DEPARTMENT OF EXECUTIVE SERVICES – INQUEST PROGRAM
KING COUNTY, WASHINGTON

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AMENDED PROTECTIVE ORDER

INQUEST INTO THE DEATH OF CHARLEENA LYLES
517IQ9301

The Administrator, having considered the joint proposal of the parties, hereby orders the following:

1. **"Confidential"** material shall include the following documents and tangible things produced or otherwise exchanged: (1) medical, psychological, and financial records, except that the confidentiality of the medical and psychological records of Charleena Lyles will be governed by the HIPAA statutory and regulatory provisions for the protection or release of records after an individual is deceased; (2) non-public tactical policies, procedures, and training protocols as limited by the exemptions to the Public Records Act" – RCW 42.56.240(1) and the corresponding case authority; (3) records that could implicate the privacy rights of the parties or third parties, including, but not limited to, personal identifying information ("PII") such as date(s) of birth, social security number(s), personal home address(es), phone number(s), and e-mail address(es), driver's license or state identification number(s), personal financial information, passport information, immigration status, criminal history and other information as may be agreed to by the parties or ordered by the Administrator.

2. **Purposes and limitations**: Discovery in this action is likely to involve production of information for which special protection may be warranted and which should be subject to a protective order. The scope of this Order does not mean, however, that the records produced in discovery under this Order will be automatically sealed by the Administrator. This Order details procedures for the parties to meet and confer on documents designated or identified as **Confidential**. Prior to public disclosure or public filing of documents deemed **Confidential**, a party may request the removal of a confidentiality designation or redact the contents of the document that are designated **Confidential,** thus removing the confidentiality of the document itself. Otherwise, a party must adhere to the requirements of General Rule 15, Local General Rule 15, and Local Civil Rule 26 by requesting that the Administrator seal any documents deemed **Confidential** under this Order.[1] This

[1] Under General Rule 15(c)(1), "the [C]ourt or any party may request a hearing to seal or redact the court records." After a hearing, the Court may order files to be sealed or redacted. General Rule 15(c)(2). "Agreement of the parties alone does not constitute a sufficient basis for the sealing or redaction of court records." Instead, the Court must weigh a party's privacy or safety concerns against the public interest.

Order does not otherwise restrict the public's ability to access publicly available documents through normal means under R.C.W. 42.56 *et seq*. This Order (a) does not confer blanket protection on all disclosures or responses to discovery; (b) does not presumptively entitle parties to file **Confidential** information under seal; and (c) the protections this Order affords from public disclosure and use extend only to the limited information or items that are entitled to **Confidential** treatment under the applicable legal principles.

3. **Scope**: This Order applies to all discovery materials. The protections conferred by this agreement cover not only **Confidential** material but also (1) any information copied or extracted from **Confidential** material; (2) all copies, excerpts, summaries, or compilations of **Confidential** material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal **Confidential** material. Except that the protections conferred by this agreement do not apply to information that is in the public domain or becomes part of the public domain through motion and trial proceedings.

4. **Access to and use of Confidential material**

    a. **Basic principles:** A receiving party may use **Confidential** material that is disclosed or produced by another party or by a non-party in connection with this inquest only for purposes of the inquest itself. The records shall not be used for any purpose other than in support of the above-entitled inquest. Counsel and their support staff and personnel shall not disclose or permit the disclosure of any **Confidential** information to any other person or entity except for the Administrator and its personnel, to the extent necessary. Should counsel provide copies of the **Confidential** information to the other persons, counsel must first redact the **Confidential** information contained therein.

    b. **Disclosure**: To the extent that a party must provide the unredacted records to an expert, consultant, investigator, party, or another professional tasked with assisting the inquest, counsel shall provide that individual or entity with a copy of this Protective Order and require execution of the certification contained in Attachment A, Acknowledgment of Understanding and Agreement to Be Bound. The original executed Acknowledgment of Understanding and Agreement to Be Bound shall be retained in counsel's file.

    c. **Public release or filing of Confidential material:** Before including **Confidential** material or discussing or referencing such material in court filings, the filing party shall confer with the parties, and any non-party who originally supplied the material, to determine whether the **Confidential** designation can be removed, whether the document can be redacted, or whether a motion to seal or stipulation and proposed order is warranted. All documents containing

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General Rule 15(c)(2). "A court record shall not be sealed under this section when redaction will adequately resolve" issues of confidentiality. General Rule 15(c)(3).

Confidential matter that are redacted before public release or filing, shall be redacted in compliance with CR 10(f) and GR 31(e).

5. **Designating protected material:** A party or non-party designating discovery as **Confidential** shall provide such designation clearly on the face of each produced page. Such designations shall be accompanied by a log providing the reason for the designation and to the extent practicable, what portions of the document contain the **Confidential** information.

    a. **Exercise of restraint and care in designating material for protection**: Each party or non-party that designates information or things for protection under this agreement must carefully limit any such designation to specific material that qualifies under the appropriate standards. The designating party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or communications for which protection is not warranted are not swept unjustifiably within the ambit of this agreement.

    Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be clearly unjustified or that have been made for an improper purpose (e.g. to unnecessarily encumber or delay the case development process or to impose unnecessary expenses or burdens on other parties) expose the designating party to sanctions.

    If it comes to a designating party's attention that information or things it designated for protection do not qualify for protection, the designating party must promptly notify all other parties that it is withdrawing the improper designation.

    b. **Manner and timing of designations**: Except as otherwise provided in this agreement, or as otherwise stipulated or ordered, disclosure or discovery material that qualifies for protection under this agreement must be clearly so designated before or when the material is disclosed or produced. If any document subject to designation was produced prior to entry of this order, the designating party shall designate such documents as Confidential within thirty (30) days of entry of this order.

        i. **Information in documentary form**: (e.g. paper or electronic documents and deposition exhibits but excluding transcripts of depositions or other pre-inquest or inquest proceedings), the designating party must affix the word "Confidential" to each page that contains confidential material.

        ii. **Other tangible things**: the producing party must affix in a prominent place on the exterior of the container or containers in which the item is stored the word "Confidential." If only a portion or portions of the information or item warrant protection, the producing party, to the extent practicable, shall identify the protected portion(s).

6. **Challenging confidentiality designations**

    a. **Timing of challenges**: Any party or non-party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality designation is necessarily to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the inquest, a party does not waive it right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

    b. **Meet and confer**: the parties must make every attempt to resolve any dispute regarding confidential designations without Administrator involvement. Any motion regarding confidential designations or for a protective order must include a certification, in the motion or in a declaration or affidavit, that the movant has engaged in a good faith meet and confer conference with other affected parties in an effort to resolve the dispute without action by the Administrator. The certification must list the date, manner, and participants to the conference. A good faith effort to confer requires a face-to-face meeting or a telephone conference.

    c. **Administrator intervention**: If the parties (including any designating non-party) cannot resolve a challenge without Administrator intervention, the designating party (including any designating non-party) may file and serve a motion to retain confidentiality. For avoidance of doubt, any designating non-party may bring a motion to retain confidentiality. The burden of persuasion in such motion shall be on the designating party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the challenging party to sanction. All parties shall continue to maintain the material in question as confidential until the court rules on the challenge.

7. **Protected material subpoenaed or ordered produced in other litigation:** If a party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as **Confidential**, that party must:

    a. Promptly notify the designating party in writing and include a copy of the subpoena or court order;

    b. Promptly notify in writing the entity who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this Order; and

    c. Cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose **Confidential** material may be affected.

8. **Unauthorized disclosure of Confidential material:** If a party learns that, by inadvertence or otherwise, it has disclosed **Confidential** material to any person or in any

circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

9. **Inadvertent production of privileged or otherwise protected material:** When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in CR 26(b)(6). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. Parties shall confer on an appropriate non-waiver order under ER 502.

10. **Final disposition and return of confidential information:** When a final disposition in the above-entitled inquest has been reached, all non-public tactical policies, procedures, and training protocols shall be deleted or destroyed to the extent technologically practicable given current best archiving practices within 30 days following final disposition, unless otherwise agreed to by the parties and approved by the Court. All parties retaining other **Confidential** material after the final disposition of this inquest remain bound by the terms of this order.

11. **Penalties:** Any violation of any term or condition of this order may constitute contempt and may subject the party to monetary damages or other sanctions as deemed appropriate by the Court.

DATED December 2, 2019

Michael Spearman
Administrator

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of

_____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Protective Order that was issued by the King County Inquest Administrator on [_____] in the Inquest into the death of Charleena Lyles, Case No. 517IQ9301, I agree to comply with and to be bound by all the terms of this Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Protective Order to any person or entity except in strict compliance with the provisions of the Protective Order.

I further agree to submit to the jurisdiction of the King County Inquest Administrator for the purpose of enforcing the terms of this Protective Order, even if such enforcement proceedings occur after termination of the Inquest.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____