

**SETTLEMENT AGREEMENT BETWEEN
THE UNITED STATES AND
THE CITY AND COUNTY OF DENVER**

I. Introduction

1. The Parties to this Settlement Agreement ("Agreement") are the United States and the City and County of Denver ("Denver") which operates the City and County of Denver Sheriff Department ("Sheriff Department").
2. This Agreement resolves a Complaint filed by the United States against the City and County of Denver under Title I of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C. §§ 12111, *et seq.*, and its implementing regulation, 29 C.F.R. Part 1630, in the United States District Court for the District of Colorado, *United States v. City and County of Denver*, (hereinafter "Civil Action").
3. To avoid the delay, uncertainty, inconvenience, and expense of litigation of these claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties have agreed to resolve this matter as set forth herein. The Parties agree that it is in their best interest, and the United States believes that it is in the public interest, to voluntarily enter into this Agreement.

II. Background

4. Denver is a person within the meaning of 42 U.S.C. § 12111(7) and 42 U.S.C. § 2000e(a), an employer within the meaning of 42 U.S.C. § 12111(5), and a covered entity within the meaning of 42 U.S.C. § 12111(2) and 29 C.F.R. § 1630.2.
5. Title I of the ADA, 42 U.S.C. §§ 12111 *et seq.*, and its implementing regulation, 29

C.F.R. Part 1630, mandate that covered employers, such as Denver, not discriminate against qualified individuals on the basis of disability in employment practices. 42 U.S.C. § 12112(a); 29 C.F.R. § 1630.4.

6. Pursuant to Title I of the ADA, an employer or other covered entity discriminates against an otherwise qualified individual on the basis of disability when it does not make “reasonable accommodations to the known physical or mental limitations” of the individual, unless the employer “can demonstrate that the accommodation would impose an undue hardship on the operation of the business” 42 U.S.C. § 12112(b)(5)(A); 29 C.F.R. § 1630.9(a).

7. Complainant is an individual with a disability within the meaning of 42 U.S.C. § 12102 and 29 C.F.R. § 1630.2, because he has type 1 diabetes (also known as insulin dependent diabetes), a physical impairment that substantially limits one or more major life activities, including the operations of the endocrine system, which is a major bodily function.

8. This matter was initiated by a charge filed by Complainant with the Equal Employment Opportunity Commission (“EEOC”) on June 29, 2015, alleging that the Sheriff Department discriminated against him when it failed to provide him with reasonable accommodations to enable him to manage his diabetes, disqualified him from his position, and terminated him on the basis of his disability.

9. The EEOC investigated the charge and found reasonable cause to believe that the Sheriff Department violated the ADA as alleged in the Complainant’s EEOC charge. After the EEOC’s attempts at conciliation failed, the EEOC referred the charge to the United States Department of Justice.

10. Complainant filed a second charge with the EEOC on December 14, 2016, alleging that,

after the Career Service Board ordered the Sheriff Department to reinstate him, the Sheriff Department failed to accommodate him when he returned to work in November 2016, and created a hostile work environment for him in retaliation for filing his earlier charge of discrimination.

11. The EEOC investigated Complainant's second charge of discrimination and found reasonable cause that the Sheriff Department discriminated against Complainant on the basis of his disability, and in retaliation for engaging in protected activity, by failing to engage in the interactive process and failing to accommodate him in his position of Deputy Sheriff in violation of the ADA. The EEOC further found that Denver's continued failure to accommodate Complainant resulted in his being removed and subsequently disqualified from his Deputy Sheriff position. After the EEOC's attempts at conciliation failed, the EEOC referred the second charge to the United States Department of Justice.

12. Based on the United States' investigation of both of Complainant's charges, the United States alleges in the Civil Action that Denver failed to provide Complainant a reasonable accommodation as required under 42 U.S.C. § 12112(b)(5)(A) and 29 C.F.R. § 1630.9(a) and unlawfully terminated him.

13. Denver and its Sheriff Department have fully cooperated with the investigation.

III. Injunctive Relief

14. General Nondiscrimination Obligation: The Sheriff Department, by and through its officials, agents, employees, and all persons in active concert or participation with the Sheriff Department in the performance of employment or personnel functions, shall not discriminate

against any individual on the basis of disability in violation of Title I of the ADA, 42 U.S.C. §§ 12111-12117. Discrimination under Title I of the ADA includes, among other things, failing to provide reasonable accommodations to the known physical or mental limitations of an otherwise qualified individual with a disability. 42 U.S.C. §§ 12112(a) and 12112(b)(5).

15. Interactive Process Regarding Reasonable Accommodations: The Sheriff Department will engage in an interactive process where a Sheriff Department employee requests a reasonable accommodation or where it has been advised (by Denver Health's Center for Occupational Safety and Health, an employee's physician or otherwise) that an employee needs a reasonable accommodation. The interactive process should, at a minimum, identify the limitations resulting from the disability and potential reasonable accommodations that may overcome those limitations. 29 C.F.R. § 1630.2(o)(3).

16. Written Policies, Practices, and Procedures: Denver will revise its reasonable accommodation policies, practices, and procedures for the Sheriff Department to comply with Title I of the ADA. Denver will ensure that its revised policies, practices, and procedures for the Sheriff Department:

- i. Provide its ADA Coordinators (and/or other personnel it designates as responsible for employee reasonable accommodations) with sufficient authority, access to information, and resources to conduct a meaningful interactive process;
- ii. Convene an interactive process meeting where appropriate or necessary to clarify the individual with a disability's needs, and identify the appropriate reasonable accommodation. The meeting may include HR personnel, the ADA Coordinator, Supervisory staff who have knowledge and authority to implement accommodations

(including, for the Sheriff Department, Command Staff), and the employee or applicant with a disability;

- iii. Preserve copies of all documents demonstrating good-faith efforts to identify and provide reasonable accommodations to Sheriff Department employees where requested and/or necessary; and
 - iv. Provide an effective and efficient process for receiving and responding to Sheriff Department employees' requests for reasonable accommodation and/or complaints of disability discrimination, including complaints alleging denial of reasonable accommodation requests.
17. To implement the policies, practices, and procedures described in paragraph 16:
- i. Within ninety (90) days of the Effective Date of this Agreement, Denver shall send its revised policies, practices, and procedures with respect to the Sheriff Department to the United States for approval, which shall not be unreasonably withheld. The United States shall review and provide comments on Denver's proposed revisions, and identify any additional provisions that should be included. Denver shall incorporate those comments.
 - ii. Within forty-five (45) days of the United States' final approval of revised policies, practices, and procedures, Denver shall implement the revised Denver Sheriff Department policies, practices, and procedures, including by distributing copies of these policies to: (1) all Denver employees in HR involved in evaluating or making decisions on reasonable accommodation requests with respect to Sheriff Department employees; and (2) all Sheriff Department employees. In addition, Denver will post a link to those policies and procedures on the Denver OHR website,

<https://www.denvergov.org/content/denvergov/en/office-of-human-resources.html>, as well as on the Sheriff Department's internal document system (Power DMS).

iii. For the duration of this Agreement, within thirty (30) days of the appointment or retention of an applicable Denver employee described in 17(ii) above, Denver shall provide that individual with copies of these policies.

18. Fitness-For-Duty Examinations for Incumbents. Denver will ensure that its use of fitness-for-duty examinations for Sheriff Department employees complies with the ADA including by revising its policies, practices, and procedures for the use of incumbent employee fitness-for-duty examinations. *See* 42 U.S.C. §§ 12112(d)(4); 29 C.F.R. §§ 1630.2(r), 1630.14(c), 1630.15. For example, when a fitness-for-duty examination for a Sheriff Department employee identifies a job restriction, or that a reasonable accommodation may be necessary, Denver policies shall trigger an interactive process. Within ninety (90) days of the Effective Date of this Agreement, Denver shall send its revised policies, practices, and procedures relating to the use of fitness-for-duty examinations for Sheriff Department employees in the reasonable accommodation process to the United States for approval, which shall not be unreasonably withheld.

19. Training. Denver shall provide a live, in-person training on Title I of the ADA ("ADA Trainings"), including its obligation to engage in an interactive process as necessary to determine appropriate reasonable accommodations to the known physical or mental impairments of otherwise qualified applicants or employees with disabilities. Denver will provide this training to all current Sheriff Department Command Staff: (1) for those with a rank of Captain and above, within 90 days of the Effective Date of this Agreement, and (2) for those with a rank of Sergeant, a live training will be provided within 180 days of the Effective Date of this Agreement; and

within ninety (90) days of the Effective Date of this Settlement Agreement Denver will provide this training to: (1) all employees working in supervisory positions in the Sheriff Department; (2) all Department of Public Safety Human Resource Staff; and (3) all Denver Human Resource Staff who may be involved in evaluating or facilitating requests for accommodation with respect to Sheriff Department employees, to the extent such training has not already been provided to Denver Human Resource Staff within 365 days of the Effective Date of this Agreement. In addition, Denver will train all employees starting in any position described above, or on extended leave, within thirty (30) days of their start date, or return to work. In providing these trainings, Denver shall:

- i. Maintain attendance logs reflecting the date of the training and sign-in sheets, along with the attendees' job titles.
- ii. Provide these initial trainings to the above-identified staff in-person/live. However, this in-person training may be videotaped for use at subsequent trainings.
- iii. Within thirty (30) days of the effective date of this Agreement, submit to the United States Department of Justice for approval, which shall not be unreasonably withheld, the trainer it seeks to use, including the individual's Curriculum Vitae.

20. Reporting Requirements. Six (6) months after the Effective Date of this Settlement Agreement, and annually thereafter during the term of this Settlement Agreement, Denver shall provide a written report to the United States regarding its efforts to comply with this Settlement Agreement. The written report shall include, for the preceding period:

- i. A specific acknowledgment that Denver has, for the instant reporting period, complied with the training requirements set forth in paragraph 19 above;

- ii. Notification of any request for reasonable accommodation made by any Sheriff Department employee, and a description of how Denver handled the request. Such notice will include, at a minimum, a description of the nature of the request, the name of the individual making the request, and all documentation possessed by Denver relevant to the handling of the request;
 - iii. Copies of the attendance logs maintained for ADA Trainings; and
 - iv. Notification of any written complaints, grievances, charges, or lawsuits under Title I of the ADA filed against the Sheriff Department after the Effective Date of this Agreement; and
 - v. Copies of any new or revised policies with respect to Title I of the ADA.
21. Nature of Agreement. This Agreement is being entered with the consent of the Parties, and shall not constitute and shall not be construed as an admission by Denver of a violation of the ADA, or any other law, rule or regulation.

IV. Injunctive Relief for Complainant

22. During the United States' investigation, Denver engaged in the interactive process with Complainant to determine what reasonable accommodations were necessary and appropriate. As a result of that process, Denver reinstated Complainant and reassigned him to a vacant position.
23. Denver has paid Complainant the backpay and benefits (including annual and sick leave) owed to him for the time period he was separated from work with the Sheriff Department after April 24, 2015. Denver shall be responsible for its portion of retroactive benefits into any retirement or other benefit system(s).

24. Complainant's seniority and retirement rights shall be determined as if his employment had continued on a full-time, uninterrupted, basis since his initial hire date.

V. Compensatory Relief

25. Within fourteen (14) days of the Effective Date of this Settlement Agreement, Denver shall offer, in writing, to pay Complainant a total monetary award of one hundred thousand dollars (\$100,000.00) for compensatory damages. This amount shall not be subject to withholding deductions, and Denver shall issue an IRS Form 1099 to Complainant for this amount.

26. Within fourteen (14) days of the effective date of this Settlement Agreement, Denver shall send this written offer to Complainant along with a copy of this signed Settlement Agreement and the attached Release of Claims Form. Denver shall send the United States a copy of this written offer and Release of Claims Form at the same time that they are sent to Complainant.

27. In order to accept the relief offered by Denver, Complainant must execute and return the Release of Claims Form to Denver within twenty-one (21) days of his receipt of Denver's letter and Release of Claims Form.

28. If Complainant accepts Denver's compensatory relief offer outlined in paragraph 25, Denver shall pay to Complainant, by overnight mail, the full amount of the total monetary award specified in paragraph 25 within sixty (60) days of its receipt of a Release of Claims Form signed by Complainant.

VI. Implementation

29. Delivery of Reporting Materials. All materials sent to the United States pursuant to this Agreement shall be sent by e-mail to undersigned counsel for the United States including a subject line referencing Denver Sheriff Department DJ 205-13-22.
30. Consideration. In consideration for the Agreement set forth above, the Parties will move jointly for dismissal of the Civil Action, as set forth in paragraph 31. The Parties agree and acknowledge that this consideration is adequate and sufficient.
31. Voluntary Dismissal. Within twenty-one (21) days of Denver complying with paragraphs 22-28, the Parties shall jointly move the Court for dismissal of the underlying Civil Action, subject to the terms concerning reinstatement as set forth in paragraph 33.
32. Enforcement. The United States may review compliance with this Agreement at any time. Denver will cooperate fully with the United States' efforts to monitor compliance with this Agreement, including but not limited to, providing the United States with reasonably requested information. If the United States believes that Denver has failed to comply adequately or in a timely manner with any requirement of this Agreement or that any requirement has been violated, the United States will notify Denver in writing and the Parties will attempt to resolve the issue in good faith.
33. Breach: Should Denver, during the term of the Agreement, breach any provision of this Agreement, the Parties agree that the United States may move to restore the present Civil Action to the active docket of this Court. If the United States makes a claim of breach, Denver consents to and agrees not to contest the United States' motion to restore the present Civil Action to the Court's active docket. Alternatively, the United States may bring a civil action for breach of this

Agreement or any provision thereof, or for a violation of Title I of the ADA, in the United States District Court for the District of Colorado. The United States may in such action seek to have the Court impose any remedy authorized at law or equity. Before taking these steps, the United States shall provide Denver notice of any breach in writing and shall afford Denver thirty (30) days from the date of mailing to cure the default.

34. Jurisdiction and Venue. The United States District Court for the District of Colorado shall have jurisdiction and be a proper venue for disputes concerning this Agreement. Denver consents to and agrees not to contest venue or the exercise of personal jurisdiction over Denver by this Court.

35. Severability. If any term of this Agreement is determined by any court to be unenforceable, the other terms of this Agreement shall nonetheless remain in full force and effect.

36. Non-Waiver. Failure by the United States to enforce any provision or deadline in this Agreement shall not be construed as a waiver of the right of the United States to enforce any deadline or provision of this Agreement.

37. Extensions. Any time limits for performance imposed by this Agreement may be extended only by the mutual written consent of the Parties. Denver shall notify the United States at least ten (10) business days before any deadline of an anticipated inability to meet the deadline and the reason(s) why, and shall request an extension of time to a specific date. The United States shall not unreasonably withhold consent to a request for an extension of time made in good faith.

38. Successor Liability. This Agreement shall be binding upon Denver, its officers, employees, contractors, successors, assigns, and any other person under the authority or control of Denver.

39. Authority. A signatory to this document in a representative capacity for Denver represents that he is authorized to bind Denver and its Sheriff Department to this Agreement.

40. Entire Agreement. This Agreement constitutes the entire agreement between the United States and Denver on the matters raised herein and no other statement, promise, or agreement, either written or oral, made by any party or agents of any party, that is not contained in this written Agreement, including its attachments, shall be enforceable.

41. Limitation. This Agreement is limited to resolving claims under Title I of the ADA related to the charges identified in paragraphs 8 and 10 above. Nothing in this Agreement relates to other provisions of the ADA or affects Denver's obligations to comply with any other federal, state, or local statutory, administrative, regulatory, or common law obligations, including those relating to nondiscrimination against individuals with disabilities. This Agreement does not affect Denver's continuing responsibility to comply with all aspects of the ADA.

42. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same Agreement, notwithstanding that each Party is not a signatory to the original or the same counterpart.

43. Effective Date. The Effective Date of this Agreement ("Effective Date") is the date of the last signature below. Unless otherwise specified, all time periods designated for an action run from the Effective Date.

44. Term. The duration of this Agreement will be three (3) years from the Effective Date.

45. Publicity. This Agreement and any amendment hereto shall be public documents. A copy of this Agreement or any information contained herein may be made available to any person, and Denver shall provide a copy of this Agreement to any person upon request.

46. Costs and Fees. The United States and Denver will bear the cost of their own fees and expenses incurred in connection with this Agreement.

47. The Parties agree that, as of the Effective Date of this Agreement, litigation is not "reasonably foreseeable" concerning the matter described in paragraph 2. To the extent that either party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matter described in paragraph 2, the party is no longer required to maintain such a litigation hold. Nothing in this paragraph relieves either party of any other obligations imposed by this Agreement.

AGREED AND CONSENTED TO:

FOR THE UNITED STATES

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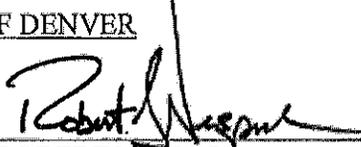
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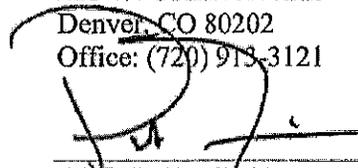
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FOR THE CITY AND COUNTY OF DENVER

Date: May 15, 2018



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