

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (the “Agreement”) is made by and among Shawn Hardman, Barry Crews, Danielle Zolna, and Justin Hamilton (collectively “Plaintiffs”), the American Civil Liberties Union Foundation of Colorado (“ACLU”), and the City of Colorado Springs. Plaintiffs, the ACLU, and the City of Colorado Springs shall be referred to collectively as the “Parties,” except where otherwise specified.

### RECITALS

WHEREAS on October 22, 2015, the ACLU sent a letter to the City of Colorado Springs criticizing certain practices of its Municipal Court, such as sentencing defendants to jail for offenses that were punishable by a fine only, converting defendants’ fines into jail sentences when defendants were too poor to pay, and sentencing indigent defendants to jail without having offered them a court-appointed attorney; and

WHEREAS the ACLU represents Plaintiffs in their claims against the City of Colorado Springs seeking recompense for injury due to the Municipal Court’s aforementioned practices (the “Plaintiffs’ Claims”); and

WHEREAS attorneys employed by the ACLU have expended time and incurred costs in pursuing claims against the City of Colorado Springs based on the Municipal Court’s aforementioned practices and seek recompense for such attorneys’ fees and costs (the “ACLU’s Claims”); and

WHEREAS the Parties desire to settle and resolve any and all of Plaintiffs’ Claims and the ACLU’s Claims in this matter as set forth below;

NOW THEREFORE, in consideration of the promises and releases contained herein, it is agreed as follows:

1. **Prospective changes to be implemented by the City of Colorado Springs.**
  - a. By April 30, 2016, the City of Colorado Springs will complete the following actions:
    - i. Repeal or amend all portions of the Code of the City of Colorado Springs 2001, as amended, that contemplate, facilitate, and/or authorize the municipal court’s practice of converting fines into jail time at a daily rate, including but not necessarily limited to Sections 11.2.103(I) and 11.3.106(A) and (B).

- ii. Mandate that all judges of the Colorado Springs Municipal Court permanently cease imposing “pay or serve” sentences, or any other sentence that converts fines and/or costs to jail time.
  - iii. Mandate that all judges of the Colorado Springs Municipal Court permanently cease imposing jail time, including by converting fines and/or costs into jail time, for any offense the Colorado Springs Municipal Code identifies as non-jailable.
  - iv. Mandate that all judges of the Colorado Springs Municipal Court will not incarcerate anyone for or because of failure to pay a fine, costs, or any other monetary amount absent: (1) a hearing on indigency, (2) a judicial determination that the individual is in contempt of court for willful failure to comply with the court’s order to pay, and (3) the provision of all procedural protections, including the right to counsel, mandated in Colorado law, Supreme Court precedent and C.R.S. § 18-1.3-702.
  - v. Provide a detailed written account to the ACLU of all steps taken to effectuate paragraphs (a)(i)-(iv) above.
- b. By July 30, 2016, provide training to all judges, prosecutors, and defense attorneys contracted by the City of Colorado Springs regarding paragraphs (a)(ii)-(iv) above.
  - c. For two years from the date of execution of this Agreement, provide written training materials to all newly hired judges, prosecutors and defense attorneys regarding paragraphs (a)(ii) –(iv) above, within one week of start date.
2. **Settlement amounts to Plaintiffs.** The City of Colorado Springs agrees to issue each Plaintiff a check, delivered to the ACLU Foundation of Colorado within fourteen (14) days of execution of this Agreement as follows:
- a. One check payable to Shawn Hardman in the amount \$11,250.00;
  - b. One check payable to Barry Crews in the amount \$1,500.00;
  - c. One check payable to ACLU Foundation of Colorado in the amount \$500.00. The ACLU will distribute \$125.00 to Danielle Zolna and \$375.00 to Justin Hamilton.

3. **Settlement fund for non-parties.**

- a. The City of Colorado Springs agrees to make a total of \$37,625.00 available to compensate persons, other than the Plaintiffs, whom the City of Colorado Springs jailed solely for a non-jailable offense at any time since January 1, 2014. These persons are hereinafter termed “Eligible Individuals.” The complete list of these Eligible Individuals appears in Attachment A [Compensable Days Chart].
- b. The City of Colorado Springs agrees to make compensation available to Eligible Individuals in the amounts listed in Attachment A [Compensable Days Chart], which reflects \$125 of compensation per day of incarceration solely for a non-jailable offense.<sup>1</sup>
- c. The City of Colorado Springs agrees to provide the notice of availability of settlement money contained in Attachment B [Notice] to Eligible Individuals by following the notice process described in Attachment C [Notice Process].
- d. The Parties agree that Eligible Individuals are entitled to claim their settlement proceeds by following the process described in Attachment D [Claim Process].
- e. The Parties agree that Eligible Individuals are entitled to collect the settlement amounts described herein so long as they have requested such funds from the City by December 30, 2016 or within two years of the incarceration date for which they are due compensation, whichever is later in time. Attachment A [Compensable Days Chart] lists the dates by which each Eligible Individual must have requested settlement funds from the City, either in writing or by initiating the process described in Attachment D [Claims Process], in order to be entitled to compensation.
- f. The Parties agree that Eligible Individuals who wish to collect settlement money available pursuant to this Agreement must execute a release of claims contained in Attachment E [Release of Claims], and a W-9 Form and Receipt contained in Attachment D [Claims Process].
- g. Eligible Individuals are not parties to this Agreement, are not clients of the ACLU, and do not have any obligation to accept the offered compensation or sign a release of claims.**

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<sup>1</sup> Compensable days do not include any periods of incarceration during which an individual was held concurrently (either pretrial or post-conviction) on a jailable offense or on a failure-to-appear warrant waiting for post-arrest judicial appearance.

4. **Attorneys' Fee and Cost payment to ACLU.** The City of Colorado Springs agrees to issue the ACLU Foundation of Colorado a check, delivered to the ACLU within fourteen (14) days of execution of this Agreement, in the amount of \$52,159.18.
5. **Release by Plaintiffs.** In exchange for consideration described in paragraphs 1-4 of this Agreement, the receipt and sufficiency of which are hereby acknowledged, Plaintiffs hereby release and forever discharge the City of Colorado Springs, Colorado Springs Municipal Court, and any of their current or former entities, elected officials, officers, employers, successors, assigns, attorneys, employees, agents, and servants (hereinafter "City"), from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever stemming from or related to injuries, known and unknown, to person, property or rights, which have resulted or may in the future develop from any sentence imposed for conviction of a non-jailable offense under the Colorado Springs City Code prior to the date this Agreement was executed.
6. **Release by ACLU.** In exchange for consideration described in paragraphs 1-4 of this Agreement, the receipt and sufficiency of which are hereby acknowledged, ACLU hereby releases and forever discharges the City from any and all claims for attorneys' fees and costs stemming from legal work related to any sentence imposed, prior to the date this Agreement is executed, for conviction of a non-jailable offense under the Colorado Springs City Code.
7. **Warranty by Plaintiffs.** Plaintiffs hereby warrant that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise, adjustment and settlement of any and all claims, disputed or otherwise, on account of the alleged injuries and damages stemming from or related to any sentence imposed for conviction of a non-jailable offense under the Colorado Springs City Code, for the express purpose of precluding forever any further or additional claims arising out of the aforesaid injuries or damages, and after having the opportunity to have the same explained by counsel. Plaintiffs further warrant that no other person, firm, or corporation has received any assignment, subrogation, lien, or other right of substitution to the claims made and released herein by Plaintiffs, and in the event that the City is subjected to further claims by any person, firm, or corporation under any actual or purported lien or right of substitution, Plaintiffs will indemnify City for any judgment obtained by reason of such purported lien or right of substitution. Plaintiffs understand and agree that they are solely responsible for all tax obligations, including all

reporting and payment obligations, that may arise as a consequence of this Agreement and the monetary consideration provided to them pursuant to it.

8. **Warranty by ACLU.** ACLU hereby warrants that the terms of this Agreement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise, adjustment and settlement of any and all claims, disputed or otherwise, to attorneys' fees or costs stemming from or related to any sentence imposed, prior to the date this Agreement is executed, for conviction of a non-jailable offense under the Colorado Springs City Code, for the express purpose of precluding forever any further or additional claims for attorney's fees or costs arising out of the aforesaid injuries or damages, and after having the opportunity to have the same explained by counsel. ACLU further warrants that no other person, firm, or corporation has received any assignment, subrogation, lien, or other right of substitution to the claims made and released herein by ACLU, and in the event that the City is subjected to further claims by any person, firm, or corporation under any actual or purported lien or right of substitution, ACLU will indemnify City for any judgment obtained by reason of such purported lien or right of substitution. ACLU understands and agrees that it is solely responsible for all tax obligations, including all reporting and payment obligations, that may arise as a consequence of this Agreement and the monetary consideration provided to it pursuant to it.
  
9. **Confidentiality.** The Parties agree that it is in the best interest of Eligible Individuals to avoid publication of the names of Eligible Individuals. Therefore, Plaintiffs and ACLU agree that they will not disclose, disseminate, or publicize Attachment A [Compensable Days Chart], or the Last Known Address List on pp. 4-5 of Attachment C, to any person, corporation, association, government agency, or other entity, other than their attorneys, who shall also be bound by this confidentiality provision. Notwithstanding the foregoing, Plaintiffs and the ACLU may provide the list of the names of Eligible Individuals contained in Attachment F [List of Eligible Individuals], to homeless service providers in Colorado Springs without violating this Agreement, so long as the homeless service provider agrees not to disclose, disseminate or publicize the list by signing Attachment G [Acknowledgment of Confidentiality].
  
10. **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument representing this Agreement of the Parties to this Agreement.
  
11. **Attorneys' Fees and Costs in the case of breach.** The Parties agree that if a material breach of any provision of this Agreement occurs and enforcement action is taken

concerning the Settlement, then, in addition to any other relief, the prevailing Party shall be reimbursed by the non-prevailing Party for all of its reasonable attorneys' fees and costs incurred in any such enforcement action as either stipulated by the parties or as awarded by the court.

12. **Attachments.** All attachments to this Agreement are incorporated into this Agreement and are material terms of this Agreement.
13. **Supersede.** This Agreement, once executed, including all attachments to this Agreement, contain the entire understanding of the parties hereto with respect to its subject matter and supersedes all prior oral and written understandings and agreements between the parties. This Agreement is not intended to be an admission of any fact or issue alleged by any party relating to the claims and, with the exception of a claim related to breach or enforcement of this Agreement, this Agreement is not intended to be evidence in any other matter.

*[Signature page follows.]*

IN WITNESS OF OUR AGREEMENT, the Parties have executed this Agreement on the date(s) indicated below.

  
Shawn Hardman

Date: April 27, 2016

\_\_\_\_\_  
Barry Crews

Date: \_\_\_\_\_

\_\_\_\_\_  
Danielle Zolna

Date: \_\_\_\_\_

\_\_\_\_\_  
Justin Hamilton

Date: \_\_\_\_\_

Approved as to Form by Counsel

\_\_\_\_\_  
Rebecca T. Wallace  
Mark Silverstein  
American Civil Liberties Union Foundation  
of Colorado

Date: \_\_\_\_\_

IN WITNESS OF OUR AGREEMENT, the Parties have executed this Agreement on the date(s) indicated below.

Shawn Hardman

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Date: \_\_\_\_\_

Barry Crews

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Date: 4/26/16

Danielle Zolna

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Date: 4-26-16

Justin Hamilton

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Date: 4-26-16

Approved as to Form by Counsel


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Rebecca T. Wallace  
Mark Silverstein  
American Civil Liberties Union Foundation  
of Colorado

Date: 4/26/16

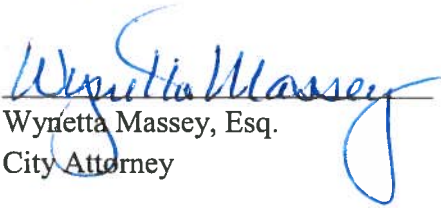


The City of Colorado Springs

By:   
John W. Suthers  
Mayor

Date signed: May 04, 2016

Approved as to form:

  
Wynetta Massey, Esq.  
City Attorney