



## City of Sacramento City Council

915 I Street, Sacramento, CA, 95814  
[www.CityofSacramento.org](http://www.CityofSacramento.org)

**Meeting Date:** 12/13/2011

**Report Type:** Consent

**Title: Agreement: FY2011/12-FY2013/14 Mercy General Hospital Neighborhood Policing Program**

**Report ID:** 2011-01019

**Location:** Citywide

**Recommendation:** Adopt a Resolution authorizing the City Manager, or designee, to: 1) rescind Resolution #2011-556; 2) enter into a two-year agreement with the Mercy General Hospital of Sacramento for the provision of neighborhood police services from January 1, 2012 to December 31, 2013, for a total not to exceed amount of \$839,604; 3) establish a project for the agreement (#E11006100); 4) adjust the project (#E11006100) revenue and expenditure budgets up to \$839,604; 5) maintain authorization for four (4.00) currently existing police officer positions unless the agreement is terminated; 6) adjust revenue and expense budgets based on actual services rendered to the Mercy General Hospital of Sacramento.

**Contact:** Katherine Lester, Acting Captain, (916)808-0800, Police Department

**Presenter:** None

**Department:** Police

**Division:** Central Command

**Dept ID:** 11001171

### **Attachments:**

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- 1-Description/Analysis
- 2-Background Mercy Hospital
- 3-Resolution Mercy Hospital
- 4-Exhibit A Neighborhood Policing Grant Award Agreement

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### **City Attorney Review**

Approved as to Form  
 Steve Itagaki  
 12/6/2011 4:34:02 PM

### **City Treasurer Review**

Reviewed for Impact on Cash and Debt  
 Russell Fehr  
 11/30/2011 4:43:04 PM

### **Approvals/Acknowledgements**

Department Director or Designee: Rick Braziel - 12/6/2011 10:57:16 AM

Eileen Teichert, City Attorney

Shirley Concolino, City Clerk  
**John F. Shirey, City Manager**

Russell Fehr, City Treasurer



## Description/Analysis

**Issue:** On October 5, 2010, the City Council approved Resolution #2010-577 authorizing an agreement with Mercy General Hospital (City Agreement #2010-0842) to provide security services at the hospital and surrounding areas through October 15, 2011.

On October 11, 2011, City Council approved Resolution #2011-556, authorizing the establishment of a new multi-year agreement with MHG. Subsequent to the adoption of Resolution #2011-556, the terms of the agreement were adjusted to reflect a shorter performance period.

The Sacramento Police Department recommends that the City Council rescind Resolution #2011-566 and enter into a new agreement with MGH to continue the provision of neighborhood policing services on the hospital campus and in the surrounding areas. The new agreement is for a two-year period, from January 1, 2012 through December 31, 2013 for a total not to exceed amount of \$839,604.

The terms of a new multi-year agreement were not finalized prior to the expiration date of the existing contract. In order to continue services while the terms were being finalized an interim agreement was entered into covering the services from October 16, 2011 through December 31, 2011.

**Policy Considerations:** The acceptance of grant funding for neighborhood policing services is consistent with the action taken by City Council on October 5, 2010 concerning the acceptance of funding (Resolution #2010-577) and with the City's ongoing commitment to providing a safe environment to live and work. In addition, City Council Resolution #2011-391 requires City Council approval to accept grant funding, establish a grant project, and appropriate funding when the grant award is in excess of \$100,000.

**Environmental Considerations:** This action is not subject to the California Environmental Quality Act (CEQA) because it does not constitute a "project" as defined in section 15378 of the CEQA Guidelines, and is otherwise exempt pursuant to section 15061(b)(3) (no significant effect on the environment) of the CEQA Guidelines.

**Sustainability Considerations:** There are no sustainability considerations associated with this report.

**Commission/Committee Action:** Not Applicable.

**Rationale for Recommendation:** This agreement for neighborhood policing services will enhance the Police Department's ability to provide effective public safety and security by physically assigning police officers to provide law enforcement services with an emphasis on community policing and problem solving. In doing so, the police officers will be able to identify, assess, and respond to crime and nuisance issues impacting the campus and immediate area. These officers will be able to provide a direct connection between the hospital and immediate area and the full capabilities of the Police Department's specialty units in responding to and investigating crimes that occur.

**Financial Considerations:** The salary and benefits associated with four existing (4) police officer positions previously approved by City Council on October 5, 2010 (Resolution #2010-577) will

continue to be funded by Mercy General Hospital (Catholic Healthcare West) from January 1, 2012 through December 31, 2013. If the agreement is terminated, these positions will be inactivated. This agreement does will not impact the Sacramento Police Department's General Fund Operating Budget.

**Emerging Small Business Development (ESBD):** Not applicable.



## **Background**

On October 5, 2010, City Council Resolution #2010-577 authorized the acceptance of grant funding for a period of one year for the Mercy General Hospital Neighborhood Policing Program. Over the last year, assigned officers have provided an important, visible and effective presence in and around the hospital in effort to improve public safety and security.

This Neighborhood Policing program was implemented due to increases in various types of crimes and nuisance-related issues at and around the hospital campus. As a result of a successful first year, Mercy General Hospital (MGH) has expressed an interest in continuing this partnership and program.

The primary duties of the assigned police officers include the following:

- Provide problem oriented police services to MGH and the immediate area.
- Provide community policing services to MGH and the immediate area.
- Address police-related MGH issues using the problem solving philosophy.
- Provide ongoing Crime Prevention Through Environmental Design (CPTED) reviews.
- Provide law enforcement safety associated training to staff as appropriate.
- Police and patrol the campus and immediate area including the on-site residential facility (future facility).
- Provide quarterly reviews to management.
- Provide investigative follow-up.
- Provide direction in the event of an emergency to other on-site security personnel.

Mercy General Hospital is located in an area surrounded by residences, Sacred Heart School, and several businesses. Significant benefits are to be gained from having police officers assigned to a neighborhood policing program in this area. The relationships developed between officers and staff, in addition to enhanced familiarity of the area and its issues allows the officers to provide more comprehensive police services. As public safety issues evolve, officers are well-positioned with their experience of the involved parties and area-specific issues to effectively solve problems. Furthermore, CPTED reviews provide ongoing comprehensive public safety planning which is critical to ever-changing environments such as the high-traffic Emergency Department and Family Birthing Center.



## RESOLUTION NO.

Adopted by the Sacramento City Council

### **Agreement: FY2011/12-FY2013/14 Mercy General Hospital Neighborhood Policing Program**

#### **BACKGROUND**

- A. In 2010, Mercy General Hospital (MGH), operated by Catholic Healthcare West, identified a need to enhance security at the 4001 “J” Street Hospital campus and immediate area. From 2009 through 2010, MGH experienced a 200% increase in “disruptive behavior” incidents. The Emergency Department is also contending with a large increase in disturbances, many of which are related to the increase in mentally ill subjects that now frequent the emergency room and hospital area. Property crimes, traffic issues, and nuisance issues in general are also of concern.
- B. On October 15, 2010, MGH entered into a partnership with the Sacramento Police Department (Agreement 2010-0842) and implemented a Neighborhood Policing Program at the hospital and the surrounding areas through October 15, 2011.
- C. The four police officers positions assigned to this detail provide neighborhood policing services that include responding to disturbances and emergency calls, addressing crime and nuisance issues using the problem solving philosophy, pertinent safety training, ongoing Crime Prevention Through Environmental Design (CPTED) reviews, and timely investigative follow-up.
- D. On October 11, 2011, City Council approved Resolution #2011-556, authorizing the establishment of a new multi-year agreement with MGH. Subsequent to the adoption of Resolution #2011-556, the terms of the agreement were adjusted to reflect a shorter performance period.
- E. MGH and the Sacramento Police Department have agreed upon the terms of a new agreement, to continue police services for two years beginning January 1, 2012 and ending December 31, 2013, in an amount not to exceed \$839,604.
- F. While the terms of the new agreement were being finalized an interim agreement was entered into between MGH and the Sacramento Police Department to provide police services from October 16, 2011 through December 31, 2011.

#### **BASED ON THE FACTS SET FORTH IN THE BACKGROUND, THE CITY COUNCIL RESOLVES AS FOLLOWS:**

- Section 1. The City Manager, or the City Manager’s designee, is authorized to rescind Resolution #2011-556.

- Section 2. The City Manager, or the City Manager's designee, is authorized to execute a two-year agreement with MGH to continue to provision of neighborhood police services from January 1, 2012 through December 31, 2013, for a total not to exceed amount of \$839,604.
- Section 3. The City Manager, or the City Manager's designee, is authorized to establish a project (#E11006100) for MGH neighborhood police services.
- Section 4. The City Manager, or the City Manager's designee, is authorized to increase the necessary project (#E11006100) revenue and expense budgets up to \$839,604 to implement the agreement with MGH.
- Section 5. The City Manager, or the City Manager's designee, is authorized to maintain four (4.00) currently existing police officer positions. These four (4.00) police officer positions will be inactivated if funding for the agreement is terminated.
- Section 6. The City Manager, or the City Manager's designee, is authorized to adjust revenue and expense budgets in the MGH project (#E11006100) based on actual services rendered to MGH.

## NEIGHBORHOOD POLICING GRANT AWARD AGREEMENT

Catholic Healthcare West, a California nonprofit public benefit corporation d/b/a Mercy General Hospital (“Hospital”) is pleased to announce the grant award of \$839,604 (“Grant”) to the Sacramento Police Department (“SPD”) for the purpose of implementing a neighborhood policing program within the area encompassed by 38<sup>th</sup> Street to 42<sup>nd</sup> Street, H Street to J Street. Grant funding will be for a two year period from January 1, 2012 to December 13, 2013. Hospital and SPD agree that this Grant will be subject to the following terms and conditions (the “Agreement”).

### **The Goal of the Program:**

The goal of the program is to develop a comprehensive neighborhood policing program within the area encompassed by 38<sup>th</sup> Street to 42<sup>nd</sup> Street, H Street to J Street, with the intent to patrol with an SPD vehicle within that defined area at least twenty (20) hours per day, seven (7) days per week.

### **Objectives of the Program:**

- A. Using a Community Oriented Policing philosophy, SPD will coordinate and develop a neighborhood police officer program for the area encompassed by 38<sup>th</sup> Street to 42<sup>nd</sup> Street, H Street to J Street. The officers will use Problem Oriented Policing tactics combined with community mobilization to address issues in this area.
- B. SPD will provide training seminars to enhance personal safety and awareness.
- C. SPD will assist security staff in providing police services for the Hospital campus and immediate area.
- D. SPD will develop working relationships with the Hospital staff, local merchants, and school to assist in developing a local business watch program in concert with the community policing effort.
- E. SPD will develop working relationships with the Hospital staff and local residents to assist in developing a local neighborhood watch program in concert with the community policing effort.

Hospital and SPD further agree as follows:

### ARTICLE 1 GENERAL OBLIGATIONS OF SPD

1.1 Program. SPD agrees that the neighborhood policing program (the “**Program**”) will be consistent with the services set forth in the Goals and Objectives stated above, which are hereby incorporated into this Agreement by this reference, as requested by Hospital. At all times when performing services under the Program, the SPD uniformed officers (“Officers”) shall be subject to and required to comply with the rules and regulations of the City of Sacramento Police Department. Notwithstanding the foregoing, Officers performing the Program at the Hospital are

expected to remain on the Hospital campus except in the event of an extreme emergency, must comply with CMS guidelines on the use of weapons and/or restraints, and must comply with the Use of Force Policy set forth in **Exhibit A**.

1.2 **Supplies and Equipment; Employees.** SPD shall provide, at its own expense, all equipment, supplies and materials necessary to perform the Program, and Hospital shall provide no supplies and equipment. All Officers used to perform the Program shall be employees of SPD. SPD shall determine the wages, working hours, and other working conditions for such Officers, and shall monitor and control the quality of their work performance.

1.3 **Drug and Health Screening.** SPD shall provide documentation to Hospital to show that all Officers performing the Program for Hospital shall have received all screenings specified in this paragraph, which screenings shall be provided at the sole expense of SPD:

- (i) PPD results (to be completed annually). In the event PPD is positive, a check x-ray or evidence of symptom review by a health care professional
- (ii) Hepatitis B vaccines, or titer, or statement of refusal
- (iii) Annual Influenza participation (proof of vaccination or signed declination).

1.4 **Background Investigation/Compliance with Immigration Law.** Upon Hospital's request, SPD shall provide documentation that SPD has performed a background investigation of the Officers to verify the Officers' suitability to perform the Program and the ability of the Officers to be employed in the United States.

1.5 **Acknowledgement of Corporate Integrity Program.** SPD acknowledges that Hospital operates under the Corporate Integrity Program of Catholic Healthcare West. SPD further acknowledges that, notwithstanding anything contained herein, neither party shall engage in any conduct that may violate any policies, procedures, or directives of the Corporate Integrity Program.

1.6 **OIG List of Excluded Providers.** SPD shall provide documentation to verify that SPD and the Officers are not listed on the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at <http://epls.arnet.gov>) and the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at <http://www.hhs.gov/oig>).

1.7 **OSHA Compliance.** Hospital, in cooperation with SPD, shall provide to Officers, in the manner set forth in **Exhibit B** attached hereto, basic information regarding the Occupational Exposure to Bloodborne Pathogens regulations ("***OSHA Regulations***") issued by the Department of Labor (29 C.F.R. 1910.1030) prior to any Officer beginning service with Hospital and shall instruct Officers to refuse to participate in situations where they are placed in unwarranted danger of exposure due to failure of Hospital to follow Universal Precautions. Hospital shall provide to SPD records evidencing training on the OSHA Regulations, and SPD agrees to maintain such records.

ARTICLE 2  
GENERAL OBLIGATIONS OF HOSPITAL

2.1 Access. Hospital shall provide SPD with access to the Facilities as needed for performance of the Program under this Agreement.

2.2 Facilities. Hospital shall retain professional and administrative responsibility for the operation of the Facilities, as and to the extent required by Title 22, California Code of Regulations, Section 70713. Hospital's retention of such responsibility is not intended and shall not be construed to diminish, limit, alter or otherwise modify in any way the obligations of SPD under this Agreement.

ARTICLE 3  
TERM AND TERMINATION

3.1 Initial Term. This Agreement shall commence on January 1, 2012 and shall remain in force until December 31, 2013, unless earlier terminated as provided herein. This Agreement may be renewed upon mutual written agreement of the parties. Should this Agreement be terminated before the end of its term, any prepaid Grant funds not spent by SPD will be returned to the Hospital.

3.2 Termination.

(a) Without Cause. This Agreement may be terminated without cause, with at least thirty (30) days' advance written notice from one party to the other.

(b) Termination for Breach. Either party may terminate this Agreement in the event of the other party's breach of a material provision, covenant or condition of this Agreement and subsequent failure to cure said breach within ten (10) calendar days after written notice by the non-defaulting party of said breach.

(c) Termination on the Advice of Counsel. In the event legal counsel for either party advises that this Agreement or any practices which could be, or are, employed in exercising rights under this Agreement may violate any existing or future law, regulation, or accrediting agency standard, or compromise Hospital's status as a non-profit corporation under Section 501(c)(3) of the Internal Revenue Code, the parties in good faith will undertake to revise this Agreement to comply with such law, accrediting agency standard, or Internal Revenue Code requirement. In the event the parties are unable to agree upon the revised terms in a timely manner, this Agreement will terminate immediately upon written notice by one party to the other.

(d) Patient Safety. Hospital may, in its sole discretion, immediately terminate or suspend this Agreement at any time if, in its sole discretion, the provision of Program under this Agreement by SPD threatens the health or safety of Hospital's patients.

ARTICLE 4  
FEES AND BILLING

4.1 Fees. The total Grant for this Agreement shall be \$839,604.

4.2 Invoice and Payment. Hospital shall pay the Grant on a quarterly basis within five (5) business days of the end of each quarter. Quarterly payments shall be remitted in accordance with the following schedule and dates:

January 1, 2012 – March 31, 2012:	\$104,040
April 1, 2012 – June 30, 2012:	\$104,040
July 1, 2012 – September 30, 2012:	\$104,040
October 1, 2012 – December 31, 2012:	\$104,040
January 1, 2013 – March 31, 2013:	\$104,040
April 1, 2013 – June 30, 2013:	\$104,040
July 1, 2013 – September 30, 2013:	\$107,682
October 1, 2013 – December 31, 2013:	\$107,682

ARTICLE 5  
MISCELLANEOUS PROVISIONS

5.1 Prohibition Against Discrimination. Neither Hospital nor SPD shall discriminate against any person because of race, color, creed, age, national origin, sex, marital status, veteran's status or any other protected status as provided by law. In addition neither Hospital nor SPD shall discriminate against any person because of handicap under Section 504 of the federal Rehabilitation Act of 1973 or disability under the Americans with Disabilities Act of 1990.

5.2 Compliance with Laws/HIPAA. SPD and Hospital shall comply with all applicable federal, state, and local laws, ordinances, codes, rules, regulations, and accrediting agency standards, including all applicable laws relating to patient confidentiality. SPD acknowledges that Hospital will only disclose to the Officers patient individually identifiable health information that is the minimum necessary for law enforcement purposes as set forth in 45 C.F.R. §164.512(f) of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), unless otherwise absolutely necessary. All Officers shall undergo appropriate confidentiality training prior to performing the Program under this Agreement

5.3 Relationship of the Parties. Hospital and SPD are independent contractors, and shall not be construed to be the partner, employee, agent or representative of each other. Hospital does not, by this Agreement, reserve control over the methods or procedures to be utilized by SPD or any of SPD's employees hereunder. SPD acknowledges that neither it nor its employees and agents have any right, entitlement or claim against Hospital for Social Security benefits, workers' compensation benefits, overtime wages, disability insurance, pension pay, vacation pay, sick pay or any other employee benefit of any kind. SPD warrants and agrees that

it will comply fully with all applicable payroll tax, employment, and labor laws with respect to all Officers assigned to Hospital, including but not limited to, all tax withholding, social security, unemployment insurance, wage-hour, employment discrimination, occupational safety and health, immigration, workplace safety, family and medical leave, and employee benefit laws. SPD further agrees to indemnify Hospital fully for any and all damages, costs, and/or attorneys' fees incurred by Hospital, its officers, agents, directors, and employees, or awarded or assessed against Hospital, its officers, agents, directors, employees, in connection with any claim, asserted claim, finding, award or liability resulting any negligent act or omission attributed to any officer, agent, director or employee of SPD. Hospital agrees to indemnify SPD fully for any and all damages, costs, and/or attorneys' fees incurred by SPD, its officers, agents, directors, and employees, or awarded or assessed against SPD, its officers, agents, directors, employees, in connection with any claim, asserted claim, finding, award or liability resulting from any negligent act or omission attributed to any officer, agent director, or employee of Hospital. It is the intention of the parties that, where comparative fault is determined to have been contributory, principles of comparative fault will be followed and each party shall bear the proportionate cost of any damage attributable to the fault of that party, its officers, agents, directors, and employees.

5.4 Insurance. Hospital and SPD both agree to maintain appropriate insurance coverage throughout this Agreement.

5.5 Notice. Any notices required or permitted to be given hereunder, by one party to the other, may be given by personal delivery in writing, or by registered or certified mail, postage prepaid, with return receipt requested. Notices shall be addressed to the parties at the addresses appearing below, but each party may change such party's addresses appearing below in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of three (3) days after mailing.

If to SPD: Sacramento Police Department  
Attn: Chief of Police  
5770 Freeport Boulevard  
Sacramento, CA 95822

If to Hospital: Mercy General Hospital  
Attn: Vice President, Ancillary Services  
4001 J Street  
Sacramento, CA 95819

With copy to: Vice President & Associate General Counsel  
CHW Legal Department – Sacramento Office  
3400 Data Drive  
Rancho Cordova, CA 95670

5.6 Governing Law. The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

5.7 Assignment or Delegation. Except as otherwise specifically provided for herein, SPD shall not assign or delegate any or all of SPD's rights or responsibilities under this Agreement without the prior written consent of Hospital.

5.8 Severability. The provisions of the Agreement shall be deemed severable and if any portion shall be held invalid, illegal or unenforceable for any reason, the remainder of this Agreement shall be effective and binding upon the parties.

5.9 Captions. Any captions to or headings of the sections, subsections, paragraphs or subparagraphs of this Agreement are solely for the convenience of the parties, are not a part of the Agreement, and shall not be used for the determination of the validity or interpretation of this Agreement or any provision hereof.

5.10 Reports. SPD shall provide to Hospital monthly reports to ensure that Grant funding is used appropriately.

5.11 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the parties hereto. A waiver of any of the terms and conditions hereof shall not be construed as a waiver of any other terms and conditions hereof.

5.12 No Third-Party Benefit. Unless otherwise set forth in this Agreement, nothing contained herein is intended nor shall be construed to create rights running to the benefit of third parties.

5.13 Entire Agreement/Modification. This Agreement and the recitals and exhibits hereto contain a full and complete expression of the rights and obligations of the parties and it shall supersede all other agreements, representations, and offers, written or oral, heretofore made by the parties regarding any of the subject matter contained herein. This Agreement may be modified only in writing, signed by the parties hereto.

5.14 Access to Records. For the purpose of implementing Section 1861(v)(1)(I) of the Social Security Act, and any written regulations thereto, SPD shall comply with the following statutory requirements governing the maintenance of documentation to verify the cost of services rendered under this Agreement:

(a) Until the expiration of four (4) years after the furnishing of services pursuant to the Agreement, SPD shall make available to the Secretary of Health and Human Services and the Comptroller General of the United States, or their duly authorized representatives, upon written request of any of them, this Agreement, and all books, documents and records that are necessary to certify the nature and extent of the cost of services hereunder, and

(b) If SPD carries out any of the duties of this Agreement through a subcontract with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary or the Comptroller General, or any of their duly authorized representatives, the subcontract, and books,

documents and records of such organization that are necessary to verify the nature and extent of such costs.

5.15 Counterparts. This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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IN WITNESS WHEREOF, the Parties have duly executed this Agreement to be effective as of the date first written above.

CITY OF SACRAMENTO

CATHOLIC HEALTHCARE WEST d/b/a  
MERCY GENERAL HOSPITAL

By: \_\_\_\_\_  
John Shirey  
City Manager

By: \_\_\_\_\_  
Denny Powell  
Hospital President

APPROVED AS TO FORM

ATTEST

By: \_\_\_\_\_  
Dave Womack  
Senior Deputy City Attorney  
City of Sacramento

\_\_\_\_\_  
Shirley Concolino  
City Clerk

By: \_\_\_\_\_  
Kelley Evans, Senior Counsel, CHW

## **EXHIBIT A**

### **USE OF FORCE POLICY**

**SUBJECT: Use of Force at Mercy General Hospital**

**DEPARTMENTS: MGH Security and Law Enforcement Personnel**

**PURPOSE: USE OF FORCE BY LAW ENFORCEMENT PERSONNEL**

This policy recognizes that the use of force by law enforcement personnel requires constant evaluation. Even at its lowest level, the use of force is a serious responsibility. The purpose of this policy is to provide contracted law enforcement personnel with Mercy General Hospital's ("MGH") guidelines on the reasonable use of force. While there is no way to specify the exact amount or type of reasonable force to be applied in any situation, MGH expects that each officer to follow their individual agency policy as well as these guidelines to make such decisions in a professional, impartial and safe manner.

The use of force by law enforcement personnel is a matter of critical concern to the public, MGH, and to the law enforcement community. Officers, by the virtue of their work, are involved in numerous and varied human encounters on a daily basis and, when warranted, may use force in carrying out their duties.

Officers must have an understanding of, and a true appreciation for, the limitations of their authority. This is especially true with respect to officers overcoming resistance while engaged in the performance of their duties at MGH.

MGH recognizes and respects the value of human life and dignity without prejudice to anyone. It is also understood that vesting officers with the authority to use reasonable force and protect the public welfare requires a careful balancing of human interests.

It is the policy of MGH that officers will use only that amount of force that reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event, to effectively bring an incident under control. "Reasonableness" of the force used must be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any interpretation of "reasonableness" must allow for the fact that police officers are often forced to make split-second decisions, in circumstances that are tense, uncertain, and rapidly evolving, about the amount of force that is necessary in a particular situation.

## **PROCEDURE:**

### **I. Factors Used to Determine the Reasonableness of Force**

- A. When determining whether or not to apply any level of force and evaluating whether an officer has used reasonable force, a number of factors should be taken into consideration. These factors include, but are not limited to:
1. The conduct of the individual being confronted (as reasonably perceived by the officer at the time).
  2. Officer/subject factors (age, size, relative strength, skill level, injury/exhaustion and number of officers vs. subjects).
  3. Influence of drugs/alcohol (mental capacity).
  4. Proximity of weapons.
  5. Availability of other options (what resources are reasonably available to the officer under the circumstances).
  6. Seriousness of the suspected offense or reason for contact with the individual.
  7. Training and experience of the officer(s).
  8. Potential for injury to citizens, MGH employees, officers and suspects.
  9. Risk of escape.
  10. Other exigent circumstances.
- B. It is recognized that officers are expected to make split-second decisions and that the amount of an officer's time available to evaluate and respond to changing circumstances may impact their decision.
- C. While various degrees of force exist, each officer is expected to use only that degree of force reasonable under the circumstances to successfully accomplish the legitimate law enforcement purpose in accordance with this policy and their individual agency policy.

### **II. Non-Lethal Force Applications**

- A. Any application of force that is not reasonably anticipated to result in death will be considered non-lethal force. Each officer is trained by their agency and provided with equipment and skills to assist in the apprehension and control of

suspects as well as the protection of officers and the public. Non-lethal force applications may include, but are not limited to, electronic devices (conducted energy device), body and leg restraints, and other less lethal control devices.

- B. Given that no policy can realistically predict every possible situation an officer might encounter in the field or at this hospital, it is recognized that each officer is entrusted with well-reasoned discretion in determining the appropriate use of force in each incident. While the ultimate objective of every law enforcement encounter is to minimize injury to everyone involved, nothing in this policy requires an officer to actually sustain physical injury before applying reasonable force.
- C. Officers are not required to retreat from those individuals resisting their legitimate authority to control or resolve the incident.

### **III. Lethal Force Applications**

- A. Lethal force is defined as any degree of force likely to produce great bodily injury or death, and does not necessarily involve the use of a firearm.
- B. Great bodily injury is defined as any bodily injury which is significant or substantial, not insignificant, trivial or moderate.
- C. Use of Lethal force is justified in the following circumstances:
  - 1) An officer may use lethal force to protect themselves or others from what they reasonably believe would be an immediate threat of death or great bodily injury.
  - 2) An officer may use lethal force to effect the arrest or prevent the escape of a suspected felon where the officer has probable cause to believe that the suspect poses an imminent threat of death or great bodily injury to the officer or others (MGH employees, visitors, general public). Under such circumstances, a verbal warning should precede the use of lethal force, where feasible.

### **IV. Announcement for the Use of Force**

- A. When it is reasonable to do so, at least one announcement indicating the application of lethal force and/or non-lethal force should be given.

### **V. Warning Shots**

- A. Warning shots are prohibited.

## **VI. Moving Vehicles**

- A. Shots fired at or from a moving vehicle are discouraged. This is not intended to restrict an officer's right to use lethal force directed at the operator of a vehicle when it is reasonably perceived that the vehicle is being used as a weapon against the officers or others.

## **VII. Authorized Weapons/Tools**

- A. Only those weapons approved by the contract police agency may be used (refer to agency specific order). Each officer will have training and certification in the use of less lethal weapons before carrying or using them.

## **VIII. Reporting Use of Force**

- A. Any use of force by a member of the contract police agency will be documented promptly, completely, and accurately in an appropriate report required by their respective agency as well as the MGH Incident Report System. The use of a particular weapon(s) may require the completion of additional report forms as specified in agency specific policies and/or law.
- B. A written report is submitted whenever an officer:
  - 1. Discharges a firearm in the performance of their official duties;
  - 2. Takes an action that results in, or is alleged to have resulted in, injury or death of another person;
  - 3. Applies force through the use of lethal or less lethal applications.
  - 4. Applies weaponless physical force upon another to the extent it is likely to cause or lead to unforeseen injury, claim of injury, or allegations of excessive force.

## **IX. Incident Notification**

- A. Notification will be made to the MGH Security Manager and appropriate law enforcement agency administrators as soon as practical following the application of physical force, under any of the following circumstances:
  - 1) Where the application of force appears to have caused physical injury.
  - 2) The individual has expressed a complaint of pain.

- 3) Any application of a less than lethal control device (pepper spray, conducted energy device, etc.)
- 4) Where the individual has been rendered unconscious.

**X. Medical Attention**

- A. Medical attention will be obtained for any person(s) who has sustained visible injury, expressed a complaint of pain, has been rendered unconscious or whenever the officer believes that the person should receive medical care.

**REFERENCES:**

**SPD General Order on Use of Force**

## EXHIBIT B

### OCCUPATIONAL EXPOSURE TO BLOODBORNE PATHOGENS REGULATIONS

The Department of Labor has published its final rule #29 CFR Part 1910.1030, Occupational Exposure to Bloodborne Pathogen (OSHA Regulations). Whereas Hospital and SPD wish to insure compliance with this rule for all healthcare personnel; and whereas both SPD and Hospital recognize that compliance will require the joint effort of the Hospital and SPD, then Hospital and SPD agree as follows:

1. Hospital shall provide Officers with information and training which includes but is not limited to the following:
  - (a) An explanation of the regulatory text of the standard and a copy of the regulatory text.
  - (b) A general explanation of the epidemiology and symptoms of bloodborne diseases.
  - (c) An explanation of how bloodborne diseases are transmitted.
  - (d) An explanation of its Exposure Control Plan and how the Officer can obtain a copy.
  - (e) An explanation of the appropriate methods for recognizing tasks and other activities that may involve exposure to blood or other potentially infectious material.
  - (f) An explanation of work practices, engineering controls, safety devices and personal protective equipment (e.g. gloves, gowns, masks, eye protection) that will prevent or reduce contact with bloodborne diseases.
  - (g) Information on the types and proper use of personal protective equipment as well as proper ways to remove, handle, clean and dispose of protective equipment.
  - (h) An explanation of the basis for selecting personal protective equipment.
  - (i) Information on the Hepatitis B vaccine including its effectiveness, safety, method of administration, and benefits of being vaccinated.
  - (j) An explanation that the Hepatitis B vaccine is offered free of charge to the Officer and that a declination must be signed by the Officer if the vaccine is refused.
  - (k) Information on what to do and who to call (both at the Hospital and at SPD) in an emergency involving blood or potentially infectious materials will be reviewed.
  - (l) An explanation of the procedure to follow if an exposure incident occurs, how the incident should be reported and the medical care that should be given, and the procedure for recording the incident or the Sharps Injury Log.
  - (m) Information will be provided on the post exposure information and follow up that will be provided at the workplace following an exposure incident.
  - (n) An explanation of the signs, labels and color coding used to identify biohazardous material will be reviewed.
  - (o) Information on how to contact SPD to submit Worker's Compensation insurance claims.
  
2. Hospital shall provide Officer training records to SPD, and SPD in turn agrees to maintain such records.

HOSPITAL AGREES FURTHER TO:

1. Comply with the provisions of the OSHA regulations regarding blood borne pathogens.
2. Provide orientation that includes informing Officers of any specific information about the facility's Exposure Control Plan, work practices, and procedures to follow should an exposure incident occur while working.
3. Inform professionals as to where personal protective equipment used to protect against blood borne pathogens is located and provide such equipment free of charge to the Officers.
4. Provide an opportunity for the Officers to ask questions about the facility's blood borne pathogen Exposure Control Plan, work practices, engineering controls, safety devices, personal protective equipment, and emergency procedures for reporting exposure incidents.
5. Provide each Officer, who consents to receive it, the Hepatitis B vaccination series, with the appropriate dose of the vaccine, according to the written authorization provided by SPD. Hospital agrees to administer the doses at cost and bill SPD for the amount due. Hospital agrees to complete the required documentation, to include: date vaccinated; vaccine lot number; expiration date of vaccine; and name and signature of the individual administering the dose. Documentation will be forwarded to SPD immediately upon completion.
6. Should an exposure incident occur, Hospital will:
  - (a) Evaluate an exposure incident and provide post exposure care for an incident occurring in the workplace and immediately forward an incident report and invoice for treatment to the SPD insurance department.
  - (b) If the Officer consents, take a blood sample from the Officer and test for HIV, HBV and HCV, or preserve sample for ninety (90) days if the professional does not consent to the test.
  - (c) If permitted, test the source individual's blood for HIV, HBV and HCV and communicate test results to the Officer along with written follow-up recommendations.
  - (d) Maintain confidential medical records related to the exposure incident with the Officer performing the post-exposure testing and follow-up.