

CPRB AND APD STIPULATION
FOR THE PRODUCTION AND EXCHANGE OF CONFIDENTIAL INFORMATION

The Community Police Review Board (“CPRB”) and Albany Police Department (“APD”) are engaged in investigations into alleged violations by APD sworn personnel of APD’s General Orders and other misconduct. These investigations routinely involve information that is also relevant to ongoing criminal investigations and civil proceedings. The information may also involve matters that are not subject to public disclosure by law.

As a result of the foregoing, APD and the CPRB enter into this Stipulation for the Production and Exchange of Confidential Information to adhere to their respective obligations, including “absolute confidentiality,” as set forth in Local Law J of 2021. This stipulation covers the review and dissemination of confidential information (as defined below) by secure electronic means (as further defined below) through appropriate software shared to APD and CPRB email accounts in a view-only format so the record cannot and shall not be downloaded, copied, printed or otherwise reproduced by APD and the CPRB and their respective counsel, employees, agents, or subcontractors as set forth herein.

IT IS HEREBY AGREED, that:

1. Confidential Information

a. “Confidential Information” means any information of any type, kind, or character that is non-public personal, confidential, sensitive or proprietary information concerning any individual or entity, or which constitutes non-public information that is protected from public disclosure or dissemination as a matter of law and that is designated as “Confidential” by any of the supplying or receiving persons, whether it be a document, information contained in a document, information revealed during a deposition or interview, video, audio or otherwise.

b. Confidential information does not include information, documents, electronically stored information, data, and items that are publicly available and/or information, documents, electronically stored information, data, and items that are not otherwise protected as confidential information by applicable law. Confidential information also does not include information already known by the receiving party prior to its receipt by the disclosing party, information independently developed by the receiving party, and information rightfully retrieved by the party from unrestricted sources.

c. APD and the CPRB may make designations in accordance with the terms of this stipulation.

2. Secure Electronic Means

a. "Secure Electronic Means" means: transmission by means of software maintained and utilized by APD and/or CPRB to create, maintain, or transmit electronic records which shall employ procedures and controls designed to ensure the authenticity, integrity, and, when appropriate, the confidentiality of electronic records, and to ensure that the recipient of transmitted electronic records can readily access the records. Such software shall employ procedures and controls which allow for: (a) the ability to generate accurate and complete copies of records in electronic format suitable for inspection and review by APD and CPRB and any qualified persons employed by either; (b) limiting system access and record access only to those entities or individuals authorized by the terms of this agreement; (c) the use of secure, computer-generated, time-stamped audit trails to independently record the date and time of transmission of and access to electronic record; and (d) ensuring that only authorized individuals can use the system and electronically access confidential records.

3. **Qualified Persons**

“Qualified Persons” means:

- a. retained counsel for the APD and CPRB and their respective staff;
- b. actual or potential independent experts, employees, or consultants, including the CPRB’s Administrative Agency pursuant to set forth in Local Law J of 2021, (and their administrative or clerical staff) engaged in connection with APD or CPRB investigations who, prior to any disclosure of Confidential Information to such person, have signed a document agreeing to be bound by the terms of this stipulation and have been designated in writing; and
- c. if the party is an entity, such officers or employees of the party who are actively involved in investigations who, prior to any disclosure of Confidential Information to such person have signed a document agreeing to be bound by the terms of this stipulation (such signed document to be maintained by APD or CPRB who designates a such person).

4. **Designation Criteria**

a. “Confidential Information.” The CPRB and APD, shall designate as Confidential Information only such information that they reasonably and in good faith believe in fact is confidential. Information that is generally available to the public, such as public filings, information that is already in the public domain, and the like, shall not be designated as Confidential. The CPRB and APD may not designate information which the other party obtained from third parties as confidential information unless said information is protected as confidential information by applicable law.

b. Information and documents that may be designated as Confidential Information include, but are not limited to, information gathered in ongoing criminal investigations or information gathered in APD Office of Professional Standard’s (“OPS”) investigations that is

protected from public dissemination as a matter of law, information gathered by the CPRB in investigations that is protected from public dissemination as a matter of law, and other sensitive information that, if not restricted as set forth in this order, may subject the producing or disclosing person to potential legal liability to third parties.

c. All documents or information designated as Confidential Information shall be clearly described as such via either a "CONFIDENTIAL" stamp in the right or left upper corner of the document in such a way as to not obscure the substance of the document. Alternatively, a clear communication in writing that the information being shared is confidential may accompany the document(s) at issue. All documents or information transmitted in electronic form that are designated confidential shall also have "#Conf" appended to the electronic file name of the document in a way which does not obscure or interfere with the substance of the electronic document/information.

5. Use of Confidential Information

All Confidential Information provided by either APD or the CPRB shall be used solely to fulfill their respective functions, duties, and responsibilities as set forth in APD's General Orders and Local Law J of 2021 for the CPRB. All Confidential Information shall not be disclosed except as the appropriate needs of an investigation may necessitate and any such disclosure shall be in accordance with the terms of this agreement, Local Law J of 2021, APD's General Orders, and CPRB's Bylaws.

6. Marking of Documents

a. Documents provided may be designated by the producing person or by any party as Confidential Information by marking each page of the documents so designated with a stamp indicating that the information is "CONFIDENTIAL" in the right or left upper corner of the

document in such a way as to not obscure the substance of the document”. In lieu of marking the original of a document, if the original is not provided, the designating party may mark the copies that are provided. If the information produced cannot be marked “CONFIDENTIAL”, as in the case of electronically stored video or audio information, then the producing person shall communicate clearly that the information is Confidential when it is produced. All documents or information transmitted in electronic form that are designated confidential shall also have “#Conf” appended to the electronic file name of the document. For example, if video or audio is produced by email then the producing party shall note that it is Confidential in the body of the email and the file name of the video or audio file shall contain “#Conf”.

b. Documents or information unintentionally produced without designation as Confidential Information later may be designated as such and shall be treated as Confidential Information from the date written notice of the designation is received by the receiving party.

7. Disclosure to Qualified Persons

a. *To Whom.* Confidential Information shall not be disclosed or made available by the receiving party to persons other than Qualified Persons; provided, however, that in the event of a disclosure compelled by law, including FOIL or court order, the receiving party will so notify the producing party as promptly as practicable (if at all possible, prior to making such disclosure).

b. *Retention of Copies.* To the extent any Confidential Information is produced in hard copy form that is provided to Qualified Persons, such hard copies shall be maintained only at City Offices, in accordance with Local Law J, of such Qualified Person stored securely and only necessary working copies of any such documents shall be made. Unless agreed in writing by the producing party, each receiving party must undertake reasonable efforts to return all Confidential Information at a time when the information is no longer needed for official purposes as noted in

Local Law "J" for 2021 or as set forth in APD's General Orders.

8. Unauthorized Disclosure of Confidential Information

As per the CPRB's bylaws (as updated March 17, 2022) and Local Law J of 2021 (§ 42-341) CPRB members are to maintain absolute confidentiality with respect to confidential or privileged information they receive and maintain a thorough knowledge of the legal protection accorded to police records, including the penalties imposed for violations. Disclosure of such records that is not authorized by law may subject members to removal for cause in accordance with Local Law J of 2021 (§ 42-335) and/or pursuant to applicable CPRB's Bylaws.

9. Consent to Disclosure and Use in Examination

Nothing in this stipulation shall prevent disclosure beyond the terms of this stipulation if each party designating the information as Confidential Information consents to such disclosure. Nor shall anything in this stipulation prevent any party from utilizing Confidential Information in the examination or cross-examination of any person who is identified as a target of an investigation, or any witness of an investigation. During the course of any related ongoing criminal investigation, OPS investigation or CPRB investigation Confidential Information shall not be shared with the complainant of any investigation to preserve the integrity of the investigation.

10. Challenging the Designation

a. *Confidential Information.* A party shall not be obligated to challenge the propriety of a designation of Confidential Information at the time such designation is made, and a failure to do so shall not preclude a subsequent challenge to the designation. In the event that any party to this stipulation disagrees with the designation of any information as Confidential Information, the parties shall first try to resolve the dispute in good faith on an informal basis, such as by production of redacted copies. If the dispute cannot be resolved, the dispute shall be presented to the Office of the Corporation Counsel who shall, within 10 days of the receipt of the disputed document or

information, make a final determination as to whether the information subject to the dispute shall be treated as Confidential Information. In the event that either APD or the CPRB does not agree with the final determination made by Corporation Counsel they shall attempt to resolve their disagreement informally within 5 business days of that final determination. In the event informal resolution of the dispute is ineffective, the parties shall mutually agree upon an acceptable mediator, which shall be chosen from the approved list of mediators found on the website for the United States District Court for the Northern District of New York within 10 days of the final determination by Corporation Counsel. The parties shall submit to the mediator no more than a five-page letter brief, unless the mediator requests further briefing, outlining their position. The parties shall request that the mediator determine the dispute within thirty days or less. The disputed information shall remain Confidential Information unless and until the Office of the Corporation Counsel, or in the case of mediation, chosen mediator deems otherwise. The party challenging Corporation Counsel's decision shall assume the costs associated with a mediator.

b. Qualified Persons. In the event that any individual designated as a Qualified Person becomes a defendant in a criminal case in the County of Albany or has a conflict of interest as contemplated by Judiciary Law § 14, either party may dispute the designation of that individual. If the dispute cannot be resolved by good faith negotiation, the dispute shall be presented to the Office of Corporation Counsel who shall, within 10 days of notification of the dispute, make a final determination as to whether the individual shall be designated a Qualified Person. The objecting party shall have the burden of demonstrating that the disputed person is a defendant in a criminal case in the County of Albany at the time of the challenge or has a conflict of interest as contemplated by Judiciary Law § 14 at the time of the challenge. Upon the submission of the dispute to the Office of Corporation Counsel, no disclosure of Confidential Information shall be

made to the disputed person unless and until the Office of Corporation Counsel confirms the designation as appropriate. In the event that either APD or the CPRB does not agree with the final determination made by Corporation Counsel they shall attempt to resolve their disagreement informally within 5 business days of that final determination. In the event informal resolution of the dispute is ineffective, the parties shall mutually agree upon an acceptable mediator, which shall be chosen from the approved list of mediators found on the website for the United States District Court for the Northern District of New York within 10 days of the final determination by Corporation Counsel. Prior to mediation, or in the event a mediator cannot be agreed upon, an aggrieved party retains the right to avail themselves of their remedies as recognized in the New York State Civil Practice Law and Rules.

11. Return of Documents

To the extent Confidential Information is shared in hard copy form, not later than five years after conclusion of any CPRB proceedings relating to the Confidential Information, any Confidential Information, all reproductions of such information, and any notes, summaries, or descriptions of such information in the possession of any of the persons specified in paragraph 2 shall be returned to the producing party or destroyed. Notwithstanding this obligation to return or destroy information, counsel may retain an attorney work product.

12. Duty to Ensure Compliance

Any party designating any person as a Qualified Person shall have the duty to reasonably ensure that such person observes the terms of this stipulation. Each Qualified Person shall sign the Qualified Person Acknowledgment attached here as Exhibit A. The party designating the Qualified Person shall provide the Acknowledgement to the other party to this agreement.

12. Good Faith Revisions

Once signed this agreement will remain in full force and effect until such time that either party wishes to engage in good faith negotiation to revise it as may become necessary or as may be mutually agreed-upon.

STIPULATED AND AGREED:

ALBANY POLICE DEPARTMENT

COMMUNITY POLICE REVIEW BOARD

Eric Hawkins

Nairobi Vives

NAME
TITLE **CHIEF OF POLICE**

NAME Nairobi Vives
TITLE Chair, CPRB

Exhibit A
Qualified Person Acknowledgment

I have been designated as a person who may have access to material designated "CONFIDENTIAL" as defined in the stipulation between APD and the CPRB.

Having read that stipulation, I agree to comply fully with it and to be bound by its terms with respect to all material designated "CONFIDENTIAL" as defined therein. I agree to maintain such designated material in strict confidence and not to disclose such information to any other person, or make use of such information, except in accordance with the terms of the stipulation.

I agree to, and hereby do, submit myself to the jurisdiction of Supreme Court, Albany County, for the purpose of enforcement of the terms of the stipulation, I understand that any violation of the stipulation could subject me to third-party legal action and other penalties pursuant to law, including the amount of the damages sustained by my violation and an award of costs and attorneys' fees in an action to enforce same. I declare under penalty of perjury the foregoing is true and correct and that this document was executed at _____ (location) on _____ (date).

(signature)

By: _____

Title: _____

Sworn to me this ____ day of _____

Notary Public