



City has had a disparate impact against African-American and Hispanic applicants and has not been shown to be job related for the position in question and consistent with business necessity, as required by federal law. The United States' Complaint does not include any allegations of intentional discrimination under Title VII and is not based upon any individual charges or complaints of discrimination.

The City: (1) denies that it has violated Title VII; (2) denies that its use of the POST mathematics test discriminated against African-American or Hispanic applicants; (3) asserts that the City's police officers use basic mathematics skills as part of their job; and (4) asserts that its use of the POST mathematics test is job related for the position in question and consistent with business necessity. Nevertheless, the United States and the City, desiring that this action be settled by an appropriate Consent Decree ("Decree"), and without the burden and expense 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 March 1, 2001, 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 the City's Police Department has included the administration of a professionally developed written examination, the POST.
- (c) Between March 1, 2001 and January 1, 2006, the City administered three (3) components of the POST, described by the test's creator, Stanard & Associates, Inc., as a reading comprehension test, a grammar test, and a mathematics test.
- (d) At least between March 1, 2001 and January 1, 2006, regardless of how well applicants scored on the reading comprehension and grammar components of the POST, the City required that applicants score at least seventy percent (70%) on the mathematics component of the POST in order to be considered for hire as entry-level police officers.
- (e) ~~Between March 1, 2001 and January 1, 2006, the City administered the POST~~ mathematics component to approximately eight hundred sixty-five (865) white applicants and two hundred eighty-five (285) African-American applicants. While the parties' respective experts have used different methods of measuring the disparity between the pass rates of African Americans and whites on the ~~mathematics component of the POST, there is no dispute that, between March 1,~~ 2001 and January 1, 2006, African-American applicants passed the mathematics component at a lower rate than white applicants and that the disparity in pass rates was statistically significant. The United States asserts that the disparity between the rate at which African-American applicants passed the mathematics component

and the rate at which white applicants passed the mathematics component is equivalent to 10.29 units of standard deviation ("SD"). The City asserts that the disparity is equivalent to 7.00 SD.

- (f) Between March 1, 2001 and January 1, 2006, the City administered the POST mathematics component to sixty-one (61) Hispanic applicants. There is no dispute that between March 1, 2001 and January 1, 2006, Hispanic applicants passed the mathematics component of the POST at a lower rate than white applicants and that the disparity in pass rates was statistically significant. The United States asserts that the disparity between the rate at which Hispanic applicants passed the mathematics component and the rate at which white applicants passed the mathematics component is equivalent to 5.17 SD. The City asserts that the disparity is equivalent to 4.50 SD.
- (g) ~~The lower pass rates of African-American and Hispanic applicants on the POST mathematics component ultimately resulted in an estimated shortfall of hires of African-American and Hispanic applicants. The shortfall is an estimate of the additional number of African-American and Hispanic applicants that would have been hired had African-American and Hispanic applicants passed at the same rate as white applicants. The United States' expert estimated that the shortfall in African-American hires was five (5), and the shortfall in Hispanic hires was three (3). The City's expert estimated that the shortfall in African-American hires was between four (4) and five (5), and the shortfall in Hispanic hires was two (2).~~

- (h) The City has adopted a new method of scoring the POST in a manner that is acceptable to both parties, as provided in Paragraph 13 of this Decree, below.

In resolution of this action, and 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, through the United States Department of Justice, and the City of Chesapeake, Virginia ("City").
2. "Backpay" refers to a monetary award that represents the value of some or all of the wages 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 (as defined by Paragraph 7 of this Decree, below).
3. "Claimant" refers to any African-American or Hispanic applicant who: (1) took the POST between March 1, 2001 and January 1, 2006 as part of the selection process for the entry-level police officer position with the City; (2) between March 1, 2001 and January 1, 2006, received a score of less than seventy percent (70%) on the mathematics component of the POST, and received a score of at least seventy percent (70%) on the reading comprehension component and at least seventy percent (70%) on the grammar component of the same administration of the POST; and (3) timely submits a claim form indicating that the claimant 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 at or following the Fairness Hearing on the Consent Decree described in Section IV of this Decree, below.

5. "Days" refers to calendar days unless business days are clearly specified in the context of a specific provision of this Decree.
6. "Individual relief" refers to monetary relief in the form of a backpay award and/or an offer of priority hire, with retroactive seniority (as defined by Paragraph 8 of this Decree, below), that a claimant may be offered pursuant to the terms of this Decree.
7. "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.
8. "Retroactive seniority" 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 the police training academy to receive seniority 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. Such seniority shall be used only for: future pay status, future accrual of vacation and sick leave, pension benefits (to the extent that back contributions by the City to the Virginia Retirement System ("VRS") are allowed by state law and policy and regulation), layoffs/reductions in work force, and eligibility for retirement, continuation of health benefits on retirement and payment for unused sick leave. Notwithstanding anything to the contrary in this Paragraph, nothing in this Decree shall be construed to obligate the City to provide pension or other retirement benefits to a claimant who receives retroactive seniority under this Decree, except to the extent that such non-VRS benefits would be provided by the City had the claimant actually begun employment in the City's police department on the claimant's retroactive seniority date. However, the City shall take all reasonable administrative actions allowed by state law,

policy and regulation (including contributions for pensions) to ensure that each claimant who receives retroactive seniority under this Decree will receive from the VRS the pension and other retirement benefits the claimant would have received had the claimant begun employment on the claimant's retroactive seniority date.

9. "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**

10. Under this Decree, the City agrees that it will:

- (a) comply with Title VII in its hiring of police officers; and
- (b) provide, as appropriate under the terms of this Decree, monetary relief and/or priority hiring relief with retroactive seniority to qualified claimants who were denied employment with the City due to the employment practices challenged by the United States in this case.

## **III. GENERAL INJUNCTIVE RELIEF**

11. The City, its employees, supervisors, and agents, jointly and severally, are enjoined from engaging in any act or practice in its entry-level police officer selection procedures that unlawfully discriminates on the basis of race or national origin, in violation of Title VII, against any African Americans or Hispanics.

12. Since approximately January 2006, the City began using the POST in a fully compensatory manner, i.e., averaging the scores on the reading comprehension, grammar and mathematics components of the POST, with a cut-off score as low as sixty-six percent (66%) as part of the City's entry-level police officer selection process.

13. As the parties have agreed, and as the Court approves by entry of this Decree, if the City wishes to continue to use the POST as part of its screening or selection process to hire entry-level police officers, the City shall continue to use the POST in a fully compensatory manner (i.e., it shall average an applicant's scores on the various components of the POST (i.e., reading comprehension, grammar and mathematics)), and the City shall use only an overall cut-off score no higher than sixty-six percent (66%).

14. While this Consent Decree remains in effect, the City, its employees, supervisors, and agents, jointly and severally, shall not use in the selection of entry-level police officers, any test of mathematics skills that results in a disparate impact and is not job related for the entry-level police officer position and consistent with business necessity. To that end, if the City wishes to use, in the selection of entry-level police officers, any test of mathematics skills or abilities, other than the POST scored in the manner described in Paragraph 13 of this Decree, above, the City shall obtain prior agreement by the United States, or absent such agreement, prior approval of the Court.

15. 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; and
- (b) receiving complaints of discrimination on the basis of race or national origin in the screening, selection and hiring of police officers in the City's Police Department.

this Decree), along with a cover letter in the form set forth in Appendix C to this Decree; and

- (b) to all sworn employees in the Chesapeake Police Department, via hand delivery at the place of employment of each such individual, or as an attachment to each such individual's regularly distributed paycheck information, along with a cover letter in the form set forth in Appendix D to this Decree.

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).

19. The City shall publish notice, in a form substantially the same as that set forth in Appendix E to this Decree, in the Wednesday, Friday and Sunday editions of the Virginian-Pilot. The published notice shall appear with a headline in bold typeface, surrounded by a dark border, shall be no smaller than six (6) inches by ten (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 during one (1) week concluding no later than six (6) weeks prior to the date set for the Fairness Hearing on the Consent Decree.

20. No later than ten (10) 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 received by the United States and the City.

**V. ENTRY OF THE CONSENT DECREE**

21. 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. The Settlement Fund

22. Within fifteen (15) days from the date of entry of this Decree, the City shall propose to the United States a federally insured financial institution in which an account shall be opened and into which the Settlement Fund shall be deposited pursuant to Paragraph 23 of this Decree, below.

23. Within thirty (30) days from the date of entry of this Decree, the City shall deposit into an account in a federally insured financial institution agreed upon by the parties the sum of Sixty-Five Thousand Dollars (\$65,000.00) (the "Settlement Fund"), to satisfy any and all claims by the United States for backpay.

24. The Settlement Fund, including any interest that accrues thereon, shall be distributed by the City to claimants entitled to backpay under this Decree, as provided in Section VI, subsection I, of this Decree, below. Any portions of the Settlement Fund remaining in the account after the payment of all claims and redistributions under this Decree shall revert back to the City.

25. The City shall pay all federal, state and local taxes and other contributions that normally are paid by employers and that are due on any backpay award paid to a claimant, including, but not limited to, the appropriate employer's contributions to Medicare and the Social Security fund.

No such taxes or contributions shall be deducted from the Settlement Fund, the interest that accrues on the Settlement Fund, or any claimant's backpay award.

26. The City shall, to the extent required by law, withhold from each claimant's backpay 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 backpay award and shall be paid by the City from the Settlement Fund account.

27. The determination that a claimant is eligible for individual monetary relief, and the amount of individual monetary relief for which a claimant is eligible, shall be within the sole discretion of the United States. However, no claimant shall be awarded backpay in an amount greater than five thousand dollars (\$5,000.00).

B. Preliminary Eligibility for Individual Relief

28. Individuals preliminarily eligible for relief under this Decree shall include each African American and Hispanic who:

- (a) took the POST as part of the City's selection process for entry-level police officers between March 1, 2001 and January 1, 2006; and
- (b) received a score of less than seventy percent (70%) on the mathematics component of the POST, and received a score of at least seventy percent (70%) on the reading comprehension component and seventy percent (70%) on the grammar component of the same administration of 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. In order to receive priority hiring relief, each individual seeking priority hire

relief must meet the criteria described in subparagraphs (a) and (b) of this Paragraph, above, and have received scores on the POST components (at the time that the individual took the POST between March 1, 2001 and January 1, 2006, and failed the mathematics component of the POST, but passed the reading comprehension and grammar components of the POST) that resulted in an overall average score of at least sixty-six percent (66%).

29. Within thirty (30) days from the date of entry of this Decree, the City shall send a copy of the Notice of Entry of Consent Decree and Interest in Relief form, set forth in Appendix F to this Decree, via certified U.S. mail to the last known address of each individual preliminarily eligible for relief, as described in Paragraph 28 of this Decree, above.

C. Claimants to Submit Interest in Relief Form

30. In order to be considered for relief under this Decree, a claimant must submit a completed and signed Interest in Relief form to the United States. A claimant shall be deemed to have submitted a completed and signed Interest in Relief form if that form is: (1) post-marked within sixty (60) days from the date of entry of this Decree by the Court; and (2) submitted in accordance with the instructions accompanying the Interest in Relief form and the provisions of this Decree.

31. Any claimant who fails to submit a completed and signed Interest in Relief form to the United States within sixty (60) days from the date of entry of this Decree by the Court, absent a showing of good cause, shall be deemed to have waived any right to be considered for individual relief under this Decree. The determination that a claimant has shown good cause shall be within the sole discretion of the United States, subject to review by the Court.

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

32. Within one hundred twenty (120) days from the date of entry of this Decree by the Court, 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, and each such claimant's presumptive hire date, as defined in Paragraph 7 of this Decree, above.

E. City to Evaluate Eligibility for Individual Priority Hire Relief

33. The City may, during the sixty (60) days following the date on which the United States provides to the City the list required by Paragraph 32 of this Decree, above, require any claimant that the United States deems eligible for priority hire relief to appear for and cooperate in any selection procedure (except the claimant shall not be required to take the POST) 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 in use by the City at the time the claimant is processed for the priority hire position with the City. The City shall make reasonable efforts to accommodate claimants in scheduling such selection procedures.

34. No later than one hundred eighty (180) days from the date of entry of this Decree, the City shall provide to the United States, in writing, all objections it has to the entitlement of any claimant to priority hiring relief as determined by the United States. Any such objection shall state all grounds for the City's contention that the claimant is not eligible for priority 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 or supporting the City's objections. In addition, the City shall make available for interview (to be conducted in Chesapeake, Virginia) all officials, agents and employees of the City with knowledge of facts supporting the City's objections within seven (7) 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 priority hiring relief. Any dispute which the parties cannot resolve involving priority hiring relief shall be resolved by the Court having jurisdiction over this case.

35. ~~the~~ E. the Filing of Relief Awards List Within two hundred ten (210) days from the date of entry of this Decree by the Court, 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 claimant the United States deems eligible for backpay, the Relief Awards List shall state the amount of the Settlement Fund (not to exceed five thousand dollars (\$5,000.00) per individual) 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.

36. For purposes of the Relief Awards List, the United States shall determine each claimant's share of the total amount of backpay (not to exceed five thousand dollars (\$5,000.00) per individual) in a manner that is reasonable and equitable in relation to the claimant population and

Individual Relief and Objection form, set forth in Appendix G to this Decree, as well as a letter, set forth in Appendix H to this Decree, 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, the proposed amount of backpay to be awarded to the individual, and whether the City has objected to a determination by the United States that the individual is entitled to priority hiring relief.

40. Claimants who object to the United States' proposed relief determinations may file objections that comply with the following:

- (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  
~~Walter E. Hoffman 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:

Chesapeake Police Settlement Team  
U.S. Department of Justice  
Civil Rights Division  
Employment Litigation Section  
950 Pennsylvania Avenue, N.W. – PHB Room 4040  
Washington, D.C. 20530; and

Darlene P. Bradberry, Esq.  
Breedon, Salb, Beasley & DuVall, P.L.C.  
555 East Main Street, Suite 1210  
Norfolk, VA 23510-2234

- (d) Objections must be filed no later than thirty (30) days prior to the date set for the Fairness Hearing on Individual Relief. The post-mark date on the objection shall be the date of submission.

41. 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 objecting party, a reply to each timely objection.

H. Approval of Final Relief Awards List

42. 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, subsection F of this Decree, above, are well-founded. The Court shall then approve the Relief Awards List as submitted or, if the Court finds any objection(s) well-founded, shall amend it to adjust the amount and nature of the relief to be awarded to the claimants consistent with such finding(s), while maintaining, to the extent possible, the proportionate amount of backpay awarded to all other claimants (but not to exceed five thousand dollars (\$5,000.00) per individual). The list approved by the Court will be the Final Relief Awards List.

43. The Court shall find that any objection regarding the amount of backpay to be awarded to a claimant is well-founded only if the amount is not reasonable and equitable in relation to the total number of claimants eligible for monetary relief and the total amount of monetary relief to be awarded under this Decree, but, in accordance with the provisions of this Decree, will ensure that no individual is awarded backpay in an amount greater than five thousand dollars (\$5,000.00).

44. 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) proves by a preponderance of the evidence that, at the time the claimant failed the mathematics component of the POST, but passed the reading comprehension and grammar components of 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 selection procedures 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 33 of this Decree, above.

I. Payment of Monetary Relief Awards

45. 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, via 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 Paragraph 46 of this Decree, below; and
- (c) any withholding forms provided by the City that it deems necessary to comply with its withholding obligations under law.

46. 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 to this Decree, and return it to the United States no later than thirty (30) days after the United States mails the notices required by Paragraph 45 of this Decree, above. The date of return to the United States shall be the postmark date. 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.

47. 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 45 of this

Decree, above, the United States shall forward to the City all executed Acceptance of Relief Award and Release of Claims and withholding forms it receives.

48. 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 Final Relief Awards List to those claimants who timely returned Acceptance of Relief Award and Release of Claims and withholding forms, in a manner designed to allocate the total amount of monetary relief available in the Settlement Fund, while preserving the relative proportions of the claimants' shares of the Settlement Fund as stated on the Final Relief Awards List, but no individual shall be awarded an amount exceeding five thousand dollars (\$5,000.00). 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 45 of this Decree, above. If the Final Relief Awards List is modified pursuant to this Paragraph, the United States shall file a copy of the amended Final Relief Awards List with the Court.

49. No later than thirty (30) 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 Paragraph 48 of this Decree, above, 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.

50. No later than thirty (30) 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 Paragraph 49 of this Decree, above, along with a statement indicating the amounts withheld from each such check and the purpose of each withholding.

51. One hundred twenty (120) days after the City mails the last monetary relief award check required by Paragraph 49 of this Decree, above, 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 the Settlement Fund account. Unless the United States determines that the amount of monetary relief represented by the returned and/or uncashed checks is de minimis, that amount will be redistributed as directed by the United States in a manner consistent with the provisions of 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.

52. One hundred eighty (180) days after any redistribution of monies in the Settlement Fund account, as provided for in Paragraph 51 of this Decree, above, the City shall provide the United States with a final accounting of the monies still remaining in the Settlement Fund

account. Thirty (30) days after such accounting is provided to the United States, the monies remaining in the Settlement Fund account shall revert back to the City.

J. Priority Hiring with Retroactive Seniority and Contributions to the Pension Fund

53. Within ninety (90) days after the Court rules on the claimants' eligibility for priority hiring relief at or following the Fairness Hearing on Individual Relief, the City shall hire as entry-level police officers in the Chesapeake Police Department a total of up to eight (8) claimants whom the Court has approved as eligible for priority hiring relief as indicated on the Final Relief Awards List. In making its priority hire decisions, the City shall attempt to provide priority hiring relief to both African-American and Hispanic claimants.

54. The City shall extend conditional offers of employment in writing to claimants who are eligible for priority hiring relief as indicated on the Final Relief Awards List until eight (8) priority hires have been made or the Final Relief Awards List has been exhausted, as defined by Paragraph 55 of this Decree, below. Only an offer that results in the participation of a claimant eligible for priority hiring relief in at least the first day of the police training academy will count as a priority hire.

55. For purposes of Paragraph 54 of this Decree, above, the Final Relief Awards List shall be exhausted when all claimants who are eligible for priority hiring relief as indicated on the Final Relief Awards List have met one of the following conditions: (a) have been hired as priority hires pursuant to this Decree; (b) have rejected an offer of priority hire; (c) have failed the post-offer medical or psychological examination regularly required of new entry-level police officers with the City; or (d) based on information discovered by the City after the City provides its objections to the United States, as set forth in Paragraph 34 of this Decree, above, at the time

the claimant took and failed the mathematics component of the POST, but passed the reading comprehension and grammar components of the POST, the claimant was not eligible for the entry-level police officer position with the City using the lawful, objective selection criteria used by the City at that time. If there is a dispute between the parties regarding whether a claimant was eligible for the entry-level police officer position with the City using the lawful, objective selection criteria used by the City at the time the applicant took and failed the mathematics component of the POST, but passed the reading comprehension and grammar components of the POST, the parties shall submit the dispute to the Court pursuant to Paragraph 62 of this Decree, below. In resolving any such dispute, the Court shall find that the claimant was eligible for the position, unless the City establishes by a preponderance of the evidence that the claimant did not meet the lawful, objective selection criteria used by the City at the time the claimant took and failed the mathematics component of the POST, but passed the reading comprehension and grammar components of the POST.

56. Within 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, the City shall provide to the United States a copy of each written offer of priority hire made pursuant to this Decree, the name and date of hire of each claimant hired as a priority hire pursuant to this Decree, and a statement of the reason(s) any claimant listed as eligible for priority hiring relief on the Final Relief Awards List was not hired, along with all available documentation of such reason(s).

57. On the date on which a claimant who was hired as a priority hire under this Decree successfully completes the police training academy, the City shall credit the claimant with

retroactive seniority 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 48 of this Decree, above, and make all pension contributions consistent with Paragraph 8 of this Decree, above.

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

58. The City shall maintain all of the following records, as defined in Title 42.1, Section 77 of the Code of Virginia of 1950, as amended, for the life of this Decree:

- (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 discrimination in hiring of police officers on the basis of race or national origin;
- (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.

59. Except as otherwise provided in this Decree, for the duration of the 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 Paragraph 58 of this Decree, above, and any additional documents relating to any dispute arising under the Decree.

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

61. Within thirty (30) days after the United States so requests in writing, the City shall make available for interview (to be conducted in Chesapeake, Virginia) 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. This obligation shall remain for the duration of this Decree.

### **VIII. DISPUTE RESOLUTION**

62. 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**

63. 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 (2) events:

- (a) the passage of twelve (12) months from the date of entry of this Decree;
- (b) the full implementation of all individual relief as contained in Section VI of this Decree, including, but not limited to, payment of backpay to all claimants eligible for relief, crediting by the City of retroactive seniority to all claimants receiving priority hiring relief, and payment by the City of the appropriate pension amounts to all claimants hired as priority hires.

**X. COSTS AND FEES**

64. 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.

65. Each party shall bear its own costs, expenses, and attorney's fees incurred in this litigation, including those incurred in resolving any dispute that may arise under this Decree.

**XI. MISCELLANEOUS**

66. For the duration of this Decree, 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.

67. 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:

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

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

Darlene P. Bradberry, Esq.  
Breedon, Salb, Beasley & DuVall, P.L.C.  
555 East Main Street, Suite 1210  
Norfolk, Virginia 23510

It is so **ORDERED**, this 15<sup>th</sup> day of June, 2007.

  
HON. RAYMOND A. JACKSON  
UNITED STATES DISTRICT JUDGE

**AGREED AND CONSENTED TO:**

**For Plaintiff United States:**

WAN J. KIM

Assistant Attorney General

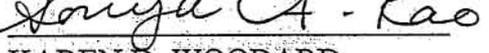
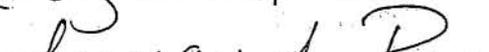
Civil Rights Division



DAVID J. PALMER

Chief

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U.S. Department of Justice

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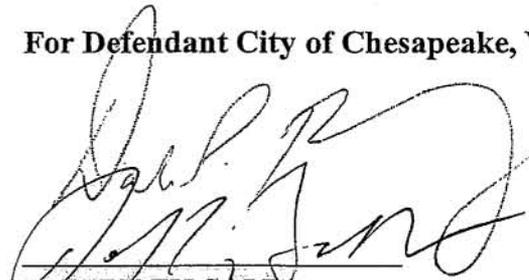
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