

## MEMORANDUM OF AGREEMENT

Fraternal Order of Police, Lodge 35, Inc. ("FOP"), and Montgomery County Government ("Employer"), agree that the Collective Bargaining Agreement for the years July 1, 2007 through June 30, 2010 shall be amended to reflect the decision and order of Arbitrator Richard Bloch, dated May 8, 2008, regarding Mobile Video Systems. The contract shall be amended to include the following language:

### **Article 66 Mobile Video Systems**

#### *Section A. Implementation.*

1. The parties agree to institute a Mobile Video System (MVS) for designated police vehicles utilized for patrol and patrol-related functions. The MVS will accurately document events, actions, conditions and statements made during traffic stops and other incidents. Recordings will be utilized to enhance officer safety, as well as to accurately collect evidence, improve internal reporting, support investigations, enhance prosecutions, support training and accountability. All MVS equipment and recordings are the property of the Montgomery County Police Department, and all original recordings will be handled and treated as evidence.
2. The Employer will seek volunteers to be assigned a vehicle with an MVS. If the number of volunteers exceeds the number of available cameras, assignment of MVS will be made among volunteers on the basis of seniority. If there is an insufficient number of volunteers cameras shall be assigned on the basis of inverse seniority.
3. Notwithstanding section A(2), if an officer has received MVS training and operates a vehicle that is equipped with an MVS, the officer must use the MVS as described in this agreement. Through the administration of Article 35, if an officer is assigned a vehicle already equipped with an MVS, he/she will be trained to use the MVS and will use the MVS in accord with this agreement following training. The fact that a vehicle is equipped with an MVS will not delay the assignment of that vehicle.
4. Use of the MVS will comply with all applicable laws and this agreement.

#### *Section B. Implementation Rules.* The program shall be subject to the following:

1. MVS will be mounted in a safe manner.
2. Only officers trained in the proper use of the MVS will use the system.
3. At the beginning of each shift and prior to beginning patrol functions, officers will perform an inspection and function test of MVS components in accord with their training to ensure that the MVS is operating properly. The inspection and function test will include the remote audio transmitter, the camera and its orientation/direction, and the recording mechanism. Any malfunction will in all cases be reported to the officer's supervisor in an expeditious and timely manner.

Similarly, vehicles taken out of service for MVS repairs will be returned to service promptly.

4. Officers will wear their audio recording transmitter in the manner consistent with their training at all times while on duty.
5. Participants may, but shall not be required to, use the MVS while off-duty.
6. It is recognized that the duties of a police officer may require the officer to move out of range of the MVS, or that in performing certain investigatory and other functions it may be desirable to do so.
7. The MVS will automatically record when the vehicle's emergency lights are activated, or when the wireless audio transmitter is in operation.
8. The following must be recorded (both video and audio) and officers must not deactivate the MVS (stop the recording) until the situation is completely ended:
  - a. Traffic stops
  - b. Vehicular pursuits
  - c. Priority responses
  - d. Prisoner transports (video at a minimum; audio with consent as described below)
  - e. Crimes in progress.
9. Officers may deactivate the MVS when:
  - a. The incident or event is of such duration that the MVS may be deactivated to conserve recording times; and
  - b. The officer does not reasonably believe that deactivation will result in the loss of evidence, and;
  - c. The reason for deactivation has been recorded by the officer on the audio portion of the MVS prior to deactivation.
10. Officers may, with or without consent of involved parties, activate the video recording portion of the MVS at any time the officer feels that the recording may have merit. Examples of such uses include but are not limited to, suspicious situations, disorderly conduct, and crime and traffic collision scenes.
11. Officers may, with the consent of involved parties, make audio recordings at any time the officer feels that the recording may have merit. Such use may only be for law enforcement purposes.
12. Prior to audio recording, the equipment must give an audio warning with brief delay. After recording starts, equipment must give a constant visual signal.
13. Video recordings will be made of all prisoners while in transport in an MVS-equipped vehicle (officers must adjust the camera to visually record the prisoner). Officers will request the prisoner's consent to make an audio recording, and if consent is granted, an audio recording will also be made. If a prisoner who is

being transported in an MVS-equipped vehicle requests that the audio recorder be activated, officers shall activate the audio recorder.

14. Whenever a recording is made of an event that results in a police report, the reporting officer must note that the recording exists, if known, and, if known, the name(s) of every officer who generated a recording.
15. Officers will not intentionally alter or modify MVS recordings or equipment.

*Section C. Review, Storage, Copying, Dissemination and Retention*

1. Management shall have access to recordings for any legitimate matters unrelated to employee performance or discipline, except as noted below in paragraph 2. All recordings will be used for official business only. The Employer shall not externally release any recordings unless required to do so by law.
2. The Employer may only use information contained in a recording as a basis of discipline where the information was obtained after the Department reviewed a specific incident on a recording following:
  - a. an external complaint being filed concerning the incident (a non-police Department employee)
  - b. a pursuit;
  - c. uses of force arising out of the incident that result in injuries to anyone;
  - d. a collision involving a police vehicle;
  - e. a non-employee's claims of injury arising out of the incident; or
  - f. the Employer's reasonable basis to suspect that a recording would show an officer engaged in criminal wrongdoing or serious allegations of misconduct in violation of Department rules and regulations applicable to bargaining unit members. At the time of its review, the Employer shall enter the grounds for its reasonable basis in the log described in C or in a related case or investigative file.

Minor administrative infractions discovered during a review under sections 2(b)-(f) above will not result in disciplinary action. Disciplinary action under sections 2(b)-(f) above shall be limited to serious allegations of misconduct.


3. A log will be kept to record access to all recordings. The log will include the:
  - a. name of employee accessing recording;
  - b. reason for access; and
  - c. date recording was accessed.
4. No recording may be used for training purposes without the written consent of all officer(s) involved. Such consent may be withdrawn in writing.
5. The employee recorded and his/her FOP representative must be given timely

access to the log described in subsection C normally within 3 business days of a request and before any interview concerning this recording.

6. All recordings will be destroyed after 210 days, unless the recording is, or may reasonably become, evidence in any proceeding. A recording will be retained if the FOP provides notice to the Department within 210 days of its potential use in a hearing.
7. No recording may be used for the purpose of performance evaluations.
8. Officers may review recordings that they generate. A unit member or the FOP may use the recording to rebut or respond to any allegations or charges against bargaining unit members.
9. Except for questioning under Article 43, § F, when any recorded incident or recording of any incident is used in any manner that involves questioning of any unit member by any person or entity, a full and complete copy of the recording shall be provided to the unit member at least one day in advance of such questioning.
10. All original recordings will be handled and stored in a manner that is consistent with existing evidence protocols.
11. Original recordings will not be released unless pursuant to a valid court order.
12. Within 30 days after the parties sign this agreement, the County shall seek an opinion from the Maryland Attorney General to determine whether MVS recordings are subject to release under the Public Information Act.
13. All external requests for copies of recordings, including subpoenas and summonses, will be reviewed by the County Attorney's Office. The County will notify the FOP of all such requests for MVS recordings/data involving unit members and solicit its opinion before determining whether the request will be granted or denied. If the County determines that a request cannot be denied under the MPIA, it will give the FOP an opportunity to file a reverse MPIA action and will not grant the original request until and unless a court orders that the recording/data be disclosed.
14. The Provisions of Article 64 apply to the use of MVS.
15. Except as required by law, no recording of an officer injury, death, or other action shall be released for publication of any kind without the prior express written consent of the unit member. Consent may be withdrawn by the unit member in writing. A copy of each written consent and withdrawal of consent shall be sent by the Employer to FOP 35.
16. Neither this agreement nor any use of MVS shall be construed as a waiver of any constitutional, statutory, civil, or other right by any unit member.

17. Whenever a recording is duplicated, the affected officer(s) will be notified, however, in the event of an internal investigation, the officer will be notified of the duplication at the earlier of the completion of the internal investigation or at the time the officer is given official notice of the investigation (MCP Form 242).
18. Officers are subject to discipline for violating the provisions herein. Factors such as negligence and intent may be relevant to the extent of discipline.

FOR FRATERNAL ORDER  
OF POLICE LODGE 35, INC.

  
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Marc B. Zifcak, President



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Walter E. Bader, Chief Negotiator

(Executed on behalf of FOP Lodge 35  
with reservation of all rights and  
without prejudice.)

FOR MONTGOMERY COUNTY  
GOVERNMENT

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Isiah Leggett, County Executive

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J. Thomas Manger, Chief of  
Police

The FOP signed and submitted this agreement to the County Executive Isiah Leggett on June 6, 2008 and we are currently awaiting their signature.