

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,

Plaintiff,

v.

TOWN OF EAST HAVEN AND EAST  
HAVEN BOARD OF POLICE  
COMMISSIONERS,

Defendants.

No. 3:12-CV-1652 (AWT)

**SETTLEMENT AGREEMENT AND  
[PROPOSED] ORDER**

**AGREEMENT FOR EFFECTIVE AND CONSTITUTIONAL POLICING**

**I. INTRODUCTION**

1. The United States of America, the Town of East Haven, the East Haven Police Department, and the East Haven Board of Police Commissioners (collectively, “the Parties”) enter into this Agreement for Effective and Constitutional Policing (“Agreement”) to ensure that the East Haven Police Department provides effective and lawful policing to all East Haven residents, in accordance with the United States Constitution, Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-4a (“Title VI”), and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d (“Safe Streets Act”). In particular, the provisions of this Agreement are designed to ensure that East Haven residents are not subject to discriminatory policing, unjustified stops and arrests, or use of excessive force. Central to the Agreement is the establishment of numerous systems of institutional accountability, including a Joint Compliance Expert, which will provide the East Haven Police Department with a lasting structure enabling policing that is consistent with the United States Constitution, federal law, and professional police practices. The Parties jointly request that this Agreement be entered as an order of the Court and that the Town of East Haven be permitted flexibility to implement the Agreement consistent with its terms.
2. Plaintiff in this action is the United States of America (“United States”).
3. Defendants in this action are the Town of East Haven; the East Haven Police Department (“EHPD”); and the East Haven Board of Police Commissioners (“Board”) (collectively, “Town”).

## II. BACKGROUND

4. On September 30, 2009, the United States notified the Town and EHPD of the Civil Rights Division, Special Litigation Section's investigation into allegations that EHPD officers engage in discriminatory policing, unconstitutional searches and seizures, and use of excessive force.
5. In conducting its investigation, the United States, with the assistance of police practice consultants, interviewed EHPD personnel, Town officials, and members of the community, conducted multiple on-site tours, and reviewed numerous EHPD documents and data sources.
6. On December 19, 2011, the Civil Rights Division reported the findings of its investigation. Specifically, the Civil Rights Division found that EHPD engages in a pattern or practice of systematically discriminating against Latinos, in violation of the Violent Crime Control and Law Enforcement Act, 42 U.S.C. § 14141 ("§ 14141"), Title VI, and the Safe Streets Act. The Civil Rights Division also noted serious concerns that EHPD had failed to ensure that individuals in East Haven are free from unlawful searches and seizures and use of excessive force.
7. Following the release of the United States' investigative findings, the Mayor announced that the Town and EHPD were willing to rebuild EHPD through implementation of changes in policies and practices. The United States and the Town have accordingly determined that this Agreement, rather than costly and protracted litigation, is the most effective means to resolve its investigation.
8. In order to ensure that EHPD is providing law enforcement services consistent with the Constitution and federal law, this Agreement establishes seven focus areas detailing the requirements that the Town, EHPD, and the Board have agreed to undertake to ensure constitutional and effective policing. These focus areas are: (a) General Policies and Training; (b) Bias-Free Policing; (c) Stops, Searches, and Seizures; (d) Use of Force; (e) Civilian Complaints, Internal Investigations, and Discipline; (f) Supervision and Management; and (g) Community Engagement and Oversight. This Agreement also establishes a Joint Compliance Expert responsible for: (a) promoting constitutional and effective policing by EHPD; (b) evaluating EHPD's performance under this Agreement; and (c) reporting on EHPD's compliance with this Agreement.

## III. DEFINITIONS

9. The following terms and definitions shall apply to this Agreement:
  - a. "EHPD" or "the Department" shall refer to the East Haven Police Department and its agents, officers, supervisors, and employees (both sworn and unsworn).
  - b. "Chief of Police" shall refer to the East Haven Chief of Police, including all successors in office.
  - c. "Board" shall refer to the East Haven Board of Police Commissioners, including all successors in office.

- d. "Town" shall refer to the Town of East Haven, including its agents, officers, and employees.
- e. "Mayor" shall refer to the Mayor of East Haven, including all successors in office.
- f. "DOJ" shall refer to the United States Department of Justice's Civil Rights Division and its agents and employees.
- g. "USAO" means the United States Attorney's Office for the District of Connecticut.
- h. "Court" shall refer to the Judge of the United States District Court for the District of Connecticut presiding over this case.
- i. "Active resistance" means a subject's physical actions to defeat an officer's attempt at control and to avoid being taken into custody. Verbal statements alone do not constitute active resistance.
- j. "Apprehension" means the arrest, capture, or taking into custody of a person.
- k. "Arrest" means a seizure of greater scope or duration than an investigatory stop or detention. An arrest is lawful when supported by probable cause.
- l. "AVL" means "Automatic Vehicle Location," a system that automatically tracks the geographic position of a vehicle and transmits that information to a receiver.
- m. "Bilingual staff" means a staff person who has demonstrated and verified proficiency, pursuant to generally accepted objective criteria, in both spoken English and at least one other language as authorized by EHPD. Bilingual staff must voluntarily agree to be assessed and serve as a bilingual employee on behalf of EHPD.
- n. "Civilian Employee" means any non-sworn personnel employed by EHPD, on either a temporary or permanent basis, in either a paid or unpaid capacity.
- o. "Complainant" means any person, including an EHPD officer or employee, who makes a complaint against EHPD or an officer or employee of EHPD.
- p. "Complaint" means any complaint made to EHPD by a member of the public, an EHPD officer, or a civilian employee, regarding EHPD services, policy or procedure, or any claim for damages or criminal complaint that alleges misconduct by an EHPD officer or civilian employee.

- q. “Critical firearm discharge” means a discharge of a firearm by an EHPD officer, including accidental discharges, discharges at animals, and discharges at persons where no one is struck, with the exception of range and training discharges.
- r. “Defendant-directed compliance period” means the time period following the Effective Date, lasting no more than 270 days, during which the Parties will request a stay of proceedings. During the Defendant-directed compliance period, the Defendants shall work to gain substantial compliance with the provisions of this Agreement.
- s. “Demographic Category” means race, color, ethnicity, or national origin.
- t. “Discipline” means a personnel action for violation of an established law, regulation, rule, or EHPD policy, including, but not limited to, an admonishment, written reprimand, suspension, demotion or dismissal.
- u. “Discriminatory Policing” means selective enforcement or non-enforcement of the law, including the selecting or rejecting of particular policing tactics or strategies, based on membership in a demographic category specified in this Agreement. Discriminatory policing does not include using membership in a demographic category as part of a reliable suspect-specific description.
- v. “ECW” means Electronic Control Weapon, a weapon designed primarily to discharge electrical charges into a subject that will cause involuntary muscle contractions and overrides the subject’s voluntary motor responses.
- w. “ECW application” means the contact and delivery of electrical impulse to a subject with an Electronic Control Weapon.
- x. “Effective Date” means the day this Agreement is entered by the Court.
- y. “EIS” means the Early Intervention System.
- z. “Exigent circumstances” means emergencies in which a reasonable person would believe that imminent bodily harm to a person or persons or the destruction of evidence is likely.
- aa. “Firearm” means a pistol, revolver, shotgun, carbine or machine gun, as well as any instrument capable of discharging a bullet or shot.
- bb. “Implement” or “implementation” means the development or putting into place of a policy or procedure, including the appropriate training of all relevant personnel, and the consistent and verified performance of that policy or procedure in actual practice.
- cc. “Including,” “includes,” and “include” mean “including, but not limited to.”

- dd. "IAO" stands for Internal Affairs Officer, the EHPD officer or officers charged with conducting internal and administrative investigations of EHPD officers, agents, and employees, including investigations of serious uses of force, uses of force by EHPD personnel of a rank higher than sergeant, or uses of force reassigned to the IAO by the Chief of Police or designee or the IAO.
- ee. "Interpretation" means the act of listening to a communication in one language (source language) and orally converting it into another language (target language), while retaining the same meaning.
- ff. "Joint Compliance Expert" means a person or team of people with specialized expertise who shall be selected to independently assess and report on the Defendants' implementation of this Agreement.
- gg. "Less-lethal force" means a force application not intended or expected to cause death or serious injury and which is commonly understood to have less potential for causing death or serious injury than conventional, more lethal police tactics. Nonetheless, use of less-lethal force can result in death or serious injury.
- hh. "Less-lethal weapon" means any apprehension or restraint tool that, when used as designed and intended, is less likely to cause death or serious injury than a conventional lethal weapon (e.g., firearm). Nonetheless, use of a less-lethal weapon may result in death or serious injury.
- ii. "Lethal force" means any use of force likely to cause death or serious physical injury, including, the use of a firearm, neck hold, or strike to the head, neck or throat with a hard object, including a fist.
- jj. "LEP" means Limited English Proficient, and refers to a person who does not speak English as his/her primary language and has a limited ability to read, write, speak, or understand English. LEP individuals may be competent in certain types of communication (e.g., speaking or understanding), but still be LEP for other purposes (e.g., reading or writing).
- kk. "Misconduct complaint" means any allegation of improper conduct by an officer or other EHPD employee, whether the complaint alleges corruption or other criminal misconduct; a violation of law; or a violation of EHPD policy or procedure. EHPD shall document and evaluate expressions of dissatisfaction regarding the service provided by EHPD officers or employees to determine whether these complaints include allegations of misconduct and are therefore misconduct complaints, or are purely service complaints.

- ll. "Neck hold" refers to one of the following types of holds: (1) bar-arm control hold: a hold that inhibits breathing by compression of the airway in the neck; and (2) carotid restraint hold: a hold that inhibits blood flow by compression of the blood vessels in the neck; (3) a lateral vascular neck constraint; or (4) a hold with a knee or other object to the back of a prone subject's neck. A neck hold shall be considered lethal force.
- mm. "Non-disciplinary corrective action" refers to action other than discipline taken by an EHPD supervisor to enable or encourage an officer to improve his or her performance.
- nn. "EHPD unit" means any designated organization of officers within EHPD, including patrol shifts and investigative components.
- oo. "EHPDAI" means EHPD Authorized Interpreter, a bilingual EHPD employee who has been authorized to interpret for others in certain situations, such as interviews, interrogations, or taking and responding to civilian complaints.
- pp. "Passive Resistance" means non-compliance with officer commands that is non-violent and is less aggressive than active resistance.
- qq. "Personnel" means EHPD officers and employees.
- rr. "Police officer" or "officer" mean any law enforcement agent employed by EHPD, including supervisors and cadets.
- ss. "Policies and Procedures" means written regulations or directives, regardless of the name of the regulation or directive, describing the duties, functions, and obligations of EHPD officers and/or employees, and providing specific direction in how to fulfill those duties, functions, or obligations.
- tt. "Pretext stop" refers to a stop made by an officer for an observed infraction, such as a traffic infraction, where the officer's object is to conduct a criminal investigation unrelated to the observed infraction.
- uu. "Probable cause" means reasonably trustworthy facts and circumstances that, within the totality of the circumstances, lead an officer to reasonably believe that an individual has committed or is committing a crime.
- vv. "Professional police practices" refers to police practices that are endorsed by credible, professional policing organizations and/or are generally accepted, standard practices used by a wide variety of competent police departments. For the purposes of this Agreement, whether a particular practice constitutes a "professional police practice" shall be determined by the Joint Compliance Expert in consultation with the Parties.

- ww. "Reasonable Force" means that force which an ordinary, prudent and reasonable officer placed in the same position with the same knowledge would find to be reasonable. In determining whether the force used by a police officer in effectuating an arrest was reasonable under the circumstances, factors to be considered are: (1) the known character of the arrestee; (2) the risks and dangers faced by the officers and third parties; (3) the nature of the offense involved; (4) the chance of the arrestee's escape if the particular means are not employed; (5) the existence of alternative methods of arrest; (6) the physical size, strength, and weaponry of the officers as compared to the arrestee; and (7) the exigency of the moment. Force that is not "reasonable" is "unreasonable."
- xx. "Reasonable suspicion" means articulable facts that, within the totality of the circumstances, lead an officer to reasonably suspect that criminal activity has been or is about to be committed.
- yy. "Seizure" or "detention" mean any restriction on the liberty interest of an individual. A seizure occurs when an officer's words or actions convey to a reasonable person that he or she is not free to leave.
- zz. "Serious use of force" means: (1) all uses of force by an EHPD officer that create a substantial risk of death, serious disfigurement, disability or impairment of the functioning of any body part or organ; (2) all critical firearm discharges by an EHPD officer; (3) all uses of force by an EHPD officer resulting in a significant injury, including a broken bone or an injury requiring hospitalization; (4) all head, neck, and throat strikes; (5) all neck holds; (6) all uses of force by an EHPD officer resulting in a loss of consciousness; (7) all other uses of force by an EHPD officer apparently resulting in death; (8) all canine apprehensions; (9) more than two applications of an ECW on an individual during a single interaction, regardless of the mode or duration of the application, and whether the applications are by the same or different officers, or ECW application for longer than 15 seconds, whether continuous or consecutive; and (10) any strike, blow, kick, ECW application, or similar use of force against a handcuffed subject.
- aaa. "Service firearm" means any firearm issued to sworn personnel by the Department.
- bbb. "Shall" means that the provision imposes a mandatory duty.
- ccc. "Supervisor" means a sworn EHPD employee at the rank of sergeant or above (or anyone acting in those capacities) and non-sworn employees of EHPD with oversight responsibility for other personnel.
- ddd. "Supervisory investigation" means an investigation conducted by a subject officer's supervisor or higher level official within the officer's chain-of-command.

- eee. "Supervisor's Investigation Report" means a written report documenting the supervisory investigation.
- fff. "Training" shall comport with best practices and include adult-learning methods that incorporate role-playing scenarios and interactive exercises, as well as traditional lecture formats. Training shall also include testing and/or writings that indicate that the officer comprehends the material taught.
- ggg. "Translation" means the replacement of written text from one language (source language) with an equivalent written text in another language (target language).
- hhh. "Use of force" means any physical coercion used to effect, influence, or persuade an individual to comply with an order from an officer above escorting or unresisted handcuffing, including unholstering a firearm.
- iii. "Use of force indicating apparent criminal conduct by an officer" means that force which a reasonable and trained supervisor would conclude could result in criminal charges due to the apparent circumstances of the use of force, such as the level of the force used as compared to the resistance encountered or discrepancies in the use of force as described by the officer and the use of force as evidenced by any resulting injuries, witness statements, or other evidence. It includes all strikes, blows, kicks, ECW applications, or other similar uses of force against a handcuffed subject, absent exigent circumstances.
- jjj. "Use of Force Report" means a written report documenting all force above unresisted handcuffing.
- kkk. "Vehicle stop" means any instance where an EHPD officer directs a civilian operating a motor vehicle of any type to stop and the driver is detained for any length of time.

#### **IV. POLICIES AND TRAINING GENERALLY**

10. EHPD's policies and procedures shall reflect and express the Department's core values and priorities, and provide clear direction to ensure that officers lawfully, effectively, and ethically carry out their law enforcement responsibilities. EHPD and the Town shall ensure that all EHPD officers are trained to understand and be able to fulfill their duties and responsibilities pursuant to EHPD policies and procedures. EHPD and the Town shall ensure that supervisors have the knowledge, skills, and ability to provide close and effective supervision to each officer under the supervisor's direct command; provide officers with the direction and guidance necessary to improve and develop as police officers; and to identify, correct, and prevent officer misconduct. To achieve these outcomes, EHPD shall implement the requirements below.



**A. Policy Development, Review, and Implementation**

11. EHPD shall develop and implement comprehensive and agency-wide policies and procedures that ensure consistency with, and full implementation of, this Agreement, and incorporate each requirement herein. Unless otherwise noted, all policies, procedures, and manuals shall be developed within 270 days of the Effective Date.
12. EHPD policies and procedures shall define terms clearly, comply with applicable law and the requirements of this Agreement, and comport with professional police practices.
13. EHPD shall review each policy or procedure related to this Agreement 180 days after it is implemented, and annually thereafter, to ensure that the policy or procedure provides effective direction to EHPD personnel and remains consistent with the Agreement, professional police practices, and current law, including incorporating mechanisms to promote and measure accountability and community engagement. EHPD also shall review policies and procedures as necessary upon notice of a policy deficiency during audits or reviews. Within 60 days of that review EHPD shall revise the policy or procedure and consult with the Joint Compliance Expert and DOJ. DOJ and the Joint Compliance Expert shall provide the same review and approval of revised policies and procedures as with the initial policies and procedures to ensure consistency with this Agreement.
14. EHPD's Department-wide policies and procedures shall be collected in a Department-level policy and procedure manual, and unit-wide policies and procedures (or standard operating procedures) shall be collected in unit-level policy and procedure manuals. EHPD shall develop and implement policy and procedure manuals that include the following EHPD functions:
  - a) Field operations, including patrol, supervision task forces, and special operations;
  - b) Internal investigations, including case and records management, administrative investigations, confidential investigations, parallel criminal and administrative investigations, audits, and officer drug testing;
  - c) Use of force reporting, reviews, and investigations, including both Supervisor and IAO force investigations and reviews; and in-custody death reviews;
  - d) Criminal investigations; and
  - e) Field and in-service training.

These manuals shall incorporate and otherwise be consistent with the requirements of this Agreement.

15. EHPD shall expressly prohibit all forms of retaliation, whether subtle or direct, including discouragement, intimidation, coercion, or adverse action, against any person, civilian or officer, who reports misconduct, makes a misconduct complaint, or cooperates with an investigation of misconduct. The default penalty for retaliation shall be termination.

16. EHPD shall develop a policy governing its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), and its progeny. As part of this policy, EHPD shall track and maintain records of all officers who have been determined to have been deceptive or untruthful in any legal proceeding, Internal Affairs investigation, or other investigation. EHPD shall make these records available to prosecutors.
17. EHPD shall submit all new and revised policies, procedures, or manuals related to this Agreement to the Joint Compliance Expert and DOJ for review and comment prior to publication and implementation within 270 days of the Effective Date. If the Joint Compliance Expert or DOJ object that the proposed new or revised policy, procedure, or manual does not incorporate the requirements of this Agreement, or is inconsistent with this Agreement or the law, it shall note this objection in writing to all parties within 15 business days of the receipt of the policy from EHPD. If neither the Joint Compliance Expert nor DOJ object to the new or revised policy, procedure, or manual, EHPD agrees to implement it within 30 days of it being provided to DOJ and the Joint Compliance Expert.
18. EHPD shall have 15 days to resolve any objections to the new or revised policies, procedures, and manuals implementing the specified provisions. If, after this 15-day period has run, DOJ maintains its objection, then the Joint Compliance Expert shall have an additional 15 days to resolve the objection. If either party disagrees with the Joint Compliance Expert's resolution of the objection, either Party may ask the Court to resolve the matter. The Joint Compliance Expert shall determine whether in some instances an additional amount of time is necessary to ensure full and proper review of policies. Factors to consider in making this determination include: 1) complexity of the policy; 2) extent of disagreement regarding policy; 3) number of policies provided simultaneously; and 4) extraordinary circumstances delaying review by DOJ or the Joint Compliance Expert. In determining whether these factors warrant additional time for review, the Joint Compliance Expert shall fully consider the importance of prompt implementation of policies, and shall allow additional time for policy review only where it is clear that additional time is necessary to ensure full and proper review. Any extension to the above timelines by the Joint Compliance Expert shall also toll EHPD's deadline for policy completion.
19. EHPD shall apply policies uniformly and hold officers accountable for complying with EHPD policy and procedure.
20. Within 180 days of the Effective Date, EHPD shall formalize a common template to use for all EHPD policies and General Orders. The template shall include a method for updates and revisions that permits all parties to keep track of former versions of policies and General Orders while clearly labeling currently operative policies and General Orders. All EHPD policies and General Orders shall be made to conform to this template.
21. Within 365 days of the Effective Date, EHPD shall make all new and revised EHPD policies freely available for public review on the Town website, unless there is a reasonable basis for maintaining a specific policy or procedure confidential or unless an

exemption from disclosure is allowed under State or Federal Freedom of Information law or any other applicable law.

22. EHPD shall review and revise its Code of Conduct within 180 days of the Effective Date, and annually thereafter, to:
  - a) describe with specificity permitted and prohibited officer conduct;
  - b) be consistent with the requirements of professional police practice and this Agreement; and
  - c) have an absolute requirement of officer honesty and make termination the default penalty for dishonesty.
23. EHPD shall submit proposed revisions to its Code of Conduct to the Joint Compliance Expert and DOJ for review and comment at least 60 days before the implementation of any revision to ensure consistency with this Agreement. The dispute resolution process and associated time frames set forth in Paragraphs 17 and 18 of this Agreement shall apply to DOJ and the Joint Compliance Expert's review of any new or revised Code of Conduct.

**B. Training on Revised Policies, Procedures, and Practices**

24. Within 60 days of the Effective Date, EHPD shall ensure that each officer and employee attends a 2-4 hour training on the content of this Agreement and the responsibilities of each officer and employee pursuant to it.
25. Within 30 days after issuing a policy or procedure pursuant to this Agreement, EHPD shall ensure that all relevant EHPD personnel have received, read, and understand their responsibilities pursuant to the policy or procedure, including the requirement that each officer or employee report violations of policy; that supervisors of all ranks shall be held accountable for identifying and responding to policy or procedure violations by personnel under their command; and that personnel will be held accountable for policy and procedure violations. EHPD shall document that each relevant EHPD officer or other employee has received, read, and sufficiently understands the policy. Training beyond roll-call or similar training will be necessary for many new policies to ensure officers understand and can perform their duties pursuant to the policy.
26. EHPD shall ensure delivery of the one-time and recurrent in-service training requirements set out throughout this Agreement. As set out herein, EHPD shall provide a minimum of 32 hours of in-service training each year to each officer, in addition to any specialized training for officers in certain units, supervisors, etc., and in addition to the one-time training required by this Agreement. Training in related areas may be delivered together. (For example, aspects of training in effective community engagement and bias-free policing may be incorporated into stop, search, and arrest training). The in-service training shall not include any firearms training required by the state. The frequency and subject areas for initial one-time and recurrent in-service training are set out in the sections below; however, it is anticipated that the frequency and subject areas for in-

service training in the future will be determined by the training plan this Agreement requires EHPD to develop.

27. EHPD shall provide mandatory supervisory, leadership, and command accountability training, tailored to each level of supervision and command, of 24 – 40 hours. All EHPD supervisors shall receive supervisory training prior to assuming supervisory responsibilities or serving as an acting supervisor, and shall receive no fewer than 40 hours of supervisory in-service training annually thereafter.
28. The supervisory training program shall include instruction in the following topics:
  - a) techniques for effectively guiding and directing officers and promoting effective and ethical police practices;
  - b) de-escalating conflict;
  - c) evaluation of written reports;
  - d) reviewing and investigating officer uses of force;
  - e) responding to and investigating allegations of officer misconduct;
  - f) risk assessment and risk management;
  - g) evaluating officer performance;
  - h) appropriate disciplinary sanctions and non-disciplinary corrective action; and
  - i) using the Risk Management System to facilitate close and effective supervision.
29. EHPD shall submit training curricula and lesson plans, revised pursuant to this Agreement, to the Joint Compliance Expert and DOJ for review and comment at least 90 days prior to the scheduled date of training delivery. The Joint Compliance Expert shall provide the Parties with written comments regarding the training. The Joint Compliance Expert and DOJ shall review all EHPD training curricula and lesson plans promulgated pursuant to this Agreement to determine whether they are consistent with and incorporate the requirements of this Agreement, and comport with professional police practices. The dispute resolution process and associated time frames set forth in Paragraphs 17 and 18 of this Agreement shall apply to DOJ and the Joint Compliance Expert's review of training curricula and lesson plans.
30. Unless otherwise noted, the training required pursuant to this Agreement shall be delivered within 365 days of the Effective Date, and annually thereafter. Within 180 days of the Effective Date, EHPD shall set out a schedule for delivering all training required by this Agreement.
31. Within 270 days of the Effective Date, EHPD shall develop and implement documented and approved testing policies and procedures regarding training to ensure that that all testing is valid, reliable, fair, and legally defensible. Both knowledge-based and performance-based tests shall be designed, developed, administered, and scored according to established professional standards of practice. Testing policies and procedures shall include detailed test security measures. All tests shall be job-related, testing knowledge and skills required for successful job performance.

## V. BIAS-FREE POLICING

32. EHPD shall deliver police services that are equitable, respectful, and free of unlawful bias, in a manner that promotes broad community engagement and confidence in the Department. In conducting its activities, EHPD shall ensure that members of the public receive equal protection of the law, without bias based on demographic category, and in accordance with the rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. To achieve these outcomes, EHPD shall implement the requirements below.

### A. Bias-Free Policing Training

33. EHPD shall provide all officers with 4 hours of comprehensive and interdisciplinary training on bias-free policing within 180 days of the Effective Date, and 2 – 4 hours annually thereafter, based on developments in Connecticut or federal law and EHPD policy. Such training shall emphasize that discriminatory policing, in the form of either selective enforcement or non-enforcement of the law, including the selecting or rejecting of particular policing tactics or strategies, is prohibited by policy and will subject officers to discipline. This training shall address:

- a) methods and strategies for more effective policing that relies upon non-discriminatory factors;
- b) police and community perspectives related to discriminatory policing;
- c) constitutional and other legal requirements related to equal protection and unlawful discrimination, including the requirements of this Agreement;
- d) the protection of civil rights as a central part of the police mission and as essential to effective policing;
- e) the existence and impact of arbitrary classifications, stereotyping, and implicit bias;
- f) instruction in the data collection protocols required by this Agreement;
- g) identification of key decision points where prohibited discrimination can take effect at both the incident and strategic-planning levels; and
- h) methods, strategies, and techniques to reduce misunderstanding, conflict, and complaints due to perceived bias or discrimination, including problem-oriented policing strategies.

### B. Ensuring Bias-Free Policing

34. EHPD shall, consistent with this Agreement, develop a comprehensive policy prohibiting discrimination on the basis of demographic category in EHPD police practices. This policy shall have the following elements:

- a) EHPD's policy on bias-free policing shall prohibit officers from using demographic category (to any extent or degree) in conducting stops or detentions, or activities following stops or detentions, except when engaging in appropriate suspect-specific activity to identify a particular person or persons.

- b) EHPD shall prohibit officer use of proxies for demographic category, including language ability, geographic location, or manner of dress.
  - c) When officers are seeking one or more specific persons who have been identified or described by their demographic category, or any proxy thereto, officers may rely on these descriptions only when combined with other appropriate identifying factors, and may not give exclusive attention or undue weight to demographic category.
  - d) Data collection, as set forth in Paragraphs 64(c) and 65 of this Agreement.
35. EHPD shall conduct quarterly analysis, as well as analysis on a cumulative basis, consistent with the methodology employed by the Joint Compliance Expert, of its traffic enforcement activities to ensure officer, squad, and Department compliance with the bias-free policy.
36. EHPD shall develop a formalized procedure for officers to notify arrested foreign nationals of their right to contact their consulate, or to contact the appropriate consular official directly.
37. EHPD shall refer any complaint plausibly implicating the bias-free policy to the IAO and to the Joint Compliance Expert. EHPD shall treat any violation of the bias-free policy as a serious violation. Officers who engage in discriminatory policing will be subjected to discipline, and, where appropriate, possible criminal prosecution.
38. Within 180 days of the Effective Date, EHPD shall incorporate concrete requirements regarding bias-free policing and equal protection into its hiring, promotion, and performance assessment processes, including giving significant weight to an individual's documented history of bias-free policing, as well as using interviews and other methods to assess the individual's ability and willingness to effectively practice bias-free policing. EHPD's hiring plan shall also include steps to encourage qualified minority and other candidates who have a demonstrated ability to serve diverse communities to apply for positions in EHPD

**C. Language Assistance**

39. EHPD shall ensure effective communication with and provide timely and meaningful access to police services to all members of the community, regardless of their national origin or limited ability to speak, read, write, or understand English. To achieve this outcome, EHPD shall:
- a) develop and implement a comprehensive language assistance plan and policy that complies, at a minimum, with Title VI of the Civil Rights Act of 1964, as amended, (42 U.S.C. § 2000d et seq.) and other applicable law, and comports with professional policing practices;
  - b) ensure that all EHPD personnel take reasonable steps to provide timely, meaningful language assistance services to LEP individuals they encounter and whenever an LEP individual requests language assistance services;

- c) identify and assess demographic data, specifically the number of LEP individuals within its jurisdiction and the number of LEP victims and witnesses who seek EHPD services;
  - d) use collected demographic and service data to develop and meet specific hiring goals for bilingual staff;
  - e) regularly assess the proficiency and qualifications of bilingual staff to become a EHPD Authorized Interpreter (“EHPDAI”);
  - f) ensure that 911 call-takers identify an EHPDAI to respond to an incident involving an LEP individual. If no EHPDAI is available, the personnel shall contact a telephonic interpretation service provider. The call-taker shall note in information to the radio dispatch that the 911 caller is an LEP individual and indicate the language;
  - g) develop protocols for interpretation for interrogations and interviews of LEP individuals, including requiring and ensuring the use of a qualified interpreter for the taking of any formal statement that could adversely affect a suspect or witness’ legal rights;
  - h) develop and implement a process for taking, responding to and tracking civilian complaints and resolutions of complaints filed by LEP individuals;
  - i) implement a process for recruitment of qualified bilingual personnel to meet demonstrated service needs. As part of this process, EHPD shall establish significant and sustained relationships with local and state-wide institutions and community organizations that can serve as the source of qualified bilingual applicants and facilitate outreach to such advocates; and
  - j) implement effective incentives for bilingual employees to become EHPDAIs, such as pay differentials and consideration in performance evaluations, assignments, and promotions.
40. EHPD shall translate the language assistance plan and policy into Spanish and other languages as appropriate, and post the English and translated versions in a public area of the police department building, as well as online, and in any other locations throughout the Town where individuals go to seek police assistance. EHPD shall distribute the language assistance plan and policy to a variety of community organizations serving LEP communities encountered by EHPD.
41. EHPD shall distribute its LEP plan and policy to all staff and police personnel, and, within 180 days of the Effective Date provide a minimum of one hour of training to all personnel on providing language assistance services to LEP individuals. This training shall include:
- a) EHPD’s LEP plan and policies, and the requirements of Title VI and this Agreement;
  - b) how to access EHPD-authorized, telephonic and in-person interpreters;
  - c) how to work with interpreters in the field;
  - d) cultural diversity and language barrier policing; and
  - e) basic command Spanish for officers assigned to patrol areas with significant LEP populations.

42. Within 60 days of Effective Date, the Town shall designate a language access coordinator who shall coordinate and ensure EHPD's compliance with its language assistance plan.
43. Within 60 days of the Effective Date, EHPD shall develop and implement a process of consultation with representatives of the LEP community to develop and at least annually review: implementation of the language assistance plan, including areas of possible collaboration to ensure its effectiveness; identification of additional languages that would be appropriate for translation of materials; accuracy and quality of EHPD language assistance services; and concerns, ideas, and strategies for ensuring language access.

## **VI. STOPS, SEARCHES, AND ARRESTS**

44. EHPD shall ensure that all EHPD investigatory stops, searches, and arrests are conducted in accordance with the rights, privileges, or immunities secured or protected by the Constitution or laws of the United States. EHPD shall ensure that investigatory stops, searches, and arrests are part of an effective overall crime prevention strategy; are consistent with community priorities for enforcement; and are carried out even-handedly. To achieve these outcomes, EHPD shall implement the requirements below.

### **A. Investigatory Stops and Detentions**

45. EHPD officers shall conduct investigatory stops or detentions only where the officer has reasonable suspicion that a person has been, is, or is about to be engaged in the commission of a crime.
46. EHPD officers shall not use "canned" or conclusory language in any reports documenting investigatory stops, detentions and searches. Articulation of reasonable suspicion and probable cause shall be specific and clear.
47. EHPD officers shall not use or rely on information known to be materially false or incorrect in effectuating an investigatory stop or detention.
48. EHPD officers shall not use demographic category as a factor, to any extent or degree, in establishing reasonable suspicion or probable cause, except as part of an actual and credible description of a specific suspect in an ongoing investigation.

### **B. Searches**

49. EHPD officers shall not use demographic category in exercising discretion to conduct a warrantless search or to seek a search warrant, except as part of an actual and credible description of a specific suspect in an ongoing investigation.
50. Where an officer seeks consent for a search, the officer shall affirmatively inform the subject of his or her right to refuse and to revoke consent at any time, articulate and document the independent legal justification for the search, and document the subject's consent on a written form that explains these rights.



51. EHPD shall ensure that the consent to search form includes separate signature lines for civilians to affirm that they understand they have a right to refuse, and for officers to certify that they have read and explained the right to refuse to the civilian.
52. An affidavit or sworn declaration supporting an application for a search warrant shall provide an accurate, complete, and clear description of the offense, the place or thing to be searched, scope of the search, and time and method of the search.
53. A supervisor shall review each request for a search or arrest warrant, including each affidavit or declaration before it is filed by an officer in support of a warrant application, for appropriateness, legality, and conformance with EHPD policy and this Agreement. The supervisor shall assess the information contained in the warrant application and supporting documents for authenticity, including an examination for "canned" or conclusory language, inconsistent information, and lack of articulation of a legal basis for the warrant.
54. As part of the supervisory review, the supervisor shall document in an auditable format those warrant applications that are legally unsupported, are in violation of EHPD policy or this Agreement, or that indicate a need for corrective action or review of agency policy, strategy, tactics, or training. The supervisor shall take appropriate action to address violations or deficiencies, including recommending non-disciplinary corrective action for the involved officer, and/or referring the incident for administrative or criminal investigation. The quality and accuracy of search warrants and supportive affidavits or declarations shall be taken into account in officer performance evaluations.
55. A supervisor shall review the operational plan for the execution of a search warrant and, absent exceptional circumstances, shall be present for execution of the search warrant. A supervisor shall document in the case file the exceptional circumstances preventing his or her presence. Once executed, a supervisor shall review the execution of the search warrant. Supervisors shall memorialize their reviews in writing within 24 hours of the execution of a search warrant. The quality of these supervisory reviews shall be taken into account in the supervisor's performance evaluations.
56. EHPD shall maintain centrally a log listing each search warrant, the case file where a copy of such warrant is maintained, the officer who applied for, and each supervisor who reviewed the application for a search warrant.

**C. Arrests**

57. EHPD officers shall only arrest an individual where the officer has probable cause. In effectuating an arrest, EHPD officers shall not rely on information known to be materially false or incorrect. Officers may not consider demographic category in effecting an arrest, except as part of an actual and credible description of a specific suspect in an ongoing investigation.
58. An officer shall immediately notify a supervisor when effectuating a felony arrest, an arrest where the officer used force, an arrest for obstructing or resisting an officer, any disorderly conduct type arrest, or a custodial arrest for a vehicle infraction, and the

supervisor shall, absent exceptional circumstances, immediately respond to the scene. A supervisor shall document in the case file the exceptional circumstances preventing his or her presence.

59. The responding supervisor shall approve or disapprove the officer's arrest recommendation, based on the existence of justifiable probable cause and EHPD policy. The supervisor shall take appropriate action to address violations or deficiencies in the officer's arrest recommendation, including releasing the subject, recommending non-disciplinary corrective action for the involved officer, and/or referring the incident for administrative or criminal investigation.
60. At the time of presentment at EHPD headquarters, a watch commander or supervisor shall visually inspect each detainee or arrestee for injury, interview the detainee or arrestee for complaints of pain, and ensure that the detainee or arrestee receives medical attention from an appropriate medical provider, as necessary. The watch commander or supervisor shall document the results of the visual inspection in writing.
61. EHPD officers shall complete all arrest reports before the end of shift. EHPD field supervisors shall review each arrest report of officers under their command and shall memorialize their review in writing within 12 hours of the arrest, absent exceptional circumstances. Supervisors shall review reports and forms for "canned" or conclusory language, inconsistent information, lack of articulation of the legal basis for the action, or other indicia that the information in the reports or forms is not authentic or correct.
62. As part of the supervisory review, the supervisor shall document in an auditable format those arrests that are unsupported by probable cause, are in violation of EHPD policy or this Agreement, or that indicate a need for corrective action or review of agency policy, strategy, tactics, or training. The supervisor shall take appropriate action to address violations or deficiencies in making arrests, including recommending non-disciplinary corrective action for the involved officer, and/or referring the incident for administrative or criminal investigation. For each subordinate, the supervisor shall track each violation or deficiency and the corrective action taken, to identify officers needing repeated corrective action. The supervisor shall ensure that each violation or deficiency is noted in the officer's performance evaluations. The quality of these supervisory reviews shall be taken into account in the supervisor's own performance evaluations. EHPD shall take appropriate corrective or disciplinary action against supervisors who fail to conduct reviews of adequate and consistent quality.
63. A command-level official shall review, in writing, all supervisory reviews related to arrests that are unsupported by probable cause, are in violation of EHPD policy or this Agreement, or that indicate a need for corrective action or review of agency policy, strategy, tactics, or training. The commander's review shall be completed within seven days of receiving the document reporting the event. The commander shall evaluate the corrective action and recommendations in the supervisor's written report and ensure that all appropriate corrective action is taken, including referring the incident to the IAO for investigation.

**D. Stop and Search Data Collection and Review**

64. EHPD shall, consistent with this Agreement, develop a comprehensive policy on stops, searches and seizures. This policy shall have the following elements:
- a) A requirement that prior to making traffic stops, officers notify dispatch about known information, including the number of occupants of the vehicle, the perceived race or ethnicity of the occupants, and a description of the basis for the stop;
  - b) A detailed description of the justification necessary for officers to make stops and arrests;
  - c) A requirement that all stops, searches, and seizures be documented in an Incident Report that records:
    - i. the officer's name and badge number;
    - ii. date, time, and location of the stop;
    - iii. duration of the stop;
    - iv. the apparent race, color or ethnicity of the individual, based on the police officer's reasonable observation and perception;
    - v. the suspected violation that led to the stop;
    - vi. whether any contraband or evidence was seized from any individual, and nature of the contraband or evidence;
    - vii. the post-stop action taken with regard to the violation (including a warning, a citation, an arrest, or a use of force); and
    - viii. whether any search was conducted, the kind of search conducted, the basis for the search, whether the search was consensual or non-consensual, and the outcome of the search.
65. Within 270 days of the Effective Date, EHPD shall develop a system to collect data on all investigatory stops and searches, whether or not they result in an arrest or issuance of a citation. This system shall allow for analysis and searches and also shall be integrated into the EIS. EHPD's stop and search data collection system shall be subject to the review of the Joint Compliance Expert and DOJ, and shall require officers to document all required information.
66. Officers shall submit documentation of investigatory stops and detentions, and any searches resulting from or proximate to the stop or detention, including a complete and accurate inventory of all property or evidence seized, to their supervisors by the end of the shift in which the police action occurred. Absent exceptional circumstances, within 12 hours of receiving a report on an investigatory stop and detention or search, a supervisor shall review the report and shall document: (a) those investigatory stops and detentions that appear unsupported by reasonable suspicion, (b) those searches that appear to be without legal justification; (c) stops or searches in violation of EHPD policy or this Agreement, or (d) stops or searches that indicate a need for corrective action or review of agency policy, strategy, tactics, or training.

67. The supervisor shall take appropriate action to address all violations or deficiencies in investigatory stops or detention or executing a search, including recommending non-disciplinary corrective action for the involved officer, and/or referring the incident for administrative or criminal investigation. For each subordinate, the supervisor shall track each violation or deficiency and the corrective action taken, if any, to identify officers needing repeated corrective action. The supervisor shall ensure that each violation or deficiency is noted in the officer's performance evaluations. The quality and completeness of these supervisory reviews shall be taken into account in the supervisor's own performance evaluations. EHPD shall take appropriate corrective or disciplinary action against supervisors who fail to conduct complete, thorough, and accurate reviews of officers' investigatory detentions and searches.
68. EHPD shall develop a protocol for comprehensive analysis, on at least a quarterly basis, of the stop and search data collected. This protocol shall be subject to the review of the Joint Compliance Expert and DOJ, and shall identify and incorporate appropriate benchmarks for comparison.
69. On at least a semi-annual basis, EHPD and the Board of Police Commissioners shall issue a report summarizing the stop and search data collected, the analysis of that data, and the steps taken to correct problems and build on successes. The report shall be publicly available.
70. EHPD shall ensure that all databases containing individual specific data comply fully with federal and state privacy standards governing personally identifying information. EHPD shall develop a process to restrict database access to authorized, identified users who are accessing the information for a specific and identified purpose.

**E. First Amendment Right to Observe and Record Officer Conduct**

71. EHPD shall ensure that onlookers or bystanders may witness, observe, record, and/or comment on officer conduct, including stops, detentions, searches, arrests, or uses of force in accordance with their rights, immunities, and privileges secured or protected by the Constitution or laws of the United States. Officers shall respect the right of civilians to observe, record, and/or verbally comment on or complain about the performance of police duties occurring in public, and EHPD shall ensure that officers understand that exercising this right serves important public purposes.
72. Individuals observing stops, detentions, arrests and other incidents shall be permitted to remain in the proximity of the incident unless there is an actual and articulable law enforcement basis to move an individual, such as: an individual's presence would jeopardize the safety of the officer, the suspect, or others in the vicinity; the individual violates the law; or the individual incites others to violate the law.

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73. Individuals shall be permitted to record police officer enforcement activities by camera, video recorder, cell phone recorder, or other means, unless there is an actual and articulable law enforcement basis to deny permission.

74. Officers shall not threaten, intimidate, or otherwise discourage an individual from remaining in the proximity of or recording police officer enforcement activities.
75. Officers shall not detain, prolong the detention of, or arrest an individual for remaining in the proximity of, recording or verbally commenting on officer conduct directed at the individual or a third party, unless there is an actual and articulable law enforcement basis for the detention.
76. Officers shall report to their supervisors whenever they believe they have been recorded by a member of the public.
77. Officers shall not seize or otherwise coerce production of recorded sounds or images, without obtaining a warrant, or order an individual to destroy such recordings. Where an officer has a reasonable belief that a bystander or witness has captured a recording of critical evidence related to a felony, the officer may secure such evidence for no more than three hours while a legal subpoena, search warrant, or other valid order is obtained.

**F. Stop, Search and Arrest Training**

78. EHPD shall provide all officers with comprehensive training on stops, searches and arrests, including the requirements of this Agreement, of no fewer than 8 hours within 180 days of the Effective Date and between 4 – 6 hours on an at least an annual basis thereafter. Such training shall be taught by a competent legal instructor with significant experience litigating, or teaching at an accredited law school, Fourth Amendment issues, and shall:
  - a) address Fourth Amendment and related law; EHPD policies, and requirements in this Agreement regarding searches and seizures;
  - b) address First Amendment and related law in the context of the rights of individuals to verbally dispute, observe, and record officer conduct;
  - c) address the difference between various police contacts by the scope and level of police intrusion; between probable cause, reasonable suspicion and mere speculation; and voluntary consent from mere acquiescence to police authority;
  - d) provide guidance on the facts and circumstances that should be considered in initiating, conducting, terminating, and expanding an investigatory stop or detention;
  - e) provide guidance on proper and improper use of pretextual stops.
  - f) provide guidance on the level of permissible intrusion when conducting searches, such as “pat-downs” or “frisks”;
  - g) provide guidance on the legal requirements for conducting searches, with and without a warrant;
  - h) provide guidance on the nature and scope of searches based on the level of permissible intrusion on an individual’s privacy interests, including searches conducted pursuant to probation or parole release provisions;
  - i) specify the procedures for executing searches, including handling, recording, and taking custody of seized property or evidence;

- j) provide guidance on effecting an arrest with and without an arrest warrant; and
- k) provide guidance regarding the nature and scope of searches incident to an arrest.

## VII. USE OF FORCE

79. EHPD shall develop and implement force policies, training, and review mechanisms that ensure that force by EHPD officers is used in accordance with the rights, privileges, and immunities secured or protected by the Constitution or laws of the United States and that any unreasonable uses of force are identified and responded to appropriately. EHPD shall ensure that officers use non-force techniques to effect compliance with police orders whenever feasible; use physical force only when strictly necessary; use physical force in a manner that avoids unnecessary injury to officers and civilians; and de-escalate the physical use of force at the earliest possible moment. To achieve these outcomes, EHPD shall implement the requirements set out below.

### A. Use of Force Principles

80. EHPD uses of force, regardless of the type of force or weapon used, shall abide by the following requirements:
- a) officers shall use advisements, warnings, and verbal persuasion, when possible, before resorting to physical force;
  - b) physical force shall be de-escalated immediately as resistance decreases;
  - c) supervisors shall determine whether the action or inaction of officers using physical force, or of other EHPD officers on scene, resulted in the need to use physical force;
  - d) officers will use disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, and/or calling in specialized units, when possible, in order to reduce the need for physical force and increase officer and civilian safety;
  - e) officers shall allow individuals time to submit to arrest before physical force is used wherever possible;
  - f) officers shall not use neck holds or a strike to the head with a hard object, except where lethal force is authorized;
  - g) using physical force against persons in handcuffs is prohibited except in emergencies in which a reasonable officer would believe that bodily harm to another person or persons is imminent;
  - h) unholstering and pointing a firearm at an individual constitutes a use of force and shall be limited accordingly; and
  - i) immediately following a use of physical force officers and, upon arrival, a supervisor, shall inspect and observe subjects for injury or complaints of pain and obtain immediately any necessary medical care. This may require an officer to provide emergency medical care until professional medical care providers are on-scene.

**B. General Use of Force Policy**

81. EHPD shall develop and implement an overarching agency-wide use of force policy that complies with applicable law and comports with professional police practices. The comprehensive use of force policy shall include all force techniques, technologies, and weapons, both lethal and less-lethal, that are available to EHPD officers. The comprehensive use of force policy shall clearly define and describe each force option and the circumstances under which use of such force is appropriate. The general use of force policy will incorporate the use of force principles articulated above and shall specify that the unreasonable use of force will subject officers to discipline, possible criminal prosecution, and/or civil liability.
82. In addition to a primary agency-wide use of force policy, EHPD shall develop and implement policies and protocols for each authorized weapon, including each of the types of force addressed below. No officer shall carry any weapon or use force that is not authorized by the Department. EHPD use of force policies shall include training and certification requirements that each officer must meet before being permitted to carry and used the authorized weapon.

**C. Use of Firearms**

83. Officers shall not possess or use unauthorized firearms or ammunition, or obtain service ammunition from any source, except through official EHPD channels. All officers' firearms shall be filled with the capacity number of rounds while on duty.
84. Officers shall not fire at or from a moving vehicle, unless use of lethal force is justified by something other than the threat from the moving vehicle; shall not intentionally place themselves in the path of or reach inside a moving vehicle; and where possible shall attempt to move out of the path of a moving vehicle before discharging their weapon.
85. Officers shall successfully qualify with each firearm they are authorized to use or carry on-duty pursuant to Connecticut requirements. Officers who fail to qualify shall immediately relinquish those firearms on which they failed to qualify. Those officers who still fail to qualify after remedial training within a reasonable time shall be subject to disciplinary action, up to and including termination of employment.
86. Critical firearm discharges by officers on- or off-duty shall be reported and investigated. Data and analysis related to critical firearm discharges shall be tracked in EIS and EHPD's Use of Force Annual Report.

**D. Electronic Control Weapons**

87. EHPD shall limit the use of ECWs to only those situations in which such force is necessary to protect the officer, the subject, or another party from immediate physical harm.

88. Unless it would present a danger to the officer or others, officers shall issue a verbal warning to the subject that the ECW will be used prior to use. Where feasible, the officer will defer ECW application a reasonable time to allow the subject to comply with the warning.
89. ECWs will not be used where such deployment may cause serious injury or death from situational hazards, including falling, drowning, losing control of a moving vehicle, or becoming ignited from the presence of a potentially explosive or flammable material or substance, except where lethal force would be permitted.
90. After one standard ECW cycle (5 seconds), the officer shall reevaluate the situation to determine if subsequent cycles are necessary. Officers shall be trained in the risks of prolonged or repeated ECW exposure, including that exposure to the ECW for longer than 15 seconds (whether due to multiple applications or continuous cycling) may increase the risk of death or serious injury. Officers shall clearly articulate and justify each and every cycle used against a subject in a written Use of Force Report.
91. ECWs shall not be used in drive stun mode as a pain compliance technique. ECWs shall be used in drive stun mode only to supplement the probe mode to complete the incapacitation circuit, or as a countermeasure to gain separation between officers and the subject so that officers can consider another force option.
92. ECWs may not be used against pregnant women, elderly persons, children, visibly frail persons or persons with a slight build and persons in medical or mental crisis, except where lethal force would be permitted, or the officer has reasonable cause to believe there is an imminent risk of serious bodily self-harm and lesser force options are not feasible. Officers shall be trained in the increased risks ECWs may present to the above listed vulnerable populations.
93. ECWs may not be applied to a subject's head, neck, and genitalia, absent exigent circumstances. ECWs shall not be used on handcuffed persons, except in emergencies in which a reasonable officer would believe that serious bodily harm to another person or persons is imminent.
94. Officers shall receive annual ECW certifications, which should consist of physical competency; weapon retention; EHPD policy, including any policy changes; technology changes; and scenario-based training.
95. Officers shall be trained in and follow protocols developed by EHPD in conjunction with medical professionals, on their responsibilities following ECW use, including:
  - (a) the removal of ECW probes, including requiring medical or specially-trained EHPD personnel to remove probes that are embedded in a subject's skin, except for probes that are embedded in a subject's head, throat, groin, or other sensitive area, which should be removed by medical personnel only;
  - (b) transporting to a hospital for evaluation all subjects who: have been exposed to prolonged application (more than 15 seconds); are a member of one of the vulnerable populations listed above; had an ECW used against them in circumstances presenting a heightened risk of harm; or were kept in prone



restraint after ECW use; and (c) monitoring all subjects who have received ECW application while in police custody.

96. Officers shall report all ECW discharges, except for training discharges, to their supervisor and the communications command center as soon as possible.
97. EHPD shall develop and implement integrity safeguards on the use of ECWs to ensure compliance with EHPD policy, including conducting random and directed audits of ECW deployment data. The audits should compare the downloaded data to the officer's report on use of force. Discrepancies within the audit should be addressed and appropriately investigated.
98. EHPD shall include the number of ECWs in operation and the number of ECW uses as elements of the EIS. Analysis of this data shall include a determination of whether ECWs result in an increase in the use of force and whether officer and subject injuries are affected by the rate of ECW use. ECW data and analysis shall be included in EHPD's Use of Force Annual Report.

**E. Use of Force Reporting Policy and Use of Force Report**

99. EHPD shall develop and implement a single, uniform, reporting system pursuant to a Use of Force Reporting policy and using a single, uniform, Use of Force Report. All officers using or observing force above un-resisted handcuffing shall report in writing, before the end of shift, the use of force in a Use of Force Report. The Use of Force Report shall include: (a) a detailed account of the incident from the officer's perspective; (b) the reason for the initial police presence; (c) a specific description of the acts that led to the use of force; (d) the level of resistance encountered; and (e) a description of every type of force used. The use of force reporting policy shall explicitly prohibit the use of "canned" or conclusory language in all reports documenting use of force.
100. Officers who use or observe force and fail to report it, shall be held strictly accountable, and face discipline up to and including termination, regardless of whether the force was reasonable.
101. Each officer in a position to see or hear a use of force shall complete a Use of Force Report, before the end of the shift, documenting the officer's own actions and observations.
102. Officers' Use of Force Reports (whether primary or supplemental) shall completely and accurately describe the use of force. Officers shall be held strictly accountable for material omissions or inaccuracies in the Use of Force Report.
103. Officers who use or observe force shall notify their supervisors immediately following any use of force or upon receipt of an allegation of unreasonable or unreported use of force by any officer.

104. Use of Force Reports shall be maintained centrally by the IAO for tracking and analysis purposes, as required by this Agreement.
105. At least annually, EHPD shall analyze the year's force data, including force-related outcome data, to determine significant trends; identify and correct deficiencies revealed by this analysis; and document its findings in a public report.

**F. Force Reviews by Supervisors**

106. Absent exceptional circumstances, the direct supervisor of any officer using force, upon notification of a use of force or allegation of excessive force, shall respond to the scene of the use of force. If a supervisor is unable to respond to the scene, the supervisor shall document in the case file the exigent circumstances preventing his or her presence. The direct supervisor of any officer using force shall review all uses of force except those incidents involving a serious use of force, a use of force that appears potentially unjustified or criminal, a use of force by EHPD personnel of a rank higher than sergeant, or a use of force reassigned to the IAO by the Chief of Police or designee or the IAO. No supervisor who was involved in the incident, including by participating in or ordering the force being investigated, shall be responsible for the investigation of the incident.
107. The reviewing supervisor shall:
  - a) respond to the scene, examine the subject of the force for injury, interview the subject for complaints of pain, and ensure that the subject receives medical attention from an appropriate medical provider;
  - b) notify the IAO immediately of the use of force and obtain a use of force tracking number;
  - c) identify and collect all relevant evidence and shall evaluate that evidence to determine whether the use of force: (i) was consistent with EHPD policy and/or (ii) raises any policy, training, tactical or equipment concerns;
  - d) ensure collection of all evidence to establish material facts related to the use of force, including audio and video recordings, and photographs and other documentation of injuries or the absence of injuries;
  - e) ensure the canvass for and interview of civilian witnesses. In addition, civilian witnesses should be encouraged to provide and sign a written report in their own words;
  - f) ensure that all officer witnesses provide a statement regarding the incident. Officers involved in a use of force incident shall be separated until they are interviewed. Group interviews shall be prohibited. Supervisors shall ensure that all use of force reports identify all officers who were involved in the incident or were on the scene when it occurred. Supervisors shall not ask officers or other witnesses leading questions that improperly suggest justifications for the officers' conduct, when such questions are contrary to appropriate law enforcement techniques. Reviewing supervisors shall record all interviews with subjects and civilian witnesses and all follow-up interviews with officers;
  - g) review all Use of Force Reports and ensure that all reports include the information required by this Agreement and EHPD policy; and

- h) consider all relevant evidence, including circumstantial, direct, and physical evidence, and make credibility determinations, if feasible. Supervisors will make all reasonable efforts to resolve material inconsistencies between the officer, subject, and witness statements, as well as inconsistencies between the level of force claimed by the officer and the subject's injuries. EHPD will train all of its supervisors on the factors to consider when evaluating credibility. Where a reasonable and trained supervisor would determine that there may have been misconduct, the supervisor shall immediately notify the IAO to respond to the scene.
108. Each supervisor shall provide a written report to the shift commander by the end of the shift documenting the supervisor's preliminary determination of the appropriateness of the use of force, including whether the force was reasonable and within policy; whether the injuries appear proportionate to the use of force described; and summaries of subject, witness, and officer statements.
109. Each supervisor shall complete and document a use of force supervisory review using a Supervisor's Force Review Report, within 72 hours of learning of the use of force. This Report shall include:
- a) the supervisor's narrative description of the incident, including a precise description of the evidence that either justifies or fails to justify the officer's conduct based on the supervisor's independent review of the facts and circumstances of the incident;
  - b) documentation of all evidence that was gathered, including names, phone numbers, and addresses of witnesses to the incident. In situations in which there are no known witnesses, the report shall specifically state this fact. In situations in which witnesses were present but circumstances prevented the author of the report from determining the identification, phone number or address of those witnesses, the report shall state the reasons why. The report should also include all available identifying information for anyone who refuses to provide a statement;
  - c) the names of all other EHPD employees witnessing the use of force;
  - d) the reviewing supervisor's evaluation of the basis for the use of force, including a determination of whether the officer's actions appear to be within EHPD policy and consistent with state and federal law; whether there is any evidence of criminal conduct by the officer; and an assessment of the incident for tactical and training implications, including whether the use of force may have been avoided through the use of de-escalation techniques or lesser force options; and
  - e) documentation of any non-disciplinary corrective action taken.
110. Upon completion of the Supervisor's Force Review Report, the investigating supervisor shall forward the report to the patrol commander, who shall review the report to ensure that it is complete and that the findings are supported by a preponderance of the evidence.

The patrol commander shall order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings.

111. Where the findings of the Supervisory Force Review Report are not supported by a preponderance of the evidence, the patrol commander shall modify the findings after consultation with the reviewing supervisor, and document the reasons for this modification, including the specific evidence or analysis supporting the modification. The patrol commander shall counsel the reviewing supervisor regarding the modification and of any investigative deficiencies that led to it, and order corrective action where appropriate. The patrol commander shall be held accountable for the accuracy and completeness of Use of Force Supervisory Review Reports completed by supervisors under the command of the patrol commander.
112. Where a reviewing supervisor repeatedly conducts deficient investigations, the supervisor shall receive the appropriate corrective action, including training, demotion, and/or removal from a supervisory position.
113. Whenever a reviewing supervisor or patrol commander finds evidence of apparent criminal conduct by an officer, he or she shall suspend the investigation immediately and notify the Chief of Police, the IAO, the State Attorney's Office, and the State Police. The IAO shall immediately notify the FBI and USAO, where appropriate.
114. When the patrol commander finds that the supervisor force review is complete and the findings are supported by the evidence, the force review file shall be forwarded to the Chief of Police and the IAO. The Chief of Police and the IAO shall review the force review to ensure that it is complete and that the findings are supported by the evidence. At the discretion of the Chief of Police, his designee, or the IAO, a use of force review may be assigned or re-assigned to another supervisor, whether within or outside of the shift in which the incident occurred, or may be returned to the patrol commander for further review or analysis. This assignment or re-assignment shall be explained in writing.
115. Where, after a force review, a use of force is found to be out of policy, the Chief of Police shall direct and ensure appropriate discipline, including forwarding the outcome of the force review to the Board of Police Commissioners for disciplinary action. Where the use of force indicates policy, training, tactical, or equipment concerns, the Chief of Police shall ensure also that necessary training is delivered and that policy, tactical or equipment concerns are resolved.

**G. Force Investigations by Internal Affairs**

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116. EHPD shall establish a single, uniform reporting and investigation/review system for all serious uses of force, including critical firearm discharges.
  117. EHPD shall ensure that all serious uses of force are investigated fully and fairly by individuals with appropriate expertise, independence and investigative skills to ensure

that uses of force that are contrary to law or policy are identified and appropriately resolved; that policy, training, equipment, or tactical deficiencies related to the use of force are identified and corrected; and that investigations of sufficient quality to ensure that officers are held accountable as necessary. To achieve this outcome, EHPD shall:

- a) Provide for an IAO to conduct administrative investigations of serious uses of force, uses of force by EHPD personnel of a rank higher than sergeant, or uses of force reassigned to the IAO by the Chief of Police or designee or the IAO.
  - b) Within 90 days from the Effective Date, EHPD shall recruit, assign, and train a sufficient number of IAOs to fulfill the requirements of this Agreement. Prior to performing IAO duties, IAOs shall receive a minimum of 24 hours of force investigation training; call out and investigative protocols; and proper roles of on-scene counterparts such as crime scene technicians, State Attorney's Office, State Police EHPD detectives, and Joint Compliance Expert; and investigative equipment and techniques. IAOs shall also receive annual in-service training on proper force investigations.
  - c) EHPD shall create a force investigation procedural manual to ensure consistency with this Agreement. The procedural manual shall include:
    - i. definitions of all relevant terms;
    - ii. clear statements of the mission and authority of the IAO regarding force investigations;
    - iii. procedures on report writing;
    - iv. procedures for collecting and processing evidence;
    - v. procedures to ensure appropriate separation of criminal and administrative investigations in the event of compelled subject officer statements;
    - vi. procedures for consulting with the State Attorney's Office and the State Police, including ensuring that administrative investigations are not unnecessarily delayed while a criminal investigation is pending;
    - vii. scene management procedures; and
    - viii. management procedures.
118. Where appropriate to ensure the fact and appearance of impartiality, investigations of serious uses of force or force indicating apparent criminal conduct by an officer shall be referred for investigation to an independent and highly competent entity outside EHPD.
119. In every incident involving a serious use of force, or any use of force indicating apparent criminal conduct by an officer, the supervisor shall immediately notify the IAO and obtain a use of force tracking number.
120. The IAO shall respond to the scene of every incident involving a serious use of force, any use of force indicating apparent criminal conduct by an officer, any use of force by an officer of a rank higher than sergeant, or as ordered by the Chief of Police or designee.

121. The IAO shall immediately notify and consult with the State Attorney's Office, State Police, FBI and USAO regarding any use of force incident indicating apparent criminal conduct by EHPD personnel, or any use of force in which an officer discharged his firearm, or where an individual has died while in or proximate to the custody of EHPD.
122. If the case may proceed criminally, or where EHPD requests a criminal prosecution, any compelled interview of the subject officers shall be delayed, consistent with Paragraphs 148 and 150 of this Agreement. No other part of the investigation shall be held in abeyance unless specifically authorized by the Chief of Police in consultation with the agency conducting the criminal investigation.
123. The IAO shall complete its administrative use of force investigation within 60 days from the use of force. At the conclusion of each use of force investigation, the IAO shall prepare a report on the investigation. The report shall include:
  - a) a narrative description of the incident, including a precise description of the evidence that either justifies or fails to justify the officer's conduct based on the IAO's independent review of the facts and circumstances of the incident;
  - b) documentation of all evidence that was gathered, including names, phone numbers, and addresses of witnesses to the incident. In situations in which there are no known witnesses, the report shall specifically state this fact. In situations in which witnesses were present but circumstances prevented the author of the report from determining the identification, phone number or address of those witnesses, the report shall state the reasons why. The report should also include all available identifying information for anyone who refuses to provide a statement;
  - c) the names of all other EHPD employees witnessing the use of force;
  - d) the IAO's evaluation of the basis for the use of force, including a determination of whether the officer's actions appear to be within EHPD policy and consistent with state and federal law; whether there is any evidence of criminal conduct by the officer; and an assessment of the incident for tactical and training implications, including whether the use of force may have been avoided through the use of de-escalation techniques or lesser force options;
  - e) if a weapon was used, documentation that the officer's certification and training for the weapon are current; and
  - f) documentation of any disciplinary and/or non-disciplinary corrective action recommended.

#### **H. Review by Chief of Police**

124. The Chief of Police shall review all force reviews by supervisors and force investigations by the IAO. The Chief of Police shall:
  - a) review each force review and investigation within 30 days of receiving the force review/investigation report to ensure that it is complete and that the findings are supported by a preponderance of the evidence;

- b) order additional investigation when it appears that there is additional relevant evidence that may assist in resolving inconsistencies or improve the reliability or credibility of the findings. Where the findings are not supported by a preponderance of the evidence, the Chief of Police or his/her designee shall modify the findings and document the reasons for this modification, including the specific evidence or analysis supporting the modification;
- c) determine whether the force violated EHPD policy. If the force violated EHPD policy, the Chief of Police or his/her designee shall take appropriate disciplinary action, including referring the review or investigation report to the Board of Police Commissioners for appropriate disciplinary action;
- d) determine whether the incident raises policy, training, equipment, or tactical concerns, and refer such incidents to the appropriate commander or supervisor within EHPD to ensure they are resolved;
- e) direct shift supervisors to take and document non-disciplinary corrective action to enable or encourage an officer to improve his or her performance; and
- f) document his or her findings within 45 days of receiving the force review or investigation.

**J. Use of Force Training**

125. EHPD shall provide all EHPD officers with 4 – 8 hours of use of force training within 365 days of the Effective Date, and 4 – 8 hours of use of force training on at least an annual basis thereafter, including information on developments in applicable law and EHPD policy. EHPD shall coordinate and review all use of force policy and training to ensure quality, consistency, and compliance with the Constitution, Connecticut law, this Agreement and EHPD policy. EHPD's use of force training shall include the following topics:

- a) EHPD's use of force model, as described in this Agreement;
- b) proper use of force decision-making;
- c) use of force reporting requirements;
- d) the Fourth Amendment and related law;
- e) role-playing scenarios and interactive exercises that illustrate proper use of force decision-making, including training officers on the importance and impact of ethical decision making and peer intervention;
- f) the proper deployment and use of all intermediate weapons or technologies, including canines and ECWs;
- g) de-escalation techniques that encourage officers to make arrests without using force, and instruction that disengagement, area containment, surveillance, waiting out a subject, summoning reinforcements, calling in specialized units, or delaying arrest may be the appropriate response to a situation, even when the use of force would be legally justified;
- h) threat assessment;
- i) basic crisis intervention and interacting with people with mental illnesses, including instruction by mental health practitioners and an emphasis on de-escalation strategies;
- j) factors to consider in initiating or continuing a pursuit;

- k) appropriate training on conflict management; and
- l) supervisors of all ranks, as part of their initial and annual in-service supervisory training, shall receive additional training in conducting use of force reviews and investigations; strategies for effectively directing officers to minimize uses of force and to intervene effectively to prevent or stop unreasonable force; and supporting officers who report unreasonable or unreported force, or who are retaliated against for using only reasonable force or attempting to prevent unreasonable force.

126. Included in the use of force training set out above. EHPD shall require firearms training for all officers within 365 days of the Effective Date and at least twice yearly thereafter. EHPD firearms training shall:

- a) require officers to complete and satisfactorily pass firearm training and qualify for regulation and other service firearms on a semi-annual basis;
- b) require cadets, officers in probationary periods, and officers who return from unarmed status to complete and satisfactorily pass firearm training and qualify for regulation and other service firearms before such personnel are permitted to carry and use firearms;
- c) incorporate professional night training, stress training (e.g., training in using a firearm after undergoing physical exertion) and proper use of force decision-making training, including continuous threat assessment techniques, in the annual in-service training program; and
- d) ensure that firearm instructors critically observe students and provide corrective instruction regarding deficient firearm techniques and failure to utilize safe gun handling procedures at all times.

## **VIII. CIVILIAN COMPLAINTS, INTERNAL INVESTIGATIONS, AND DISCIPLINE**

127. EHPD and the Town shall ensure that all allegations of officer misconduct are received and are fully and fairly investigated; that all investigative findings are supported by a preponderance of the evidence and documented in writing; and that all officers who commit misconduct are held accountable pursuant to a disciplinary system that is fair and consistent. To achieve these outcomes, EHPD and the Town shall implement the requirements below.

### **A. Reporting Misconduct**

128. EHPD shall require that all officers and employees report apparent misconduct by another EHPD officer or employee to a supervisor or directly to the IAO for review and investigation. Where apparent misconduct is reported to a supervisor, the supervisor shall immediately document and report this information to the IAO. Failure to report or document apparent misconduct or criminal behavior shall be grounds for discipline, up to and including termination of employment. The default discipline for a failure to report criminal behavior shall be termination.



**B. Complaint Information**

129. Within 180 days of the Effective Date, the Town and EHPD shall develop and implement a program to ensure broad knowledge throughout the East Haven community about how to make misconduct complaints, and the availability of effective mechanisms for making misconduct complaints. The requirements below shall be incorporated into this program.
130. The Town and EHPD shall make complaint forms and informational materials, including brochures and posters, available at appropriate government properties, including EHPD headquarters, EHPD and Town websites, Town Hall, and the public library. Individuals shall be able to submit misconduct complaints through the EHPD and City websites and these websites shall include complaint forms and information regarding how to file misconduct complaints.
131. At the locations listed above, EHPD shall post and maintain a permanent placard describing the external complaint process that includes relevant contact information, such as telephone numbers, email addresses, and Internet sites. EHPD will require all officers to carry complaint forms, containing basic complaint information, in their department vehicles at all times. Officers shall also provide complaint forms and the officer's name and badge number upon request. If an individual objects to an officer's conduct, that officer will inform the individual of his or her right to make a complaint and shall provide the complaint form, informational brochure, and the officer's name and badge number. If the individual indicates that he or she would like to make a complaint, the officer shall immediately inform his or her supervisor.
132. Complaint forms and related informational materials shall be made available and posted in English and Spanish.

**C. Complaint Intake, Classification, and Tracking**

133. Within 180 days of the Effective Date, EHPD shall revise policy and train all officers and supervisors to ensure that all officers properly handle complaint intake, including how to properly provide complaint materials and information; and the consequences for failing to take complaints; and strategies for turning complaints into positive police-civilian interactions.
134. The refusal to accept a misconduct complaint, discouraging the filing of a misconduct complaint, or providing false or misleading information about filing a misconduct complaint, shall be grounds for discipline, up to and including termination.
135. EHPD shall accept all misconduct complaints, including anonymous and third-party complaints, for review and investigation. Complaints may be made in writing or verbally, in person or by mail, telephone (or TDD), facsimile, or electronic mail. Any LEP individual who wishes to file a complaint about an EHPD officer or employee shall be provided with a complaint form in Spanish or, for less common languages in East Haven, EHPD will make arrangements to ensure that the LEP person is able to make a complaint. Such complaints will be investigated in accordance with this Agreement.

136. All officers and employees who receive a misconduct complaint in the field shall immediately inform a supervisor of the misconduct complaint so that the supervisor can ensure proper intake of the complaint. All misconduct complaints received outside of EHPD headquarters shall be forwarded to the IAO before the end of the shift in which it was received.
137. EHPD shall ensure that allegations of officer misconduct made during criminal prosecutions or civil lawsuits are identified and investigated as misconduct complaints.
138. Within three business days of the receipt of a misconduct complaint, the IAO shall determine whether the complaint will be assigned to the subject officer(s)' supervisor(s) or retained by the IAO for an administrative investigation. The IAO shall also determine whether the misconduct complaint warrants a referral to the State Attorney's Office and/or USAO for a criminal investigation. EHPD shall develop and implement a complaint classification protocol that is allegation-based rather than anticipated outcome-based to guide the IAO in determining where a complaint should be assigned. This complaint classification protocol shall ensure that the IAO investigates allegations including:
  - a) serious misconduct, including but not limited to: criminal misconduct; unreasonable use of force; discriminatory policing; false arrest or planting evidence; untruthfulness/false statements; unlawful search; retaliation; sexual misconduct; domestic violence; and theft;
  - b) misconduct implicating the conduct of the supervisory or command leadership of the subject officer; and
  - c) any other violations as determined by the Chief of Police.
139. The Chief of Police shall not be authorized to personally conduct an investigation of officer misconduct or violation of policy, nor prevent the conduct of such an investigation. A misconduct complaint investigation may not be conducted by any officer who used force during the incident; whose conduct led to the injury of a person; who authorized the conduct that led to the reported incident or complaint; or who was on the scene of the incident leading to the allegation of misconduct.
140. EHPD shall track, as a separate category of misconduct complaints, allegations of discriminatory policing, along with characteristics of the complainants. EHPD shall ensure that complaints of discriminatory policing are captured and tracked appropriately, even if the complainant does not specifically label the misconduct as such.
141. Within 180 days of the Effective date, the IAO shall develop and implement a centralized numbering and tracking system for all misconduct complaints. Upon the receipt of a complaint, the IAO shall promptly assign a unique numerical identifier to the complaint, which shall be provided to the complainant at the time the complaint is made. Where a misconduct complaint is received in the field, a supervisor shall obtain the unique numerical identifier and provide this identifier to the complainant.

142. EHPD's centralized numbering and tracking system shall maintain accurate and reliable data regarding the number, nature, and status of all misconduct complaints, from initial intake to final disposition, including investigation timeliness and notification to the complainant of the interim status and final disposition of the investigation. This system shall be used to determine the status of complaints and to confirm that a complaint was received, as well as for periodic assessment of compliance with EHPD policies and procedures and this Agreement, including requirements on the timeliness of administrative investigations.
143. Where a supervisor receives a misconduct complaint in the field alleging that misconduct has just occurred, the supervisor shall gather all relevant information and evidence and provide this information and evidence to the IAO. This information includes the names and contact information for all complainants and witnesses, the names of all EHPD officers and employees on the scene at the time of the alleged misconduct, and any available physical evidence such as voluntarily provided video or audio recordings, or documentation of the existence of such recordings where the witness chooses not to provide the recording. The supervisor shall take photographs of apparent injuries or the absence thereof.

**D. Investigation of Complaints**

144. Investigations of officer misconduct shall be as thorough as necessary to reach reliable and complete findings. The misconduct complaint investigator shall interview each complainant in person, absent exceptional circumstances, and this interview shall be recorded in its entirety, absent specific, documented objection by the complainant. All officers in a position to hear or see an incident, or any significant event before or after an incident, shall provide a written statement regarding their observations, even to state that they did not see or hear anything.
145. Where the alleged misconduct is particularly serious or information from an officer or other witness may be necessary to resolve an allegation, the investigator shall conduct an in-person interview of the officer or other witness. Each officer, witness, and complainant shall be interviewed separately. An EHPDAI not involved in the underlying complaint will be used when taking statements or conducting interviews of any LEP complainant or witness.
146. All officer and civilian witness statements should be documented in their entirety, including any statement that the witness saw or heard nothing. All interviews should be recorded. All recordings shall be stored and maintained in a secure location within IAO.
147. EHPD shall require officers to cooperate with administrative investigations, including appearing for an interview when requested by an EHPD investigator and providing all requested documents and evidence. Supervisors shall be notified when an officer under their supervision is summoned as part of an administrative investigation and shall facilitate the officer's appearance, absent extraordinary and documented circumstances.

148. The subject officer shall not be compelled to provide a statement to administrative investigators where there is a potential criminal investigation or prosecution of the officer, until consultation with the criminal investigative agency (e.g. State Attorney's Office or USAO) and approval by the Chief of Police. EHPD, the Town, and the State Attorney's Office shall develop and implement protocols to ensure that the criminal and administrative investigations are kept appropriately separate after a subject officer has provided a compelled statement.
149. Nothing in this Agreement or EHPD policy shall hamper an officer's obligation to provide a public safety statement regarding a work related incident or activity. EHPD shall make clear that all officer statements in incident reports, arrest reports, use of force reports and similar documents, and statements made in interviews such as those conducted in conjunction with EHPD's routine use of force review and investigation process, are part of each officer's routine professional duties and are not compelled statements. Where an officer believes that providing a verbal or written statement will be self-incriminating the officer shall affirmatively state this and shall not be compelled to provide a statement without prior consultation with the criminal investigative agency (e.g. State Attorney's Office or USAO), and approval by the Chief of Police.
150. If at any time during complaint intake or investigation the investigator determines that there may have been criminal conduct on the part of any officer or employee, the investigator shall immediately notify the Chief of Police and the Joint Compliance Expert, and shall consult with the State Attorney's Office, USAO and the local office of the FBI regarding the initiation of a criminal investigation, as appropriate. Where an allegation is investigated criminally, the IAO shall continue with the administrative investigation of the allegation, except that it may delay or decline to conduct an interview of the subject officer(s) or other witnesses until completion of the criminal investigation unless, after consultation with the investigating agency and the Chief of Police, such interviews are deemed appropriate.
151. In each investigation, EHPD shall consider all relevant evidence including circumstantial, direct and physical evidence, and make credibility determinations based upon that evidence. There will be no automatic preference for an officer's statement over a non-officer's statement, nor will EHPD disregard a witness' statement merely because the witness has some connection to the complainant or because of any criminal history. During its investigation, EHPD may take into account the criminal history of a complainant that involves a crime of dishonesty. EHPD may also take into account the record of any involved officers who have been determined to have been deceptive or untruthful in any legal proceeding, Internal Affairs investigation, or other investigation. EHPD shall make efforts to resolve material inconsistencies between witness statements.
152. The misconduct investigator shall explicitly identify and recommend one of the following dispositions for each allegation of misconduct in an administrative investigation:
  - a) "Unfounded," where the investigation determines, by a preponderance of the evidence, that the alleged misconduct did not occur or did not involve the subject officer;

- b) "Sustained," where the investigation determines, by a preponderance of the evidence, that the alleged misconduct did occur;
  - c) "Not Sustained," where the investigation is unable to determine, by a preponderance of the evidence, whether the alleged misconduct occurred; or
  - d) "Exonerated," where the investigation determines, by a preponderance of the evidence, that the alleged conduct did occur but did not violate EHPD policies, procedures, or training.
153. In addition to determining whether the officer committed the alleged misconduct, administrative investigations shall assess and document whether: (a) the police action was in compliance with training and legal standards; (b) the use of different tactics should or could have been employed to achieve a potentially better outcome; (c) the incident indicates a need for additional training, counseling or other non-disciplinary corrective measures; and (d) the incident suggests that EHPD should revise its policies, strategies, tactics, or training. This information shall be shared with the relevant commander(s) who shall document the commander's disagreement or agreement with these findings; refer any recommendations to the appropriate individual to implement the recommended change; document the implementation of these recommendations; and return the documentation to the IAO.
154. EHPD shall respond to each complaint within 48 hours and shall resolve each stage of a complaint investigation in a reasonable time frame. EHPD shall complete all investigations of civilian complaints within 60 days of receiving the complaint. Upon a showing of good cause, officers may receive no more than two extensions of up to 30 days each. Requests for extensions must be in writing and approved by the Chief.
155. A misconduct investigation shall not be closed simply because the complaint is withdrawn or the alleged victim is unwilling or unable to provide additional information beyond the initial complaint, or because the complainant pled guilty or was found guilty of an offense.
156. Each misconduct complainant will be kept informed periodically regarding the status of the investigation. The complainant will be notified of the outcome of the investigation, in writing, within ten business days of the completion of the investigation, including regarding whether any disciplinary or non-disciplinary action was taken.
- E. Discipline**
157. EHPD shall ensure that discipline for sustained allegations of misconduct is based on the nature of the allegation and defined, consistent, mitigating and aggravating factors, rather than the identity of the officer or his or her status within EHPD or the broader community. EHPD and the Town shall develop and implement procedures to ensure that discipline is fair and consistent including:
158. EHPD, in consultation with the Board of Police Commissioners and the Town, shall create a disciplinary matrix that:

- a) establishes a presumptive range of discipline for each type of rule violation;
  - b) increases the presumptive discipline based on both an officer's prior violations of the same or other rules;
  - c) sets out defined mitigating or aggravating factors;
  - d) requires that any departure from the presumptive range of discipline must be justified in writing;
  - e) provides that EHPD shall not take only non-disciplinary corrective action in cases in which the disciplinary matrix calls for the imposition of discipline; and
  - f) provides that EHPD shall consider whether non-disciplinary corrective action also is appropriate in a case where discipline has been imposed.
159. EHPD, the Board of Police Commissioners, and the Town shall establish a unified system for reviewing sustained findings and assessing the appropriate level of discipline pursuant to EHPD's disciplinary matrix to facilitate consistency in the imposition of discipline. All disciplinary decisions shall be documented, including the rationale behind any decision to deviate from the level of discipline set out in the disciplinary matrix.
160. EHPD and the Board of Police Commissioners shall develop and establish written policies and procedures to ensure that the Town Attorney provides close guidance to EHPD and the Board at the disciplinary stage to ensure that EHPD's and the Board's disciplinary decisions are as fair and legally defensible as possible.

#### **IX. SUPERVISION AND MANAGEMENT**

161. EHPD and the Town shall ensure that EHPD supervisors provide the close and effective supervision necessary for officers to improve and grow as police officers; to police actively and effectively, and to identify, correct, and prevent misconduct. To achieve these outcomes, EHPD shall implement the requirements below.
- A. Duties of Supervisors**
162. EHPD supervisors shall provide, and shall be held accountable for providing, the close and effective supervision necessary to direct and guide officers. Close and effective supervision requires that supervisors: (a) respond to the scene of certain arrests; (b) review each arrest report; (c) respond to the scene of uses of force; (d) investigate each use of force (except those investigated by the IAO); (e) confirm the accuracy and completeness of officers' written reports; (f) respond to each complaint of misconduct; (g) ensure officers are working actively to engage the community and increase public trust and safety; and (h) provide counseling, redirection, support to officers as needed, and are held accountable for performing each of these duties.
163. On-duty field supervisors shall be available throughout their shift to respond to the field to provide supervision to officers under their direct command and, as needed, to provide supervisory assistance to other shifts.

164. Shift commanders shall closely and effectively supervise the officers under their command. All EHPD Commanders and supervisors shall ensure that all supervisors and officers under their command comply with EHPD policy, state and federal law, and the requirements of this Agreement.
165. EHPD shall hold commanders and supervisors directly accountable for the quality and effectiveness of their supervision, including whether commanders and supervisors identify and effectively respond to misconduct, as part of their performance evaluations and through non-disciplinary corrective action, or through the initiation of formal investigation and the disciplinary process, as appropriate.
166. Within twelve months of the Effective Date, EHPD shall develop and implement an EHPD-specific system to accurately evaluate officer performance in areas related to integrity, community policing, and critical police functions on both an ongoing and annual basis that comports with professional police practices and the requirements of this Agreement. As part of this program, EHPD shall establish a formalized system documenting annual performance evaluations of each officer by the officer's direct supervisor which shall include assessment of:
  - a) community engagement and communication with the public;
  - b) use of community-policing and problem-solving strategies;
  - c) civilian commendations and complaints;
  - d) disciplinary actions;
  - e) compliance with policies on usage of sick leave and other leave;
  - f) compliance with policies on secondary employment;
  - g) safety (e.g., POST officer safety standards and vehicle operations);
  - h) training;
  - i) report-writing; and
  - j) decision-making skills.
167. Annual performance evaluations shall be based upon work performance completed during the specific rating period. The officer's current direct supervisor shall complete the performance evaluation, but all supervisory personnel who supervised the officer during the rating period should provide written input, which shall be considered by the officer's current supervisor and incorporated into the performance evaluation.

**B. Early Identification System**

168. EHPD shall develop, implement and maintain an early identification system ("EIS") to support the effective supervision and management of EHPD officers and employees, including the identification of and response to potentially problematic behaviors as early as possible. EHPD will regularly use EIS data to promote ethical and professional police practices; to manage risk and liability; and to evaluate the performance of EHPD employees across all ranks, units and shifts.

169. Within 180 days of the Effective Date, EHPD shall develop and begin implementing a protocol setting out which fields in EIS shall include historical data; deadlines for inputting data related to current and new information; and the individuals responsible for capturing and inputting data.
170. Within 180 days of the Effective Date, EHPD shall develop and begin implementing a protocol for using the EIS and information obtained from it. The protocol for using the EIS shall address data storage, data retrieval, reporting, data analysis, pattern identification, identifying officers for intervention, supervisory use, supervisory/departmental intervention, documentation and audit. Among protocol requirements EHPD shall include:
- a) comparative data analysis, including peer group, shift and unit analysis, to identify patterns of activity by individual officers and groups of officers;
  - b) EHPD commander and supervisor review, on a regular basis, but not less than bi-weekly, of EIS reports regarding each officer under the commander or supervisor's direct command and, at least quarterly, broader, pattern-based reports;
  - c) EHPD commanders and supervisors to initiate, implement, and assess the effectiveness of interventions for individual officers, supervisors, and shifts, based on assessment of the information contained in the EIS;
  - d) require an array of intervention options to facilitate an effective response to identified problems. Interventions may take the form of counseling or training, or of other supervised, monitored, and documented action plans and strategies designed to modify activity. All interventions will be documented in writing and entered into the automated system;
  - e) specify that the decision to order an intervention for an employee or group using EIS data shall include peer group analysis, including consideration of the nature of the employee's assignment, and not solely on the number or percentages of incidents in any category of information recorded in the EIS;
  - f) prompt review by EHPD commanders and supervisors of the EIS system records of all officers upon transfer to their supervision or command;
  - g) evaluation of EHPD commanders and supervisors based on their appropriate use of the EIS to enhance effective and ethical policing and reduce risk; and
  - h) mechanisms to ensure monitored and secure access to the EIS to ensure the integrity, proper use, and appropriate confidentiality of the data.
171. The EIS shall include all relevant information available to EHPD to assess the conduct of each officer, including:
- a) all awards and commendations received by employees;
  - b) investigations of the officer;
  - c) complaints (including civil lawsuits) against the officer and their dispositions;
  - d) data collected regarding the officer's stops, search and seizures and uses of force;
  - e) data about officer's arrests, including arrests for interfering with a police officer, resisting arrest, assault on a police officer, and disorderly conduct;
  - f) training history;



- g) supervisory reviews;
  - h) all vehicle pursuits and traffic collisions involving EHPD equipment;
  - i) all loss or theft of EHPD property or equipment in the custody of the employee, including currency, firearms, force instruments, and identification cards; and
  - j) any disciplinary or other corrective action taken against the officer.
172. The EIS shall include appropriate identifying information for each involved officer (i.e., name, badge number, shift and supervisor) and civilian.
173. EHPD shall maintain all personally identifiable information about an officer included in the EIS for at least five years following the officer's separation from the agency. Information necessary for aggregate statistical analysis will be maintained indefinitely in the EIS. On an ongoing basis, EHPD will enter information into the EIS in a timely, accurate, and complete manner, and shall maintain the data in a secure and confidential manner. No individual within EHPD shall have access to individually identifiable information that is maintained only within EIS and is about an officer not within that individual's direct command, except as necessary for investigative, technological, or auditing purposes.
174. The EIS, including any computer programs and hardware, will be operational, fully implemented, and be used in accordance with policies and protocols that incorporate the requirements of this Agreement within 365 days of the Effective Date. Prior to full implementation of the new EIS, EHPD will continue to use existing resources to the fullest extent possible, to identify patterns of conduct by employees or groups of officers.

**C. Visual and Audio Documentation of Police Activities**

175. EHPD shall maintain and operate video cameras and AVL in all police vehicles and shall repair or replace all non-functioning video cameras or AVL units. EHPD shall ensure that that recordings are captured, maintained, and reviewed as appropriate by supervisors, in addition to any review for investigatory or audit purposes, to assess the quality and appropriateness of officer interactions, uses of force, and other police activities.
176. Within 180 days of the Effective Date, EHPD shall develop and implement policies and procedures regarding AVL, in-car recorders, ECWs, and similar equipment that require:
- a) activation of in-car cameras for all traffic stops and pursuits until the motor vehicle stop is completed and the stopped vehicle departs, or until the officer's participation in the motor vehicle stop ends;
  - b) activation of ECW cameras when the ECW is unholstered;
  - c) activation of in-car cameras for incidents in which a prisoner being transported is violent or resistant;
  - d) supervisors to review AVL, in-car camera recordings, and ECW recordings of all officers listed in any EHPD report regarding any incident involving injuries to a prisoner or an officer, uses of force, vehicle pursuits, or misconduct complaints;
  - e) supervisors to review recordings regularly and to incorporate the knowledge gained from this review into their ongoing evaluation and supervision of officers;

- f) that EHPD retain and preserve recordings for at least five years, or, if a case remains under investigation or litigation longer than five years, at least three years after the final disposition of the matter, including appeals; and
  - g) that an officer notify a supervisor immediately when an event was not recorded.
177. Within 90 days of the Effective Date, EHPD shall develop and implement a schedule for testing AVL, in-car recorder, and ECW camera recording equipment to confirm that it is in proper working order. Officers shall be responsible for ensuring that recording equipment assigned to them or their car is functioning properly at the beginning and end of each shift and shall report immediately any improperly functioning equipment.
178. Within 180 days of the Effective Date, EHPD shall provide each supervisor with handheld recording devices and require that supervisors use these devices to record complainant and witness statements taken as part of use of force or misconduct complaint investigations.

#### **X. COMMUNITY ENGAGEMENT AND OVERSIGHT**

179. EHPD shall create robust community relationships and engage constructively with the community to ensure collaborative problem-solving, ethical and bias-free policing, and increase community confidence in the Department. EHPD shall establish community and problem-oriented policing principles in its policing operations. EHPD shall also engage the public in the reform process through the dissemination of public information on a regular basis. EHPD and the Town shall develop, implement, and maintain systems to ensure comprehensive, effective, and transparent oversight of EHPD that will be sustained after the completion of this Agreement. To achieve these outcomes, EHPD shall implement the requirements below.
180. EHPD shall, in all of its policing operations, adopt the professional police practices of community oriented and problem-solving policing, including robust community partnerships, cooperative strategies, and promoting trust in the community.
181. Within 90 days of the Effective Date, EHPD shall appoint and/or hire a Community Liaison Officer who is a sworn officer fluent in English and Spanish. The Community Liaison Officer shall also have formalized training in the nature and scope of federal and state civil rights law as applied to law enforcement activity.
182. EHPD shall make the contact information and duty hours of the Community Liaison Officer public on its website and on any EHPD document generally available to the public. The Community Liaison Officer shall be directly available for public contact during normal business hours. The Community Liaison Officer shall have the following duties:
- a) The Community Liaison Officer shall arrange for a monthly meeting of East Haven residents designed to permit residents to voice their concerns and ask questions. The meeting shall be conducted as follows:

- i. The meeting shall be attended by the Community Liaison Officer, at least one senior EHPD command staff member, and by officers responsible for patrolling, or supervising patrol, in each of the three East Haven districts. All EHPD personnel present shall be identified, in uniform, and available for responses to questions from residents of East Haven.
    - ii. Names shall not be required of persons attending the meeting, nor shall any investigative law enforcement action be taken at or after this meeting that involves attendees in any way, absent an emergency. EHPD may act based on information explicitly communicated at the meeting for that purpose.
    - iii. EHPD shall notify the public of this meeting and the requirements of this provision, including anonymity, regarding this meeting in the local press two weeks in advance of the meeting.
    - iv. The meeting shall rotate among the three East Haven districts, so that the meeting is held in each district every three months.
  - b) The Community Liaison Officer shall review, on a monthly basis, all complaints submitted to EHPD by members of the community to assess community concerns. For those complaints that do not rise to the level of requiring formal action under EHPD policy, code of conduct, and the terms of this Agreement, the Community Liaison Officer shall notify the complainant of the availability of the Community Liaison Officer to answer the complainant's questions and respond to any further concerns.
  - c) The Community Liaison Officer shall meet monthly with the Chief of Police, the Mayor, and the Board. During these meetings, the Community Liaison Officer shall communicate the concerns that the Community Liaison Officer has received during the previous month, along with any other relevant information pertaining to the relationship of EHPD with East Haven residents.
183. Within 90 days of the Effective Date, EHPD shall develop a strategic recruitment plan that includes clear goals, objectives, and action steps for attracting high-quality applicants for employment across all levels of EHPD, sworn and civilian. EHPD's strategic recruitment plan shall establish and clearly identify the duties and goals of EHPD's recruitment efforts. The strategic recruitment plan shall include specific strategies for attracting a diverse pool of applicants, including members of groups that have been historically underrepresented in EHPD and applicants fluent in Spanish.
184. All EHPD audits and reports related to the implementation of this Agreement shall be made publicly available via website and at the Police Department, Town Hall, and other public locations, in English and in Spanish, to the fullest extent permissible under law.
185. EHPD shall collect and maintain all data and records necessary to facilitate and ensure transparency and wide public access to information related to EHPD decision making and activities, as permitted by law.

## **XI. AGREEMENT IMPLEMENTATION AND ENFORCEMENT**

### **A. Role of the Joint Compliance Expert**

186. The Parties shall select a Joint Compliance Expert (“JCE”) to assist the Parties in determining whether the terms of this Agreement have been fully and timely implemented, including reviewing and making recommendations on new or revised policies, training curricula, standard operating procedures, plans, protocols, and other operational documents related to this Agreement. The Joint Compliance Expert shall also assess and report whether the requirements of this Agreement have been implemented, and whether this implementation is resulting in constitutional policing, increased community trust, and the professional treatment of individuals by EHPD.
187. The Joint Compliance Expert shall only have the duties, responsibilities and authority conferred by this Agreement. The Joint Compliance Expert shall not, and is not intended to, replace or assume the role and duties of the Mayor, Board, Chief of Police, or EHPD.
188. In order to assess and report on the Town’s implementation of this Agreement and whether implementation is resulting in constitutional policing, increased community trust, and the professional treatment of individuals by EHPD, the Joint Compliance Expert shall conduct the compliance reviews and audits, outcome assessments, and incident reviews specified below, and such additional audits, reviews, and assessments as the Joint Compliance Expert or the Parties deem appropriate.

### **B. Compliance Reviews and Audits**

189. The Joint Compliance Expert shall conduct compliance reviews or audits as necessary to determine whether the Town has implemented and continues to comply with the material requirements of this Agreement. Compliance with a material requirement of this Agreement requires that the Town has: (a) incorporated the requirement into policy; (b) trained all relevant personnel as necessary to fulfill their responsibilities pursuant to the requirement; and (c) that the requirement is being carried out in actual practice. Compliance reviews and audits shall contain both qualitative and quantitative elements as necessary for reliability and comprehensiveness.

### **C. Outcome Assessments**

190. In addition to compliance reviews and audits, the Joint Compliance Expert shall conduct qualitative and quantitative outcome assessments to measure whether the Town’s implementation of this Agreement has promoted effective and constitutional policing. These outcome assessments shall include collection and analysis, both quantitative and qualitative, of the following outcome data:

- a) Bias-Free Policing and Community Engagement measurements, including:

- i. A reliable, comprehensive, and representative annual survey of members of the East Haven community regarding their experiences with and perceptions of EHPD and of public safety. This comprehensive community survey shall include measures to ensure input from individuals of each significantly represented demographic category;
  - ii. Number and variety of community partnerships, with particular consideration of partnerships with youth, and qualitative assessment of the depth and effectiveness of those partnerships.
- b) Stop, Search and Arrest measurements, including:
- i. The number and rate of arrests for which there is articulated reasonable suspicion for the stop and probable cause for the arrest, overall and broken down by geographic area; type of arrest; and demographic category;
  - ii. The number and rate of arrests which are prosecuted, overall and broken down by geographic area; type of arrest; and demographic category; and
  - iii. The number and rate of searches which result in a finding of contraband, overall and broken down by geographic area; type of arrest; and demographic category.
- c) Use of Force measurements including:
- i. Rate of force used per arrest by EHPD overall and by force type; geographic area (i.e. street address); type of arrest; and demographic category;
  - ii. Rate of force complaints that are sustained and rate that are not sustained, overall and by force type; geographic area (i.e. street address); source of complaint (internal or external); type of arrest; and demographic category;
  - iii. Uses of Force that were found to violate policy overall and by force type; geographic area (i.e. street address); type of arrest; and demographic category;
  - iv. Number and rate of Use of Force administrative investigations/reviews in which each finding is supported by a preponderance of the evidence; and
  - v. Number of officers who frequently or repeatedly use force, or have more than one instance of force found to violate policy.
- d) Recruitment and Training measurements, including:
- i. Number of highly-qualified recruit candidates that have a demonstrated ability to serve diverse communities;
  - ii. Number of candidates with Spanish language fluency;
  - iii. Officer and agency reports of adequacy of training in type and frequency; and
  - iv. Role of lack of training reflected in problematic incidents or by performance trends.

- e) Supervision measurements, including:
  - i. Initial identification of officer violations and performance problems by supervisors, and effective response by supervisors to identified problems.
- f) Accountability measurements, including:
  - i. The number of misconduct complaints, with a qualitative assessment of whether any increase or decrease appears related to access to the complaint process;
  - ii. Rate of sustained, not sustained, exonerated and unfounded misconduct complaints;
  - iii. Number and rate of misconduct complaints in which the finding for each allegation is supported by a preponderance of the evidence;
  - iv. Number of officers who are subjects of repeated misconduct complaints, or have repeated instances of sustained misconduct complaints.
  - v. Number and nature of civil suits against EHPD officers for on or off duty police conduct, regardless of whether the Town or EHPD is a defendant in the litigation, and settlement or penalty amounts;
  - vi. Arrests/Summons of officers for on or off duty conduct; and
  - vii. Criminal prosecutions of officers for on or off duty conduct.

191. In conducting these outcome assessments the Joint Compliance Expert may use any relevant data collected and maintained by EHPD, provided that it has determined that this data is reasonably reliable and complete. To conduct the annual community survey, the Joint Compliance Expert shall retain an individual or entity which shall:

- a) develop a baseline of measures on public satisfaction with policing, attitudes among police personnel, and the quality of police-citizen encounters;
- b) conduct baseline surveys of Town residents, police personnel, and detained arrestees, and follow-up surveys on at least an annual basis;
- c) ensure that the resident surveys are designed to capture each demographic category; and
- d) conduct the survey in English and Spanish.

**D. Outcome Assessment Plan and Review Methodology**

192. Within 90 days of the Effective Date, the Joint Compliance Expert shall develop a plan for conducting the above outcome assessments and compliance reviews and audits, and shall submit this plan to the Parties for review and approval. This plan shall:

- a) clearly delineate the requirements of the Agreement to be assessed for compliance, indicating which requirements will be assessed together;
- b) set out a schedule for conducting outcome measure assessments for each outcome measure at least annually, except where otherwise noted, with the first assessment occurring within 18 months of the Effective Date; and

- c) set out a schedule for conducting a compliance review or audit of each requirement of this Agreement within the first two years of the Agreement, and a compliance review or audit of each requirement at least annually thereafter.

- 193. Where the Joint Compliance Expert recommends and the Parties agree, the Joint Compliance Expert may refrain from conducting a compliance audit or review of a requirement previously found to be in compliance by the Joint Compliance Expert pursuant to audit or review, or where outcome assessments indicate that the outcome intended by the requirement has been achieved.
- 194. At least 90 days prior to the initiation of any outcome measure assessment or compliance review or audit, the Joint Compliance Expert shall submit a proposed methodology for the assessment, review or audit, to the Parties. The Parties shall submit any comments or concerns regarding the proposed methodology to the Joint Compliance Expert within 45 days of the proposed date of the assessment, review or audit. The Joint Compliance Expert shall modify the methodology as necessary to address any concerns or shall inform the Parties in writing of the reasons it is not modifying its methodology as proposed.

**E. Review of Use of Force and Misconduct Investigations**

- 195. EHPD shall provide each completed investigation of a serious use of force or use of force that is the subject of a misconduct investigation, and each misconduct complaint report, to the Joint Compliance Expert. The Joint Compliance Expert shall review each use of force investigation or review and each misconduct investigation and recommend for further investigation any use of force or misconduct complaint investigations the Joint Compliance Expert determines to be incomplete or for which the findings are not supported by a preponderance of the evidence.

**F. Joint Compliance Expert Recommendations and Technical Assistance**

- 196. The Joint Compliance Expert may make recommendations to the Parties regarding measures necessary to ensure timely, full and effective implementation of this Agreement and its underlying objectives. Such recommendations may include a recommendation to change, modify, or amend a provision of the Agreement, a recommendation for additional training in any area related to this Agreement, or a recommendation to seek technical assistance. In addition to such recommendations, the Joint Compliance Expert may also, at the request of DOJ or the Town and based on the Joint Compliance Expert's reviews, provide technical assistance consistent with the Joint Compliance Expert's responsibilities under this Agreement.

**G. Comprehensive Re-Assessment**

- 197. The Joint Compliance Expert shall conduct a comprehensive assessment two years after the Effective Date to determine whether and to what extent the outcomes intended by this Agreement have been achieved, and any modifications to the Agreement that are necessary for continued achievement in light of changed circumstances or unanticipated

impact (or lack of impact) of the requirement. This assessment shall address also areas of greatest achievement and the requirements that appear to have contributed to this success, as well as areas of greatest concern, including strategies for accelerating full and effective compliance. Based upon this comprehensive assessment, the Joint Compliance Expert shall recommend modifications to the Agreement necessary to achieve and sustain intended outcomes. Where the Parties agree with the Joint Compliance Expert's recommendations, the Parties shall stipulate to modify the Agreement accordingly. This provision in no way diminishes the Parties' ability to stipulate to modifications to this Agreement as set out below.

#### **H. Joint Compliance Expert Reports**

198. The Joint Compliance Expert shall file with the Court semi-annual written, public reports covering the reporting period that shall include:
- a) a description of the work conducted by the Joint Compliance Expert during the reporting period;
  - b) a listing of each Agreement requirement indicating which requirements have been: (i) incorporated into implemented policy; (ii) the subject of sufficient training for all relevant EHPD officers and employees; (iii) reviewed or audited by the Joint Compliance Expert to determine whether they have been fully implemented in actual practice, including the date of the review or audit; and (iv) found by the Joint Compliance Expert to have been fully implemented in practice;
  - c) the methodology and specific findings for each audit or review conducted, redacted as necessary for privacy concerns. An unredacted version shall be filed under seal with the Court and provided to the Parties. The underlying data for each audit or review shall not be publicly available but shall be retained by the Joint Compliance Expert and provided to either or both Parties upon request;
  - d) for any requirements that were reviewed or audited and found not to have been fully implemented in practice, the Joint Compliance Expert's recommendations regarding necessary steps to achieve compliance;
  - e) the methodology and specific findings for each outcome assessment conducted;
  - f) qualitative assessment of EHPD's progress in achieving the desired outcomes for each area covered by the Agreement--noting issues of concern or particular achievement; and
  - g) a projection of the work to be completed during the upcoming reporting period and any anticipated challenges or concerns related to implementation of the Agreement.
199. The Joint Compliance Expert shall provide a copy of semi-annual reports to the Parties in draft form at least ten business days prior to Court filing and public release of the reports to allow the Parties to informally comment on the reports. The Joint Compliance Expert shall consider the Parties' responses and make appropriate changes, if any, before issuing the report.



200. The Joint Compliance Expert shall maintain regular contact with the Parties in order to ensure effective and timely communication regarding the status of the Town's implementation of and compliance with this Agreement.

**I. Public Statements, Testimony, Records, and Conflicts of Interest**

201. Except as required or authorized by the terms of this Agreement or the Parties acting together: neither the Joint Compliance Expert, including, for the purposes of this paragraph, any agent, employee, or independent contractor thereof, shall make any public statements or issue findings with regard to any act or omission of the Town or its agents, representatives, or employees; or disclose non-public information provided to the Joint Compliance Expert pursuant to the Agreement. Any press statement made by the Joint Compliance Expert regarding its employment or assessment activities under this Agreement shall first be approved by the Parties.
202. The Joint Compliance Expert may testify as to observations, findings, and recommendations before the Court with jurisdiction over this matter, but the Joint Compliance Expert shall not testify in any other litigation or proceeding with regard to any act or omission of the Town or any of its agents, representatives, or employees related to this Agreement or regarding any matter or subject that the Joint Compliance Expert may have received knowledge of as a result of his or her performance under this Agreement. This paragraph does not apply to any proceeding before a court related to performance of contracts or subcontracts for monitoring this Agreement.
203. Unless such conflict is waived by the Parties, the Joint Compliance Expert shall not accept employment or provide consulting services that would present a conflict of interest with the Joint Compliance Expert's responsibilities under this Agreement, including being retained (on a paid or unpaid basis) by any current or future litigant or claimant, or such litigant's or claimant's attorney, in connection with a claim or suit against the Town or its departments, officers, agents or employees.
204. The Joint Compliance Expert is not a state or local agency, or an agent thereof, and accordingly the records maintained by the Joint Compliance Expert shall not be deemed public records subject to public inspection.
205. The Joint Compliance Expert shall not be liable for any claim, lawsuit, or demand arising out of the Joint Compliance Expert's performance pursuant to this Agreement.

**J. EHPD Compliance Coordinator**

206. Within 30 days of the Effective Date, EHPD shall identify a compliance coordinator to serve as the single point of contact to the Joint Compliance Expert and DOJ. The Compliance Coordinator shall coordinate the Town's compliance and implementation activities; facilitate the provision of data, documents, materials, and access to the Town's personnel to the Joint Compliance Expert and DOJ, as needed; ensure that all data, documents and records are maintained as provided in this Agreement; and assist in

assigning implementation and compliance related tasks to EHPD personnel, as directed by the Chief of Police or his/her designee.

**K. Implementation Assessment and Report**

207. The Town shall collect and maintain all data and records necessary to: (a) document implementation of and compliance with this Agreement, including data and records necessary for the Joint Compliance Expert to conduct reliable outcome assessments, compliance reviews, and audits; and (b) perform ongoing quality assurance in each of the areas addressed by this Agreement.
208. Beginning with the Joint Compliance Expert's first semi-annual report, the Town shall provide to the Joint Compliance Expert and DOJ a status report no later than 45 days before the Joint Compliance Expert's semi-annual report is due. The Town's report shall delineate the steps taken by the Town during the reporting period to implement this Agreement; the Town's assessment of the status of its progress; plans to correct any problems; and response to any concerns raised in the Joint Compliance Expert's previous semi-annual report.

**L. Access and Confidentiality**

209. To facilitate its work, the Joint Compliance Expert may conduct on-site visits and assessments without prior notice to the Town. The Joint Compliance Expert shall have access to all necessary individuals, facilities, and documents, which shall include access to Agreement related trainings, meetings, and reviews such as critical incident reviews; use of force reviews, and disciplinary hearings. EHPD shall notify the Joint Compliance Expert as soon as practicable, and in any case within twelve hours, of any critical firearms discharge, arrest of any officer, or any other potentially high-profile serious incident.
210. The Town shall ensure that the Joint Compliance Expert shall have timely, full and direct access to all of the Town's staff, employees, and facilities that the Joint Compliance Expert reasonably deems necessary to carry out the duties assigned to the Joint Compliance Expert by this Agreement. The Joint Compliance Expert shall cooperate with the Town to access people and facilities in a reasonable manner that, consistent with the Joint Compliance Expert's responsibilities, minimizes interference with daily operations.
211. The Town shall ensure that the Joint Compliance Expert shall have full and direct access to all of the Town's documents and data that the Joint Compliance Expert reasonably deems necessary to carry out the duties assigned to the Joint Compliance Expert by this Agreement, except any documents or data protected by the attorney-client privilege. Should the Town decline to provide the Joint Compliance Expert access to documents or data based on attorney-client privilege, the Town shall inform the Joint Compliance Expert and DOJ that it is withholding documents or data on this basis and shall provide the Joint Compliance Expert and DOJ with a log describing the documents or data.

212. To the extent necessary to ensure proper implementation of this Agreement, DOJ and its consultative experts and agents shall have full and direct access to all of the Town's staff, employees, facilities, documents and data. DOJ and its consultative experts and agents shall cooperate with the Town to access involved personnel, facilities, and documents in a reasonable manner that, consistent with DOJ's responsibilities to enforce this Agreement, minimizes interference with daily operations. Should the Town decline to provide DOJ with access to documents or data based on attorney-client privilege, the Town shall inform DOJ that it is withholding documents or data on this basis and shall provide DOJ with a log describing the documents or data.
213. The Joint Compliance Expert and DOJ shall provide the Town with reasonable notice of a request for copies of documents. Upon such request, the Town shall provide in a timely manner copies (electronic, where readily available) of the requested documents to the Joint Compliance Expert and DOJ.
214. The Joint Compliance Expert shall have access to all records and information relating to criminal investigations of EHPD officers as permissible by law. The Joint Compliance Expert shall have access to all documents in criminal investigation files that have been closed by EHPD. The Joint Compliance Expert shall also have reasonable access to all arrest reports, warrants, and warrant applications whether or not contained in open criminal investigation files. Where practicable, arrest reports, warrants, and warrant applications shall be obtained from sources other than open criminal investigation files.
215. The Joint Compliance Expert and DOJ shall maintain all non-public information provided by the Town in a confidential manner. This Agreement shall not be deemed a waiver of any privilege or right the Town may assert, including those recognized at common law or created by statute, rule or regulation, against any other person or entity with respect to the disclosure of any document or communication.

**M. Selection and Compensation of the Joint Compliance Expert**

216. Within 60 days of the Effective Date, the Town and DOJ shall together select an independent Joint Compliance Expert, acceptable to both, which shall assess and report on EHPD's implementation of this Agreement. The selection of the Joint Compliance Expert shall be pursuant to a method jointly established by the Town and DOJ, and will not be governed by any formal or legal procurement requirements. The Joint Compliance Expert and his/her team shall be individuals of the highest ethics.
217. If the Parties are unable to agree on a Joint Compliance Expert or an alternative method of selection within 60 days of the Effective Date, they reserve the right to seek the Court's assistance by asking the Court to select a Joint Compliance Expert. In that case, each Party shall submit the names of three candidates, or three groups of candidates, along with resumes and cost proposals, to the Court, and the Court shall select a Joint Compliance Expert from among the qualified candidates/candidate groups.

218. The Joint Compliance Expert shall be appointed for a period of four years from the Effective Date and shall have its appointment extended automatically should the Town not demonstrate full and effective compliance at the end of this four-year period.
219. The Town shall bear all reasonable fees and costs of the Joint Compliance Expert. In selecting the Joint Compliance Expert, DOJ and the Town recognize the importance of ensuring that the fees and costs borne by the Town are reasonable, and accordingly fees and costs shall be one factor considered in selecting the Joint Compliance Expert. In the event that any dispute arises regarding the reasonableness or payment of the Joint Compliance Expert's fees and costs, the Town, DOJ, and the Joint Compliance Expert shall attempt to resolve such dispute cooperatively prior to seeking the assistance of the Court to resolve such dispute.
220. The Town shall provide the Joint Compliance Expert with permanent office space and reasonable office support such as office furniture, telephones, access to internet, secure document storage, photocopying and scanners.
221. The Joint Compliance Expert, at any time after its initial selection, may request to be allowed to hire or employ or contact with such additional persons or entities as are reasonably necessary to perform the tasks assigned to the Joint Compliance Expert by this Agreement. Any person or entity hired or otherwise retained by the Joint Compliance Expert to assist in furthering any provision of this Agreement shall be subject to the provisions of this Agreement. The Joint Compliance Expert shall notify the Town and DOJ in writing if the Joint Compliance Expert wishes to select such additional persons or entities. The notice shall identify and describe the qualifications of the person or entity to be hired or employed and the task to be performed. If the Town and DOJ agree to the Joint Compliance Expert's proposal, the Joint Compliance Expert shall be authorized to hire or employ such additional persons or entities. The Town or the DOJ have ten business days to disagree with the proposal. If the Town and DOJ are unable to reach agreement within ten business days of receiving notice of the disagreement, the parties reserve the right to seek the Court's assistance to resolve the dispute.
222. Should any of the Parties to this Agreement determine that the Joint Compliance Expert's individual members, agents, employees, or independent contractors have exceeded their authority or failed to satisfactorily perform the duties required by this Agreement, the Party shall meet and confer to resolve outstanding concerns. If the Parties are unable to agree on a solution, either Party may petition the Court for such relief as the Court deems appropriate, including replacement of the Joint Compliance Expert, and/or any individual members, agents, employees, or independent contractors.

**N. Court Jurisdiction, Modification of the Agreement, and Enforcement**

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223. This Agreement shall become effective upon entry by the Court.
  224. The Parties agree jointly to file this Agreement with the United States District Court for the District of Connecticut. The joint motion shall request that the Court enter the Agreement pursuant to Federal Rule of Civil Procedure 41(a)(2), conditionally dismiss

the complaint in this action, and retain jurisdiction to enforce the Agreement. Should the United States determine that the Town has failed to comply with the Agreement, the case will be reinstated for the purposes of enforcing the Agreement only. The Town may not challenge liability nor the necessity for Agreement terms.

225. To ensure that the requirements of this Agreement are properly and timely implemented, the Court shall retain jurisdiction of this action for enforcement purposes until such time as the Town has achieved full and effective compliance with this Agreement and maintained such compliance for no less than two years. If the Town believes it has reached full compliance and moves the Court to terminate this Agreement, the Town shall bear the burden of demonstrating full and effective compliance with this Agreement.
226. The United States acknowledges the good faith of the Town in trying to address the remedial measures that are needed to promote police integrity and ensure constitutional policing in East Haven. The United States, however, reserves its right to seek enforcement of the provisions of this Agreement if it determines that the Town has failed to fully comply with any provision of this Agreement. Prior to initiating any enforcement proceedings in Court for an alleged failure to comply with any provision of this Agreement, the United States will notify the Town in writing of the facts supporting its belief that the Town is not in compliance. The Town will investigate the allegations and respond in writing within 30 days. If the dispute remains unresolved, the parties will conduct negotiations to resolve the issue(s). If the parties are unable to resolve the issue(s) satisfactorily within 30 days of the Town's written response, the United States may move the Court for any relief permitted by law or equity and demonstrate that the relief is necessary to implement this Agreement.
227. Failure by any Party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver, including of its right to enforce other deadlines and provisions of this Agreement.
228. Any modification of this Agreement shall be executed in writing by the Parties, shall be filed with the Court, and shall not be effective until the Court enters the modified agreement and retains jurisdiction to enforce it.
229. Nothing in this Agreement shall be construed as an acknowledgement, an admission, or evidence of liability of the Town under the Constitution of the United States, federal or state law, and this Agreement may not be used as evidence of liability in this or any other civil or criminal proceeding.
230. The Parties agree to defend the provisions of this Agreement. The Parties shall notify each other of any court or administrative challenge to this Agreement. In the event any provision of this Agreement is challenged in any Connecticut court, removal to a federal court shall be sought by the Parties.

- 231. The Town agrees to promptly notify DOJ if any term of this Agreement becomes subject to a collective bargaining dispute and to consult with DOJ in a timely manner regarding the position the Town takes in any collective bargaining dispute connected with this Agreement.
- 232. The Town shall require compliance with this Agreement by its respective officers, employees, agencies, assigns, or successors.

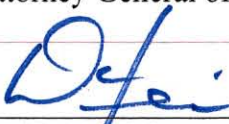
**O. Termination of the Agreement**

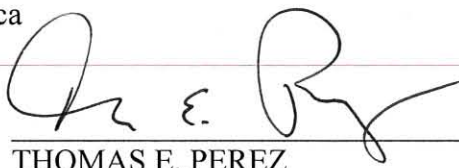
- 233. The Parties anticipate that the Town will have reached full and effective compliance with this Agreement within four years of its Effective Date. The Parties may agree to jointly ask the Court to terminate this Agreement prior to or after this date, provided that the Town has been in full and effective compliance with this Agreement for two consecutive years. "Full and Effective Compliance" shall be defined to require both sustained compliance with all material requirements of this Agreement and sustained and continuing improvement in constitutional policing and public trust, as demonstrated pursuant to the Agreement's outcome measures.
- 234. If after four years from the Effective Date the Parties disagree whether the Town has been in full and effective compliance for two years, either Party may seek to terminate this Agreement. In the case of termination sought by the Town, prior to filing a motion to terminate, the Town agrees to notify DOJ in writing when the Town has determined that it is in full and effective compliance with this Agreement and that such compliance has been maintained for no less than two years. Thereafter, the Parties shall promptly confer as to the status of compliance. If, after a reasonable period of consultation and the completion of any audit or evaluation that DOJ and/or the Joint Compliance Expert may wish to undertake, including on-site observations, document review, or interviews with the Town's personnel, the Parties cannot resolve any compliance issues, the Town may file a motion to terminate this Agreement. If the Town moves for termination of this Agreement, DOJ will have 60 days after the receipt of the Town's motion to object to the motion. If DOJ does not object, the Court may grant the Town's motion. If DOJ does make an objection, the Court shall hold a hearing on the motion and the burden shall be on the Town to demonstrate that they are in full and effective compliance with this Agreement and have maintained such compliance for at least two consecutive years.

Agreed to this 19<sup>th</sup> day of November, 2012.

For the UNITED STATES OF AMERICA:

ERIC H. HOLDER, JR.  
Attorney General of the United States of America


  
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DAVID FEIN  
United States Attorney for the  
District of Connecticut

  
\_\_\_\_\_  
THOMAS E. PEREZ  
Assistant Attorney General  
Civil Rights Division

JOHN B. HUGHES, Civil Chief  
MICHELLE McCONAGHY, AUSA  
United States Attorney's Office  
District of Connecticut

JONATHAN M. SMITH, Chief  
LUIS E. SAUCEDO, Acting Deputy Chief  
ANIKA N. GZIFA, Trial Attorney  
AARON S. FLEISHER, Trial Attorney  
United States Department of Justice  
Civil Rights Division  
Special Litigation Section

For the TOWN OF EAST HAVEN:

  
HON. JOSEPH MATURO, JR.  
Mayor of the Town of East Haven

For the EAST HAVEN BOARD OF POLICE COMMISSIONERS

  
JOSEPH CIVITELLO  
Chairperson  
East Haven Board of Police Commissioners

IT IS SO ORDERED, this \_\_\_\_ day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
U.S. District Judge