

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA AND GOOCHLAND POWHATAN
COMMUNITY SERVICES
U.S. DEPARTMENT OF JUSTICE DJ # 204-79-352**

BACKGROUND

1. The parties (“Parties”) to this Settlement Agreement (“Agreement”) are the United States of America (“United States”) and Goochland Powhatan Community Services (“GPCS”), a local government agency that provides mental health services, including case management services, to Consumers who reside in Goochland and Powhatan Counties, Virginia.
2. This matter was initiated by a complaint filed with the United States against GPCS, 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. KR,¹ the complainant, is the sister and Power of Attorney (“POA”) for LR, an individual who is deaf and uses American Sign Language (“ASL”) as her primary means of communication.
3. KR alleges that GPCS failed to provide LR sign language interpreting services when necessary to ensure effective communication. Specifically, KR alleges that LR received services from GPCS between February 1, 2015, and October 1, 2017. During the course of services LR received from GPCS, KR provided the agency with multiple copies of a speech language pathologist (“SLP”) evaluation of LR. The SLP evaluation explained that LR uses ASL to communicate, she has serious difficulties reading basic instructions/directions, she does not have reliable lip-reading skills. KR further alleges that GPCS staff had many consequential and complex interactions with LR, however GPCS failed to furnish sign language interpreting services for those interactions, including:
 - a. Multiple care planning meetings about a variety of subjects, including legally required quarterly and annual Individual Support Plans and Person-Centered Plans with LR.
 - b. Multiple 30-day face-to-face meetings that GPCS’s case manager held with LR.
 - c. Multiple meetings when discussing the provision of services to LR, including a meeting held at GPCS’s offices in which a group home presented a notice of discharge from its services to LR.
4. As a result of GPCS’s failure to ensure effective communication, KR alleges that LR did not understand what GPCS’s Personnel was trying to communicate to her.

¹ In order to protect the privacy of the complainant and her sister, we are using two letter identifiers for each.

5. KR also alleges that as a result of GPCS's failure to furnish ASL interpreting services, GPCS frequently enlisted her to facilitate communication with LR.

TITLE III COVERAGE

6. The United States Attorney for the Eastern 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 GPCS's compliance with Title II of the ADA. The USAO has the authority to, where appropriate, negotiate and secure voluntary compliance agreements, to resolve investigations through informal resolution such as settlement agreements, and to bring civil actions enforcing Title II of the ADA should it fail to secure voluntary compliance. 28 C.F.R. § 35.172(c).
7. LR has multiple disabilities, including athetoid cerebral palsy, an intellectual disability, and she 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. § 35.108.
8. KR, as LR's family member and POA, has a known relationship or association with an individual with a disability. 28 C.F.R. § 35.130(g).
9. The ADA applies to the GPCS 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.
10. Pursuant to the ADA, GPCS is required to take appropriate steps to ensure that communications with applicants, participants, members of the public, and companions with disabilities are as effective as communications with others. 28 C.F.R. § 35.160(a)(1).
11. On the basis of its investigation, the U.S. Attorney's Office has determined that:
 - a. GPCS provided a variety of communication intensive services to LR between February 1, 2015, and October 1, 2017, including case management services, during which GPCS assisted with the development of and compliance with Individual Support Plans and Person-Centered-Plans.
 - b. GPCS had an obligation to provide appropriate auxiliary aids and services to ensure effective communication with LR while she received services from the agency. 28 C.F.R. § 35.160.
 - c. KR provided GPCS with a copy of a speech language pathologist ("SLP") evaluation of LR multiple times. The SLP evaluation explained that LR's "most effective mode of communication" is sign language, that she has serious difficulties reading basic instructions/directions, she does not have reliable lip reading skills, and that verbal speech should not be used as a means to communicate with her.

- d. GPCS failed to furnish a qualified sign language interpreter or otherwise provide an effective method of communicating with LR including during numerous consequential and complex interactions during the time period that GPCS was providing services, such as:
- 1) Multiple legally required annual and quarterly meetings in which LR's Individual Support Plans and Person-Centered-Plans were discussed and developed. Federal and Virginia regulations dictate that service providers, such as GPCS, ensure that Consumers, such as LR, be able to participate in a meaningful way, in the development of the Individual Support Plans and Person-Centered-Plans and have access to information in those documents in a format that is understandable to them. *See* 42 C.F.R. § 441.725; 12VAC35-115-50.B.5; 12VAC35-105-660 & 665.H.; 12VAC35-115-70. Due to the nature, length and complexity of the communication involved in these meetings, a sign language interpreter was required for these meetings. 28 C.F.R. § 35.160(B)(2).
 - 2) Multiple face-to-face meetings with LR that LR's case manager was required to hold every 30 days in which she observed LR "to assess for previously unidentified risks, injuries, needs, or other changes in status; assess whether the individual's support plan is being implemented appropriately and remains appropriate for the individual; and ascertain whether supports and services are being implemented consistent with the individual's strengths and preferences and in the most integrated setting appropriate to the individual's needs." Due to the nature, length and complexity of the communication involved in these meetings, a sign language interpreter was required for these meetings. 28 C.F.R. § 35.160(B)(2).
 - 3) Multiple complex interactions to discuss a variety of issues that had arisen regarding the services that were being provided to LR, including: case management meetings, and changes in services, such as a highly significant meeting in which LR's group home provider attempted to present her with notice that it would be discharging her from its services in 30 days. *See* 12VAC35-115-50.B.5. Due to the nature, length and complexity of the communication involved in these interactions, a sign language interpreter was required for these meetings. 28 C.F.R. § 35.160(B)(2).
 - 4) Multiple incident investigations that necessarily involved communications with LR, including three regarding serious physical injuries that LR sustained at her group home for which she needed treatment at a hospital emergency room, including a fractured finger and another incident involving a crush injury in which LR alleged that she had been physically abused by personnel from her group home. Due to the nature, length and complexity of the communication necessitated by these incident investigations, a sign language interpreter was required.

28 C.F.R. § 35.160(B)(2).

- 5) Interactions in which Virginia regulations and/or provider manuals required GPCS to provide information to its consumers in a “language easily understood by the individual” or “written in the words of the individual receiving the services” or otherwise indicates that the provider is required to ensure that a consumer can understand the information being conveyed. *See* 12VAC35-115- 50.B.5; 12VAC35-105-665.H. Due to the nature, length and complexity of the communication required when conveying such information, a sign language interpreter was required when GPCS provided such information. 28 C.F.R. § 35.160(B)(2).
 - 6) When providing a variety of documents to LR for her review and signature. Due to the nature, length and complexity of the communication required when GPCS showed LR these documents and sought her signature, a sign language interpreter was required. 28 C.F.R. § 35.160(B)(2).
- e. Because GPCS failed to provide a qualified sign language interpreter, GPCS’s staff frequently relied upon KR to facilitate communication with LR.
 - f. GPCS’s failure to provide appropriate auxiliary aids and services to ensure effective communication with LR violates Title II, 42 U.S.C. § 12132; 28 C.F.R. § 35.160.
 - g. GPCS’s reliance upon KR to facilitate communication with LR violates Title II’s regulation, 28 C.F.R. § 35.130(g) & 35.160(c)(2), and as such, she is an aggrieved individual.
 - h. The parties agree that it is in their best interests, and the United States believes that it is in the public interest, to resolve this dispute without engaging in litigation. The parties have therefore voluntarily agreed to the terms of this Agreement.

DEFINITIONS

12. The term “auxiliary aids and services” includes 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.

13. The term “GPCS Personnel” means all employees, both full and part-time, and employees of independent contractors with contracts to work for or with GPCS, including, without limitation, administrators, support coordinators, administrative staff, technicians, admitting personnel, billing staff, security staff, therapists, and volunteers, who have or are likely to have direct contact with the public.
14. The term “qualified interpreter” means an interpreter who, via a VRI service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. 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).
15. The term “Consumer” shall be broadly construed to include any applicants, participants, or members of the public who is seeking or receiving, services, from GPCS.
16. The term “Companion” means a family member, friend, legal representative, or associate of an individual seeking access to a service, program, or activity of a public entity, who, along with such individual, is an appropriate person with whom the public entity should communicate. 28 C.F.R. § 35.160(a)(2).
17. “Consumer files or records” means the files and related records for an individual Consumer, including both the paper and electronic records.

EQUITABLE RELIEF

18. **ADA Self-Evaluation.** GPCS 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. The GPCS will provide a copy of the ADA self-evaluation to the United States Attorney’s Office once it is completed.
19. **ADA Coordinators.** GPCS has designated at least one employee with responsibility to coordinate the GPCS’s efforts to comply with and carry out its responsibilities under the ADA, whose title is the “ADA Coordinator.” GPCS will designate at least one

employee as an ADA Deputy Coordinator (“ADA Deputy Coordinator”), who is available in case the ADA Coordinator is not available. The ADA Coordinator or Deputy Coordinator will be available twenty-four (24) hours a day, seven (7) days a week, to answer questions and provide appropriate assistance regarding prompt access to, and proper use of, the appropriate auxiliary aids and services, including qualified interpreters. GPCS will circulate and post broadly within GPCS the name, telephone number, function, and office location of the Coordinator(s), including a TTY telephone number, through which the ADA Coordinator or designee on duty can be contacted twenty-four (24) hours a day seven days a week by Consumers and Companions who are deaf or hard of hearing. The ADA Coordinator and Deputy Coordinator will be designated by GPCS no later than 30 days following execution of this Agreement and will be subject to approval by the U.S. Attorney’s Office.

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 consumers or members of the public;
2. Address requests by members of the public with disabilities for reasonable modifications or appropriate auxiliary aids or services;
3. Ensure that all GPCS Personnel who interact with members of the public with disabilities are provided with adequate and appropriate information and training on ADA issues;
4. Know where appropriate auxiliary aids are stored, how to operate them, and being responsible for their maintenance, repair, replacement, and distribution.
5. Maintain the Auxiliary Aid or Service Log described in paragraph 29.
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 contact information);
7. Serve as a resource for the public and other GPCS personnel who have questions regarding ADA compliance issue; and
8. Otherwise coordinate GPCS’s efforts to comply with and carry out its responsibilities under the ADA.

A. Prohibition of Discrimination

20. Nondiscrimination. GPCS shall provide appropriate auxiliary aids and services, including qualified interpreters, where such auxiliary aids and services are

necessary to ensure effective communication with Consumers and Companions who are deaf or hard of hearing, unless GPCS can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden. GPCS shall also provide Consumers and Companions, who are deaf or hard of hearing, with the full and equal enjoyment of the services, privileges, facilities, advantages, and accommodations of the company as required by this Agreement and the ADA.

21. Discrimination by Association. GPCS shall not deny equal services, accommodations, or other opportunities to any individual because of the known relationship of that person with someone who is deaf or hard of hearing. 28 C.F.R. § 35.130(g).
22. Retaliation and Coercion. GPCS 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 exercised, or is exercising, his or her rights under this Agreement or the ADA. *See* 42 U.S.C. § 12203; 28 C.F.R. § 35.134.

B. Effective Communication

23. Provision of Appropriate Auxiliary Aids and Services. The GPCS will ensure that appropriate auxiliary aids and services, including qualified interpreters, are made available to consumers, visitors, and other members of the public who interact with the GPCS, who are deaf or hard of hearing, where such aids and services are necessary to ensure effective communication, so that they may participate in or benefit from the GPCS's services, programs, or activities on an equal basis with others. While this Settlement Agreement focuses on the effective communication needs of individuals who are deaf or hard of hearing, the GPCS 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 blindness.
24. Primary Consideration. In determining the type of auxiliary aid or service necessary to provide effective communication, the GPCS 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 personnel will inquire as to the choice of auxiliary aid or service of the individual with a disability and will honor the expressed choice unless the GPCS can demonstrate that another equally effective means of communication is available. Specifically, to determine whether someone who is deaf or hard of hearing wants a qualified sign language interpreter, in all non-emergency circumstances, GPCS Personnel will use the American Sign Language pictogram for "sign language interpreter" available at Exhibit B to inquire as to the person's preference.
25. Consultation Requirement. In order to provide primary consideration to the expressed

preference of the individual with a disability regarding the type of auxiliary aids or services to provide, the GPCS will consult with the individual with a disability regarding the appropriate auxiliary aids or services, and the timing, duration, and frequency with which they will be provided. GPCS Personnel will provide a Communication Assessment Form that accounts for all relevant facts and circumstances, including, for example, the individual's communication skills and knowledge, and the nature and complexity of the communication at issue. A Model Communication Assessment Form is attached to this Agreement as Exhibit A, and the GPCS will develop a form similar to Exhibit A within thirty (30) days of the Effective Date of this Agreement. GPCS shall provide a copy of the Communication Assessment Form that it develops to the USAO for review and approval prior to GPCS's implementation of the Form. GPCS shall ensure that a completed Form is obtained from each individual or companion who agrees to complete the Form. GPCS shall provide assistance in completing the Form at the Consumer's or Companion's request, including a sign language interpreter if the GPCS has any reason to believe that the Consumer or Companion does not understand the form. After being completed, the Form(s) shall be maintained in the Consumer's record, whether kept in paper or electronic form. If at any point when providing services to a Consumer, a Companion identifies himself or herself as deaf or hard of hearing, the GPCS shall promptly provide him/her with the Form, if it has not done so already. GPCS recognizes that some individuals that it serves may have a disability that interferes with his/her ability to articulate a request for a sign language interpreter and will provide interpreting services when appropriate to these individuals.

26. 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, GPCS Personnel will reassess communication effectiveness regularly throughout the period of providing services and will consult with the individual who is deaf or hard of hearing on a continuing basis to assess the measures required to ensure effective communication. See 28 C.F.R. Part 35, App. A. For Consumers, such reassessment will take place during 30-day face to face meetings.
27. Documentation of Refusal of Auxiliary Aids or Services. If a Consumer who is deaf or hard of hearing indicates that he or she does not require any or all of the Auxiliary Aids and Services set forth in the Agreement, he or she will sign a Waiver of Auxiliary Aids and Services and that document will be kept in the Consumer's file. GPCS will take steps to ensure that the Waiver of Auxiliary Aids and Services form is effectively communicated to Consumers with disabilities, including providing auxiliary aids and services for discussion of the form. GPCS understands that the lack of a completed Waiver of Auxiliary Aids and Service form is presumptive evidence that there was no refusal of services by the Consumer. Notwithstanding a Consumer's completion of a waiver form, the GPCS still has a continuing obligation to assess a consumer's communication needs on an ongoing basis as discussed in paragraphs 23 & 24.
28. Time for Assessment. The determination of which appropriate auxiliary aids and services are necessary, and the timing, duration, and frequency with which they will

be provided, must be made at the time GPCS learns that a Consumer or Companion who is deaf or hard of hearing will be using its services or on the arrival of the Consumer or Companion who is deaf or hard of hearing at GPCS, whichever is earlier. GPCS Personnel will perform an assessment (see paragraph 23 & 24) as part of each initial assessment and document the results in the Consumer's file (including the results of the assessments of companion's need for auxiliary aids and services).

29. Subsequent Interactions. GPCS will continue to provide the appropriate auxiliary aids or services to its Consumer or Companion without requiring another request for auxiliary aids or services to be made for each interaction. In addition, GPCS will continue to address the needs of the Consumer or Companion and will ask the Consumer and/or Companion questions related to auxiliary aids or services needs in order to ensure that the means of communication provided in past interactions continue to be effective means of communication. GPCS will keep appropriate records that reflect the ongoing provision of auxiliary aids and services to Consumers and Companions, such as notations in a Consumer's record, and its ongoing assessment of the auxiliary aids and services that are being provided.
30. Auxiliary Aid and Service Log. GPCS will maintain a log in which requests for an auxiliary aid or service will be documented. The log will indicate:
 - a. The name of the Consumer or Companion who is deaf or hard of hearing, who made the request;
 - b. The auxiliary aid or service that was requested, and time and date the request was made;
 - c. The time and date the request was made for, i.e., for immediate use (emergent need) or for a scheduled meeting (stating the date and time of the meeting);
 - d. The identity of the GPCS Personnel who conducted the assessment and made the determination of which auxiliary aid or service to provide;
 - e. The name of the staff member making the request and time and date the request was made by staff;
 - f. The auxiliary aid or service provided; and
 - g. All times and dates the auxiliary aid or service was provided.

If the requested auxiliary aid or service was not provided, was not provided in the type requested, or was provided outside of the timeliness provisions contained in paragraph 35 of this agreement, the log shall contain a statement explaining why. Such logs will be maintained by the ADA Administrator or designee for the entire duration of the Agreement, and will be incorporated into the semi-annual Compliance Reports as described in paragraph 53 of this Agreement.

31. Complaint Resolution. GPCS will establish a grievance resolution mechanism for the

investigation of disputes regarding effective communication with Consumers and Companions who are deaf or hard of hearing. GPCS will maintain records of all grievances regarding effective communication, whether oral or written, made to GPCS and actions taken with respect thereto. At the time GPCS completes its assessment described in paragraphs 23 & 24 and advises the Consumer and/or Companion of its determination of which appropriate auxiliary aids and services are necessary, GPCS will notify deaf and hard of hearing persons of its grievance resolution mechanism, to whom complaints should be made, and of the right to receive a written response to the grievance. A written response to any grievance filed shall be completed promptly, but no later than within seven (7) days of receipt of the complaint. Copies of all grievances related to provision of services for Consumers or Companions who are deaf or hard of hearing and the responses thereto will be maintained by the ADA Administrator or designee for the entire duration of the Agreement, and will be incorporated into the semi- annual Compliance Reports as described in paragraph 53 of this Agreement.

32. Prohibition of Surcharges. All appropriate auxiliary aids and services provided by GPCS will be provided free of charge to the Consumer or Companion who is deaf or hard of hearing.
33. Record of Need for Auxiliary Aid or Service. GPCS will take appropriate steps to ensure that all GPCS Personnel are made aware of a Consumer's or Companion's disability and auxiliary aid and services needed so that effective communication with such person will be achieved. These steps will include designating this information in the Consumer's record. The Consumer's record shall be conspicuously labeled (such as with a sticker, indicator, or label on the cover) to alert GPCS Personnel to the fact that the Consumer and/or Companion is deaf or hard of hearing. The Consumer's record shall indicate the mode of communication requested by and provided to the Consumer or Companion.

C. Qualified Interpreters

34. Circumstances Under Which Interpreters Will Be Provided. Depending on the complexity and nature of the communication, a qualified interpreter may be necessary to ensure effective means of communication for Consumers and Companions. When an interpreter is needed, GPCS shall provide qualified sign language interpreters to Consumers and Companions who are deaf or hard-of- hearing and whose primary means of communication is sign language, and qualified oral interpreters to such Consumers and Companions who rely primarily on lip reading as necessary for effective communication. Examples of circumstances when the communication may be sufficiently lengthy or complex so as to require an interpreter include the following:
 - a. When federal or state regulations, state manuals, or GPCS's policies require Consumers to have a meaningful opportunity to participate in

- discussions regarding services that affect them;
- b. When federal or state regulations, state manuals, or GPCS's policies require Consumers to have access to information that is in a language that is understandable to the Consumer;
 - c. During 30-day face-to-face meetings with consumers;
 - d. While conducting any assessment;
 - e. Initial orientation discussions including explanations of program services;
 - f. Notices and explanations of legal, civil, and human rights;
 - g. Meetings in which care and service planning is discussed, including for periodic meetings for discussions of Individual Support Plans and Person Centered Plans;
 - h. Interviews of Consumers as a part of incident investigations, including but not limited to those that involve injury of a Consumer;
 - i. Execution of legal documents, including but not limited to: authorizations, leases, and annual forms;
 - j. Mental health services whether in person or using telecommunication services, including group or individual counseling for Consumers and family members;
 - k. Obtaining informed consent, including but not limited to services and medical decisions;
 - l. Discussions of a Consumer's symptoms, pain, injuries, or medication side effects that require complex and/or lengthy communication;
 - m. Discussions of a Consumer's medical appointments and follow-up instructions that require complex and/or lengthy communication;
 - n. Discussions that facilitate non-routine medication administration;
 - o. Soliciting Consumer feedback;
 - p. Educational presentations;
 - q. Consumer stress/crisis intervention and mitigation;

- r. Explanations of changes to a Consumer's routine, schedule, or environment that require complex and/or lengthy communication; and
- s. Discharge and discharge planning.

In the above circumstances, GPCS will presume that a qualified interpreter is necessary for effective communication with a Consumer or Companion who relies upon such auxiliary aids and services.

35. Method for Obtaining Interpreters.

Within thirty (30) days after execution of this Agreement, GPCS agrees:

- a. To have written agreements with three or more interpreter services to ensure that interpreting services will be available on a priority basis, twenty-four hours per day, seven days a week.
- b. To select interpreters or interpreter services that have been screened for the quality and skill of its interpreters to work with the population that GPCS serves, including individuals with intellectual and developmental disabilities and any other disabilities that a particular Consumer has, its reliability, and other reasonable factors. GPCS will review and update this list annually.
- c. To establish internal procedures for its personnel to order interpreting services that is consistent with the interpreter or interpreter agencies' procedures. At a minimum, all of GPCS's requests for interpreters, including the time, date and location, will be confirmed in writing at the time of the request. If GPCS receives verbal confirmation or speaks with the vendor regarding the GPCS's request for an interpreter, GPCS will confirm such conversations in writing and this information will be documented in the Interpreter's Log. GPCS will retain a copy of all written correspondence with interpreting services. Additionally, for the duration of this Agreement, GPCS will file a copy of its written correspondence with interpreters and interpreting agencies in the Auxiliary Aid and Service Log discussed in paragraph 29.

GPCS may also hire qualified sign language interpreter(s) to be staff interpreter(s) that have been screened for the quality and skill of its interpreters to work with the population that GPCS serves, including individuals with intellectual and developmental disabilities and any other disabilities that a particular Consumer has, who will provide sign language services to its service recipient.

36. Provision of Interpreters in a Timely Manner.

- a. Non-scheduled Interpreter Requests: A "non-scheduled interpreter request" means a request for an interpreter made by a Consumer or Companion who is deaf or hard of hearing with less than two (2) hours advance notice. The

interpreter shall be provided no more than (a) two hours from the time GPCS receives the request for an interpreter if the service is provided through a contract interpreting service or a staff interpreter who is located off-site or (b) 15 minutes from the time GPCS completes the assessment if the service is provided through a Video Remote Interpreting service as described in paragraph 36 below. Deviations from this response time will be addressed with the interpreting service provider, and performance goals will be reviewed with the U.S. Attorney's Office. If no interpreter can be located, GPCS Personnel will take the following additional steps:

- i. GPCS Personnel will exert reasonable efforts (which shall be deemed to require no fewer than five (5) telephone inquiries and/or emails and/or text messages unless exceptional circumstances intervene) to contact any interpreters or interpreting agencies already contracted with GPCS and request their services;
 - ii. Inform GPCS's ADA Coordinator of the efforts made to locate an interpreter and solicit assistance in locating an interpreter;
 - iii. Inform the Consumer or Companion 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
 - iv. 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, GPCS 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, GPCS will immediately call an interpreter service for another qualified interpreter.
- c. Data Collection on Interpreter Response Time and Effectiveness. GPCS will monitor the performance of each interpreter it uses to provide communication to Consumers or Companions who are deaf or hard of hearing by monitoring their response time and seeking feedback from the individual who requires the services of the interpreter. As part of the Auxiliary Aid and Service Log, described in paragraph 29, GPCS shall collect and maintain information regarding response times and effectiveness for requests for interpreters.
37. 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, GPCS 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 a Consumer's limited ability to move his or her head, hands or arms; vision or cognitive issues; significant pain; or due to space limitations in the 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 GPCS's control, VRI shall not be used as a substitute for an on-site interpreter, and an on-site interpreter shall be provided in accordance with the timetable set forth above in which case the determination that VRI is not effective shall count as the completion of assessment for timing purposes. Further, if the VRI device is not functioning properly and GPCS's staff is unable to get the VRI device to function properly within 30 minutes of when it started to malfunction, it will call for an on-site interpreter.

38. Notice to Consumers and Companions, who are Deaf or Hard of Hearing. As soon as GPCS Personnel have determined that a qualified interpreter is necessary for effective communication with a Consumer or Companion who is deaf or hard of hearing, GPCS will inform the Consumer (and his or her authorized representative) or Companion of the current status of efforts being taken to secure a qualified interpreter on his or her behalf. GPCS will provide additional updates to the Consumer (and his or her authorized representative) or Companion as necessary until an interpreter is secured. Notification of efforts to secure a qualified interpreter does not lessen GPCS's obligation to provide qualified interpreters in a timely manner as required by paragraph 35 of this Agreement.
39. Other Means of Communication. GPCS agrees that between the time an interpreter is requested and the interpreter is provided, GPCS Personnel will continue to try to communicate with the Consumer or Companion 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 using sign language pictographs. This provision in no way lessens GPCS's obligation to provide qualified interpreters in a timely manner as required by paragraph 35 of this Agreement.
40. Restricted Use of Certain Persons to Facilitate Communication.
 - a. GPCS shall not require an individual who is deaf or hard of hearing to bring another individual to interpret for him or her. 28 C.F.R. § 36.303(c)(2).
 - b. GPCS shall not rely on an adult accompanying an individual with a

disability 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 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. 28 C.F.R. § 35.160(c)(1). Consent of, and for, the accompanying adult to facilitate communication must be provided freely and voluntarily both by the individual with a disability and the accompanying adult. GPCS may not coerce or attempt to persuade another adult to provide effective communication for the individual with a disability. See 28 C.F.R. Part 36, App. A.
- c. GPCS will not rely on a minor child or another Consumer 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. § 36.303(c)(4).
- 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 GPCS's programs, services, and activities. GPCS 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.
- e. GPCS will not use its personnel as sign language interpreters unless the employee's sign language interpreting skills have been evaluated and GPCS can document that the individual is a "qualified interpreter" pursuant to 28 C.F.R. § 35.104. Further, GPCS will not use its personnel as sign language interpreters or oral transliterators if the employee's presence poses a conflict of interest or raises confidentiality and privacy concerns. 28 C.F.R. § 35.160(b)(2).
41. Individuals May Revise Their Communication Requests. If a Consumer or Companion indicates to GPCS Personnel that he or she wants an interpreter after failing to request one on the Deaf or Hard of Hearing Communication Request Form, GPCS Personnel shall conduct a new assessment as required by paragraphs 23 and 24.
42. Visual Alert Notifications.

- a. GPCS Consumers who are deaf or hard of hearing should not miss announcements, alarms, or any other auditory information from GPCS Personnel because of their disability.
- b. GPCS shall provide an effective visual notification system that will notify Consumers who are deaf or hard of hearing, of auditory information from GPCS Personnel.
- c. GPCS will provide Consumers who are deaf or hard of hearing with an effective visual notification system, which will advise them of an emergency evacuation or other emergency. GPCS Personnel shall be responsible for the evacuation of Consumers who are deaf or hard of hearing, during an emergency.

D. Notice to Community

43. Policy Statement. Within thirty (30) days of the entry of this Agreement, GPCS shall inform all Consumers, potential Consumers, and authorized representatives for Consumers in a language that they can understand of the statement below. Further, GPCS will post signs wherever Consumer’s rights are posted that shall include language to the following effect (and shall include the appropriate contact information):

Sign language and oral interpreters, TTYs, and other auxiliary aids and services are available free of charge to people who are deaf or hard of hearing. For assistance, please contact any GPCS Personnel or the Information Office at _____(voice/TTY), room_____.

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:



44. Website. GPCS will include on the front page of its website in a prominent location the policy statement described in paragraph 42 above.
45. Consumer Handbook. Within 30 days of signing this agreement, GPCS will include

in its Consumer Handbook (or equivalent) and all similar publications a statement to the following effect:

To ensure effective communication with Consumers and their Companions who are deaf or hard of hearing, we provide appropriate auxiliary aids and services free of charge, such as: sign language and oral interpreters, video remote interpreting services, TTYs, note takers, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, televisions with caption capability or closed caption decoders, and open and closed captioning of most GPCS programs.

Please ask your house manager or other GPCS Personnel for assistance, or contact the Information Office at _____ (voice or TTY), room _____.

The Consumer Handbook (or equivalent) will include the International Symbol for Hearing Loss, the International Symbol for TTYs, and a symbol to indicate the availability of sign language interpreters:



GPCS will also include in its Consumer Handbook (or equivalent) a description of its complaint resolution mechanism.

E. Effective Communication Policies and Procedures.

46. Within thirty (30) days of the effective date of this Agreement, GPCS will submit for review and approval to the United States its policies and procedures to implement fully this Settlement Agreement. Upon receipt of the United States' comments, GPCS will address all of the United States' concerns, if any, and will resubmit a draft for final approval, if any changes are needed. The adoption of the final policies and procedures will occur within 30 days of the GPCS's receipt of approval by the United States.

F. Notice to GPCS Personnel

47. Policy Statement. GPCS shall publish a policy statement regarding the GPCS's policy for effective communication with persons who are deaf or hard of hearing.

This policy statement shall include, but is not limited to, language to the following effect:

If you recognize or have any reason to believe that a Consumer or a relative, close friend, or Companion of a Consumer is deaf or hard of hearing, you must advise the person that appropriate auxiliary aids and services, such as sign language and oral interpreters, video remote interpreting services, TTYs, note takers, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, televisions with captioning or closed caption decoders, and open and closed captioning of most GPCS programs, will be provided free of charge when appropriate. If you are the responsible care provider, you must ensure that such aids and services are provided when appropriate. All other personnel should direct that person to the appropriate ADA Administrator at _____ and reachable at _____ [relevant information will be furnished in the policy statement].

GPCS will circulate this policy within thirty (30) days of the Effective Date of this Agreement to all GPCS Personnel.

G. Training

48. Training of ADA Coordinator. GPCS will provide mandatory training for the ADA Coordinator(s) within thirty (30) days of designation as provided in this Agreement. Such training will be sufficient in duration and content to train the ADA Coordinator(s) in the following areas:

- a. Ensuring that GPCS complies with all aspects of this Settlement Agreement;
- b. to promptly identify communication needs of Consumers and Companions who are deaf or hard of hearing, which auxiliary aids are effective in different circumstances, and how to identify sign language interpreters who are skilled in communication with individuals with other disabilities, such as intellectual and developmental disabilities and physical disabilities;
- c. the mandatory use of the Communication Assessment Form in paragraph 24;
- d. to secure qualified interpreter services as quickly as practicable when necessary;
- e. the need to document all communications with sign language interpreting services, including the order and confirmation that the service will be sending an interpreter at the time, date, and location requested;

- f. to encourage GPCS staff members to comply with this Settlement Agreement with regard to Consumers and Companions who are deaf or hard of hearing;
- g. to use, when appropriate, flash cards and pictographs (in conjunction with any other available means of communication that will augment the effectiveness of the communication);
- h. if GPCS decides to use VRI, how and when to use this service and the limitations of VRI;
- i. making and receiving calls through TTYs, other accessible telecommunication equipment, and the relay service; and
- j. GPCS's complaint resolution procedure described in paragraph 30 of this Agreement.

49. Training of GPCS Personnel. GPCS will provide mandatory annual in-service training to all GPCS Personnel.

- a. The training will address the needs of Consumers and Companions who are deaf or hard of hearing and will include the following objectives:
 - i. Ensuring GPCS personnel are complying with the terms of this Settlement Agreement;
 - ii. To identify, promptly, communication needs of Consumers and Companions who are deaf or hard of hearing;
 - iii. The mandatory use of the Communication Assessment form referenced in paragraph 24;
 - iv. To secure qualified interpreter services or video remote interpreting services as quickly as possible when necessary;
 - v. The need to document all communications with sign language interpreting services, including the order and confirmation that the service will be sending an interpreter at the time, date and location requested; and to use, when appropriate, flash cards and pictographs (in conjunction with any other available means of communication that will augment the effectiveness of the communication).
- b. Such training must be provided within sixty (60) days of the Effective Date of this Agreement.
- c. New employees must be trained within thirty (30) days of their hire. A

screening of a video of the original training will suffice to meet this obligation.

50. Training Attendance Sheets. GPCS will maintain in electronic form for the duration of this Agreement, confirmation of training conducted pursuant to paragraphs 47, 48 & 49 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.
51. Use of Outside Trainer. GPCS will hire an independent agency or group to conduct the initial trainings described in this Agreement. The independent agency used to train GPCS, along with the training materials, shall be subject to the approval of the U.S. Attorney's Office. For the required annual trainings thereafter, GPCS may conduct trainings without the assistance of an independent group, but must sufficiently update and/or create training materials in order to ensure the trainings include any new developments to the ADA and its requirements. GPCS may also videotape the initial trainings for annual trainings as long as GPCS also ensures that it supplements such training with any new developments to the ADA and its requirements.

H. Reporting, Monitoring, and Violations

52. Training Materials. Within ninety (90) days of the effective date of this Agreement, GPCS will provide the United States with a copy of all training materials used to train its staff, training attendance sheets required in Paragraph 50 above, and photographs of the notices posted in its offices pursuant to this Agreement.
53. Compliance Reports. Beginning six months after the Effective Date of this Agreement and every six months thereafter for the entire duration of the Agreement, GPCS will provide a written report ("Compliance Report") to the U.S. Attorney's Office regarding the status of its compliance with this Agreement with the exception of the last report, which will be due sixty days prior to the final day of this Agreement. The Compliance Report will include data relevant to this Agreement, including but not limited to:
 - a. the Auxiliary Aid and Service Log described in paragraph 29;
 - b. the Communication Assessment Forms described in paragraph 24;
 - c. records that reflect the ADA training that GPCS has conducted, including training materials and the attendance sheets described in paragraph 50; and
 - d. complaints received by GPCS from Consumers and Companions who are deaf or hard of hearing regarding auxiliary aids and services and/or effective communication, and the resolution of such complaints including any

supporting documents, as described in paragraph 30.

GPCS will maintain records to document the information contained in the Compliance Reports and will make them available, upon request, to the U.S. Attorney's Office.

54. Complaints. During the term of this Agreement, GPCS will notify the U.S. Attorney's Office if any person files a lawsuit, complaint, or formal charge with a state or federal agency, alleging that GPCS failed to provide auxiliary aids and services to Consumers or Companions who are deaf or hard of hearing, or otherwise failed to provide effective communication with such Consumers or Companions. Such notification must be provided in writing via certified mail within twenty (20) days of the date GPCS received notice of the allegation and will include, at a minimum, the nature of the allegation, the name and contact information for the person making the allegation, and any documentation possessed by GPCS relevant to the allegation. GPCS will reference this provision of the Agreement in the notification to the U.S. Attorney's Office.

I. Enforcement and Miscellaneous

55. This Agreement will be in effect for three (3) years from the Effective Date.
56. In consideration of the terms of this Agreement as set forth above, the Attorney General agrees to refrain from undertaking further investigation or from filing a civil suit under title III of the ADA related to the allegations in paragraphs 3-5, except as provided in paragraph 57. 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 GPCS for violations of any statutes, regulations, or rules administered by the United States or to prevent or limit the right of the United States to obtain relief under the ADA.
57. 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 the requirements thereof has been materially violated by instituting a civil action in the U.S. District Court. If the United States believes that this Agreement or the requirements thereof have been materially violated, it will raise its claim(s) in writing with GPCS, and the parties will attempt to resolve the concern(s) in good faith. The United States will allow GPCS thirty (30) days from the date it notifies GPCS 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.
58. 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 or any other federal law.

59. 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. GPCS has a duty to so inform any such successor in interest of this Agreement.
60. 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.
61. The effective date of this Settlement Agreement is the date of the last signature below.
62. 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.

FOR THE UNITED STATES:

JESSICA D. ABER
United States Attorney
Eastern District of Virginia

By:

/s/
STEVEN GORDON
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Attorney's Office Eastern District of Virginia
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DATED: 8/4/2022

For Goochland Powhatan Community Services

By: /s/
Les Saltzberg, Executive Director

DATED: 8/3/2022