

Conciliation Agreement  
In re: Virginia Beach Police Department  
Virginia OCR Case No. 2021-0028

The Office of the Attorney General of Virginia, Virginia Office of Civil Rights (Virginia OCR) initiated a preliminary inquiry to determine whether the Virginia Beach Police Department (Department) engaged in a pattern or practice of conduct that deprived persons subject to interrogation of rights, privileges, or immunities secured or protected by the laws of the United States and the Commonwealth pursuant to Code of Virginia §§ 2.2-511.1 and 2.2-520. The Department and the City of Virginia Beach (City) were cooperative and professional throughout every stage of the inquiry.

As part of the inquiry, Virginia OCR reviewed thousands of pages of documents related to policies and procedures, training, and interviews/interrogations. The Department's internal investigation determined that out of approximately 9,600 investigative cases, there were five (5) instances when inauthentic Department of Forensic Science (DFS) Certificates of Analysis (COAs) were utilized as an interrogation technique (the Practice). The Virginia OCR inquiry found no reason to believe the Practice extended any further than those five instances nor any reason to believe that the Practice remains ongoing.

Before becoming aware of the Virginia OCR inquiry, Department Chief Paul Neudigate issued a directive (Directive) on May 1, 2021 mandating that all sworn personnel of the Department immediately discontinue the use of any inauthentic COA, DFS letterhead, or a format to create a replica of a DFS document. The directive further prohibited Department personnel from replicating, altering, or using any such certificate, letterhead, or format belonging to any agency outside of the Department.

Having come to a consensus on the scope of the Practice, Virginia OCR, the City, and the Department (the Parties) enter into this Conciliation Agreement (Agreement) pursuant to Code of Virginia § 2.2-511.1 as a mutually agreeable outcome of the inquiry.

**I. GENERAL PROVISIONS**

- 1) This Agreement is subject to the Freedom of Information Act, Code of Virginia § 2.2-3700, *et seq.*, as amended.
- 2) This Agreement does not in any way limit or restrict the Commonwealth's authority to receive complaints, seek to conciliate, or inquire into incidents that may constitute an unlawful pattern or practice of conduct by members of the Department that deprives persons of rights, privileges, or immunities secured or protected by the laws of the United States and the Commonwealth.
- 3) The Department, the City, and Virginia OCR further agree that if any section of the Agreement should be held invalid by operation of law or by a tribunal of competent jurisdiction, or if

compliance with or enforcement of any section is restrained by such tribunal, the application of any and all other sections, other than those which have been held invalid, will not be affected.

- 4) This Agreement constitutes the entire integrated agreement of the parties. No previous drafts or previous or contemporaneous communications, oral or written, shall be relevant or admissible for purposes of determining the meaning of any provisions herein in any litigation or any other proceeding.
- 5) Nothing in this Agreement or the negotiation process shall be construed as an admission or evidence of liability under any federal, state, or municipal law including, but not limited to, 42 U.S.C. § 1983. Nor is the City's entry into this Agreement an admission by the City, the Department, or any officer or employee of either entity that it has engaged in any unconstitutional, illegal, or otherwise improper activities or conduct.
- 6) This Agreement is binding upon the parties hereto, by and through their officials, agents, employees, and successors. This Agreement is enforceable only by the parties. No person or entity is intended to be a third-party beneficiary of the provisions of this Agreement for purposes of any civil, criminal, or administrative action, and accordingly, no person or entity may assert any claim or right as a beneficiary or protected class under this Agreement. This Agreement is not intended to impair or expand the right of any person or organization to seek relief against the Department for its conduct or the conduct of the Department's officers. This Agreement does not authorize, nor shall it be construed to authorize, access to or dissemination of any documents, except as expressly provided by this Agreement, by persons or entities other than Virginia OCR, the Department, and the City. Upon execution of the Agreement, any and all confidential personnel information provided to the Virginia OCR for purposes of this inquiry, including any duplicates, copies, and/or electronic versions subsequently created, shall be returned to the Department at a mutually agreed upon time.

## **II. AGREED UPON RELIEF**

- 1) The Department shall incorporate the substance of the Directive issued by Chief Neudigate on May 1, 2021 in a Department General Order (General Order) within sixty (60) days from the effective date of this Agreement. The Department shall forward a copy of the General Order to Virginia OCR upon the effective date of the order.
- 2) The Department shall post the General Order incorporating the substance of the Directive on the Department's website within sixty (60) days from the effective date of this Agreement.
- 3) The Department shall circulate the General Order to all sworn personnel currently assigned to the Detective Bureau along with an acknowledgment of receipt and a commitment to abide by the General Order to be signed by all such sworn personnel assigned to the Detective Bureau within sixty (60) days from the effective date of this Agreement.

- 4) The Department shall ensure that all sworn personnel transferred into or reassigned to the Detective Bureau from the effective date of this Agreement are provided the General Order as part of orientation and that any such sworn personnel sign an acknowledgement of receipt and commitment to abide by the General Order.
- 5) The Department shall ensure that any in-service training provided to sworn personnel regarding suspect interviews and/or custodial interrogations contains the substance of the General Order.
- 6) The Department shall update any and all other Department General Orders relevant to suspect interviews and/or custodial interrogations and the "Voluntariness" section of the Department's Constitutional Issues Field Guide with the substance of the General Order within sixty (60) days from the effective date of this Agreement.
- 7) If the Department becomes aware after the effective date of this Agreement of any alleged violation of the Directive or the terms of the General Order related to the Practice, directly or indirectly by Department personnel, the Department shall initiate an internal investigation into such conduct. After completion of the investigation, the Department shall report the results of the internal investigation regarding the Practice and any related disciplinary action to Virginia OCR within five (5) business days. Such a report made to Virginia OCR from the Department shall not be subject to the Freedom of Information Act, Code of Virginia § 2.2-3700, *et seq.*, as amended, pursuant to Code of Virginia § 2.2-3705.1.
- 8) If the Department desires to substantively amend the portion of General Order 6.03 pertaining to the Practice for any reason, including, but not limited to, changes in statutory or constitutional law, the Department shall only make the amendment effective after receiving agreement from Virginia OCR. Virginia OCR shall respond to any request made by the Department within five (5) business days.
- 9) The Department agrees that in the five (5) identified instances of the Practice, Virginia OCR will provide notice, subject to the limitations set forth in the Code of Virginia, to the appropriate individuals that the Practice was used as an interrogation technique and that the Department has ended the Practice. Virginia OCR may provide notice on its own or through a third-party.

### **III. AGREED UPON RESOLUTION**

Having come to a consensus on the Agreed Upon Relief in Section II of this Agreement, the Parties mutually agree that the following terms have been completed or resolved to the satisfaction of Virginia OCR as of the execution of this Agreement.

- 1) The Department has complied with Agreed Upon Relief Term 1 to the satisfaction of Virginia OCR prior to the execution of this Agreement by incorporating the substance of the Directive issued by Chief Neudigate on May 1, 2021 in Department General Order 6.03 regarding "Interview and Interrogation" and providing a copy to Virginia OCR.


- 2) The Department has complied with Agreed Upon Relief Term 2 to the satisfaction of Virginia OCR prior to the execution of this Agreement by posting the updated General Order 6.03 on the Department's website.
- 3) The Department has complied with Agreed Upon Relief Term 3 to the satisfaction of Virginia OCR prior to the execution of this Agreement by circulating General Order 6.03 to all sworn personnel in the Department with a required signature acknowledging receipt of General Order 6.03 and a commitment to abide by its terms via PowerDMS.
- 4) The Department has complied with Agreed Upon Relief Term 6 to the satisfaction of Virginia OCR prior to the execution of this Agreement by: (a) ensuring any and all Department General Orders relevant to suspect interviews and/or custodial interrogations appropriately reference General Order 6.03; and (b) updating the relevant sections of the Department's Constitutional Issues Field Guide.

#### IV. IMPLEMENTATION, MODIFICATION, AND ENFORCEMENT

- 1) This Agreement shall become effective upon the signature of all parties to the Agreement.
- 2) This Agreement shall terminate two years after it becomes effective.
- 3) This Agreement is enforceable through specific performance in the City of Richmond Circuit Court, which the parties to this agreement stipulate has *in personam* and subject matter jurisdiction and venue.
- 4) Failure by any party to enforce this entire Agreement or any provision thereof with respect to any deadline or any other provision herein shall not be construed as a waiver of its right to enforce other deadlines and provisions of this Agreement.
- 5) Virginia OCR agrees that, prior to the initiation of any action to enforce a specific provision within this agreement, it shall give written notice to the City and the Department of the specific alleged failure to fulfill any obligation under this Agreement and a request to cure. The Department shall have sixty (60) days from the receipt of such notice to cure the failure. In the event that, in the estimation of Virginia OCR, such failure has not been cured, Virginia OCR may file an action, without further notice to any of the other parties to this Agreement, in the City of Richmond Circuit Court seeking specific performance from the City and the Department.
- 6) If a court determines that the Department has failed to comply with this Agreement, the Department shall be ineligible for funding under Va. Code § 9.1-165 *et seq* until the Department comes into compliance with the Agreement.
- 7) The parties to this Agreement may consent, in writing, to modify this Agreement.

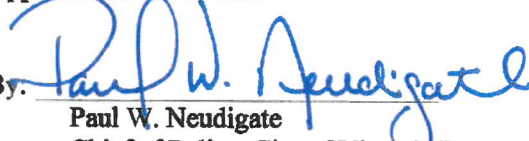
IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the last day and year written below.

**City of Virginia Beach**

By:   
Patrick A. Duhaney  
City Manager, City of Virginia Beach


Date: 1/12/, 2022.

Approved as to Content:

By:   
Paul W. Neudigate  
Chief of Police, City of Virginia Beach


Date: 1/12, 2022.

Approved as to Legal Sufficiency:

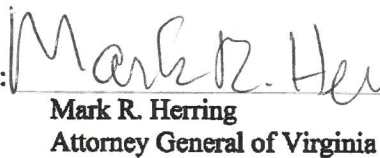
By:   
Mark Stiles  
City Attorney, City of Virginia Beach

Date: 1/12, 2022.

**Office of the Attorney General**

By:   
Erin B. Ashwell  
Chief Deputy Attorney General

Date: 1-12, 2022.

By:   
Mark R. Herring  
Attorney General of Virginia

Date: 1/12, 2022.