

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

MARIA SALINAS,
Plaintiff

VS.

CITY OF NEW BRAUNFELS,
Defendant.

§
§
§
§
§
§
§
§
§

CIVIL ACTION NO. SA-06-CA-0729-XR

MEDIATED SETTLEMENT AGREEMENT

Agreements of Plaintiff Maria Salinas and Defendant City of New Braunfels:

KNOW ALL MEN BY THESE PRESENTS THAT I, MARIA SALINAS, a resident of the State of Texas for consideration of SEVENTY FIVE AND NO/100 DOLLARS (\$75,000.00) cash to me in hand by the Defendant City of New Braunfels, a governmental entity of the State of Texas, the receipt of which is hereby Acknowledged, and for consideration of the City of New Braunfels' and New Braunfels Police Department's (NBPD) commitments and agreements to publish, implement, and continue to enforce the policy regarding the hearing impaired attached as Exhibit A (which is hereby incorporated in full into the text of this Settlement Agreement) to be adopted within thirty days of the signing of this document, do agree to release and forever discharge, and by these present, do for myself, my heirs, executors and administrators, FULLY AND FINALLY AND COMPLETELY RELEASE AND DISCHARGE Defendant CITY OF NEW BRAUNFELS, a governmental entity located in the State of Texas and any employees of the City of New Braunfels, of and from all liability or demand now accrued or which may hereafter accrue, on account of any and all claims for damages or causes of action, at law or in equity, in state or federal claims, including any and all claims for race or

national origin discrimination, Civil Rights claims under Title II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, any and all Code of Federal Regulations, any and all Department of Justice Guidelines, Title II, 42 U.S.C. 2000(a) and 2000(a)(2), 1981 and 1982 Civil Rights claims, claim for injunctive relief, discrimination claims, intentional infliction of emotional distress claims or any other claim, which I may now have, or which any of my heirs, executors or administrators at any time hereafter may claim to have had as of this date against Defendant City of New Braunfels and all employees of the City of New Braunfels, by any reason of any claim for damages, losses or demands, including but not limited to loss of enjoyment, loss of accommodations, loss of services, hospital, medical, doctor and nursing bills, and any and all damages for personal injury, incapacity, loss or reduced earning capacity, and any and all causes of action, subrogation interests medical liens, losses and expenses of whatsoever nature that may have been sustained by me in the past, or which may exist at the present time, or which may be claimed by me or anyone on my behalf to exist in the future as a result of the September 23, 2004 incident as set out in this lawsuit, the allegations which are included in Plaintiff's Complaint styled "*Maria Salinas v. City of New Braunfels.*" Likewise, Defendant, for itself and on behalf of its officers, directors, representatives, agents, employees, partners, predecessors, successors, assigns, insurers, reinsurers, departments, affiliates, and attorneys, completely RELEASE, DISCHARGE, and RELINQUISH Plaintiff and Plaintiff's representatives, agents, successors, assigns, attorneys, and anyone else acting for Plaintiff from any and all past, present or future claims, whether known or unknown, and whether based on a tort, contract, or other theory of recovery, that have accrued or that may accrue later or otherwise be acquired on account of or in any way growing out of or that are the subject of the Lawsuit.

IT IS EXPRESSLY AGREED AND UNDERSTOOD by us that the compromise and settlement hereby evidenced is not an admission of liability on the part of the Defendant **CITY OF NEW BRAUNFELS** and all employees of the City of New Braunfels, but is merely a compromise of a bona fide disputed claim between Plaintiff Maria Salinas and the **CITY OF NEW BRAUNFELS**.

IT IS FUTHER EXPRESSLY AGREED AND UNDERSTOOD that Plaintiff Maria Salinas in consideration of the payment and policy referenced above will file with the Court the motion (attached as Exhibit B and agreed to by Defendant City of New Braunfels) to dismiss with prejudice her lawsuit styled, "*Maria Salinas v. City of New Braunfels*." Under Civil Action no. SA-06-CA-0729XR, In the United States District Court in and for the Western District of Texas, San Antonio Division. In consideration of the dismissal of Civil Action No. 06-CV-0729 and the agreements herein, The City of New Braunfels agrees to pay Maria Salinas the total amount set out in paragraph one above and to implement within (thirty days of this signing of this document) and enforce and continue to enforce the policies and arrangements set out herein, including those in Exhibit A.

THE UNDERSIGNED DOES UNDERSTAND AND AGREE that this is in **FULL SATISFACTION FOR ALL DAMAGES** arising on account of the September 23, 2004 incident as described in this lawsuit with said allegations contained in my lawsuit styled "*Maria Salinas v. City of New Braunfels*" and we further do understand and agree and not to assert or prosecute any claims or lawsuits against Defendant **CITY OF NEW BRAUNFELS** and all employees of the City of New Braunfels with reference to the described incidents as alleged in Civil Action No. SA-06-CA-0729XR.

Any and all claims for race or national origin discrimination, Civil Rights claims under Title II of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, any and all Code of Federal Regulations, any and all Department of Justice Guidelines, Title II, 42 U.S.C. 2000(a) and 2000(a)(2), 1981, and 1982 Civil Rights claims, claim for injunctive relief, discrimination claims, intentional infliction of emotional distress claims or any other claim, against parties not specifically released herein, if any, are hereby assigned in full to the parties hereby released.

IT IS FURTHER EXPRESSLY AGREED AND UNDERSTOOD AND ACKNOWLEDGED by Plaintiff **MARIA SALINAS** to Defendant **CITY OF NEW BRAUNFELS** and all employees of the City of New Braunfels for all state and federal causes of action including but not limited to loss of enjoyment, loss of accommodations, loss of services, hospital, medical, doctor and nursing bills, and any and all damages for personal injury, incapacity, loss or reduced earning capacity, and any and all causes of action, subrogation interests, medical liens, losses and expenses, or any and all causes of action which may now exist as a result of the hereinabove-mentioned incidents, and that **NO ADDITIONAL OR FURTHER SUM** whatsoever is to be paid to me by Defendant **CITY OF NEW BRAUNFELS** and all employees of the City of New Braunfels other than the sum hereinabove first mentioned.

IT IS ALSO AGREED AND UNDERSTOOD by Plaintiff **MARIA SALINAS** and **THE CITY OF NEW BRAUNFELS** that each party to this lawsuit will pay its own costs of Court.

IT IS FURTHER EXPRESSLY AGREED AND UNDERSTOOD AND ACKNOWLEDGED by the undersigned, that **MARIA SALINAS** will pay out of the above mentioned settlement any and all claims of any hospital or provider of medical or legal services

for any and all medical or other expenses of any kind or nature whatsoever, incurred or to be incurred by or on behalf of the undersigned as a result of or to result from the above described incident.

MARIA SALINAS DOES FURTHER WARRANT AND REPRESENT that there are no liens or encumbrances against the claim asserted herein, nor the settlement proceeds paid hereunder, nor the undersigned's causes of action which could or might be made with respect to or arising out of September 23, 2004 incident wherein Plaintiff Maria Salinas made a 9-1-1 call and her request for an interpreter due to her hearing impaired condition as described in this lawsuit with said allegations contained in my lawsuit and the injuries to her as a result of the said incident mentioned above, for or on account of monies payable to any hospitals, physicians and/or practitioners of the healing arts, health care providers and any and all medical services provided on account of any claim and injury to Plaintiff **MARIA SALINAS** as a result of the incident made the basis of this lawsuit that have not been paid.

THE UNDERSIGNED PARTIES DO FURTHER WARRANT that they are of legal age and legally competent to execute this Agreement and that they do so of their own free will and accord without reliance or representation of any kind or character not expressly set forth herein.

THE UNDERSIGNED PARTIES DO FURTHER WARRANT that their attorneys have fully and satisfactorily explained this agreement to them and that they fully understand its contents.

THE UNDERSIGNED DO FURTHER WARRANT that they have read the foregoing document carefully, that they know and understand the contents hereof and sign same as their own free acts.

THIS RELEASE and the Exhibits attached contain the ENTIRE AGREEMENT between Plaintiff Maria Salinas and Defendant CITY OF NEW BRAUNFELS.

IN WITNESS THEREOF, the parties have hereunto below signed their names on the dates recited below.

SIGNED:

Plaintiff:

Maria Salinas 5/08
(signature) Date
Maria salinas

Attorney for Plaintiff:

Lucy D. Wood May 5/08
(signature) Date
LUCY D. WOOD

Defendant:

Michael Morrison 5/13/08
(signature) Date
Michael Morrison
City Manager, City of New Braunfels

APPROVED AS TO FORM:
CITY ATTORNEY

Alan C. Way
5-13-08

Attorney for Defendant:

Charles Frigerio 5-9-08
(signature) Date
Charles Frigerio

New Braunfels Police Department

DEAF AND HARD OF HEARING

Policy

I. Purpose

It is the purpose of this policy to provide the officers and employees of this department with the guidance on effective communication during police contacts with the deaf and persons who have hearing impairment. Under the Americans with Disabilities Act (ADA), people who are deaf or hard of hearing are entitled to the same services law enforcement provides to anyone else. You must attempt to relay the same depth of information, and give the same opportunity for exchange with the deaf person that you would give a hearing person in the same situation, no matter what service is being provided.

II. Policy

Most officers will have encounters with persons who are deaf or affected by significant hearing loss – whether that be as victims, witnesses, or suspects. To ensure effective communication with persons who are deaf or hard of hearing, and to conform to provisions of federal and state law, officers shall follow the guidelines provided in this policy.

III. Definitions

Lip Reading: Also referred to as speech reading; the ability to use information gained from movement of the lips, face, body to increase understanding.

Sign language: American Sign Language (ASL) is the form of sign language most often used in the United States. Signs convey concepts or ideas even though a sign may stand for a separate English word. Signing individual letters by finger spelling can supplement sign language. Just as there are regional variations (dialects) in spoken English, there are regional differences in sign language.

Auxiliary aids and services: As defined in the Americans with Disabilities Act (ADA), these are communication aids that assist people who are deaf or who have hearing loss. They include, for example, sign language interpreters, hearing aids, cochlear implants, the exchange of written notes, telecommunications devices for the deaf (TDDs) also called text telephones (TTs) or teletypewriters (TTYs), telephone handset amplifiers, assistive listening systems, videotext displays, and hearing assistance dogs.

Qualified Interpreter: The interpreter must be able to interpret effectively, accurately, and impartially both receptively and expressively in the language the deaf person uses (e.g., American Sign Language or Signed English) and

must be familiar with law enforcement terms and phrases. Because a qualified interpreter must be able to interpret impartially, a family member, child, or friend of the individual who is deaf may not be qualified to render the necessary interpretation because of factors such as professional, emotional, or personal involvement, or considerations of confidentiality.

Direct Access: In the context of ADA requirements, direct access means that all calls from persons who are deaf, have hearing loss or speech impairments must be accepted through this department's emergency communication center by whatever means are provided to other members of the public. They may not be relayed through third-party emergency service providers unless the caller asks the department to do so.

IV. Procedures

A. Emergency Call Takers and Dispatchers

1. The emergency call center of this agency shall be equipped to receive calls from TDD and computer modem users and all call takers will be trained to communicate with callers using TTY and TDD equipment.
2. The deaf and hearing impaired shall be provided with direct, equal access to all emergency services provided by this department by communication through TTYs, TDDs, or alternative devices that are equally effective.
3. Emergency call takers shall place a high priority on response to emergency calls for service from persons who are deaf or who have hearing impairment.
4. All call takers and dispatchers shall receive initial and periodic refresher training on the use of TDDs, TTYs, and related devices as well as training in procedures and techniques for handling callers who have communication difficulties.
5. All call takers and dispatchers shall receive initial and periodic refresher training on the use of relay systems.
6. The City shall maintain the list of available sign language interpreters described in C-5 below, for use by emergency call takers and dispatchers.

B. Encounters with Persons who are the Deaf and Hearing Impaired

Communication problems in police-public encounters provide the basis for potential frustration and embarrassment. Failure of officers to recognize that a person has a hearing impairment, or that person's failure to make his or her impairment known to officers, can also lead to critical misunderstandings. To avoid such potentialities, officers shall be cognizant of the following:

1. Be alert to indications that a person may be deaf or have a hearing impairment. Such indications include but are not limited to the following:

- a. The appearance of bumper stickers, rear window decals, or visor notices/symbols indicating the disability
 - b. Failure of persons to respond to spoken command or signals
 - c. Use of signs, hand signals, or gestures in an attempt to communicate
 - d. Display of cards by the person noting his or her hearing disability
 - e. Inability or difficulty of a person to follow verbal instruction or requests for information
 - f. A need to see the officer's face directly, suggesting that the person is attempting to lip-read
 - g. Evidence of assistive devices such as hearing aids, cochlear implants, or picture symbols
 - h. Evidence of behaviors such as increased agitation or irritability, low frustration levels, withdrawal, poor attention, or impaired equilibrium
2. When dealing with persons who are, or are suspected of being deaf or have hearing impairment, officers shall never assume that the person understands until it can be confirmed by appropriate responses to questions or directives.
3. Once someone is identified as a deaf or hearing-impaired person, officers shall determine by written or other forms of communication the person's preferred means of communication--- sign language, lip reading, reading and note writing, or speech.
4. For persons who use sign language, a family member or friend may interpret under emergency conditions until a qualified interpreter arrives, or in minor situations for the sake of convenience, but only with consent of the deaf person. In all other situations, officers shall not rely on family members or friends for sign language interpretation due to their potential emotional involvement or conflict of interest.
5. Officers shall address all questions and directives to persons who lip-read by facing them directly and speaking in a moderately paced conversational tone. Shouting or using exaggerated mouth movements interfere with the ability to lip-read. Understanding can be further degraded by the presence of facial hair, chewing gum, cigarettes, and so on.
6. Officers shall be aware that only about one third of words can be accurately interpreted by lip-reading. Therefore, communication of a critical nature (e.g., *Miranda* warnings) shall be reinforced by other means of communications. (See paragraph C below).

7. Officers shall not assume that persons who wear hearing aids can hear and fully understand what is being said. Some use hearing aids to provide sound awareness rather than to increase speech understanding.
8. Highly stressful situations, background noise, multiple speakers, and complex information and instruction can compromise the limited effectiveness of hearing aids. Officers shall test comprehension by seeking appropriate responses to simple questions or directives.
9. Deaf or hard-of-hearing persons may require additional time to understand and respond to commands, instructions, and questions.

C. Sign Language Interpreter Requirements

The need for use of a sign language interpreter is governed generally by the length, importance, and complexity of the communication, as well as the deaf person's preferred means of communication.

1. In a simple enforcement situations, such as traffic stops, driver's license checks, or consensual police-public encounters, a notepad and pencil may provide effective communication (see IV.B.4).
2. During investigations and arrests, a sign language interpreter is generally necessary to effectively communicate with a person who uses sign language. In such investigations and encounters with the public who are deaf, primary consideration shall be given to the deaf person's chosen manner of communication.
3. A sign language interpreter need not be available in order for an officer to make an arrest of a subject where probable cause is established independent of interrogating the deaf or hearing impaired suspect. A sign language interpreter shall be called for to be available later at booking.
4. If probable cause to make an arrest must be established through questioning or interrogation of a deaf or severely hearing impaired person, a sign language interpreter shall be requested.
5. This department shall maintain an up to date list of available speech language interpreters who are available on a 24 hour basis, as qualified by the National Registry of Interpreters for the Deaf and ensure their familiarity with common and essential forms of police communication for interrogation and related purposes. The list of interpreters will be kept in the dispatch center. Officers will request the dispatcher to contact an interpreter when necessary.

6. Officers shall be required to demonstrate their ability to communicate basic ASL requests and directions as defined by this department.

D. Arrest Situations

1. Recognizing that some persons need their hands free in order to communicate, unless absolutely necessary for the safety of officers or others, the use of handcuffs shall be avoided if possible. If handcuffs are required, all essential communication with the suspect should be completed prior to their application if possible.
2. Deaf persons and persons who have severe hearing impairments often have reduced verbal communication skills, speech that may be incoherent or otherwise resemble that of an individual who is intoxicated, and difficulty with equilibrium. As such, officers shall avoid administering standard field sobriety tests to such persons. Breathalyzer, blood alcohol, or horizontal gaze nystagmus should be employed as alternative tests.
3. Some deaf and hearing-impaired persons have limited written language skills, particularly involving difficult matters such as legal warnings and admonitions. Therefore, officers shall not assume the effectiveness of this form of communication and should gain confirmation of a person's understanding whenever possible.
4. Officers shall ensure that deaf and hearing-impaired persons who are arrested and transported to a booking site have their communication devices with them.

Respectfully submitted,

LAW OFFICES OF CHARLES S. FRIGERIO
A Professional Corporation
Riverview Towers
111 Soledad, Suite 840
San Antonio, Texas 78205
(210) 271-7877
(210) 271-0602 Telefax

BY: /s/ Charles S. Frigerio
CHARLES S. FRIGERIO
SBN: 07477500
HECTOR X. SAENZ
SBN: 17514850
ATTORNEYS FOR DEFENDANT
CITY OF NEW BRAUNFELS

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of May, 2008, I electronically filed the foregoing Mediated Settlement Agreement with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Ms. Lucy D. Wood
Advocacy, Incorporated
7800 Shoal Creek Blvd., Suite 142-S
Austin, Texas 78757

Thomas J. Crane
Attorney at Law
6800 Park Ten Blvd., Suite 208-N
San Antonio, Texas 78213

/s/ Charles S. Frigerio
Charles S. Frigerio