

18. “PSS” shall refer to OCSO’s Professional Services Section.

19. “Spark Test” shall refer to the pre-operational check of the ECW, and includes removing the cartridge of the ECW, pointing the ECW in a safe direction, and running a full five-second cycle.

20. “Train,” means to instruct in the skills addressed to a level that the trainee has the demonstrated proficiency to implement those skills as and when called for in the training. “Trained” means to have achieved such proficiency.

21. “Under Force” shall mean to control or secure the subject upon deployment of the ECW, which does not necessarily conclude with the termination of the ECW cycle.

22. Throughout this Agreement, the following terms are used when discussing compliance: substantial compliance, partial compliance, and non-compliance. “Substantial compliance” indicates that the OCSO has achieved compliance with most or all components of the relevant provision of the Agreement. “Partial compliance” indicates that compliance has been achieved on some of the components of the relevant provision of the Agreement, but significant work remains. “Non-compliance” indicates that most or all of the components of the Agreement provision have not yet been met.

III. SUBSTANTIVE PROVISIONS

A. OCSO ECW POLICY: the Sheriff shall demonstrate substantial compliance with the following:

1. Constitutional Standard: OCSO agrees to develop and implement an ECW policy that explains Fourth Amendment standards regarding the use of force, specifically stating that ECW deployment be reasonable in light of the facts and circumstances surrounding the deployment.

2. Verbal Warnings: OCSO agrees to develop and implement an ECW policy that requires that deputies give a verbal warning prior to ECW deployment, unless exigent circumstances exist or the verbal warning would place an individual at risk.

3. ECW Deployment Against Certain Subjects: OCSO agrees to develop and implement an ECW policy that addresses the deployment of the ECW against the following:

(a) Fleeing Subjects: OCSO agrees to develop and implement an ECW policy that states that a subject's flight should not be the sole justification for deploying the ECW. OCSO ECW policy shall further instruct that prior to deploying the ECW against a fleeing subject, the deputies should consider such factors as:

(1) the severity of the offense;

(2) any immediate threat to the safety of the deputy or others posed by the subject; and,

(3) the ability of the deputy to safely effectuate the arrest without ECW deployment.

(b) Passive Subjects: OCSO agrees to develop and implement an ECW policy that prohibits the deployment of the ECW against passive subjects.

(c) Restrained Subjects: OCSO agrees to develop and implement an ECW policy that prohibits ECW deployment against handcuffed or otherwise restrained subjects, unless the restrained subject is endangering the safety of the deputy or others by effectively attempting to employ physical force against the deputy or others.

(d) Vulnerable Subjects: OCSO agrees to develop and implement an ECW policy that prohibits, absent exigent circumstances, deployment of the ECW against the following subjects, or under the following circumstances:

(1) in an environment where the subject's fall may cause substantial injury or death (e.g., an elevated location such as rooftop or building ledge; standing in or near water or other drowning hazards; or climbing a fence or wall);

(2) against a subject in physical control of a vehicle in motion, including a bicycle;

(3) against an apparently helpless person or an individual with an apparent severe disability;

(4) against a reasonably apparent young child;

(5) against a reasonably apparent elderly person;

(6) against a female person reasonably believed to be pregnant;

(7) within an elementary school.

4. Prohibited Uses of the ECW: OCSO agrees to develop and implement an ECW policy that prohibits reckless and careless use and storage of the ECW.

5. ECW Deployment Practices: OCSO agrees to develop and implement an ECW policy that mandates, absent exigent circumstances:

(a) only one deputy at a time deploy an ECW against a subject;

(b) deployment of the ECW for no more than one standard cycle before stopping to evaluate the situation;

(c) use of the “drive stun mode” only as a secondary option;

(d) prohibition of restraint techniques that will impair a subject’s respiration after the subject has been exposed to an ECW deployment.

6. Supervisor Responsibilities: OCSO agrees to develop and implement an ECW policy that requires supervisors to:

(a) be trained in usage of the ECW, and supervision of others who use the ECW;

(b) respond to the scene of every ECW discharge (intentional or unintentional) involving a deputy/suspect confrontation or when a deputy or third

party is contacted by the ECW, absent exigent circumstances, such as dangerous conditions at the scene of the ECW discharge;

(c) evaluate all ECW deployments by a deputy, to include review of:

(1) interviews of the deputy, the subject, and other witnesses;

(2) all relevant use-of-force reports;

(3) photographs of all relevant evidence, including, when possible, impact points of the ECW probes before and after removal from the subject; and,

(4) a sample of the AFID confetti from the ECW cartridge.

(d) complete a written report of findings following each assessment of ECW deployment;

(e) ensure that the deputy places the spent ECW cartridge and probes into evidence control;

(f) secure and review any in-car video if so equipped;

(g) instruct deputies to produce the ECW to PSS or Material Control/Supply in order for PSS or Material Control/Supply to download the ECW deployment data to assess the time of the deployment, the number of deployments, and the duration of each deployment; and,

(h) ensure that if upon the supervisor’s review a violation of law or policy is suspected, the supervisor’s use-of-force report should be immediately forwarded to PSS for investigation.

7. Medical Responses: OCSO agrees to develop and implement an ECW policy that instructs deputies:

(a) to notify emergency medical personnel under circumstances when it is anticipated that the deputy will deploy the ECW against a subject and there is adequate time to notify and stage emergency medical

personnel (e.g. cases of suspected "excited delirium"); and,

(b) to ensure that subjects receive a post-deployment medical evaluation.

B. OCSO ECW TRAINING: the Sheriff shall demonstrate substantial compliance with the following:

8. OCSO agrees to continue its practice of only issuing ECWs to deputies during the ECW training course to ensure that no deputy shall be issued an ECW without having attended the ECW training course.

9. OCSO agrees to not rely solely upon the ECW manufacturer's printed and electronic training materials. OCSO shall develop and implement its own training materials; scenario-based deployment and arrest drills; and testing procedures to best develop the ECW knowledge and skills of its deputies as tailored for the needs of OCSO.

10. OCSO ECW training courses shall be conducted with an appropriate level of seriousness and professionalism.

11. OCSO ECW training shall incorporate practical scenario-based training exercises to drill deputies on ECW deployment skills. For example, deputies shall be instructed, drilled, and tested on how to:

(a) give a verbal warning to the subject and other deputies;

(b) work together with other deputies as a team;

(c) provide cover, and how to arrest under force;

(d) deploy a standard cycle and assess the situation;

(e) recognize symptoms of mental illness and "excited delirium;" and,

(f) stage emergency medical services in cases where ECW deployment is predictable.

12. OCSO agrees to develop and implement ECW training dedicated to supervisor response and incident review. The course material shall cover such aspects of supervisor response and incident review as:

    (a) conducting interviews with the deputy, the subject, and other witnesses;

    (b) completing a use-of-force report;

    (c) photographing all relevant evidence, including impact points of the ECW probes before and after removal from the subject; and,

    (d) collecting a sample of the AFID confetti from the ECW cartridge.

13. OCSO ECW training instructors shall explain the risks involved in deploying the ECW, specifically against subjects under the influence of drugs or exhibiting behaviors associated with “excited delirium.” OCSO ECW training instructors shall provide examples from actual cases in which subjects received serious injuries as a direct or indirect result of an ECW deployment.

C. <u>OCSO ECW ACCOUNTABILITY PROCESSES</u>: the Sheriff shall demonstrate substantial compliance with the following:

14. PSS shall track ECW use in its EIS database and use EIS alert functions to identify trends in ECW deployments.

15. OCSO will continue to use its use of force form that records ECW information, including:

    (a) the serial number of the ECW and ECW cartridge;

    (b) information regarding the deployment (e.g. unholstered only, unholstered and deployed and hit or missed target);

    (c) distance from subject, environment, physical and weather conditions of the location;

    (d) number of cycles deployed;

(e) whether a drive-stun was employed;

(f) a description of the resistance demonstrated by the subject;

(g) statements from the subject;

(h) injuries and medical care provided;

(i) names of witnesses;

(j) type of crime involved; and,

(k) type of clothing worn by subject.

16. PSS shall investigate all ECW cases in which:

(a) the subject dies or suffers serious bodily injury after deployment of the ECW;

(b) a subject is subjected to prolonged or excessive cycling of the ECW;

(c) the ECW appears to have been used in a punitive or abusive manner;

(d) there appears to be a material deviation from OCSO ECW policy.

17. PSS or Material Control/Supply shall download the data from an ECW after every ECW deployment other than spark tests.

18. PSS shall conduct random audits of the ECW deployment data.

19. All civilian complaints regarding ECW use shall be forwarded to PSS, assigned a tracking number, and investigated appropriately by PSS or a line supervisor, as determined by PSS, who is not a subject of the complaint.

IV. IMPLEMENTATION

1. For the purposes of this Agreement, “provision” shall be defined as each complete Paragraph of Section III of the Agreement (e.g., Section III.(33)(subparagraphs a-k)). Sub-paragraphs are not severable.

2. Within one month of the effective date of this Agreement, OCSO shall communicate to all OCSO employees the requirements set forth in this Agreement.

3. DOJ and its law enforcement consultants may, at its discretion, tour OCSO to assess compliance with this Agreement.

4. Prior to any tour, DOJ shall provide 30 days notice to OCSO. Within 20 days in advance of the tour, DOJ shall identify any law enforcement consultants who will participate in the tour.

5. DOJ and its law enforcement consultants shall have full and complete access to OCSO policies, training materials and courses, PSS records regarding ECW use, and OSCO employees upon reasonable notice to OCSO, pursuant to paragraph 4 above, for the purpose of ascertaining compliance with this Agreement.

6. OCSO shall respond to any written questions from DOJ concerning the OCSO’s compliance with this Agreement, within 30 days of receipt of such written questions. OCSO shall provide DOJ with access to any requested documents regarding the OCSO’s compliance with the requirements of this Agreement.

7. OCSO shall maintain sufficient records to document its compliance with all of the requirements of this Agreement, for the duration of the Agreement.

8. OCSO shall designate a compliance coordinator to serve as the single point of contact to the DOJ and to oversee the implementation of this Agreement.

9. DOJ and OCSO agree to defend the provisions of this Agreement. DOJ and OCSO shall notify each other of any court challenge to this Agreement. In the event any provision of this Agreement is challenged in any local or state court, removal to a federal court shall be sought.

10. This Agreement shall be binding on all successors, assignees, employees, agents, and all those working for, or on behalf of, the OCSO.

11. In the event any provision of this Agreement is declared invalid for any reason by a court of competent jurisdiction, said finding shall not affect the remaining provisions of this Agreement.

12. Each party shall bear the cost of their fees and expenses incurred in connection with this Agreement.

13. Throughout the duration of the Agreement, DOJ and its expert law enforcement consultants shall maintain the confidentiality of all information provided pursuant to this Agreement consistent with state and federal law and consistent with the law enforcement responsibilities of DOJ.

V. COMPLIANCE AND TERMINATION

1. Within 60 days from the effective date of this Agreement, OCSO shall prepare and submit to DOJ for review and approval an action plan ("Action Plan") specifying the measures OCSO has taken or will take in order to bring OCSO into compliance with the substantive requirements of Section III of this Agreement, including timeframes for completion of each measure.

2. OCSO shall prepare and submit "Compliance Reports" to DOJ regarding compliance with each of the substantive requirements of Section III of this Agreement. OCSO shall submit the first Compliance Report within 90 days after submitting the Action Plan and every 120 days thereafter until substantial compliance is reached. The Compliance Reports shall identify OCSO's progress in implementing the Action Plan along with any appropriate supporting documentation. Upon achieving substantial compliance, as determined by DOJ, with any substantive paragraph of Section III, no further reporting shall be required on that paragraph.

3. OCSO shall submit to DOJ for review and approval all policies developed in accordance with Section III(A) of this Agreement.

4. DOJ will conduct a tour of OCSO within 60 days of receiving the first "Compliance Report" described above in V.2 to

determine the status of OCSO’s compliance with the terms of this Agreement.

5. The parties agree that OCSO will make all good faith efforts to immediately implement and achieve substantial compliance with all substantive requirements of Section III of this Agreement, and the parties anticipate that OCSO will attain substantial compliance with all provisions of the Agreement within 12 months of the effective date.

6. The parties agree that upon OCSO reaching substantial compliance with all provisions in this Agreement, DOJ will then continue to monitor OCSO for a period of 18 months to assess the sustainability of the reforms.

7. Failure by any party to enforce this entire Agreement, or any provision thereof, with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines and provisions of this Agreement.

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