

**SETTLEMENT AGREEMENT AMONG**  
**THE UNITED STATES OF AMERICA,**  
**THE CITY OF ENGLEWOOD, COLORADO,**  
**AND**  
**PLAINTIFFS IN *LAWRENCE ET AL V. CITY OF ENGLEWOOD ET***  
***AL*, INCLUDING**  
**THE COLORADO CROSS-DISABILITY COALITION,**  
**THE COLORADO ASSOCIATION OF THE DEAF, AND**  
**WILLIAM LAWRENCE**

**Department of Justice Complaint No. 204-13-311**

[Press Release](#)

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**PURPOSE**

1. This Agreement is entered into among the United States Department of Justice (“the United States”); the Colorado Cross-Disability Coalition, the Colorado Association of the Deaf, and William Lawrence (“Private Plaintiffs”); and the City of Englewood (“Englewood” or “the City”) (collectively, “Parties”). It is the Parties’ intent that this Settlement Agreement shall resolve all issues associated with the provision of effective communication with persons who are deaf and hard of hearing so that they may participate in or benefit from the law-enforcement related services, programs, or activities of the City on an equal basis with other individuals, including but not limited to arrestees, detainees, suspects, victims, witnesses, companions, complainants, and visitors. This Agreement

establishes the City's obligations to provide appropriate auxiliary aids and services whenever necessary to ensure effective communications with qualified individuals who are deaf or hard of hearing, in the context of its law enforcement and related programs, services, and activities.

## BACKGROUND

2. The United States initiated an administrative investigation upon receipt of a complaint filed pursuant to Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-12134, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C § 794(a), alleging, *inter alia*, that Englewood has failed to ensure that police officers' communications with William Lawrence and others who are deaf or hard of hearing are as effective as communications with others. The administrative complaint was filed on behalf of the Colorado Cross Disability Coalition, the Colorado Association of the Deaf, and William Lawrence, who are also plaintiffs in a private lawsuit in U.S. District Court for the District of Colorado, Civil Action No. 12-cv-1423-MSK-BNB. Private Plaintiffs' allegations in the lawsuit are the same as those in their complaint to United States. The United States is not a party to that lawsuit.
3. Private Plaintiffs allege and Englewood denies that its police officers, on August 13, 2011, failed to communicate effectively with William Lawrence, who is deaf, when its officers arrested him pursuant to a warrant from another county. It is undisputed the Englewood police officers did not offer Mr. Lawrence a qualified sign language interpreter or ask whether one would help him to communicate effectively. Englewood and the Private Plaintiffs disagree regarding whether Mr. Lawrence requested an interpreter or whether the Englewood police officers were able to communicate effectively with him through gestures, lipreading, exchanges of written notes, and some assistance from Mr. Lawrence's landlord. Private Plaintiffs also allege the City has failed to establish and enforce sufficient policies and training for its law enforcement personnel regarding how to obtain qualified interpreters, when to obtain qualified interpreters, and how to interact with people who are deaf or hard of hearing.

4. Englewood expressly denies any and all wrongdoing and liability.
5. The ADA applies to the City of Englewood because it is a "public entity" pursuant to Title II of the ADA, 42 U.S.C. § 12131. Title II of the ADA prohibits discrimination against qualified individuals with disabilities on the basis of disability in the "services, programs, or activities of a public entity." 42 U.S.C. § 12132.
6. Section 504 of the Rehabilitation Act applies to the City of Englewood because it receives funding and assistance from the U.S. Department of Justice. Section 504 prohibits discrimination against qualified individuals with disabilities by recipients of federal funds.
7. The Attorney General is authorized, under 28 C.F.R. Part 35, Subpart F, to investigate the allegations of the complaint in this matter to determine Englewood's compliance with Title II of the ADA and the Title II implementing regulation at 28 C.F.R. pt. 35. The United States is also authorized to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. Furthermore, the Attorney General is authorized, under 42 U.S.C. § 12133, to bring civil actions enforcing Title II of the ADA should it fail to secure voluntary compliance pursuant to Subpart F.
8. The Attorney General is authorized under 28 C.F.R. Part 42, Subpart G, to determine the City's compliance with section 504 of the Rehabilitation Act of 1973, to issue findings, and, where appropriate, to negotiate and secure voluntary compliance agreements. Furthermore, should the Department fail to secure voluntary compliance pursuant to Subpart G, the Attorney General is authorized, under 29 U.S.C. § 794 and 28 C.F.R. §§ 42.530 and 42.108-110, to suspend or terminate financial assistance to the City provided by the Department of Justice or to bring a civil suit to enforce the rights of the United States under applicable federal, state, or local law.
9. In consideration of the terms of this Agreement as set forth below, the Attorney General agrees to refrain from further investigation, from filing a civil suit in this matter, or from initiating a fund suspension or termination proceeding, except as provided in the paragraph entitled "**Notification of Noncompliance and Enforcement,**" below.

10. The Parties have determined that the United States' investigation and the private litigation can be resolved without further investigation, enforcement action, or litigation. In order to avoid additional time and expense and to continue its efforts to comply fully with the Americans with Disabilities Act and the Rehabilitation Act, Englewood agrees to enter into this Agreement.

## DEFINITIONS

11. **“Auxiliary aids and services”** includes qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; computer-aided real-time transcription services (CART); written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;
12. **“Disability”** will be defined as it is in the ADA, 42 U.S.C. § 12102(2). See also 28 C.F.R. sec. 35.104. To the extent Colorado state law is implicated by this Agreement, “disability” will also be defined as applicable under state law.
13. **“Effective communication”** will mean communication with persons with disabilities that is as effective as communication with others. Effective communication is achieved by furnishing appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities an equal opportunity to participate in or benefit from the services, programs, or activities of a public entity.
14. **“Members of the public”** or **“individuals”** will mean people who are not Englewood personnel. These include, but are not limited to, crime victims, witnesses, suspects, arrestees, detainees, and those who seek access to enforcement and related programs,

services, and activities, as well as deaf or hard of hearing companions of non-disabled crime victims, witnesses, suspects, arrestees, detainees, and others, so long as the deaf or hard of hearing companion is the type of person (such as spouse, child, etc.) with whom Englewood would normally communicate under the circumstances. 28 C.F.R.

§ 35.160(a)(2).

15. **"Qualified Interpreter"** will mean an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary, given the deaf or hard of hearing individual's language skills and education. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators. 28 C.F.R. § 35.104. Not all interpreters are qualified for all situations. For example, an interpreter who is qualified to interpret using American Sign Language (ASL) is not necessarily qualified to interpret orally. Also, someone who has only a rudimentary familiarity with sign language or finger spelling is not a "qualified sign language interpreter." Likewise, someone who is fluent in sign language but who does not possess the ability to process spoken communication into the proper signs or to observe someone signing and translate their signed or finger-spelled communication into spoken words is not a qualified sign language interpreter. 28 C.F.R. pt. 35, App. A.
16. **"Personnel"** will mean all Englewood police department and related law enforcement employees and volunteers.
17. **"TTYs"** will mean devices that are used with a telephone to communicate with persons who are deaf or hard of hearing by typing and reading communications.
18. **"Video Remote Interpreting service" or "VRI"** will mean an interpreting service that uses video conference technology over dedicated lines or wireless technology offering high-speed, wide-bandwidth video connection that delivers high-quality video images as provided in § 35.160(d).

## TERMS AND CONDITIONS

19. **Nondiscrimination.** Englewood agrees not to engage in any act or practice, directly or through contracting, licensing, or other arrangements, that has the purpose or effect of unlawfully discriminating against any person with a disability in violation of Title II of the ADA or Section 504 of the Rehabilitation Act. Unless otherwise indicated, within sixty (60) days after the effective date of this Agreement, Englewood agrees to implement fully the practices and policies set forth below with respect to all law enforcement and related programs, services, and activities.
20. **Coverage of Involuntary Participation.** Throughout this Agreement, terms such as “enjoyment,” “benefit,” or “seek” that in other contexts might imply the voluntary and willing participation of a member of the public in a public entity’s programs, services, or activities, shall also refer to a member of the public’s involuntary participation in Englewood’s law enforcement and related programs, services, and activities, such as arrest or detention.
21. **ADA Coordinator for Law Enforcement.** Within 10 days of the effective date of this Agreement, Englewood will designate at least one employee to coordinate its efforts to comply with and carry out its responsibilities under Title II, Section 504, and this Agreement with respect to Englewood’s law enforcement and related programs, services, and activities (“ADA Coordinator for Law Enforcement”). The duties of the ADA Coordinator for Law Enforcement will include any investigation of any complaint communicated to Englewood alleging its noncompliance with or alleging any actions that would be prohibited by Title II, Section 504, or this Agreement. Englewood will make available to all interested members of the public the name, office address, and telephone number of the employee or employees designated pursuant to this paragraph. *See* 28 C.F.R. § 35.107(a).
22. **Grievance Procedures.** Within sixty (60) days of the effective date of this Agreement, Englewood will adopt and publish grievance procedures providing for prompt and equitable resolution of complaints related to law enforcement and related programs, services, and activities alleging any action that would be prohibited by Title II, Section

504, or this Agreement. *See* 28 C.F.R. § 35.107(b).

**23. Prohibition of Retaliation or Coercion.** Englewood will not discriminate against an individual because that individual has opposed any act or practice made unlawful by Title II, Section 504, or this Agreement, or because the individual made a charge, testified, assisted or participated in any manner in an investigation, proceeding, or hearing under Title II, Section 504, or this Agreement. Englewood will not coerce, intimidate, threaten, or interfere with any individual in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any individual in the exercise or enjoyment of, any right granted or protected by Title II, Section 504, or this Agreement. *See* 28 C.F.R. § 35.134.

**24. Duties.** Englewood is not required to take any action under this Agreement that it can demonstrate would result in a fundamental alteration in the nature of a law enforcement or related service, program, or activity, or in undue financial and administrative burdens. *See* 28 C.F.R. § 35.164. In those circumstances where Englewood personnel believe the proposed action would fundamentally alter the service, program, or activity or would result in undue financial and administrative burdens, Englewood has the burden of proving that compliance with Title II, Section 504, or this Agreement would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Chief of Police or his or her designee after considering all resources available for use in the funding and operation of the service, program, or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with Title II, Section 504, or this Agreement would result in such an alteration or such burdens, Englewood will take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, members of the public with disabilities receive the benefits or services provided by the public entity. *See* 28 C.F.R. § 35.164.

**25. Provision of Auxiliary Aids and Services.** Englewood will ensure that appropriate auxiliary aids and services, including qualified interpreters, are made available to all

members of the public who are deaf, hard of hearing, or deaf-blind, where such aids and services are necessary to ensure effective communication, so that they may participate in or benefit from Englewood's law enforcement and related services, programs, or activities on an equal basis with others.

**26. Primary Consideration.** In determining what type of auxiliary aid or service is necessary to comply with the ADA, Englewood agrees to give primary consideration to the expressed preference for a particular auxiliary aid or service by an individual who is deaf or hard of hearing. 28 C.F.R. § 35.160. "Primary consideration" will mean that Englewood will inquire as to the choice of auxiliary aid or service of the individual with a disability and will honor the expressed choice unless it can demonstrate that another equally effective means of communication is available. Specifically, to determine whether someone who is or may be deaf or hard of hearing wants a qualified sign language interpreter, in all non-exigent circumstances Englewood personnel will use the American Sign Language pictogram for "sign language interpreter" found at [Exhibit 2](#) to inquire as to the person's preference.

**27. Use of Interpreting Service Agency(ies).** Within sixty (60) days of the effective date of the Agreement, Englewood agrees:

- a. To form and maintain working relationships with one or more qualified oral/sign language interpreter agencies to ensure that interpreting services will be available on a priority basis, twenty-four hours per day, seven days a week;
- b. In the alternative, to make other appropriate arrangements such as contracting directly with or hiring qualified interpreters on a fee for service basis;
- c. To provide the United States with documentation that such interpreter services are being made available;
- d. To record all oral/written requests it receives for oral/sign language interpreters and any action taken or denial of services. That record shall be provided to the United States for review of compliance with this Agreement upon request by the United



States and in annual compliance reports as required in Paragraph 39, below.

**28. Time for Interpreter Response.** Whenever a qualified interpreter is to be provided pursuant to policies and procedures adopted under this Agreement, the qualified interpreter will be provided at the earliest reasonable time. In most cases during normal business hours, an interpreter should be provided within one hour of the first identification of a need. Nighttime, weekend, or holiday requests may take longer, but still must be honored within a reasonable time. “Reasonableness” will be subject to “force majeure” events - i.e., any response time that is delayed because of a force majeure event is excluded from the determination whether the prescribed response criteria have been met. Force majeure events are events outside the reasonable control of Englewood, the interpreting service agency, or the interpreter called to respond, such as weather problems, other Acts of God, unanticipated illness or injury of the interpreter while en route to the reporting site, and unanticipated transportation problems (including, without limitation, mechanical failure of the interpreter’s automobile, automobile accidents and roadway obstructions other than routine traffic or congestion).

**29. Imminent Threat and Exigent Circumstances**

- a. When there is an emergency involving an imminent threat to the safety or welfare of an individual (to include Englewood law enforcement personnel or a citizen) or the public, and there is insufficient time to make available appropriate auxiliary aids and services, Englewood law enforcement personnel will use whatever auxiliary aids and services are most effective under the circumstances to communicate with persons who are deaf or hard of hearing, consistent with an appropriate law enforcement response to the imminent threat. This may include, for example, exchanging written notes or using the services of a person who knows sign language but who is not a qualified interpreter, for an interim period during the period of ongoing imminent threat, even if the person who is deaf or hard of hearing would prefer a qualified sign language interpreter or another appropriate auxiliary aid or service. *See* 28 C.F.R. § 35.160(c)(3).

- b. The imminent threat exception in this paragraph and its subparts is not intended to apply to the typical and foreseeable emergency situations that are a part of the normal operations of Englewood's law enforcement and related programs, services, and activities. For example, Englewood personnel may rely on an accompanying individual to interpret or facilitate communication under this paragraph only in truly exigent circumstances, *i.e.*, where any delay in providing immediate services to the individual could have life-altering or life-ending consequences to members of the public or personnel. *See* 28 C.F.R. pt. 35, App. A. Once the exigency has lifted, personnel should revisit the decision of what auxiliary aids and services are appropriate, inquire as to the person's preferences under the non-exigent circumstances, and give primary consideration to those preferences.

### **30. Use of Other Members of the Public to Facilitate Communication.**

- a. Englewood shall not require an individual who is deaf or hard of hearing to bring another member of the public to interpret for him or her. *See* 28 C.F.R. § 35.160(c)(1).
- b. Englewood will not rely on an adult accompanying an individual who is deaf or hard of hearing to interpret or facilitate communication except:
  - i. In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available, or
  - ii. Where the individual who is deaf or hard of hearing specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances. *See* 28 C.F.R. § 35.160(c)(2).

Englewood shall not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available. *See* 28 C.F.R. § 35.160(c)(3). The

limitations of paragraph 29(b) apply to this provision.

31. **Ongoing Need for Communication Assessments and Consultation.** In addition to the initial communication assessment done at the time the need for auxiliary aids and services is first identified, Englewood personnel will reassess communication effectiveness regularly throughout the communication and will consult with the individual who is deaf or hard of hearing on a continuing basis to assess what measures are required to ensure effective communication. *See* 28 C.F.R. pt. 35, App. A.
32. **Reasonable Modification of Handcuffing Policies.** When Englewood personnel deem it necessary to handcuff a person who is deaf or hard of hearing, personnel will, safety permitting, reasonably modify standard operating procedure and handcuff deaf members of the public in front to enable the person to communicate using sign language or writing.
33. **Signs.** Within sixty (60) days of the effective date of this Agreement, at all police stations and other City facilities at which law enforcement personnel are reasonably anticipated to engage with members of the public, Englewood will post conspicuous signs in public areas (including booking and holding areas). *See* 28 C.F.R. § 35.163.

Such signs will advise persons who are deaf or hard of hearing of the availability of appropriate auxiliary aids and services, including qualified interpreters, as follows:

To ensure effective communication with individuals who are deaf or hard of hearing, Englewood will provide auxiliary aids, such as qualified sign language, oral, or tactile interpreters; TTYs; and volume controlled telephones, free of charge.

Please ask for assistance by contacting Englewood's ADA Coordinator for Law Enforcement, [name and full contact information].

The posted signs will include the International Symbol for Hearing Loss, the International Symbol for TTYs, and a symbol to indicate the availability of sign language interpreters:



**TTYs, Hearing-Aid Compatible Telephones, and Volume Control Telephones.** Within thirty (30) days of the effective date of this Agreement, Englewood agrees to provide, if it has not already done so, at least one TTY, one hearing aid compatible telephone, and one volume control telephone for use by personnel and one for members of the public at every City facility routinely used for law-enforcement related services, programs, or activities.

- a. Where telephones are available to members of the public, TTYs, hearing aid compatible telephones, and volume control telephones will be made available upon request. *See* 28 C.F.R. § 35.161. Signage will be displayed at all public telephones areas indicating the availability of the TTY, the hearing aid compatible telephone, and the volume control telephone and the procedure for obtaining them.
- b. Where arrestee or detainee telephone calls are time-limited, Englewood will provide arrestees or detainees who are deaf or hard of hearing who use TTYs three times the normal length of time to make those calls, due to the slower nature of TTY communications compared with voice communications.
- c. If a TTY, hearing aid compatible telephone, or volume control telephone is not available in the same location as telephones used by arrestees or detainees who are not deaf or hard of hearing, arrestees or detainees who need to use a TTY, hearing aid compatible telephone, or volume control telephone will be allocated reasonable additional time to get to and from the location of the equipment.

**34. Privacy of Communications.** Englewood will ensure that the privacy of telephone calls by arrestees or detainees using a TTY, hearing aid compatible telephone, or volume control telephone is equal to that of other arrestees' or detainees' telephone calls.

**35. Telephone Emergency Services.** Englewood will ensure its telephone emergency

services, including 9-1-1 services, shall provide direct access to individuals who use TDDs and computer modems. *See* 28 C.F.R. § 35.162.

- 36. Effective Communication Policies and Procedures.** Within sixty (60) days of the effective date of this Agreement, Englewood will submit to the United States its final policies and procedures to implement fully the Settlement Agreement. The policies and procedures must provide at least as great a degree of protection of the right to effective communication for persons who are deaf or hard of hearing as are provided in [Exhibit 1](#), Draft Policies and Procedures for Law Enforcement Personnel to Communicate with People Who Are Deaf or Hard of Hearing.
- 37. Monetary Relief.** Within 10 days of the effective date of this Agreement, Englewood will send to the United States a check in the amount of \$35,000, made payable to the Colorado Cross Disability Coalition. Within the same timeframe, Private Plaintiffs' counsel will send to the United States releases (Exhibit 3) signed by each of the Private Plaintiffs. Counsel for the United States shall not forward the check to Private Plaintiffs' counsel until the United States has received executed releases from all Private Plaintiffs.
- 38. Training.**
- a. Within twelve (12) months, and at least once annually throughout the term of this Agreement, Englewood will train all law enforcement and related personnel who have contact with members of the public as to effective communication with persons who are deaf, hard of hearing or deaf-blind. The training will be sufficiently detailed to enable personnel to effectively implement all provisions of this Agreement, including the relevant Exhibits, and all policies and procedures developed pursuant to this Agreement.
  - b. Englewood will begin conducting training sessions within sixty (60) days of the effective date of this Agreement and will conclude the training sessions within six (6) months of the effective date of this Agreement.
  - c. Englewood will ensure that all new law enforcement and related personnel who will

have contact with members of the public will receive the training as a component of pre-service training and orientation.

## **IMPLEMENTATION AND ENFORCEMENT**

**39. Annual Reports; Compliance Review.** Englewood will report annually, by January 30th of each year, to the United States as to its compliance with this Agreement. The United States may review compliance with this Agreement at any time.

**40. Notification of Noncompliance and Enforcement.**

- a. If the United States believes that this Agreement or any portion of it has been violated, it will notify Englewood in writing and attempt to resolve the issue. Depending on the nature of the possible violation, the United States may also notify counsel for the Private Plaintiffs.
- b. The United States will give Englewood thirty (30) days from the date it notifies it of any breach of this Agreement to make good faith efforts to cure that breach. After thirty days and prior to instituting any court action, the Parties (including, in appropriate circumstances, counsel for Private Plaintiffs) shall meet and confer in good faith on the breach, the progress being made toward curing the breach, and the timeliness of such progress.
- c. If the Parties reach an impasse and are unable to reach a satisfactory resolution of the issue(s) after meeting and conferring in good faith, the United States and/ or Private Plaintiffs may institute a civil action in Federal district court to enforce the terms of this Agreement or Title II and may, in such action, seek any relief available under the law. Alternatively, the United States and/or Private Plaintiffs may seek relief under Section 504 of the Rehabilitation Act in any appropriate venue.

**41. Lack of Waiver.** Failure by the United States or Private Plaintiffs to enforce any provision or deadline of this Agreement will not be construed as a waiver of their right to enforce other provisions or deadlines of this Agreement.

42. **Term of Agreement.** The effective date of this Agreement is the date of the last signature below. This Agreement will remain in effect for three (3) years from the effective date of this Agreement.
43. **Headings.** The paragraph headings in this Agreement are for convenience only and will not be deemed to affect in any way the language of the provisions to which they refer.
44. **Signatories Bind Parties.** The persons signing for the Parties represent that they are authorized to bind their respective Parties to this Agreement.
45. **Entire Agreement.** This Settlement Agreement constitutes the entire agreement between the parties relating to Department of Justice Complaint No. 204-13-311 and, with respect to Englewood and the Private Plaintiffs, relating to Lawrence et al v. City of Englewood et al., Civil Action No. 12-cv-1423-MSK-BNB. 1 No other statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written Settlement Agreement, including its attachments, will be enforceable.
46. **Public Document.** A copy of this document may be made available to any person upon request.
47. **Parameters of Agreement.** This Agreement does not purport to remedy any other potential violations of the ADA or any other Federal law not specifically referenced herein. This Agreement does not affect Englewood's continuing responsibility to comply with all aspects of the ADA.
48. **Severability.** If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect, provided, however, that if the severance of any such provision materially alters the rights or obligations of the parties, the United States, Englewood, and the Private Plaintiffs shall engage in good faith negotiations in order to adopt mutually agreeable amendments to this Agreement as may be necessary to restore the parties as closely as possible to the

initially agreed upon relative rights and obligations.

**For the United States of America:**

THOMAS E. PEREZ

Assistant Attorney General

EVE L. HILL

Senior Counselor to the

Assistant Attorney General

By: /s/ Mary Lou Mobley

Date: March 7,

MARY LOU MOBLEY, Trial Attorney

2013

GREGORY B. FRIEL, Acting Chief

ROBERTA KIRKENDALL, Special Litigation

Counsel

Disability Rights Section

Civil Rights Division

U.S. Department of Justice

950 Pennsylvania Avenue, N.W.

Washington, D.C. 20530

(202) 307-0663

**For the Colorado Cross-Disability Coalition, the Colorado Association of the Deaf, and  
William Lawrence:**

/s/ Kevin W. Williams

Date: 2-28-13

By: KEVIN WILLIAMS, Legal Program Director

Colorado Cross-Disability Coalition



655 Broadway, Suite 775

Denver, CO 80203

(720) 336-3584

**For the City of Englewood:**

/s/ John Collins

Date: 3/5/13

JOHN COLLINS, Chief of Police

3615 S. Elati Street

Englewood, CO 80110

(303) 762-2460

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<sup>1</sup> This Agreement does not address or resolve matters with respect to the Sheriff for Arapahoe County, under the same lawsuit or Department of Justice Complaint No. 204-13-310.

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## **Exhibit 1**

### **Policies and Procedures for Law Enforcement to Communicate with People Who Are Deaf or Hard of Hearing.**

#### **370.1 PURPOSE AND SCOPE**

Individuals who are deaf or hard of hearing may encounter difficulties in gaining meaningful access to, or an understanding of, important rights, obligations, and services. In accordance with the Americans with Disabilities Act, the agency will offer and provide appropriate auxiliary aids

and services to ensure effective communication with such individuals in all contexts, including contact with law enforcement personnel.

This agency shall offer and furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including applicants, participants, companions, and members of the public, an equal opportunity to participate in, and enjoy the benefits of, all agency services, programs, or activities.

### **370.1.1 DEFINITIONS**

**Auxiliary aids and services** - includes qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; computer-aided real-time transcription services (CART); written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing;

**Deaf or hard of hearing** – A person who has a functional hearing loss of sufficient severity to prevent aural comprehension, even with the assistance of hearing aids. (CRS § 13-90-202(6)); or a person who has a substantial limitation in the major life activity of hearing with or without the use of hearing aids, cochlear implant technology, or other forms of mitigation; who has a record of having such a limitation; or who is regarded as having an impairment.

**Qualified interpreter** --- means an interpreter who, via a video remote interpreting (VRI) service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. In some circumstances, Colorado requires interpreters to have a valid certification of competency accepted by the Commission for the Deaf and Hard of Hearing, so it is the policy of this agency to only obtain certified interpreters. Qualified interpreters include, for example, sign language

interpreters, oral transliterators, cued-language transliterators, including oral interpreters, and intermediary interpreters. Not all interpreters are qualified for all situations. For example, an interpreter who is qualified to interpret using American Sign Language (ASL) is not necessarily qualified to interpret orally. Also, someone who has only a rudimentary familiarity with sign language or finger spelling is not a "qualified sign language interpreter." Likewise, someone who is fluent in sign language but who does not possess the ability to process spoken communication into the proper signs or to observe someone signing and translate their signed or finger-spelled communication into spoken words is not a qualified sign language interpreter. 28 C.F.R. § 35.104. A qualified interpreter for a person who is deaf-blind would need to be able to use tactile sign language.

## **370.2 INITIAL AND IMMEDIATE CONSIDERATIONS**

Recognizing that various law enforcement encounters may be potentially volatile and/or emotionally charged, agency employees should be alert to the possibility of communication problems. They should exercise special care in the use of all gestures and with verbal and written communications to minimize initial confusion or misunderstanding when dealing with any individual with known or suspected hearing-related disabilities.

When there is an emergency involving an imminent threat to the safety or welfare of an individual (to include Englewood law enforcement personnel or a citizen) or the public, and there is insufficient time to make available appropriate auxiliary aids and services, Englewood law enforcement personnel will use whatever auxiliary aids and services are most effective under the circumstances to communicate with persons who are deaf or hard of hearing, consistent with an appropriate law enforcement response to the imminent threat. This may include, for example, exchanging written notes or using the services of a person who knows sign language but who is not a qualified interpreter, for an interim period during the period of ongoing imminent threat, even if the person who is deaf or hard of hearing would prefer a qualified sign language interpreter or another appropriate auxiliary aid or service.

The imminent threat exception is not intended to apply to the typical and foreseeable emergency situations that are a part of the normal operations of Englewood's law enforcement and related

programs, services, and activities. For example, Englewood personnel may rely on an accompanying individual to interpret or facilitate communication under this paragraph only in truly exigent circumstances, *i.e.*, where any delay in providing immediate services to the individual could have life-altering or life-ending consequences for members of the public or personnel. Once the exigency has lifted, personnel should revisit the decision of what auxiliary aids and services are appropriate, inquire as to the person's preferences under the non-exigent circumstances, and give primary consideration to those preferences.

### **370.3 HONORING INDIVIDUALS' CHOICES THROUGH PRIMARY CONSIDERATION**

1. **Generally.** This agency will offer and provide appropriate auxiliary aids and services to any person who is deaf or hard of hearing to ensure effective communication, at no cost to the individual with a disability. In all non-emergency situations – whether the person is a crime victim, witness, suspect, arrestee, detainee, or member of the public seeking information, when an employee knows or suspects a person is deaf or hard of hearing, the employee will ask whether the person wants a qualified interpreter for effective communication, using the American Sign Language pictogram for “sign language interpreter” available at [Exhibit 2](#). Whether the individual requests a qualified interpreter or some other specific auxiliary aid or service, the individual's choice of a communication method shall be given primary consideration and shall be honored unless the employee can adequately demonstrate that an equally effective method of communication exists under the circumstances.

If the person has requested a qualified interpreter, the officer will, in writing, notify the person who is deaf or hard of hearing that a qualified interpreter has been requested. Prior to the arrival of the interpreter, the officer should write messages to the suspect in simple language explaining what is transpiring or will transpire. No other questioning, interviews or interrogations will be conducted without a qualified interpreter present unless an imminent threat or exigent circumstances requires an attempt at communication. No employee will advise the deaf or hard of hearing person who uses sign language of his or her Miranda Rights without the qualified interpreter present.

Once a qualified interpreter has arrived, the employee will use the qualified interpreter to facilitate all communication with the person who is deaf or hard of hearing, including issues related to needed medical attention, if any. The employee will explain to the person all charges filed and all procedures relating to the person's detainment and release.

**2. Arrests.** In the event of an arrest, the arresting officer shall immediately make arrangements to provide a qualified interpreter at the earliest possible time onsite or at the place of detention, as appropriate, unless the person has indicated he or she does not use sign language or prefers another specific auxiliary aid or service.

At the conclusion of the arrest, if the person who is deaf or hard of hearing is to be placed into a holding cell, any qualified interpreter who has been obtained for effective communication will be asked to accompany the officer to the holding cell to facilitate completion of the booking process.

**3. Custodial Interrogations and Bookings.** These same processes will apply during custodial interrogations and bookings, i.e., the officer will show [Exhibit 2](#) to the person who is deaf or hard of hearing, will ask whether the person wants a qualified interpreter for effective communication, and will defer to the person's expressed preference unless another equally effective means of communicating is available.

**4. Victims and Witnesses.** As stated above, an employee shall offer (using [Exhibit 2](#)) and provide a qualified interpreter to assist in an interview or questioning of a victim or witness who is deaf or hard of hearing and uses sign language for effective communication. If the victim or witness has requested another type of auxiliary aid or service, the employee will defer to the expressed preference unless another equally effective means of communication is available.

### **370.4 Factors to Consider**

In order to be effective, auxiliary aids and services must be provided in accessible formats, in a timely manner, and in such a way as to protect the privacy and independence of the individual with a disability to the same extent as similarly situated non-disabled individuals. Factors an employee may consider when determining whether a different auxiliary aid or service will ensure

equally effective communication, once the person has expressed a preference for a qualified interpreter or other particular auxiliary aid or service, include:

- (a) The methods of communication used by the individual;
- (b) The nature, length, and complexity of the communication involved; and
- (c) The context in which the communication is taking place.

Before deciding that a method other than providing a qualified interpreter or other particular auxiliary aid or service will ensure effective communication, the employee should try to confirm full comprehension and expression of communication by actively assessing the quality of communication. Employees should never assume effective communication is being achieved. People who are deaf or hard of hearing may appear to understand verbal or written communication, despite actual confusion. In the absence of a qualified interpreter, for instance, employees should confirm the deaf person fully comprehends the communication – by having the person repeat what is being said in his or her own words – before proceeding. It is also possible that the person with a disability can respond to and understand the employee’s communication, but does not feel able to express his or her own questions or concerns in English. To comply with the ADA, communication flowing both ways must be equally effective to communication with those in similar circumstances. For instance, if an officer is effectuating an arrest pursuant to a warrant, and probable cause has already been established, the person being arrested will generally have questions about the reason for and circumstances of the arrest and may want to inform the arresting officers about health or child care concerns; deaf persons must have the same opportunity to ask and have answered such questions or express such concerns. When there is doubt about whether effective communication is being achieved, given the ADA’s mandate of “primary consideration,” the employee must defer to the expressed preference of the individual.

Employees should document the type of communication utilized in any related document and whether an individual with a disability elected to use services provided by the agency or some other identified source. Agency-provided services may include, but are not limited to, the

following, so long as effective communication is achieved.

### **370.5 FIELD RESOURCES**

1. Using the procedures set out in this document, employees shall offer and provide appropriate auxiliary aids and services. Specifically, they will preliminarily offer a qualified interpreter by displaying [Exhibit 2](#), as set out above. If the person who is deaf or hard of hearing declines the offer of a qualified interpreter, examples of other auxiliary aids and services that may be appropriate in different contexts include:

- (a) Hand gestures or visual aids to supplement oral communication.
- (b) Use of a pen or pencil to exchange written notes.
- (c) Use of computers or a typewriter.
- (d) Use of Teletypewriters (TTY) or Videophones (VRS).
- (e) Use of family members or friends of the individual, consistent with the limitations set forth in paragraph 4 of this memo.
- (f) Verbally communicating with an individual who uses some lip reading, while speaking slowly and clearly. Note that reliance on the effectiveness of lip reading is often misplaced; in many cases it will not provide effective communication sufficient to meet the agency's legal obligations.
- (g) Use of computer-aided real-time transcription services (CART) for someone who is deaf or hard of hearing and who does not use sign language. CART can be particularly helpful in group settings such as meetings or educational sessions.

2. Imminent Communication Need Prior to Interpreter's Arrival. Even when a person who is deaf or hard of hearing has expressed a desire for a qualified interpreter, provided the employee has informed the person that a qualified interpreter has been requested, if the need for communication is imminent or initiated by the person who is deaf or hard of hearing, employees

may utilize other resources immediately available to them while awaiting the arrival of the qualified interpreter.

3. Obligation is On the Agency. The agency shall not require an individual with a disability to bring another individual to interpret for him or her.

4. Use of Others to Interpret. The agency shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication except--

- (a) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
- (b) Where the individual with a disability specifically requests that the accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances.
- (c) The agency will not rely on a minor child to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available.

### **370.6 PROCEDURES FOR OBTAINING INTERPRETER SERVICES**

If an officer or employee determines that a sign language interpreter is needed, a request for a sign language interpreter should be made through Dispatch. The officer or employee should then notify his or her on-duty supervisor. Dispatch will contact a qualified interpreting service agency (from a list maintained by Dispatch) and request an estimated time of arrival. If the sign language interpreter cannot respond within one hour (or a reasonable amount of time), another sign language interpreter should be requested.

### **370.7 TTY AND RELAY SERVICES**

Individuals who are deaf or hearing-impaired will be given the opportunity to use text telephones



(TTY or TDD) or any other comparable auxiliary aid that is available. Individuals who have been arrested or detained will be given the same privacy rights as other arrestees. Due to the slower nature of TTY and TDD communications, arrestees or detainees should be given three (3) times the normal length of time to make the call if the call is time limited.”

### **370.8 CONTACT SITUATIONS AND REPORTING**

Whenever any member of this agency is otherwise required to complete a report or other documentation, and communication assistance is provided to any involved person with a disability, such services should be noted in the report.

### **370.9 HEARING AIDS AND OTHER PERSONAL DEVICES**

- (a) Individuals who require and possess personally-owned communication aids (e.g., hearing aids, cochlear processors, and others) shall be permitted to retain such personally-owned devices while in custody.
- (b) Individuals in custody who have been allowed to retain communication devices that help them communicate with agency members shall be allowed to use those devices for that purpose.

### **370.10. REASONABLY MODIFYING HANDCUFFING POLICIES**

When Englewood personnel deem it necessary to handcuff a person who is deaf or hard of hearing, personnel will, safety permitting, reasonably modify standard operating procedure and handcuff deaf members of the public in front to enable the person to communicate using sign language or writing.

### **370.11 EVIDENCE**

All written correspondence exchanged with a person who is deaf or hard of hearing in a criminal case will be placed into evidence under the appropriate case report number. This includes any notes exchanged with victims, witnesses, or suspects. Placement of any notes into evidence does not take the place of documenting the conversation in the narrative section of the case report. As

determined to be necessary, in non-custodial interactions (e.g., traffic stops), officers are encouraged to place any written notes exchanged with the deaf or hard of hearing individual into evidence under the appropriate case report number.

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## Exhibit 2



Sign Language Interpreter?



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March 22, 2013