

SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND CENTRAL VIRGINIA REGIONAL JAIL AUTHORITY
U.S. Department of Justice DJ 204-80-101

Background

1. The parties (“Parties”) to this Settlement Agreement (“Agreement”) are the United States of America (“United States”) and the Central Virginia Regional Jail Authority (the “Authority”).
2. This matter was initiated by a complaint filed with the United States against the Central Virginia Regional Jail (“CVRJ”), alleging violations of Title II of the Americans with Disabilities Act of 1990, as amended (the “ADA”), 42 U.S.C. §§ 12131-12134, and its implementing regulation, 28 C.F.R. Part 35, and seeking to recover compensatory damages for an aggrieved person that was subject to the alleged discrimination on the basis of disability as a result of the ADA violations. Specifically, Complainant VS (the “Complainant”), who is deaf and uses American Sign Language (“ASL”) to communicate, alleged that CVRJ personnel failed to provide a qualified interpreter or other appropriate auxiliary aids or services so that she could communicate during her 30 day incarceration at the CVRJ facility. Further, the Complainant alleged that CVRJ failed to furnish appropriate auxiliary aids and services that would have afforded her an equal opportunity to use telecommunication services, which other inmates without hearing disabilities have ready access to.
3. The Authority has fully cooperated with the United States’ investigation of this matter. The Authority responded timely to each and every request made by the United States, including a meeting between the Authority’s members and its Superintendent and representatives of the United States. The Parties have determined that the United States’ investigation can be resolved without litigation and have agreed to the terms of this Agreement.

DEFINITIONS

4. **CVRJ staff** means all employees, both full and part-time, and contractors and their employees providing supplies or services to CVRJ, including, but not limited to, uniformed officers of the CVRJ, inmate service counselors, nurses, physicians, social workers, administrative staff, therapists, and volunteers, who have or are likely to have direct contact with inmates or companions as defined below.
5. **Auxiliary aids and services** include qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; 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. 28 C.F.R. § 35.104.
6. **Qualified Individual** means any person who is deaf or hard of hearing and requires appropriate auxiliary aids and services for effective communication, and with whom CVRJ staff should communicate to meet its obligations under the ADA to provide equal access to CVRJ's services, programs, and activities, including an inmate and a family member, friend, legal representative, or associate of an inmate. *See* 28 C.F.R. § 35.160.
7. **Disability** is defined as it is in the ADA, 42 U.S.C. § 12102;. 28 C.F.R. § 35.108. Specifically, a person is "deaf" or "hard of hearing" for the purposes of this Agreement if she or he has a physical impairment that substantially limits the major life activity of hearing, with or without mitigating measures such as hearing aids or cochlear implants.
8. **Effective communication** means 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.
9. **Inmate** shall be broadly construed to include any individual who is being held or

detained at the CVRJ.

10. **Inmate Records** means the files and related records for an individual inmate, including both the paper and electronic records, and any infirmary records.
11. **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, 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 people signing and translate their signed or finger-spelled communication into spoken words is not a qualified sign language interpreter. 28 C.F.R. Part 35, App. A. To be a qualified interpreter, the interpreter must be able to interpret in the language the individual with a disability uses (e.g., American Sign Language or Signed English).

INVESTIGATION AND USAO DETERMINATIONS

12. The United States Attorney for the Western District of Virginia ("USAO") is authorized under 42 U.S.C. §§ 12131-34 and 28 C.F.R. Part 35, Subpart F, to investigate the allegations of the complaint in this matter to determine the Authority's compliance with Title II of the ADA. The USAO has the authority to, where appropriate, attempt informal resolution, such as through the terms of this Agreement. If resolution is not achieved, the United States has the authority to issue a Letter of Findings, and thereafter to negotiate a voluntary compliance agreement, and to bring a civil action enforcing Title II of the ADA should it fail to secure voluntary compliance. 28 C.F.R. §§ 35.172; 35.173.
13. The Complainant is deaf and, as such, is an individual with a "disability" within the

meaning of the ADA. 42 U.S. C. § 12102; 28 C.F.R. § 35.1084. The Complainant communicates using ASL and is unable to communicate effectively by reading or writing in English, or reading lips.

14. The Authority operates the CVRJ, a detention facility located in Orange, Virginia, pursuant to Virginia law, Va. Code § 53.1-106. The Authority includes the Sheriffs of the Counties of Fluvanna, Greene, Louisa, Madison, and Orange. The CVRJ serves those counties and employs fifty (50) or more employees. The ADA applies to the Authority because it is a “public entity” pursuant to Title II of the ADA, 42 U.S.C. § 12131; 28 C.F.R. § 35.104. 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.

15. Based on its investigation, the USAO determined that:

- a. On September 30, 2015, following her arrest by the Virginia State Police, VS was transported to the CVRJ where she was detained until October 30, 2015.
- b. During booking, CVRJ correctional staff were advised that VS was deaf. CVRJ staff did not evaluate VS’s need for auxiliary aids or services or other accommodations and did not inquire as to her preferred means of effective communication. Instead, CVRJ staff communicated with VS through her mother, who had been arrested and transported to CVRJ at the same time as VS.
- c. During medical assessment, CVRJ medical staff were advised that VS was deaf and needed an ASL interpreter, but instead communicated with VS through her mother who did not know ASL. Medical staff were unable to obtain complete information about VS’s medical history and prescription medicines because she had been treated previously at the UVA Medical Center and those records were not provided to CVRJ pursuant to the release VS signed until after VS was released from CVRJ on bond thirty days after her arrest.
- d. The Authority had an obligation to ensure effective communication with VS while she was in custody at the CVRJ and had an obligation to furnish appropriate auxiliary aids and services where necessary to ensure such effective communication with VS. 28 C.F.R. § 35.160.

- e. The Authority failed to consult with VS about the types of auxiliary aids and services that would have been effective for VS, and, therefore, also failed to give primary consideration to VS's requests for a qualified interpreter. The Authority provided limited access to a TTY telephone and used written notes to communicate with VS, although she had a limited English literacy.
- f. During VS's incarceration at the CVRJ, the Authority failed to provide effective communication with her for multiple complex communications, including those related to:
 - 1. A discussion of the types of auxiliary aids or services needed to ensure effective communication;
 - 2. The initial housing and classification assessment;
 - 3. The initial medical assessment;
 - 4. VS' orientation to CVRJ and receipt of a CVRJ handbook;
 - 5. CVRJ medical staff's treatment of VS on at least four occasions (resulting in the failure to take sufficient vital signs and medication pass errors);
 - 6. CVRJ staff's investigation of at least two altercations and/or disputes between VS and other inmates;
 - 7. An administrative segregation hearing to determine whether VS should remain in isolation.
- g. The Authority's failure to provide appropriate auxiliary aids and services to ensure effective communication with VS for these complex interactions violates 42 U.S.C. § 12132 and 28 C.F.R. § 35.160.
- h. CVRJ medical staff recognized that VS could not communicate to them a complete medical history and list of prescription medications. CVRJ staff had VS sign a consent form, without effectively communicating information regarding that form, to permit the disclosure of her complete medical records from her primary care provider. These records were not received until after VS was released from CVRJ.
- i. Commonwealth of Virginia regulations, 6 VAC 15-40-660, 730, and 1270, and CVRJ's internal policies, permit inmates to make telephone calls to counsel, family, friends, and others. CVRJ staff improperly limited VS's access to the TTY

telephone to times when staff was available to escort her to the room in which the TTY was located, when the staff member with the key to the room was available, and when VS was able to gain the attention of a staff member to request the use of the TTY. Inmates without hearing disabilities, however, did not have such restrictions on their use of the telephones. This forced VS to use other inmates without hearing disability to communicate with VS's family and others on her behalf.

16. The investigation also disclosed the following general issues of non-compliance with the ADA at the time of VS's incarceration:

- a. The Authority did not show that it had conducted an ADA self-evaluation as required by 28 C.F.R. § 33.105.
- b. The Authority did not ensure that interested persons, including those with impaired vision or hearing, could obtain information about the existence and location of accessible services, activities, and facilities as required by 28 C.F.R. § 35.163.
- c. The Authority did not have an ADA Coordinator who was familiar with the requirements of the ADA, its implementing regulations, and the relevant DOJ technical assistance materials as required by 28 C.F.R. § 35.107; 28 C.F.R. Part 35, Appendix B.

EQUITABLE RELIEF

17. **ADA Self-Evaluation.** The Authority will complete an ADA self-evaluation within one year of the effective date of this agreement. 28 C.F.R. § 35.105. The ADA self-evaluation will include the elements discussed in the ADA Title II Technical Assistance Manual, at II-8.2000, which will be limited to policies and practices maintained by the Authority. The Authority will notify the USAO once it has completed its ADA self-evaluation, and it shall provide a copy of the ADA self-evaluation to the USAO if requested.

18. **ADA Coordinator(s) For Inmates.**

- a. **Designation.** The Authority will designate at least one employee to serve as the ADA Coordinator for Inmates ("ADA Coordinator") who will be responsible for

coordinating the Authority's efforts to comply with and carry out its responsibilities under the ADA with respect to inmates. Further, the Authority will designate at least one employee as an ADA Deputy Coordinator for Inmates ("ADA Deputy Coordinator"), to carry out these responsibilities when the ADA Coordinator is not available. The Authority will develop job descriptions for the ADA Coordinator and ADA Deputy Coordinator for Inmates, to include all duties, responsibilities, and qualifications set forth in this Agreement.

b. Duties and Responsibilities. The ADA Coordinator and ADA Deputy Coordinator shall have the responsibility and authority to:

1. Ensure that procedures for the prompt and equitable resolution of ADA complaints by inmates and/or requests by inmates with disabilities for reasonable modifications, appropriate auxiliary aids or services, or accommodation of physical accessibility issues (herein, "disability accommodations") are established, publicized, and implemented;
2. Process, investigate, and promptly act upon inmate complaints and/or requests for disability accommodations;
3. Ensure that all CVRJ staff who interact with inmates with disabilities are provided with adequate and appropriate information and training about the ADA and its requirements;
4. Ensure that inmates with disabilities are housed in facilities that are readily accessible to and usable by inmates with disabilities and that all applicable CVRJ facilities and programs are ADA compliant;
5. Compile and maintain such information concerning inmates with disabilities in the custody of CVRJ as is necessary to carry out the duties and responsibilities of the position;
6. Develop and maintain an inventory of written materials and other resources concerning ADA compliance (including, without limitation, laws, regulations, reference materials, educational materials, DOJ publications, and relevant contact information);
7. Otherwise coordinate the Authority's efforts to comply with and carry out its

- responsibilities under the ADA with respect to inmates;
8. Serve as a resource for inmates and CVRJ staff, and for representatives of federal, state, and local government agencies regarding CVRJ inmates with disabilities, CVRJ's obligations with respect to inmates with disabilities, and CVRJ's procedures concerning ADA compliance; and
 9. Be generally available during standard business hours (9 a.m. to 5 p.m. on weekdays) to respond to inmate requests and complaints and answer questions from, and provide advice and assistance to, the CVRJ staff. The ADA Deputy Coordinator shall be available when the ADA Coordinator is not available, including outside of standard business hours.

c. Training For ADA Coordinator and ADA Deputy Coordinator.

1. Within 90 days of the effective date of this Agreement, the Authority shall ensure that the ADA Coordinator and ADA Deputy Coordinator have sufficient training to ensure that they are fully knowledgeable about the legal rights of inmates with disabilities and the legal obligations of the Authority with respect to inmates with disabilities. Further, while this Agreement is in effect, the Authority shall ensure that the ADA Coordinator and the ADA Deputy Coordinator attend at least 24 hours of ADA training per year.
2. The training should include, at a minimum, the following:
 - a. How to promptly identify the communication needs of inmates and other qualified individuals who are deaf or hard of hearing and who require auxiliary aids and services in different circumstances;
 - b. How to secure qualified interpreter services in a timely manner when necessary;
 - c. How to work with CVRJ staff to comply with the effective communication provisions of the ADA and this Agreement;
 - d. The appropriate use of flash cards and pictographs (in conjunction with any other available means of communication that will augment the effectiveness of the communication);
 - e. The proper use of video remote interpreting services;

- f. The use of auxiliary aids and services such as videophones, captioned phones, telephone handset amplifiers, TTYs and the relay service to make and receive telephone calls; and
- g. CVRJ's grievance resolution procedure described in paragraph 50 of this Agreement.

19. Information Concerning Inmates with Disabilities. The Authority shall modify its existing directives, roles, policies, and procedures concerning the screening and classification of inmates upon entry into the custody of the CVRJ:

- a. To provide that when the CVRJ receives into custody a person with or alleging to have a disability, CVRJ staff will notify a supervisor who shall immediately notify the ADA Coordinator or the ADA Deputy Coordinator to provide him or her with the inmate's name, the nature of the inmate's disability, and any request for disability accommodations made by that inmate upon intake;
- b. To require CVRJ intake staff to document the inmate's disability and any request made by the inmate for disability accommodations in the inmate's record;
- c. To require the ADA Coordinator or the ADA Deputy Coordinator to meet with each inmate with a disability within the next business day of his/her arrival at the CVRJ and continue to monitor his or her progress until released.
- d. To require that within 24 hours of the supervisor's contact with the ADA Coordinator or the ADA Deputy Coordinator described in subparagraph a or the meeting described in subparagraph c, whichever is earlier, the ADA Coordinator or ADA Deputy Coordinator shall ensure that the needs of the inmate with a disability are being met to the extent required by the ADA; and
- e. To require that the medical staff conduct a monthly discussion of ADA concerns and issues encountered with the ADA Coordinator.

20. Dissemination of Contact Information. The Authority shall make available to visitors, inmate advocates, inmate family members, and representatives upon request, the name, office address, and telephone number of the ADA Coordinator and ADA Deputy Coordinator. Further, such information shall be available in an accessible manner on the front page of Authority's website in a location that is at least as conspicuous as other

information provided on the website. 28 C.F.R. § 35.107. The identity of the ADA Coordinator and Deputy ADA Coordinator shall be on conspicuous posters of suitable size posted in locations in each facility where notices to inmates are normally posted. Moreover, the CVRJ inmate handbook shall inform inmates that they can contact the ADA Coordinator and ADA Deputy Coordinator through a staff member. *Id.*

21. **Discrimination Prohibited.** With respect to all of its programs, services, and activities, the Authority 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.
22. **Retaliation and Coercion** . The Authority shall not retaliate against or coerce in any way any person who made, or is making, a complaint according to the provisions of this Agreement or who exercised, or is exercising, his or her rights under this Agreement or the ADA. 28 C.F.R. § 35.134.
23. **Provision of Appropriate Auxiliary Aids and Services** . The Authority will take appropriate steps to ensure that communications with Inmates and members of the public with disabilities are as effective as communications with others. 28 C.F.R. § 35.160(a)(1). The Authority will furnish appropriate auxiliary aids and services, including qualified interpreters, where necessary to ensure effective communication, so that Inmates and members of the public with disabilities may participate in or benefit from CVRJ's services, programs, or activities on an equal basis with others as required by the ADA. 28 C.F.R. § 35.160(b)(1). While this Agreement focuses on the effective communication needs of individuals who are deaf or hard of hearing, the Authority recognizes that it is required by the ADA to provide appropriate auxiliary aids and services to ensure effective communication with individuals with other disabilities, such as individuals who are blind or have low vision.
24. **Primary Consideration.** The Authority will consult with each disabled individual about the appropriate auxiliary aids or services, and the timing, duration, and frequency with which they will be provided, to meet its requirement to give primary consideration to the disabled individual's expressed preference for the type of auxiliary aids or services needed. In determining the type of auxiliary aid or service necessary to ensure effective

communication, the Authority 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 the choice of auxiliary aid or service of the individual with a disability and will honor the expressed choice unless the Authority can demonstrate that another equally effective means of communication is available. Specifically, in all non-emergency circumstances, personnel will use the American Sign Language pictogram for “sign language interpreter” depicted at Exhibit B to inquire about the person’s preference and to determine whether someone who is deaf or hard of hearing wants a qualified sign language interpreter. The Authority shall keep a written record of the inmate’s auxiliary aid or services preference (or lack thereof) along with a record of the auxiliary aid or service provided (or lack thereof).

Such records shall be kept for a period of one year after the inmate’s release from CVRJ.

25. Ongoing Need for Communication Assessments and Consoltation . In addition to the initial communication assessment done at the time the need for auxiliary aids and services is first identified, CVRJ staff will reassess whether communication is effective regularly throughout the period of incarceration and will consolt with the Inmate on a continuing basis to assess the appropriate auxiliary aids and services required to ensure effective communication. *See* 28 C.F.R. Part 35, App. A.

26. Qualified Interpreters for Detention Facility Programs . The following are examples of circumstances when it may be necessary to provide qualified interpreters to ensure effective communication with Inmates:

- a. Initial intake and classification processing (see below for specifics);
- b. Medical care and health programs, such as medical, dental, visual, audiological, mental health examinations or treatment and drug and alcohol recovery services;
- c. Educational classes and activities;
- d. Any court hearing held at the facility, including those held via video hookup with the court;
- e. Official hearings in which the inmate or detainee is a participant;
- f. Criminal, incident, and other investigations or inquiries conducted by CVRJ staff or that involve CVRJ staff;

- g. Classification review interviews; Grievance interviews or processes; and
- h. Religious services.

This list is not exhaustive and there may be other circumstances not identified here when it may be necessary to provide qualified interpreters for effective communication. Under some circumstances other entities may have a joint obligation to furnish a qualified interpreter.

27. Booking and Intake.

- a. **Qualified Interpreters** . As soon as CVRJ staff learn that a person who is deaf or hard of hearing will arrive at the detention facility, whether pursuant to an arrest or a transfer from another jurisdiction or facility, staff will inquire through all available means (including the use of Exhibit A) as to whether the person will need a qualified interpreter for effective communication. If so, a qualified interpreter will be provided in a timely manner as set forth in paragraph 27 to facilitate booking, intake, classification, orientation, and other such processes.
- b. **Booking and Intake Processes** . If a person who is deaf or hard of hearing has requested a qualified interpreter or responded to the mandatory inquiry that he or she wants a sign language interpreter, any booking process that relies on communication must be delayed until a qualified interpreter is present or VRI service is available. Such processes include, but are not limited to, medical screenings, taking criminal and personal histories, and obtaining or transmitting information for classification and housing assignments. If a person who is deaf or hard of hearing expresses an urgent medical need that cannot wait for a qualified interpreter, or personnel suspect there is an urgent medical need, personnel should not delay providing required medical care or services that would be provided to an inmate without disabilities under similar circumstances and should use the most effective available means of communicating with the person who is deaf or hard of hearing. The qualified interpreter or VRI service shall be provided in a timely manner as set forth in paragraph 28.
- c. **Inmate Handbook** . At the earliest reasonable time, the CVRJ staff will effectively communicate the contents of the Inmate Handbook and similar

publications to all inmates who are deaf or hard of hearing, including those for whom written English is not an effective means of communication. CVRJ staff will provide that inmate with the opportunity to meet with a staff member and a qualified interpreter to explain the Inmate Handbook and ask any questions regarding the Inmate Handbook and any other written materials that have been provided to inmates.

- d. **Notice in Inmate Handbook** . The Authority will revise its Inmate Handbook and all similar publications, including orientation materials, to include a statement to the following effect:

To ensure effective communication with inmates and other qualified individuals who are deaf or hard of hearing and who require auxiliary aids or other means of effective communication, we provide appropriate auxiliary aids and services free of charge, such as: qualified sign language interpreters and oral transliterators, videophones, TTY's, notetakers, computer-assisted real time transcription services, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, closed caption decoders or TVs with built-in captioning, and open and closed captioning of Central Virginia Regional Jail programs.

Please ask a Central Virginia Regional Jail staff member for assistance.

28. **Provision of Interpreters in a Timely Manner** .

- a. **General Interpreter Requests** : A “general interpreter request” means a request for an interpreter with less than two (2) hours advanced notice made by an inmate or other qualified individual who is deaf or hard of hearing. For general interpreter requests, CVRJ staff will make reasonable efforts to procure an interpreter as soon

as reasonable, given the rural location of CVRJ. If the service is provided through a Video Remote Interpreting service, the service shall be provided no more than thirty minutes from the request for an interpreter. If no interpreter can be located, CVRJ staff will take the following additional steps:

1. CVRJ staff will exert reasonable efforts (deemed to be no fewer than three (3) telephone inquiries and/or emails and/or text messages unless exceptional circumstances intervene) to contact any qualified interpreters or interpreting agencies already known to CVRJ staff;
2. Inform the ADA Coordinator and/or ADA Deputy Coordinator of the efforts made to locate an interpreter and solicit assistance in locating an interpreter;
3. Inform the inmate, visitor, or the member of the public of the efforts taken to secure a qualified interpreter and that the efforts have failed, and follow up on reasonable suggestions for alternate sources of qualified interpreters; and
4. Document all of the above efforts.

b. Scheduled Interpreter Requests . A “scheduled interpreter request” is a request for an interpreter made two (2) or more hours before the services of the interpreter are required. For scheduled interpreter requests, CVRJ staff will make a qualified interpreter available at the time of the scheduled appointment. If an interpreter fails to arrive for the scheduled appointment, upon notice that the interpreter failed to arrive, CVRJ staff will immediately use reasonable efforts (as defined in paragraph 28a) to call an interpreter service for another qualified interpreter.

c. Data Collection on Interpreter Response Time and Feedback . CVRJ staff will collect and record response times and comments by individuals using the interpreter services obtained pursuant to this Agreement.

29. Use of Interpreting Service Agency(ies). Within thirty (30) days of the effective date of this Agreement, the Authority agrees to:

- a. Contract 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. Select interpreters or interpreter services that have been screened for the quality

and skill of its interpreters, its reliability, and other reasonable factors and review and update this list annually;

- c. Provide the USAO, upon request, with documentation that such interpreter services are being made available; and
- d. Record all requests for oral/sign language interpreters and any action taken, including denial of services, and to provide the USAO with such record upon request and in compliance reports as required in paragraph 51 below.

30. Method for Obtaining Interpreters . The Authority will establish internal procedures for ordering interpreting services that is consistent with the interpreter or interpreter agencies' procedures.

31. Use of Other Members of the Public to Facilitate Communication.

- a. The Authority shall not require an inmate or other qualified individual to bring another member of the public to interpret for him or her. 28 C.F.R. § 35.160(c)(1).
- b. The Authority will not rely on an adult accompanying an individual who is deaf or hard of hearing to interpret or facilitate communication except:
 - 1. 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
 - 2. Where the inmate or other qualified 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).
- c. The Authority 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. 28 C.F.R. § 35.160(c)(1).
- d. 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 the CVRJ's programs, services, and activities. Personnel may rely on an accompanying individual to interpret or facilitate communication under

this paragraph only in truly emergency circumstances, *i.e.*, where any delay in providing immediate services to the individual could have life-altering or life-ending consequences. *See* 28 C.F.R. Part 35, App. A. Once the emergency has lifted, personnel should revisit the decision of what auxiliary aids and services are appropriate and give primary consideration to those preferences.

- 32. Prohibition on The Use of Employees or Inmates as Sign Language Interpreters or Oral Transliterators** . The Authority will not use its personnel as sign language interpreters unless the employee's sign language interpreting skills have been evaluated and the Authority can document that the individual is a "qualified interpreter" pursuant to 28 C.F.R. § 35.104. Further, the Authority will not use its employees as sign language interpreters or oral transliterators if the employee or volunteer's presence poses a conflict of interest or raises confidentiality or privacy concerns. The Authority shall not use inmates as interpreters or assistants to those with disabilities. Although an inmate may, on occasion, possess the skill level necessary to provide interpreting services, inmate interpreters or transliterators shall not be used for confidentiality, privacy, and security reasons.
- 33. Other Means of Communication** . The Authority agrees that between the time an interpreter is requested and the interpreter is provided, CVRJ personnel will continue to try to communicate with the inmate or other qualified individual who is deaf or hard of hearing for such purposes and to the same extent as they would have communicated with the person but for the disability, using all available methods of communication, including sign language pictographs. This provision in no way lessens the Authority's obligation to provide qualified interpreters in a timely manner as required by paragraph 28.
- 34. Video Remote Interpreting (VRI)** . VRI can provide immediate, effective access to interpreting services in a variety of situations including emergencies and unplanned incidents. When using VRI services, the Authority shall ensure that it provides: (1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; (2) A sharply delineated image that is large enough to display the

interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position; (3) A clear, audible transmission of voices; and (4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI. 28 C.F.R. § 35.160(d). VRI shall not be used when it is not effective due, for example, to an individual's limited ability to move his or her head, hands or arms; vision or cognitive issues; significant pain; or due to space limitations in a room. If, based on the circumstances, VRI is not providing effective communication after it has been provided or is not available due to circumstances outside of the Authority's control, an on-site interpreter shall be requested. Further, if the VRI device is not functioning properly and CVRJ staff is unable to correct the malfunction within 30 minutes, CVRJ staff will call an on-site interpreter.

35. Reasonable Modification of Handcuffing Policies . When CVRJ staff deem it necessary to handcuff a person who is deaf or hard of hearing, staff will, safety permitting, reasonably modify standard operating procedure and handcuff people who are deaf or hard of hearing so their hands remain in front of them to facilitate communication using sign language or writing.

36. Signs. Within 30 days of the effective date of this Agreement, at CVRJ's booking area and in the medical unit, the Authority will post conspicuous signs. *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, the Central Virginia Regional Jail will provide auxiliary aids, such as qualified sign language, oral, or tactile interpreters; videophones; TTYs; and volume controlled telephones, free of charge.

Please ask for assistance by contacting the ADA Coordinator, [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.

37. Videophones, Captioned Telephones, TTYs, Hearing-Aid Compatible Telephones, and Volume Control Telephones.

Within sixty (60) days of the effective date of this Agreement, the Authority agrees to provide, if it has not already done so, at least three of the following for use by inmates and members of the public at the CVRJ: a device capable of video telephone calls (including video relay calls), a TTY, a captioned telephone, a hearing aid compatible telephone, or a volume control telephone. 28 C.F.R. § 35.161.

- a. The Authority shall permit non-deaf inmates access to a device capable of video of video telephone calls, captioned telephone, or TTY, as needed to communicate with deaf and hard of hearing individuals outside the CVRJ on the same terms that non-deaf individuals outside of the CVRJ.
- b. Where inmate telephone calls are time-limited, the CVRJ will provide inmates who are deaf or hard of hearing who use TTYs, captioned telephones, or a telecommunications relay system (including the Video Relay Service) three times the normal length of time to make those calls, due to the slower nature of TTY and relayed communications compared with direct voice communications.
- c. If a device capable of video telephone calls including video relay calls, captioned telephone calls, 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 device capable of video telephone calls including video relay calls, captioned telephone, 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.
- d. The Authority shall maintain all auxiliary aids for inmates and the public, who are deaf or hard of hearing, in working condition at all times. The Authority shall attempt to resolve complaints about any malfunctioning equipment within a

reasonable time.

- e. The Authority shall ensure that sufficient staff members, including the ADA Coordinator and ADA Deputy Coordinator for Inmates, and at least two staff members per shift, are adequately trained in the operation of the technology used for telecommunication.
- f. The Authority shall not impose a surcharge on inmates for using a telecommunications relay service.

38. Privacy of Communications . The Authority will ensure that the privacy of telephone calls by arrestees or detainees using a device capable of video telephone calls, TTY, hearing aid compatible telephones, or volume control telephones is equal to that of other arrestees' or detainees' telephone calls.

39. Television Programming. Inmates and detainees who are deaf or hard of hearing will have access to captioned television programming that is equivalent to the access to television programming available to inmates and detainees without disabilities.

40. Visual Alert Notifications.

- a. Inmates at the CVRJ should not miss announcements, alarms, or any other auditory information from CVRJ staff to the general inmate population because of their disability.
- b. The Authority will provide inmates who are deaf or hard of hearing, with an effective notification system which will advise them of an emergency evacuation or other emergency. CVRJ staff shall be responsible for the evacuation of inmates who are deaf, during an emergency.
- c. The Authority shall not rely solely on a "buddy" system, such as a system of using inmates or designated personnel, to communicate emergency information, announcements, alarms, or other auditory information to deaf and hard of hearing inmates.

41. Hearing Aid and Cochlear Processor Batteries . Whenever inmates or detainees who use hearing aids, cochlear implants, or other such personal devices, are housed in the detention facility, the Authority will purchase appropriate types of hearing aid and cochlear process batteries when necessary. Replacement batteries for these devices will

be provided to those requesting them as soon as possible, but no later than 24 hours after such request. To the extent the Authority normally charges inmates and detainees for normal health maintenance items such as toothpaste, the Authority may impose reasonable fees for batteries required under this paragraph. For inmates with cochlear implants or hearing aids that require rechargeable batteries, the Authority must permit the inmate to access both rechargeable batteries and a device on which to recharge them. Because of the proprietary nature of such batteries and chargers, the Authority must permit such inmates to maintain possession of any batteries found on their person at the time they enter CVRJ and to allow inmates to receive extra batteries or chargers from others. The Authority may maintain control of chargers and unused batteries, but must permit the inmate to have indirect access to chargers and extra batteries as needed to maintain functionality of the inmate's hearing aid or cochlear implant.

42. Repair of Hearing Aids and Other Such Personal Devices. The Authority will send inmate and detainee hearing aids, cochlear processors, and other such devices to appropriate repair companies as soon as possible, but no later than the next day for which mail is picked up at the CVRJ, following a request for the repair of such a personal device. The Authority shall inform the inmate or detainee when the device was sent for repair and when it is expected to be returned by the repair company. The inmate or detainee will be provided with written documentation of all such repairs, including detailed information regarding the vendor used, the date of the repair, and the specific repairs performed. Should an inmate or detainee be unable to read this written documentation, then the Authority will use appropriate auxiliary aids and services to convey the information in this documentation.

43. Identification. The Authority will take appropriate steps to ensure that all personnel having contact with an Inmate are made aware of the person's disability, and the person's preferred auxiliary aids and services, so that effective communication with the person will be achieved. A person's identity as someone needing appropriate auxiliary aids and services for effective communication will not be treated as confidential medical information for CVRJ personnel.

44. Prohibition of Surcharges . All appropriate auxiliary aids and services required by this

Agreement will be provided free of charge to the Inmate, visitor, or member of the public who is deaf or hard of hearing.

45. Policies and Procedures. Within sixty (60) days of the effective date of this Agreement, the Authority will submit for review and approval to the USAO its policies and procedures to implement fully the Settlement Agreement. Upon receipt of the USAO's comments, the Authority will address all of the USAO's concerns, if any, and will resubmit a draft for final approval, if any changes were needed. The adoption of the final policies and procedures will occur within 30 days of the Authority's receipt of approval by the USAO.

46. Training.

- a. Within 90 days of the effective date of this Agreement, and at least once annually throughout the term of this Agreement, the Authority will ensure that all personnel, including contractors and employees of contractors, who have contact with inmates and other qualified individuals will receive training as to effective communication with persons who are deaf or hard of hearing. The training will be sufficiently detailed to enable personnel to effectively implement all provisions of this Agreement, including the relevant Exhibits, all policies and procedures developed pursuant to this Agreement, and all effective communication requirements under the ADA.
- b. The Authority will ensure that all new personnel who will have contact with inmates, visitors to the CVRJ and other members of the public will receive ADA training as a component of pre-service training and orientation.

47. Training Attendance Sheets . The Authority will maintain in electronic form for the duration of this Agreement, confirmation of training conducted pursuant to paragraph 46 of this Agreement, which will include the names, signature, and respective job titles of the attendees, as well as the date and time of the training session.

48. Report of Training . Upon request, the Authority will provide the USAO with a copy of all training materials used to train its staff, training attendance sheets required in Paragraph 47, above, and photographs of the notices posted in its offices pursuant to this Agreement.

49. **ADA Log** . The Authority will maintain a log in which requests for qualified interpreters on site or through video remote services will be documented. The log will indicate the time and date the request was made, the name of the inmate or other qualified individual, the nature of the auxiliary aid or service provided, the time and date the appropriate auxiliary aid or service was provided or a statement of the reason that an auxiliary aid or service was not provided. The log will also include the identity of the CVRJ staff member(s) who conducted the assessment and made the determination. Such logs will be maintained by the ADA Coordinator for the entire duration of the Agreement, and will be incorporated into the Compliance Reports as described in paragraph 51 of this Agreement.
50. **Disability Rights Grievance Procedures.** The Authority shall maintain a grievance procedure providing for the prompt and equitable resolution by the ADA Coordinator for requests by inmates with disabilities for auxiliary aids and services, reasonable modifications of policies, practices or procedures, or complaints by inmates alleging any action that would be prohibited by the ADA. If the ADA Coordinator receives a complaint or request that is not complete, the ADA Coordinator shall notify the inmate within one business days that the complaint or request is incomplete and identify the additional information that is needed to complete the complaint or request. Copies of all grievances related to ADA issues will be maintained by the ADA Coordinator for the entire duration of the Agreement, and will be incorporated into the semi-annual Compliance Reports as described in paragraph 51 of this Agreement. The ADA grievance procedures shall be made available to inmates upon request. 28 C.F.R. § 35.107(b).
51. **Compliance Reports.** Beginning six months after the Effective Date of this Agreement and every six months thereafter for the entire duration of the Agreement, the Authority will provide a written report (“Compliance Report”) to the USAO regarding the status of its compliance with this Agreement. The Compliance Report will include a narrative report of the actions taken by the ADA Coordinator and the ADA Deputy Coordinator for Inmates during the preceding year and any plans for action concerning ADA compliance in the coming year. The report shall include as an exhibit copies of all

inmate complaints or requests for auxiliary aids and services, or reasonable modifications of policies, practices or procedures, or requests related to physical access issues received by the ADA Coordinator and ADA Deputy Coordinator for Inmates and all documents reflecting any actions taken or decisions rendered by the ADA Coordinator for Inmates in response to such complaints or requests during the reporting period. The report will also include the ADA Log described in paragraph 49. The Authority will maintain records that document the information contained in the Compliance Reports and will make them available, upon request, to the USAO. The USAO may review compliance with this Agreement at any time.

52. **Complaints** . During the term of this Agreement, the Authority will notify the U.S. Attorney's Office if any person files a lawsuit or a complaint with any state or federal agency alleging that the Authority failed to comply with the ADA. Such notification must be provided in writing via certified mail within 30 days of the date the Authority received notice of the allegation and will include, at a minimum, the nature of the allegation, the name of the person making the allegation, and a copy of the lawsuit or complaint.

ENFORCEMENT AND MISCELLANEOUS

53. **Term of Agreement.** This Agreement will be in effect for twenty-three months from the Effective Date.

54. **Monetary Relief.** For settlement purposes only, to avoid the time and expense of litigation, CVRJ will approve a payment of \$50,000 to be made for the benefit of the Complainant. The payment will be placed into an annuity or special needs trust. Approval of any payment with respect to CVRJ is conditioned on execution of a full release and discharge of all claims that otherwise could be asserted by the Complainant or the Department of Justice against CVRJ, and all employees, agents, and assigns of CVRJ, arising from the facts set forth in paragraphs 2 and 15.

Within thirty (30) days after receiving the Complainant's signed release, the Virginia Department of Treasury, Division of Risk Management on behalf of CVRJ will issue a check in

the amount of \$50,000 made out to the annuity/special needs trust of the Complaint as further instructed by the Financial Litigation Unit of the U.S. Attorney's Office. The check shall be mailed to:

Financial Litigation Unit

United States Attorney's Office for Western District of Virginia

310 First St., S.W. Suite 906

Roanoke, VA 24011

55. Further Proceedings. In consideration of the terms of this Agreement as set forth above, the United States agrees to refrain from undertaking further investigation or from filing a civil suit under Title II of the ADA related to VS's allegations in paragraphs 2 and 15, except as provided in paragraph 59. Nothing contained in this Agreement is intended or shall be construed as a waiver by the United States of any right to institute proceedings against the Authority for violations of any statutes, regulations, or roles administered by the United States or to prevent or limit the right of the United States to obtain relief under the ADA.

56. Compliance Review. The United States may review compliance with this Agreement at any time and can enforce this Agreement if the United States believes that it or any requirement thereof has been violated by instituting a civil action in the U.S. District Court. If the United States believes that this Agreement or any portion of it has been violated, it will raise its claim(s) in writing with the Authority, and the parties will attempt to resolve the concern(s) in good faith. The United States will allow the Authority sixty (60) days from the date it notifies the Authority of any breach of this Agreement to cure said breach, prior to instituting any court action to enforce the ADA or the terms of the Agreement.

57. Entire Agreement. This Agreement and the attachments hereto constitute the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written agreement, shall be enforceable. This Agreement is limited to the facts set forth herein and does not purport to remedy any

other potential violations of the ADA, such as violations relating to inmates other than VS, or any other federal law.

58. **Parties.** This Agreement is final and binding on the parties, including all principals, agents, executors, administrators, representatives, successors in interest, beneficiaries, assigns, heirs, and legal representatives thereof. The Authority has a duty to so inform any such successor in interest of this Agreement.

59. **Non-waiver of Enforcement.** Failure by the United States to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.

60. **Effective Date.** The effective date of this Agreement is the date of the last signature below.

61. **Execution of Agreement.** This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Electronically transmitted signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

62. **Duty to Negotiate.** 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 and the Authority 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 CENTRAL VIRGINIA
REGIONAL JAIL AUTHORITY**

Dated: _____

/s/ Troy Wade
TROY WADE, Chairman
Louisa County

Dated: _____

/s/ James Crozier
JAMES CROZIER, Vice Chairman
Orange County

Dated: _____

/s/ Frank E. Dyer
FRANK E. DYER III, Superintendent

Dated: _____

/s/ Helen E. Phillips
HELEN E. PHILLIPS, Esquire,
Counsel

FOR THE UNITED STATES:

Dated: _____

/s/ Laura Day Rottenborn
LAURA DAY ROTTENBORN
Executive Assistant United States
Attorney
Western District of Virginia

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