KING COUNTY DEPARTMENT OF EXECUTIVE SERVICES

INQUEST PROGRAM

INQUEST INTO THE DEATH OF CHARLEENA CHAVON LYLES, Deceased.	Case No. 517IQ9301 FAMILY REPLY REGARDING INQUEST SCOPE

I. INTRODUCTION

The City and Officers concede to the relevance of much of the Family's scope. *The Officers agree to the family's definition of "circumstances."*[1] This is a substantial concession because no objections have been made to the other part of the family's scope definition concerning "facts." Similarly, *the City concedes that the Family's definition of circumstances, as it relates to Ms. Lyles, is correct.*[2]

With the Officers accepting the Family's scope definition and the City agreeing to its most significant part, the main remaining area of contention is the Family's application of that definition. However, the City and Officers offer few actual objections to the information

[1] The Officers state, "The family correctly acknowledges that the 'circumstances' of the death include 'any information or events that bear on Officer McNew, Officer Anderson, or Ms. Lyles's actions related to the death.'" *Officers' Response* at 2:13-15.

[2] The City admits that its 1 hour 23 minute scope window was overly narrow and information is relevant if it bears on Ms. Lyles's actions. *City's Response* at 7:15-18 (explaining that the incident involving Ms. Lyles's demands for toilet paper is relevant as it speaks to Ms. Lyles's actions on June 18th).

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included in the Family's scope.[3] Instead, they often mischaracterize the Family's scope, seizing on objectionable, related information, even though it is outside the proposed scope. These misleading distractions must be dismissed and the focus must remain on the Family's detailed explanations of relevance, grounded in the actual inquest rules. Once distractions and mischaracterizations are rejected, the appropriate conclusion will be that the Family's proposed scope should govern this inquest.

II. AREAS OF DISAGREEMENT

A. June 5, 2019 incident

The City objects to any evidence from the June 5, 2019 incident, outside of the report reviewed by Officer Anderson, because it may mislead the panel as to what the Officers knew. The City's concern is misplaced. The June 5th report will almost certainly be entered into evidence, allowing the panel to easily review the report and determine what information the Officers knew.

B. Officer Anderson and McNew prior uses of force

The City's objection to the Officers' use of force reports conflates use of force reports with disciplinary records. Use of force reports do not result in the imposition of discipline and, thus, are not disciplinary records. As a result, the City's briefing on PHL-7-1-2-EO Appendix 2, § 4.6, ER 404(b), and the cases cited on page 4, lines 4-10 is irrelevant. The City relies on *State v. Blackwell*, 120 Wn.2d 822 (1993), which is also unrelated to the standards in this inquest. *Blackwell* ruled that officers' entire personnel files were not discoverable because of specific limitations under the *criminal discovery rules*. *Blackwell* at 829. Relying on the civil discovery rules, the trial court reached the opposite conclusion—awarding the contested discovery. *Id.* Since the inquest is not constrained by the limits of criminal discovery, *Blackwell* is irrelevant.

[3] Despite the fact that the City and Officers disagree on numerous issues, such as the relevance of racial bias and crisis intervention training, they choose to direct the entirety of their responses at the Family.

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Finally, the City objects to a "blanket order" finding all use of force reports relevant since some use of force reports may not be admissible under ER 401/403. However, the Family is not seeking the blanket admissibility of all use of force reports. Instead, the Family seeks their inclusion in the scope so that they may be reviewed for potential inclusion in the inquest. Only those reports involving "a situation with substantial similarities to the events of June 18th" should be admitted into the actual inquest, as they bear on the Officers' decision-making. *Family Brief* at 7:10-11.

C. Ms. Lyles's mental health history

The City and Officers next claim that Ms. Lyles's mental illness is not relevant to her death. The City contends that, because Ms. Lyles's mental illness was unknown to Officers, it should be excluded from the proceeding. However, the inquest is not a culpability-finding proceeding focused on evaluating the Officers' actions, but fulfills 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 (emphasis added). Ms. Lyles's mental illness was, undoubtedly, a circumstance surrounding her death.

The City next claims that considering information about Ms. Lyles's mental illness would be prejudicial to the City and Officers. Since the City offers no explanation as to why such information would be prejudicial, its objection related to prejudice should be rejected.

The City and Officers also characterize any relationship between Ms. Lyles's mental illness and her actions as speculative, claiming the family has "jump[ed] the rails." *Officers' Response* at 2:15. The Officers claim that no "conceivable interrogatory to the panel on this topic [the relationship between Ms. Lyles's mental illness and her actions] could possibly be answered on a more probable than not basis without utter speculation." *Id.* at 3:1-2. Contrary to the Officers' claim, evaluating intent is not a foreign concept to juries, but something routinely tasked to jurors in criminal and civil litigation. Furthermore, there is a wealth of information

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from which to evaluate Ms. Lyles's state of mind, including an incident only days prior when, as a direct result of her mental health crisis, Ms. Lyles displayed a knife, in the same apartment, in front of officers from the same police department.

Furthermore, the Officers' objection misses a broader point. The inquest is designed to be a broad inquiry, covering a variety of topics where reaching a final determination might be difficult. Inquest interrogatories have been precisely designed to account for this challenge. The rules specifically provide for the answer of "unknown" if "not enough evidence was presented to allow the panelist to answer the question in the affirmative or the negative." PHL-7-1-2-EO, Appendix 2, § 14.4. Additionally, when a panelist believes a "yes," "no," or "unknown" answer does not adequately capture the panelist's determination on a specific issue, the panelist may provide a written explanation. PHL-7-1-2-EO, Appendix 2, § 14.6.

Finally, the City and the Officers object to the Family's "intent to admit testimony from 'expert' Dr. Mark Whitehill." *Officers' Response* at 3:8-9. However, the Family has not sought the admission of Dr. Whitehill's testimony. Should the parties have concerns about potential expert testimony, they should raise their concerns if the admission of such testimony is sought, not in briefing concerning inquest scope.

D. Ms. Lyles's domestic violence history

The Officers and City dismiss Ms. Lyles's extensive domestic violence history as irrelevant to the circumstances of her death. However, they completely fail to address the relevance explained, in great detail, in the Family's brief. *Family's Brief* at 14:4-17:13. Ms. Lyles's experiences of domestic violence were accompanied by a deterioration in her mental health, whereby, in the weeks leading up to her death, her experiences as a victim were now immediately followed by periods of mental health crisis, including on the day of her death when she perceived herself as the victim of a burglary. As a result, her history of as a victim bears on her actions the morning of her death.

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E. Brettler Family Place security issues

Excluding evidence that bears on Ms. Lyles's belief that there was a burglary the morning of her death would unfairly prejudice Ms. Lyles, giving the City and Officers an opportunity to question Ms. Lyles's motives without any ability to fully explain the relevant circumstances. While the Officers can explain the intent behind their actions, Ms. Lyles cannot. However, the fact that she is dead does not make her perspective any less important. Ms. Lyles expressed concern about burglaries to family members and her perspective cannot be understood without considering the source of those concerns.

The City further claims that exclusion is warranted by falsely asserting that the Family has offered no evidence beyond "information and belief" that there were security issues. *City's Response* at 6:5-7. However, the Family provided evidence of security issues at Brettler Family Place in its original brief—highlighting the unusual presence of a security guard patrolling Ms. Lyles's building the night prior to her death and the high level of police activity at Ms. Lyles's building in the 18 months prior to her death. *Family's Brief* at 18:8-16.

F. Officer Anderson's discipline for failing to carry his taser during the incident

The City claims that Officer Anderson's discipline for failing to carry his taser somehow both invades the province of the panel, while also being irrelevant since the parties all agree that Officer Anderson violated policy. If there is no disagreement as to whether Officer violated policy, making it a forgone conclusion that the panel will determine he violated policy, it's unclear how introducing evidence of his discipline would invade the province of the panel. Most importantly, the City's suggestion that disciplinary history must be excluded if it relates to a topic addressed by the panel is in direct contradiction to the inquest rules. The rules, by providing for the introduction of disciplinary history "directly related to the use of force," specifically provide for the consideration of discipline related to topics addressed by the panel. PHL-7-1-2-EO, Appendix 2, § 4.6.

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The Officers object to the inclusion of Officer Anderson's discipline by, once again, offering the misleading claim that a taser is inappropriate given the circumstances, when SPD training, in fact, provides for the use of a taser when an individual possesses a knife. Bates No. 625-626. Like the City, the Officers direct their focus elsewhere and ignore the actual inquest rules that provide for the admission of officer discipline "directly related to the use of force." PHL-7-1-2-EO, Appendix 2, § 4.6. Under the inquest rules, Officer Anderson's discipline should be included in the inquest since his failure to carry his taser deprived him of a use of force option called for by another officer, which could have prevented the need to use deadly force.

G. Prior Brettler Family Place Incident

In their replies, the Officers and City both change their positions on the relevance of the prior Brettler Family Place incident. In their original briefing, the Officers describe the Brettler Family Place internal reports as "relevant and admissible." *Officers' Brief* at 11:19-20. However, potentially realizing that their prior position would suggest that officer history evidence (among other information) would also be included in the scope, the Officers refer to their prior position as insensible, claiming, "Just as the officers' history is irrelevant, consequently, the only sensible position on the child knife threat incident is that it, too, should not be discussed." *Officers' Response* at 6:5-6.

In its initial briefing, the City excluded all events and information occurring prior to 8:55 am on June 18, 2017. However, after reading the Officers' conflicting position, the City changed its scope such that the Brettler Family Place incident would be relevant if a party asserted that Ms. Lyles did not threaten Officers the day of the shooting. *City's Response* at 7:15-17.

Ironically, the City's and Officers' apparent attempt to bring their positions into concert has once again brought them into conflict. Their changing positions regarding the Brettler Family Place incident demonstrate their interest in cherry-picking events to fit their narrative, rather than consistently applying a theory of inquest scope. These attempts must be rejected and the inquest

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should use the Family's definition of scope, which includes all relevant information, regardless of whether it is beneficial to the Family's theory of events.

H. Training Areas of Disagreement

i. Force Review Board (FRB) recommended training

The Officers and City reject Officer McNew's supplemental training by mischaracterizing the Family's scope. The Family proposed that supplemental tactical instruction given to Officer McNew concerning contact/cover tactics, team tactics, availability of a taser officer on scene, and appropriate use of de-escalation tactics should be included within the inquest scope. *Family's Brief* at 10:21-11:9. The City and Officers do not object to the relevance of the actual trainings proposed by the Family. Instead, they object to the inclusion of the FRB finding that Officer McNew failed to follow policy/training and information from the underlying event itself. However, their objections are completely irrelevant since the Family only proposed that the training ordered as a result of the FRB finding be included in the scope, not information from the underlying event or the FRB determination that Officer McNew's actions were inconsistent with policy and training.

ii. Mental health crisis training

The City rejects the relevance of mental health training because "there is no evidence that any individual involved in the alleged incident was in crisis at any time." *City's Response* at 8:21-22. To the contrary, as explained in detail in the Family's original briefing, there is substantial evidence that Ms. Lyles was in mental health crisis at the time she was alleged to have produced a knife. *Family's Brief* at 16:4-17:13. In the weeks leading up to the shooting, Ms. Lyles appeared to experience mental health crisis on several occasions, including one occasion when she displayed a knife while referring to a non-existent dead ex-boyfriend. Declaration of Corey Guilmette (Exhibit 2). Just days prior to the shooting, Ms. Lyles engaged in very similar behavior as the morning of the shooting—she called 911 to report being the victim of a crime,

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the investigation initially proceeded without incident, and then Ms. Lyles suddenly displayed scissors. Bates No. 1053. During that incident, which resulted in her referral to Mental Health Court, Ms. Lyles said she could see the "snake" in Officers' eyes, spoke of morphing into a wolf, and referenced cloning her daughter. *Id.* That a very similar incident, in which Ms. Lyles experienced mental health crisis, happened only days prior, suggests that she experienced a mental health crisis the morning of her death.

iii. Officer safety caution training

The City makes a misguided claim that officer safety caution training is not within the inquest scope because officer safety caution training is subsumed in other training. However, even if it is subsumed in other training, it remains relevant (a claim no party disputes) and the training materials that contain information on officer safety cautions must be included within the inquest scope.

iv. First aid training

The City improperly excludes first aid training because there "is no evidence first aid was improperly administered." Whether officers followed first aid training is a question for the inquest panel, not an issue relevant to determining scope. Further, there is evidence that officers failed to appropriately render aid in a timely manner. At 9:49:44 am, when Ms. Lyles's son steps out of his bedroom, Officer McNew describes Ms. Lyles as "on the floor, you know dying." *See* Officer Anderson DICV at 9:49:44; Bates No. 640-41. However, even though she lay on the floor, dying, Officers chose not to render aid, but instead maintained their guns pointed at her for nearly eight minutes before any attempt was made to assist. Officer McNew DICV 9:49:21-9:57:10.

v. Early Intervention System training

In rejecting training proposed pursuant to the Early Intervention System (EIS), the City again mischaracterizes the information included in the Family's scope. The City misleadingly

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suggests that EIS is nothing more than an officer wellness program. While EIS does promote employee wellness, its primary goal is to "identify and mitigate against factors that may lead to negative performance issues, employee discipline, and/or employee or department liability." Seattle Police Department (SPD) Policy Manual Title 3.070. An Officer is referred to the EIS program when the officer "exceeds a preset threshold of risk factors," including being among the top 5% or 1% of SPD officers in use of force incidents. *Id;* Title 3.070-POL-2. The first topic listed on SPD's own list of resources provided to officers through the EIS program is "training/education." Title 3.070. There is no reason that EIS-mandated training on a topic within inquest scope is any less relevant to this inquest than any other within-scope training course.

vi. Racial bias training

The Officers, for the third time, erroneously object to implicit bias training because (as the Family readily admits) the Family has not and cannot show that the Officers carried implicit bias. The Officers' objections continue to be meaningless. Implicit bias training is relevant because it teaches all officers to engage in actions to counter potential unconscious biases they may have. 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 and the inquest would not consider whether the Officers held implicit bias.

The Officers also suggest the Family's two explanations for the relevance of bias training are somehow interrelated. They are not. Implicit bias training is relevant for only the reasons previously explained. Other bias training—focused on conscious bias—is separately relevant because the Officers were aware that, days prior, Ms. Lyles's belief that officers were members of the KKK played a role in her displaying scissors. Ms. Lyles's accusation was made while officers described her behavior as threatening, and, contrary to the Officers' assertions, creates a factual basis for the Officers to know that issues of race should be considered in their interactions with Ms. Lyles. Again, whether Officers were biased is irrelevant and would be ignored by the

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inquest in considering training on conscious bias. As a result, the Officers' concerns of prejudice (which they fail to explain) are misplaced and racial bias training should be included in the inquest, as both the City and the Family propose.

vii. Training that predates to the Consent Decree

The City's objection to all training that predates the consent decree is overbroad, resulting in the exclusion of relevant training. Officers have not been instructed to ignore all pre-consent decree training and, thus, pre-consent decree training still bears on their actions. Like any other specific training, the Family agrees that a pre-consent decree training course should be excluded if an officer received that training and a later training, which replaced *the entirety* of the pre-consent decree training with new trained behavior. To the extent that the newer training only replaced parts of the prior training, then only those parts of the older training should be excluded from the inquest.

III. CONCLUSION

The Family is the only party to this proceeding that has advanced a consistent theory of scope, actually grounded in the rules. The Officers and City have selectively applied their theories of scope to the facts that benefit their narrative, even changing their proposed scope over the course of briefing. When they addressed the Family's scope, they often did so in a way that mischaracterized the Family's position. When these tactics are duly recognized and dismissed, it becomes clear that the Officers and City agree with much of the Family's scope definition and offer few objections to the actual application of that definition to the facts. As a result, the inquest should reject the Officers' and City's inconsistent, unsupported definitions of scope and accept the Family's scope, which is consistently applied and thoroughly supported.

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JOINTLY filed this 16th 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 REPLY REGARDING INQUEST SCOPE** on the following individuals:

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