KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES

INQUEST PROGRAM

INQUEST INTO THE DEATH OF CHARLEENA CHAVON LYLES, Deceased.	Case No. 517IQ9301 FAMILY RESPONSE TO THE CITY'S AND OFFICERS' BRIEFS TO DETERMINE INQUEST SCOPE

I. INTRODUCTION

The City's and Officers' proposals are discordant with the inquest rules and inconsistently applied. The Officers' scope includes: 1) the Officers' and Ms. Lyles's actions related to her death; 2) information and events that bear on the Officers' decision-making; and 3) information and events that bear on Ms. Lyles's actions. However, the Officers fail to consistently apply their proposal, choosing to only include information that bears on Ms. Lyles's or the Officers' actions when it helps advance their narrative. The City restricts the scope even further, arguing that the only relevant time period is contained within 1 hour and 23 minutes (from the time Ms. Lyles calls 911 to the time of her death). The City's and Officers' proposals do not allow the inquest to achieve its purpose of providing a "full, fair, and transparent" review of Ms. Lyles's death and should be rejected. Conducting Inquests in King County, PHL-7-1-2-EO, Appendix 1, § 2.2 (2018).

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The appropriate scope is that proposed by the Family, drawn from the inquest rules and essentially mirroring the Officers' proposed (but inconsistently applied) scope. In order to provide a "full, fair, and transparent" review of Ms. Lyles's death, the inquest proceeding must consider the "facts and circumstances surrounding the death," including within the scope *Officer McNew, Officer Anderson and Ms. Lyles's actions related to the death and any information or events that bear on those actions.* PHL-7-1-2-EO, Appendix 1, § 2.2 (2018).

II. ARGUMENT

The City's and Officers' briefs are based on two incorrect assumptions about the inquest proceeding. First, both briefs primarily focus on the circumstances that were known to the Officers instead of the circumstances of the death. Yet, the City and Officers have already admitted on multiple occasions that an inquest is not a culpability-finding proceeding. Every time the inquest rules discuss the focus of the inquiry, it is not framed around the actions of the officers, but the facts and "circumstances of *the death*." See PHL-7-1-2-EO, Appendix 1, § 2.2; 5.3; 6.1; Appendix 2, § 3.2; 11.1 (2018) (emphasis added); *See also* King County Charter, Section 895. Since both the Officers' and Ms. Lyles's actions were related to her death, the inquest scope must include those actions and the information or events that bear on them.

Second, the City and Officers incorrectly assert that the inquest rules strictly limit the scope of the inquiry to an illogical degree, when instead the rules provide for a "full" review. PHL-7-1-2-EO, Appendix 1, § 2.2, 6.2. The City contends that the rules "contemplate a limited inquiry" and the Officers describe the scope of the inquest as "narrow." *City's Brief* at 10; *Officers' Brief* at 1. Beyond conclusory citations to variations of the phrase "cause, manner, and circumstances of the death," the City and Officers provide no authority for their claim that the inquest is designed to be a narrow inquiry.

Indeed, the Officers' and City's positions are wholly inconsistent with the intent of the entire inquest process, i.e. to reassure the community, in a transparent manner, that a police

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shooting of substantial public concern has gone through an objective process of review and without merely rubber stamping by the police or City. It's not good enough to simply focus inside the window of the shooting. That is no different than choosing to focus on a single paragraph of a chapter out of context. None of the following language is gratuitous: the "public has a strong interest in a full and transparent review of the **circumstances surrounding the death**." PHL-7-1-2-EO, Appendix 1, § 6.2 (emphasis added).

Further support for a robust inquest process is found in the provisions regarding the inclusion of all potentially relevant testimony: "there is a strong presumption against the exclusion of witnesses until after their testimony, and relevant, non-cumulative witnesses should only be excluded by the administrator in exceptional circumstances." PHL-7-1-2-EO, Appendix 2, § 12.4. Viewed in the context of the actual language of the inquest rules, the rules do not contemplate a narrow inquiry, but a full review, with a strong presumption against exclusion.

In outlining the inquest scope, Officers and the City fail to offer a definition of how to determine which information constitutes the *facts* of Ms. Lyles's death and which information constitutes the *circumstances*. PHL-7-1-2-EO, Appendix 1, § 2.1, 2.2, 5.3, 6.1. All of the information included within the inquest scope under the Family's definition of the *facts* of Ms. Lyles's death—Officer McNew, Officer Anderson, and Ms. Lyles's actions directly related to the death—is also included within the scope proposed by the Officers and the City.

The Officers and City offer different definitions of what can be considered the "circumstances" of Ms. Lyles's death. The Officers adopt a definition similar to the definition proposed by the Family. They include among the circumstances of Ms. Lyles's death, information that bears on Ms. Lyles's actions in allegedly holding a knife shortly before her death. Specifically, the Officers explain that a prior report of Ms. Lyles holding a knife in front of neighboring children "is relevant and admissible as it relates directly to Ms. Lyles' [sic] history of using a knife to threaten others prior to her encounter with Officers Anderson and

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McNew on June 18, 2017." *Officers Brief* at 11. By their own logic—that prior events which bear on Ms. Lyles's actions are within the scope—the Officers admit to the relevance of other information related to Ms. Lyles's mental health, including those events in the Family's Brief on pages 13-18.

In the following paragraphs, this Brief will consider the specific scope outlined by the Officers and City, using the general structure they adopt: 1) facts and circumstances; 2) training; and 3) policy.

A. The City's theory of inquest scope is inconsistent with the inquest rules by failing to account for the circumstances relevant to Ms. Lyles's death

Unlike the Family and Officers, the City argues that all information outside of a 1 hour, 23 minute window is irrelevant and outside the scope of the inquest, ignoring many of the circumstances that bear on Ms. Lyles's actions. While the City's scope definition might appear, on its face, to offer a tidy way to define scope, it is inconsistent with the inquest rules and fails to withstand serious scrutiny. The inquest is not a culpability-finding inquiry solely focused on the Officers' actions, but instead is focused on the "facts and circumstances surrounding *the death*." PHL-7-1-2-EO, Appendix 1, § 2.2 (2018) (emphasis added). The facts and circumstances surrounding *the death* involve not just the Officers' actions and the events and information that bear on those actions but also Ms. Lyles's actions and the events and information that bear on those actions, even if unknown to the Officers.

A ruling that the inquest scope must be limited to those circumstances known to officers would have clearly undesirable consequences. For example, suppose officers killed an individual after he failed to comply with commands to stop reaching into his waistband. However, after the shooting, the officers learn that the individual had a substantial hearing impairment that likely prevented him from hearing their commands. Under the City's definition of the circumstances of the death, the inquest would avoid all discussion of the individual's inability to hear commands

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because the officers were unaware that he suffered a hearing deficit. As a result, the inquest panel would be left to reach the erroneous conclusion that he chose not to follow officers' commands. Clearly, in such a situation, no inquest would proceed by ignoring information that bears on the nature of the individual's hearing deficit and leads the inquest to reach erroneous determinations. Similarly, Ms. Lyles had disabilities that directly bear on her actions related to her death. It would be equally problematic to exclude information from this inquiry that speaks to the nature of her mental illness.

The City's scope also incorrectly results in the exclusion of information relevant to potential officer error. For example, consider a situation where an officer responds to a call and neglects to adequately review and take appropriate action regarding Officer Safety Caution information when he has the opportunity to do so. As a result, he puts himself in a deadly force situation that could have otherwise been avoided. Under the City's theory of scope, the inquest would completely ignore how information that officer should have reviewed could have changed his actions and prevented the use of deadly force.

B. The Officers fail to consistently apply their theory of inquest scope

The Officers fail to consistently apply their theory to the facts and circumstances of Ms. Lyles's death and, instead, only choose to apply their theory when it helps advance their narrative. For example, although the Officers claim that a prior report of Ms. Lyles holding a knife in front of neighboring children should be within the inquest scope because it bears on Ms. Lyles's actions, they also claim that information about Ms. Lyles's mental illness, which bears on her actions, is outside the scope of the inquest. A full and fair inquest inquiry does not support this biased approach.

Furthermore, the event involving Ms. Lyles holding a knife in front of neighboring children is so intertwined with Ms. Lyles's mental illness and history as a domestic violence victim that it cannot be considered outside of that context. *See Family Brief* 15-17. Ms. Lyles

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demanded her "12 rolls of toilet paper" from a 10-year-old on the playground and when she later returned holding a knife, she referenced her "dead" ex-boyfriend, despite the fact that no such person existed. Declaration of Corey Guilmette filed with Family Brief (Exhibit 2). That same weekend, Ms. Lyles's ex-boyfriend refused to leave her apartment, smashed her cell phone, choked her and then punched her in the face. Declaration of Corey Guilmette (Exhibit 19). Additionally, that weekend, Ms. Lyles called 911 alleging that, late at night, children were ringing her doorbell and taunting her while their mother was threatening to harm her. Declaration of Corey Guilmette (Exhibit 20). Although the Officers seek to present the event involving the 10-year-old and Ms. Lyles's demand for 12 rolls of toilet paper as a simple example of Ms. Lyles's history of threats, separate from her experiences of mental illness (and domestic violence), such a framing betrays the truth of what actually occurred. Ms. Lyles's demand for 12 rolls of toilet paper and statement about her non-existent dead ex-boyfriend was a product of her mental illness and intertwined with her experience as a victim of violence. Just like the events that led to her death, information about this event cannot be understood without also considering Ms. Lyles's mental illness and its intersection with her experiences as a victim of violence.

Furthermore, the Officers' exclusion of Ms. Lyles's mental health history from the inquest scope is entirely inconsistent with their claim that training on mental illness is within the scope. *Officers' Brief* at 6. In the inquest the Officers will claim that they appropriately responded to Ms. Lyles's mental health crisis, but seek to do so without addressing any circumstances that would explain the nature of that crisis or otherwise put it into context.

The Officers also reject considering Ms. Lyles's mental health by feigning concern that doing so would "needlessly prejudice Ms. Lyles' [sic] position." *Officers' Brief* at 4. The Officers' claim about prejudice reflects an outdated conception of mental illness as something to receive societal shame. If Ms. Lyles had a physical disability that impacted her actions prior to her death, the Officers could not genuinely claim that such a disability should be excluded as

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prejudicial. There is no reason that Ms. Lyles's mental illness cannot be considered in a professional manner, allowing the inquest to address one of the most important circumstances surrounding her death. There will be no prejudice to Ms. Lyles unless the Officers and City attempt to use the fact and circumstances of her mental illness against her in an unfair or derogatory manner. In that event, the Administrator may halt such behavior.

C. The City and Officers fail to apply their own theories of inquest scope to determine which training should be included within the inquest

The City and Officers fail to provide a logical basis for determining which trainings fall within the inquest scope. As a result, they omit training topics relevant under their very own theories of inquest scope.[1] For example, the City excludes first aid training, despite including the Officers' attempts (or lack thereof) to render first aid as part of the scope.

The City also excludes training related to engaging with individuals with mental illness. Yet, during the 1 hour, 23 minute timeframe of the City's proposed scope, Officer Anderson: a) learned of Ms. Lyles's mental illness from an Officer Safety Caution; b) discovered its nexus with an event days prior in which she allegedly held scissors in the presence of officers; c) adapted his response by calling for a second officer; and d) talked with Officer McNew about where to position himself based on the caution. *Bates No.* 563, 638. Clearly training on mental illness or mental health crisis was relevant to the Officers' actions even within the City's overly narrow proposed scope.

Similarly, the City and Officers fail to include any training on how to respond to an Officer Safety Caution, even though, as explained in the previous paragraph, such training falls within both of their scope definitions.

[1] As of the date of this Response, the City has still not provided any training descriptions or met with the family to discuss training topics, as ordered to do in the pre-inquest conference on September 10, 2019. Since the Family does not have training descriptions from the City, it cannot be sure its understanding of topics addressed by the training materials listed in the City's brief is correct.

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They also do not include training on team tactics, even though team tactics were relevant to the Officers' "decision-making," including during the City's scope timeframe. *Officers' Brief* at 7. For example, Officer McNew described himself as a "cover" officer during the call and also instructed Officer Anderson to fire his taser while he provided lethal cover. *Bates No.* 645, 668.

Although the City includes less-lethal option training within the inquest scope, the Officers do not, even though less-lethal option training was "relevant to the officers' decision making" by instructing officers as to what use of force options were appropriate in the situation. *Officers' Brief* at 7.

The only use-of-force tool training specifically addressed in the Officers' Brief is taser training. The Officers claim that taser training is irrelevant because no taser was present, conveniently ignoring the fact that no taser was present because Officer Anderson chose not to carry his taser—a decision that SPD found to be a violation of policy and resulted in his suspension. *Officers' Brief* at 6; Declaration of Corey Guilmette (Exhibit 21). Seconds before officers shot Ms. Lyles, believing that Officer Anderson was carrying his taser, Officer McNew yelled "taser," in a request for Officer Anderson to fire his taser at Ms. Lyles. *Bates No.* 645. Had Officer Anderson carried his taser, as required under department policy, he would have been able to comply with Officer McNew's directive and Ms. Lyles may very well be alive today.

The Officers further claim that taser training is irrelevant since tasers are not to be used in deadly force situations. *Officers' Brief* at 5-6. Whether a taser was a trained response given the circumstances is a question for the inquest panel to determine, not an issue relevant to scope. Furthermore, the Officers' claim that a taser is inappropriate when confronted with a deadly weapon is false. The Seattle Police Department (SPD) Taser X2 training, which Officer Anderson received in 2015, states in its Executive Summary, "a TASER can also be an effective force option against subjects who might be possessing potentially deadly weapons such as knives." *Bates No.* 625-626.

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While the City includes bias training within its scope, the Officers argue that bias training is irrelevant to this inquest. *Officers' Brief* at 5-7. The Officers fail to actually address the Family's explanation of why bias training is within the inquest scope. They argue that there is no evidence of explicit bias by the Officers. *Id.* at 5. However, the Family never claimed that bias training was relevant because of known explicit bias.

The Officers claim that training on what they call "inherent bias" is irrelevant because there is no evidence that "inherent bias" contributed to their actions.[2] *Id.* at 6. As explained in the Family's previous briefing, implicit bias, by its very nature, cannot be demonstrated outside of controlled experiments. That there is no evidence of implicit bias is a completely meaningless statement—as that is always the case in a police shooting.

Ultimately, the Officers reject the inclusion of implicit bias training because it is impossible to prove that the Officers carried implicit bias. *Id.* at 6-7. However, this misses the point. Implicit bias training is not relevant because it aids in understanding whether the Officers were biased. Implicit bias training is relevant because it teaches all officers to engage in actions to counter potential unconscious biases they may have.[3] The relevant inquiry is whether the officers took the steps outlined in their implicit bias training. Whether the Officers actually harbored any implicit bias is irrelevant to this inquiry.

D. The Officers fail to include SPD policy that is within the Officers' own scope definition

The City, Family, and Officers propose very similar inquest scopes related to SPD policy. However, in conflict with the City and Family's proposed scopes, the Officers do not include

[2] "Inherent bias" is not a commonly used in term in relation to unconscious racial bias. The Family assumes that, in referring to "inherent bias," the Officers are referring to what is commonly called "implicit bias."

[3] Through routine monitoring and other techniques, implicit bias training allows officers to reduce racial bias, including in how they respond to perceived threats. Mitchell, Renée & James, Lois, *Addressing the Elephant in the Room: The Need to Evaluate Implicit Bias Training Effectiveness for Improving Fairness in Police Officer Decision-Making*, Police Chief Magazine, https://www.policechiefmagazine.org/addressing-the-elephant-in-the-room/

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SPD Manual Title 8.300, which governs use of force tools, despite the fact that it falls within their own scope definition. For example, Title 8.300-Pol-3(7) states that officers, when feasible, shall issue a verbal warning prior to discharging their firearm. Given that the Officers discharged their firearms in shooting Ms. Lyles, policy related to the firing of their weapons is "relevant to the officers' decision making." *Officers' Brief* at 7. Additionally, former SPD Manual Title 8.300-POL-3(3), which required officers to carry their issued taser, falls within the Officers' own proposed scope because Officer Anderson's failure to carry his taser influenced the use-of-force options he had available and thus was "relevant to the officers' decision making." *Id.*

E. The Officers' response to the Family's Discovery Demand is duplicative and irrelevant to the requested briefing

The Officers' Response to the Family's August 2019 Discovery Demand is duplicative and irrelevant to this briefing. To that end, the Family directs the Officers to review the briefing already filed on those issues.

III. CONCLUSION

The inquest serves the public's "**strong interest** in a **full** and **transparent** review of the **circumstances surrounding the death**." PHL-7-1-2-EO, Appendix 1, § 6.2 (2018) (emphasis added). This purpose would be thwarted if the scope is unduly restricted and unfairly applied in the manner proposed by the City and Officers. The inquest should adopt the Family's scope definition, which is directly drawn from the inquest rules and consistently applied. The inquest should provide a "full, fair, and transparent" review of Ms. Lyles's death and consider the "facts and circumstances surrounding the death," including within the scope *Officer McNew, Officer Anderson and Ms. Lyles's actions related to the death and any information or events that bear on those actions.* PHL-7-1-2-EO, Appendix 1, § 2.2 (2018).

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JOINTLY filed this 11th day of October, 2019.

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CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury according to the laws of the United States and the State of Washington that on this date I caused to be served in the manner noted below a copy of this document entitled **FAMILY RESPONSE TO THE CITY'S AND OFFICERS' BRIEFS TO DETERMINE INQUEST SCOPE** on the following individuals:

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