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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

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CLERK US DISTRICT COURT  
NORFOLK, VIRGINIA

UNITED STATES OF AMERICA,

PLAINTIFF,

v.

CIVIL ACTION No.

CITY OF VIRGINIA BEACH, VIRGINIA,

DEFENDANT.

CONSENT DECREE

This action was brought by the United States against the City of Virginia Beach, Virginia (the "City") to enforce the provisions of Title VII of the Civil Rights Act of 1964, 42 U.S.C.

§ 2000e et seq., as amended. This Court has jurisdiction of the action under 42 U.S.C. § 2000e-6, 28 U.S.C. § 1343(a)(3) and 28 U.S.C. § 1345.

In its Complaint, the United States alleges that the City has pursued policies and practices that discriminate against and deprive or tend to deprive African Americans and Hispanics of employment opportunities because of their race and national origin, in violation of Section 703(a) of Title VII, 42 U.S.C. § 2000e-2(a). Specifically, the United States alleges that the City's use of a mathematics test as a pass/fail screening device in the selection process for the entry-level position of police officer has had a statistically significant disparate impact against African-American and Hispanic applicants. The United States further alleges that the City's use of the mathematics test has not been shown to be job related for the position in question and consistent with business necessity.

This action alleges disparate impact discrimination. Intent to discriminate is not an

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element of disparate impact discrimination. The United States does not allege that the City of Virginia Beach or the Virginia Beach Police Department has intentionally discriminated against any person or group of persons under Title VII.

The City denies that it has violated Title VII. Nevertheless, the United States and the City, desiring that this action be settled by an appropriate Decree and without the burden of protracted litigation, agree to the jurisdiction of this Court over the parties and the subject matter of this action. The United States and the City further agree to the entry of this Decree as final and binding between themselves as to the issues raised in the United States' Complaint in this case. Subject to the Court's approval of this Decree, the parties waive hearings and findings of fact and conclusions of law on all issues, except as to the following, which the parties admit and which the Court finds:

- (a) In June 2004, the United States began a formal investigation to determine whether the City's employment practices in its Police Department complied with Title VII.
- (b) Since at least 1998, the selection process used by the City in the screening and selection of applicants for hire into the position of entry-level police officer in its Police Department has included the administration of a written examination, the National Police Officer Selection Test ("POST").
- (c) The version of the POST used by the City since 2001 consists of three components, described by Stanard & Associates, Inc. as a reading test, a grammar test and a mathematics test.
- (d) Regardless how well applicants score on the reading and grammar components of the POST, the City requires that applicants score at least 70% on the POST mathematics test in order to be considered for hire as entry-level police officers.

(e) Between 2002 and June 2005, the City administered the POST mathematics test to approximately 1,800 white applicants and 477 African-American applicants. The pass rate for African-American applicants was approximately 59%, while the pass rate for white applicants was approximately 85%. The disparity between the white and African-American pass rates is equivalent to approximately 11 units of standard deviation.

(f) Between 2002 and June 2005, the City administered the POST mathematics test to 232 Hispanic applicants. Approximately 66% of these applicants passed the mathematics test. The disparity between the white and Hispanic pass rates is equivalent to approximately 6 units of standard deviation.

In resolution of this action, with the consent of the parties, IT IS THEREFORE ORDERED, ADJUDGED AND DECREED as follows:

**I. DEFINITIONS AND PARTIES**

1. The parties to this Consent Decree are the United States, by the United States Department of Justice, and the City of Virginia Beach, Virginia.
2. "Backpay" refers to a monetary award that represents the value of some or all of the wages and benefits that a claimant would have received from the City if the claimant had been hired by the City for an entry-level police officer position at or about the claimant's presumptive hire date.
3. "Claimant" refers to any African-American or Hispanic applicant who took the POST used by the City as part of the selection process for entry-level police officers between 2002 and the date of entry of this Decree, received a score of less than 70% on the mathematics component of the POST, received a score of at least 70% on each of the other components of the POST, received an overall POST score (calculated as the equally weighted average of the candidate's scores on

the three components of the POST) of at least 60% and timely submits a claim form indicating that the applicant is interested in being considered for individual relief under this Decree.

4. "Date of entry" of the Decree refers to the date on which the Court orders entry of the Decree following the Fairness Hearing on the Consent Decree described in Section IV of this Decree.

5. "Days" refers to calendar days unless business days are clearly specified in the context of a specific provision of this Decree.

6. "Entry-level police officer" refers to the entry-level position in the City's Police Department even though an individual hired into that position may be called a "recruit" (or other title) until the individual has completed academy training.

7. "Individual relief" refers to a monetary award in the form of backpay and/or an offer of priority hire, with retroactive hire date, that a claimant may be offered pursuant to the terms of this Decree.

8. "Presumptive hire date" for any claimant refers to the earliest date of hire of any applicant to whom the City administered the POST on or after the date on which the claimant failed the POST, or if no such applicant was hired, the earliest date of hire of any individual hired after the date on which the claimant failed the POST.

9. "Retroactive hire date" refers to the right of a claimant who is hired by the City as a priority hire pursuant to the terms of this Decree and successfully completes his/her probationary period to receive credit for the time period between the claimant's presumptive hire date and the date on which the claimant actually begins employment with the City as a priority hire. A claimant's retroactive hire date shall not be used for purposes of any applicable probationary periods, time requirements relevant to progression to Master Police Officer, a requirement of three

years of experience as a patrol officer for eligibility for the specialized assignments listed in Exhibit 1 to this Decree or promotion, but shall be used for all other purposes, including without limitation: amount of salary or other pay, pension benefits (to the extent that back contributions to the Virginia Retirement System ("VRS") are allowed by state law and policy and regulation), future accrual of leave, including both vacation and sick leave, layoffs/reductions in work force, and eligibility for retirement.

10. "Title VII" refers to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq., as amended.

## **II. PURPOSES OF THIS DECREE**

11. The purposes of this Decree are to ensure that:

- (a) the City does not violate Title VII by using policies and practices that have a disparate impact against African American or Hispanic applicants for the police officer position on the basis of race or national origin and are not job related for that position and consistent with business necessity;
- (b) the City does not retaliate against individuals who complain of such policies and practices, who have participated in the investigation or litigation of this case, or who seek or are awarded any relief under this Decree; and
- (c) the City provides, as appropriate, monetary relief and/or priority hiring with retroactive hire date to qualified individuals who were denied employment with the City due to the employment practices challenged by the United States in this case.

### III. GENERAL INJUNCTIVE RELIEF

12. The City, its employees, supervisors, agents and all individuals in active concert or participation with it, are enjoined from:

- (a) using any policy or practice that has a disparate impact against African-American or Hispanic applicants for the police officer position on the basis of race or national origin and are not job related for that position and consistent with business necessity; and
- (b) retaliating against or in any way adversely affecting the terms and conditions of employment of any person because that person has complained of such discrimination, has participated in the investigation or litigation of this case, or has sought or been awarded any relief under this Decree.

13. The City, its officials, agents, employees and successors, and all persons acting on their behalf or in active concert or participation with them, shall not use the POST mathematics test as a pass/fail screening device, with its own cutoff score, as part of its entry-level police officer selection process.

14. While this Consent Decree remains in effect, the City, its officials, agents, employees and successors, and all persons acting on their behalf or in active concert or participation with them, shall not use, in the selection of entry-level police officers, any test of mathematics skills or abilities that results in a disparate impact against African-American or Hispanic applicants and is not job related for the entry-level police officer position and consistent with business necessity.

To that end, the City shall not use, in the selection of entry-level police officers, any test of mathematics skills or abilities (other than the POST mathematics test in the manner described in the following Paragraph) without the prior agreement of the United States or, absent such

agreement, prior approval of the Court.

15. The City may use the POST mathematics test in the selection of entry-level police officers in the following manner: the City will consider all applicants who score at least 70% on the reading component of the POST, score at least 70% on the grammar component of the POST and obtain an overall POST score (calculated as the equally-weighted average of scores on the mathematics, reading and grammar components of the POST) of at least 60%. If the City wishes to use the mathematics component of the POST in any other manner or wishes to use any other written examination to screen or select entry-level police officers, the City must so notify the United States not less than ninety (90) days prior to the City's intended use of the test. With the notice, the City must provide: a description of the test and the manner in which the City intends to use it; the known or likely disparate impact, if any, of the test; all evidence of job relatedness or validity of the test available to the City; and any basis for a conclusion that the use of the test in the manner in which the City intends to use it is job related and consistent with business necessity.

16. If the United States has not agreed to the City's use of the test within sixty (60) days after receipt of notice of the City's intended use of the test and related materials pursuant to the preceding Paragraph, the City may apply to this Court for approval of its use of the test. The Court shall approve the City's use of the test only if the City establishes by a preponderance of the evidence that its use of the test is job related for the entry-level police officer position and consistent with business necessity.

17. The City shall designate an individual who shall be responsible for enforcing the provisions of this Decree. This individual's responsibilities shall include, but not be limited to, the following:

- (a) ensuring that the City fully implements and complies with all paragraphs of this

Decree;

- (b) receiving complaints of discrimination on the basis of race or national origin in the screening, selection and hiring of entry-level police officers in the Virginia Beach Police Department; and
- (c) receiving complaints of retaliation because an individual has complained of such discrimination, has participated in the investigation or litigation of this case, or has sought or been awarded any relief under this Decree.

#### IV. FAIRNESS HEARING ON THE CONSENT DECREE

18. Upon execution of this Decree, the United States and the City shall file a joint motion for the provisional approval and entry of the Decree by the Court and shall request a Fairness Hearing on the Consent Decree to allow the Court to determine whether the terms of this Decree are fair, reasonable, equitable and otherwise consistent with federal law. The Court shall provide the parties with at least ninety (90) days' notice of the date and time set for this Fairness Hearing.

19. The purpose of the Fairness Hearing on the Consent Decree and the related notification provisions of this Decree is to provide to all individuals who may be affected by the terms of the Decree notice and an opportunity to present objections prior to final entry of the Decree, in accordance with Section 703(n) of Title VII, 42 U.S.C. §2000e-2(n).

20. No later than sixty (60) days prior to the Fairness Hearing on the Consent Decree, the City shall provide a Notice of Settlement and Fairness Hearing, Instructions for Filing an Objection Prior to the Fairness Hearing, and Objection to the Entry of the Consent Decree form, in the form set forth in Appendix A, as follows:

- (a) via certified U.S. mail to the last known address of each African-American or Hispanic applicant who took the POST as part of the City's police officer selection



process during or after 2002, received a score of less than 70% on the mathematics component of the POST, received a score of at least 70% on each of the other components of the POST, received an overall POST score (calculated as the equally-weighted average of scores on the mathematics, reading and grammar components of the POST) of at least 60% and was considered by the City to have failed the POST (each such individual is listed in Appendix B to this Decree), along with a cover letter in the form set forth in Appendix C to this Decree;

- (b) to all sworn employees in the Virginia Beach Police Department, via hand delivery at the place of employment of each such individual, as an attachment to each such individual's regularly distributed pay check information, or as a PDF file sent by e-mail to an e-mail account maintained by the City for each such individual and to which the City regularly sends employment-related notices; the City will provide a cover letter in the form set forth in Appendix D to this Decree with the notice, instructions and objection form.

At or before the time notices are provided pursuant to subparagraph (a) of this Paragraph, the City shall provide to the United States a list stating the last known address of each individual to whom such notice is being sent. At or before the time notices are provided pursuant to subparagraph (b) of this Paragraph, the City shall provide to the United States a list of the individuals to whom notice is being provided pursuant to subparagraph (b).

21. The City shall publish notice, in a form substantially the same as Appendix E to this Decree, in the Wednesday, Friday and Sunday editions of the Virginian Pilot and the New York Daily News. The published notice shall appear with a headline in bold typeface, surrounded by a dark border, shall be no smaller than 6 inches by 10 inches in size, and shall be placed in the local

news section or other prominent location agreed to by the parties. All such newspaper notices shall be published for two (2) weeks concluding no later than six (6) weeks prior to the date set for the Fairness Hearing on the Consent Decree.

22. No later than five (5) days prior to the Fairness Hearing on the Consent Decree, the United States and the City shall file a response to all objections timely filed with the Court that also have been timely served on the United States and the City.

#### **V. ENTRY OF THE CONSENT DECREE**

23. If the Court determines that the terms of this Decree are fair, reasonable, equitable and otherwise consistent with federal law, the Court shall enter the Decree at or following the Fairness Hearing on the Consent Decree.

#### **VI. INDIVIDUAL RELIEF**

##### **A. Deposit of the Settlement Fund**

24. Within thirty (30) days after the date of entry of this Decree at or following the Fairness Hearing on the Consent Decree, the City shall deposit the sum of One Hundred Twenty-Eight Thousand Dollars (\$128,000) into an account ("Settlement Fund I") in a federally insured financial institution agreed to by the parties. On the same date, the City shall deposit an additional sum of Thirty-two Thousand Dollars (\$32,000) into a second account ("Settlement Fund II") at the same financial institution.

##### **B. Monetary Relief Awards from the Settlement Fund**

25. The funds in Settlement Fund I, including any interest that accrues on Settlement Fund I, shall be distributed by the City to African-American claimants entitled to monetary relief under this Decree, as provided in Section VI.J. of this Decree. The funds in Settlement Fund II,

including any interest that accrues on Settlement Fund II, shall be distributed by the City to Hispanic claimants entitled to monetary relief under this Decree, as provided in Section VI.J. of this Decree.

26. The City shall pay all federal, state or local taxes or contributions that normally are paid by employers and that are due on any monetary relief award paid to a claimant, including the appropriate employer's contributions to Medicare and the Social Security fund. No such taxes or contributions shall be deducted from Settlement Fund I or Settlement Fund II, the interest that accrues on either Settlement Fund I or Settlement Fund II or any claimant's monetary relief award.

27. The City shall, to the extent required by law, withhold from each claimant's monetary relief award all appropriate federal and state income taxes and any other required employee withholdings or deductions. Such amounts shall be deducted by the City from each claimant's monetary relief award and shall be paid by the City from Settlement Fund I for African-American claimants and from Settlement Fund II for Hispanic claimants.

C. Preliminary Eligibility for Individual Relief

28. Individuals preliminarily eligible for relief under this Decree shall include all African Americans and Hispanics who:

- (a) took the POST as part of the City's selection process for entry-level police officers during or after 2002; and
- (b) received a score below 70% on the mathematics component of the POST; and
- (c) received a score of at least 70% on each of the other components of the POST; and
- (d) received an overall POST score (calculated as the equally weighted average of scores on the mathematics, reading and grammar components of the POST) of at least 60%; and

(e) were considered by the City to have failed the POST.

Each such individual is listed in Appendix B to this Decree. Such individuals need not seek priority hiring relief or accept an offer of employment with the City in order to receive an award of monetary relief.

29. Within thirty (30) days after the entry of this Decree by the Court at or following the Fairness Hearing on the Consent Decree, the City shall send a copy of the Notice of Entry of Consent Decree and Interest In Relief Form, attached to this Decree as Appendix F, by certified U.S. mail to the last known address of each individual preliminarily eligible for relief, as described in the preceding Paragraph.

D. Claimants to Submit Interest in Relief Form

30. Any claimant who fails to submit a completed and signed Interest in Relief Form to the United States within sixty (60) days after entry of the Consent Decree by the Court at or after the Fairness Hearing on the Consent Decree, absent a showing of good cause, shall be deemed to have waived any right to be considered for individual relief under this Consent Decree. The determination that a claimant has shown good cause shall be within the sole discretion of the United States.

E. United States to Make Initial Determination of Claimants' Eligibility for Individual Relief

31. Within ninety (90) days after entry of this Decree by the Court at or following the Fairness Hearing on the Consent Decree, the United States shall provide to the City a list that identifies all individuals preliminarily eligible for relief who have submitted an Interest in Relief Form to the United States. The list required by this Paragraph shall indicate the type(s) of relief, if any, for which the United States has determined each such claimant is eligible, each such claimant's

race/national origin and each such claimant's presumptive hire date, as defined in Paragraph 8, above.

F. City to Evaluate Eligibility for Individual Relief

32. The City may, during the one hundred twenty (120) days following the date on which the United States provides to the City the list required by the preceding Paragraph of this Decree, require any claimant the United States deemed eligible for priority hiring relief to appear for and cooperate in any selection procedure designed to allow the City to evaluate the claimant's qualifications for the position of entry-level police officer in the City's Police Department, using the lawful, objective selection procedures then in use by the City. The City shall make reasonable efforts to accommodate claimants in scheduling such selection procedures.

33. No later than two hundred ten (210) days after entry of this Decree by the Court at or following the Fairness Hearing on the Consent Decree, the City shall provide to the United States in writing all objections it has to the entitlement of any claimant to monetary and/or hiring relief as determined by the United States. Any such objection shall state all grounds for the City's contention that a claimant is not eligible for monetary and/or hiring relief and shall identify all witnesses with knowledge of facts supporting the City's contention. On the date on which it provides to the United States any such objections, the City also shall provide to the United States copies of all documents relating to the City's objections. In addition, the City shall make available for interview or deposition all officials, agents and employees of the City with knowledge of facts supporting the City's objections within fourteen (14) days after the United States so requests. The parties shall thereafter make good faith efforts to resolve any objections and to reach agreement regarding the identities of the claimants entitled to relief and the type(s) of relief to which each claimant is entitled.

G. Filing of Relief Awards List

34. Within two hundred seventy (270) days after entry of this Decree by the Court at or following the Fairness Hearing on the Consent Decree, the United States shall file with the Court a Relief Awards List stating, for each individual listed in Appendix B to this Decree, whether the claimant timely returned an Interest in Relief form, the claimant's race/national origin, the type(s) of relief sought by the claimant, the type(s) of relief for which the United States deems the claimant eligible and the claimant's presumptive hire date. In addition, for each African-American claimant the United States deems eligible for monetary relief, the Relief Awards List shall state the share of Settlement Fund I that the United States has determined should be awarded to the claimant. For each Hispanic claimant the United States deems eligible for monetary relief, the Relief Awards List shall state the share of Settlement Fund II that the United States has determined should be awarded to the claimant. The United States shall simultaneously serve a copy of the Relief Awards List on the City.

35. For purposes of the Relief Awards List, the United States shall determine each claimant's share of the total amount of monetary relief in a manner that is reasonable and equitable in relation to the claimant population and the total amount of monetary relief available under the Decree from the appropriate Settlement Fund and that is consistent with the provisions of this Decree.

H. Fairness Hearing on Individual Relief

36. Upon filing the Relief Awards List described in Section VI.G. of this Decree, the United States shall move the Court to hold a Fairness Hearing on Individual Relief to allow the Court to determine whether the Relief Awards List filed by the United States should be approved or amended. The Court shall provide the parties with at least sixty (60) days notice of the date and time set for the Fairness Hearing on Individual Relief.

37. If the City disagrees with the United States' relief determinations as stated in the Relief Awards List, the City may file objections with the Court no later than forty-five (45) days prior to the date set for the Fairness Hearing on Individual Relief, stating all grounds for each of the City's objections and identifying all documents relating to the City's objections and all witnesses with knowledge of facts supporting the City's objections. In addition, the City shall make available for interview or deposition all officials, agents and employees of the City with knowledge of facts supporting the City's objections within fourteen (14) days after the United States so requests.

38. No later than forty-five (45) days before the date set for the Fairness Hearing on Individual Relief, the United States shall send by first-class U.S. mail to each individual listed in Appendix B to this Decree, addressed to the last known address of such individual, a Notice of Fairness Hearing on Individual Relief, Instructions for Filing an Objection to Individual Relief and Objection form, in the form attached as Appendix G to this Decree, as well as a letter, in the form attached as Appendix H, notifying the individual of the United States' relief determinations regarding the individual's eligibility for relief under the Decree, the reasons for any determination that the individual is ineligible for any form of relief and the individual's proposed share of the monetary relief.

39. Claimants who object to the United States' proposed relief determinations may file objections as follows:

- (a) Objections shall state the objector's name, address and telephone number; set forth a description of the objector's basis for disputing the United States' relief determination; include copies of any documentation supporting the objections; state the name and address of the objector's counsel, if any; and state whether the objector wishes the opportunity to be heard in court at the Fairness Hearing on

Individual Relief.

- (b) Objections shall be submitted by filing the original with the Court at the following address:

Clerk of the United States District Court for the  
Eastern District of Virginia  
United States Courthouse  
600 Granby Street  
Norfolk, Virginia 23510

- (c) Objectors also must mail a copy of any objection to the United States Department of Justice and the City at the following addresses:

Virginia Beach Police Settlement Team  
Employment Litigation Section  
U.S. Department of Justice  
Civil Rights Division  
PHB, Room 4024  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

City of Virginia Beach  
City Attorney  
Municipal Center, Bldg 1  
2401 Courthouse Drive  
Virginia Beach, VA 23456

- (d) Objections must be filed no later than thirty (30) days prior to the date set for the Fairness Hearing on Individual Relief.

40. No later than five (5) days prior to the date set for the Fairness Hearing on Individual Relief, the United States and the City shall file with the Court and serve on the other party a reply to each timely objection.

I. Approval of Final Relief Awards List

41. At or following the Fairness Hearing on Individual Relief, the Court shall determine which, if any, objections to the United States' relief determinations, as stated in the Relief Awards



List filed pursuant to Section VI.G. of this Decree, are well-founded. The Court shall then approve the Relief Awards List as submitted or, if the Court finds that any objection(s) are well-founded, shall amend the list to adjust the amount and nature of the relief to be awarded to the claimants consistent with such finding, while maintaining, to the extent possible, the proportionate shares of monetary relief awarded to all other claimants. The list approved by the Court will be the Final Relief Awards List.

42. The Court shall find that any objection regarding the amount of monetary relief to be awarded to a claimant is well-founded only if the amount is not reasonable and equitable in relation to the claimant population and the total amount of monetary relief to be awarded under this Decree.

43. The Court shall find that any objection, including any objection made by the City, regarding a claimant's eligibility for priority hiring relief is well-founded only if the objector(s) prove by a preponderance of the evidence that, at the time the claimant failed the POST, the claimant was not qualified for the position of entry-level police officer in the City's Police Department using the lawful, objective hiring criteria in use by the City at that time, or is not currently qualified as of the date of the Fairness Hearing on Individual Relief, using the lawful, objective selection procedures then in use by the City. In addition, the Court shall find that an objection, including an objection made by the City, regarding a claimant's eligibility for priority hiring relief is well-founded if the objector(s) establish(es) by a preponderance of the evidence that the claimant failed to cooperate in or to appear for the administration of a measure or evaluation of one of the claimant's qualifications, as allowed by Paragraph 32 of this Decree.

J. Payment of Monetary Relief Awards

44. No later than thirty (30) days after the Court determines, at or following the Fairness

Hearing on Individual Relief, each claimant's eligibility for relief under this Decree, the United States shall mail by certified U.S. mail notices of the monetary relief awards to all claimants determined by the Court to be entitled to monetary relief, as stated in the Final Relief Awards List, at their current or last known address. Each notice shall include:

- (a) a statement of the amount of the monetary relief award for that claimant as stated on the Final Relief Awards List and an explanation of the time limit for acceptance of the monetary relief offer;
- (b) an Acceptance of Relief Award and Release of Claims as described in the following Paragraph of this Decree; and
- (c) any withholding forms provided by the City that it deems necessary to comply with its withholding obligations under law.

45. As a condition for the receipt of a monetary relief award, each claimant otherwise entitled to monetary relief as indicated in the Final Relief Awards List shall be required to execute a copy of the Acceptance of Relief Award and Release of Claims form set forth in Appendix I of this Decree and return it to the United States no later than thirty (30) days after the United States mails the notices required by the preceding Paragraph. The date of return to the United States shall be the date of receipt by the United States of the executed form. A failure to accept a monetary relief award and to return the executed Acceptance of Relief Award and Release of Claims and withholding forms within the time allowed shall constitute a rejection of the offer of relief and shall release the United States and the City from any further obligation under this Decree to make a monetary relief award to that individual.

46. No later than forty-five (45) days after the United States mails the Acceptance of Relief Award and Release of Claims forms and other materials as required by Paragraph 44 of this Decree, the United States shall forward to the City all executed Acceptance of Relief Award and Release of Claims and withholding forms it receives.

47. If any claimant listed on the Final Relief Awards List rejects a relief award, the United States shall reallocate the amount of monetary relief allocated to that claimant on the Relief Awards List to those claimants who timely returned an Acceptance of Relief Award and withholding forms, in a manner designed to allocate the total amount of monetary relief available in the appropriate Settlement Fund, while preserving the relative proportions of the claimants' shares of the Settlement Fund as stated on the Final Relief Awards List. The United States shall amend the Final Relief Awards List to reflect any such reallocation and provide a copy of the amended Final Relief Awards List to the City (or inform the City that no amendments are required) no later than forty-five (45) days after the United States mails the materials required by Paragraph 44 of this Decree.

48. No later than forty-five (45) days after the United States provides to the City the amended Final Relief Awards List or informs the City that no amendments are required, the City shall mail a monetary relief award check to each claimant listed on the Final Relief Awards List as eligible to receive a monetary award who has timely returned an executed Acceptance of Relief Award and Release of Claims and withholding forms. The amount of each such claimant's check shall be the amount stated for the claimant on the Final Relief Awards List, as amended pursuant to the preceding Paragraph, less all appropriate taxes and other amounts required to be withheld by law. The City shall forward to the appropriate government agency such taxes and other amounts required to be withheld by law. The employer's share of any applicable payroll or other taxes shall not be deducted from any amount of monetary relief to be paid to any claimant under this Decree.

49. No later than forty-five (45) days after the United States provides to the City the executed Acceptance of Relief Award and Release of Claims and withholding forms and the amended Final

Relief Awards List (or notice that no amendment is required), the City shall provide to the United States a copy of each monetary relief award check mailed to a claimant pursuant to the preceding Paragraph, along with a statement indicating the amounts withheld from each such check and the purpose of each withholding.

50. One hundred twenty (120) days after the City mails the last monetary relief award check required by Paragraph 48 of this Decree, the City shall provide to the United States a list of all checks that have been returned to the City undeliverable and of any other checks that have not been cashed, as well as a statement of the amount of funds remaining in each of the Settlement Funds. Unless the United States determines that the amount of monetary relief represented by the returned checks is de minimis, that amount will be redistributed as directed by the United States in a manner consistent with this Decree. Whether the amount of monetary relief represented by the returned checks is de minimis shall be within the sole discretion of the United States.

K. Priority Hiring with Retroactive Hire Date

51. For purposes of the following paragraphs of Section V.K. of this Decree: "the First Academy Class" means the first police academy class attended by Virginia Beach entry-level police officers beginning at least one hundred twenty (120) days after the Court rules on the claimants' eligibility for priority hiring relief at or following the Fairness Hearing on Individual Relief; and "the Second Academy Class" means the second police academy class attended by Virginia Beach entry-level police officers beginning at least one hundred twenty (120) days after the Court rules on the claimants' eligibility for priority hiring relief at or following the Fairness Hearing on Individual Relief.

52. No later than thirty (30) days prior to the beginning of the First Academy Class, the City shall hire as entry-level police officers in the Virginia Beach Police Department a total of at least

six (6) African-American claimants whom the Court has approved as eligible for priority hiring relief as indicated on the Final Relief Awards List. The employment of an entry-level police officer hired pursuant to this Paragraph shall begin on the first day of the police academy class attended by that officer. The City may make more than six priority hires of African-American claimants pursuant to this Paragraph.

53. No later than thirty (30) days prior to the beginning of the First Academy Class, the City shall hire as entry-level police officers in the Virginia Beach Police Department a total of up to three (3) Hispanic claimants whom the Court has approved as eligible for priority hiring relief as indicated on the Final Relief Awards List. The employment of entry-level police officers hired pursuant to this Paragraph shall begin on the first day of the police academy class attended by that officer.

54. In order to fulfill the priority hiring requirements of Paragraph 52, above, the City shall extend conditional offers of employment in writing to African-American claimants who are eligible for priority hiring relief as indicated on the Final Relief Awards List until at least six (6) African-American priority hires have been made or all such claimants have been hired as priority hires pursuant to this Decree, have rejected an offer of priority hire, have accepted an offer of priority hire but failed to appear to begin the police academy on the date scheduled, or have failed the post-offer medical or psychological examination regularly required of newly-hired Virginia Beach police officers. Only an offer that results in an African-American claimant eligible for priority hiring relief attending the police academy as a Virginia Beach entry-level police officer in the First Academy Class or an earlier academy class will count as a priority hire for purposes of this Paragraph and Paragraph 52, above.

55. In order to fulfill the priority hiring requirements of Paragraph 53, above, the City shall

extend conditional offers of employment in writing to Hispanic claimants who are eligible for priority hiring relief as indicated on the Final Relief Awards List until three (3) Hispanic priority hires have been made or all such claimants have been hired as priority hires pursuant to this Decree, have rejected an offer of priority hire, have accepted an offer of priority hire but failed to appear to begin the police academy on the date scheduled, or have failed the post-offer medical or psychological examination regularly required of newly-hired Virginia Beach police officers. Only an offer that results in a Hispanic claimant eligible for priority hiring relief attending the police academy as a Virginia Beach entry-level police officer in the First Academy Class or an earlier academy class will count as a priority hire for purposes of this Paragraph and Paragraph 53, above.

56. No later than thirty (30) days after the beginning of the First Academy Class, the City shall provide to the United States a copy of each written offer of priority hire made pursuant to Paragraphs 52 and 53 of this Decree, the name of each claimant who has accepted such an offer, whether or not each claimant who accepted such an offer was actually employed by the City, a statement of the reason(s) that any claimant to whom an offer of priority hire was made was not hired, and a statement of the reason(s) the City has determined that any claimant listed as eligible for priority hiring relief on the Final Relief Awards List was not currently qualified, along with all available documentation of such reason(s).

57. No later than thirty (30) days prior to the beginning of the Second Academy Class, the City shall hire as entry-level police officers in the Virginia Beach Police Department a total of up to twelve (12) African-American claimants whom the Court has approved as eligible for priority hiring relief as indicated on the Final Relief Awards List. The employment of entry-level police officers hired pursuant to this Paragraph shall begin on the first day of the police academy class

attended by that officer. Any claimants hired as priority hires pursuant to Paragraph 52 of this Decree who attends the police academy as a Virginia Beach entry-level police officer in the First Academy Class or an earlier academy class shall be counted toward the total number of priority hires for purposes of the priority hiring requirement of this Paragraph.

58. In order to fulfill the priority hiring requirements of Paragraph 57, above, the City shall extend conditional offers of employment in writing to African-American claimants who are eligible for priority hiring relief as indicated on the Final Relief Awards List until a total of twelve (12) African-American priority hires have been made or all such claimants have been hired as priority hires pursuant to this Decree, have rejected an offer of priority hire, or have failed the post-offer medical or psychological examination regularly required of newly-hired Virginia Beach police officers. Only an offer that results in an African-American claimant eligible for priority hiring relief attending the Second Academy Class or an earlier police academy class as a Virginia Beach entry-level police officer will count as a priority hire for purposes of this Paragraph and Paragraph 57, above.

59. No later than thirty (30) days after the beginning of the Second Academy Class, the City shall provide to the United States a copy of each written offer of priority hire made pursuant to Paragraph 57 of this Decree, whether or not each claimant who accepted such an offer was actually employed by the City, a statement of the reason(s) that any claimant to whom an offer of priority hire was made pursuant to Paragraph 57 of this Decree was not hired, the name and date of hire of each claimant hired as a priority hire pursuant to Paragraph 57 of this Decree, and a statement of the reason(s) the City determined that any claimant listed as eligible for priority hiring relief on the Final Relief Awards List was not currently qualified, along with all available documentation of such reason(s).

60. On the date on which a claimant who was hired as a priority hire under this Decree completes his/her probationary period, the City shall credit the claimant with a retroactive hire date in the police officer position as of the claimant's presumptive hire date as stated on the Final Relief Awards List, as amended pursuant to Paragraph 47 of this Decree.

61. Any claimant hired as a priority hire pursuant to this Decree who at the time of hire is already certified by the Commonwealth of Virginia as a law enforcement officer will be given credit for any experience the claimant may have had as a certified police officer with a department other than the City's Police Department in accordance with the City's existing policy regarding certified/experienced officers at the time of hire.

## **VII. RECORD KEEPING AND COMPLIANCE MONITORING**

62. The City shall maintain all of the following records (including those in electronic form):

- (a) all applications for entry-level police officer positions in the City's Police Department;
- (b) all documents relating to the screening, evaluation or selection of applicants for the entry-level police officer position;
- (c) all records relating to the development and/or validation of any selection practice or procedure the City uses to screen or select entry-level police officers;
- (d) all documents relating to written or verbal complaints made by any person or organization regarding: (i) discrimination in hiring of entry-level police officers on the basis of race or national origin; or (ii) retaliation for complaining of or participating in any proceedings involving a complaint of such discrimination;
- (e) all documents relating to the evaluation or selection of claimants to be offered priority hire and/or to the employment of claimants hired as priority hires under this



Decree; and

- (f) all other documents relating to the City's compliance with the requirements of this Decree, including but not limited to documents relating to the payment or award of individual relief to any claimant under this Decree.

63. Except as otherwise provided in this Decree, the City will make available to the United States, no later than thirty (30) days after the United States so requests in writing, any records maintained in accordance with the preceding Paragraph of this Decree and any additional documents relating to any dispute arising under the Decree.

64. When possible, all records furnished to the United States shall be provided in computer-readable format.

65. Within thirty (30) days after the United States so requests in writing, the City shall make available for interview by the United States any agent, employee or official of the City who the United States reasonably believes has knowledge of information necessary to verify the City's compliance with the terms of this Decree or to resolve a dispute arising under this Decree.

#### **VIII. DISPUTE RESOLUTION**

66. The parties shall attempt in good faith to resolve informally any disputes that arise under this Decree. If the parties are unable to resolve the dispute expeditiously, either party may submit the disputed issue to the Court for resolution.

#### **IX. DURATION OF DECREE**

67. This Decree shall be dissolved and this action shall be dismissed, without further order of the Court, upon the occurrence of the later of the following two events:

- (a) the passage of thirty (30) months from the date of entry of this Decree;

- (b) the fulfillment of all the parties' obligations regarding Individual Relief contained in Section VI of this Decree, including crediting by the City of retroactive hire date to claimants hired as priority hires.

**X. COSTS AND FEES**

68. Except as set forth in this Decree, each party shall bear its own costs and expenses incurred as a result of obligations imposed by this Decree, including the cost of all notification and publication procedures.

69. Each party shall bear its own costs, expenses, and attorney's fees incurred in this litigation.

**XI. MISCELLANEOUS**

70. The Court shall retain jurisdiction over this Decree for the purpose of resolving any disputes or entering any orders that may be appropriate to implement the Decree.

71. Except as otherwise provided in this Decree, all documents required to be delivered under this Decree to the United States by the City shall be sent to the attention of:

Chief, Employment Litigation Section  
Virginia Beach Police Settlement Team  
U.S. Department of Justice  
Civil Rights Division  
Employment Litigation Section--PHB 4040  
950 Pennsylvania Ave., NW  
Washington, D.C. 20530

72. Any documents required to be delivered under this Decree by the United States to the City shall be sent to the attention of:

City Attorney  
City of Virginia Beach  
Municipal Center, Bldg 1  
2401 Courthouse Drive  
Virginia Beach, VA 23456

It is so **ORDERED**, this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

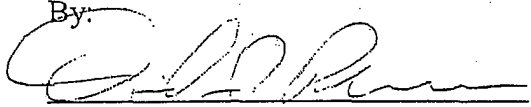
UNITED STATES DISTRICT JUDGE

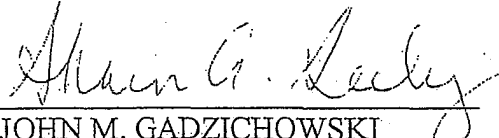
**AGREED AND CONSENTED TO:**

**For plaintiff United States of America:**

WAN J. KIM  
Assistant Attorney General  
Civil Rights Division

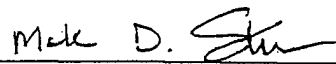
By:

  
DAVID J. PALMER [VA Bar No. 27802]  
Chief, Employment Litigation Section

  
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**For defendant City of Virginia Beach:**

  
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