

## AGENDA ITEM SUMMARY

<b>Meeting Date:</b>	JULY 17, 2019
<b>Agenda Category:</b>	CONSENT BUSINESS
<b>Agenda Item Number:</b>	10 D
<b>Subject:</b>	PROPOSED SETTLEMENT AGREEMENT – GOMEZ V. CITY OF ROCKLEDGE (CITY MANAGER)

<b>Attachments:</b>	Memorandum; agreement
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<b>Staff Contact:</b>	City Manager Fettrow
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<b>Background:</b>	<p>Andres Gomez, from Miami, recently sued the City for ADA non-compliance with certain budget-related documents on the City's website. Although attempts were made to obtain additional information from the complainant, no further details were ever received. The total proposed settlement amount of \$8,500.00 will be paid by the Florida Municipal Insurance Trust (FMIT), and the City has a \$0.00 deductible. The settlement agreement also contains a provision that all PDF content on the City's website must be fully ADA compliant by July 1, 2022.</p>
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<b>Reference:</b>	
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<b>Suggested Action:</b>	Approve the settlement agreement in the amount of \$8,500.00
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# Memorandum

**To:** Dr. Fettrow  
**CC:** Corey Harris  
**From:** Matthew D. Trine  
**Date:** 07/17/2019  
**Re:** Proposed Settlement – Gomez, Andres, et al. v. City of Rockledge

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*approved to go  
to Council.  
Dr. Fettrow  
7/8/2019*

The City is in receipt of a proposed settlement agreement in regards to the above case. The settlement is a final, full, and complete settlement, for which the City is insured. The total settlement amount is \$8,500, for which the City has a \$0 deductible, resulting in no additional cost to the City. However, the settlement agreement also provides for prospective compliance with the accessibility of PDF content on the City's website beginning on July 1, 2022. Furthermore, the agreement provides for no admission of fault by the City of Rockledge. It is staff's recommendation that the Council approve this settlement agreement.

Respectfully,



Matthew D. Trine  
Assistant City Manager  
Director Finance & Risk Management

## SETTLEMENT AGREEMENT AND RELEASE

Plaintiffs allege that Andres Gomez is visually impaired and that certain content on Defendant's website, [www.cityofrockledge.org](http://www.cityofrockledge.org), is not accessible to visually-impaired individuals who use screen reader software (the "allegations"). As a result, Plaintiffs claim they have been denied access to certain content on Defendant's website. Plaintiffs filed a lawsuit asserting a claim under Title II of the Americans with Disabilities Act of 1990 and under Section 505 of the Rehabilitation Act of 1973 through which Section 504 of the Rehabilitation Act of 1973 is enforced. Defendant and Insurer have denied and continue to deny any wrongdoing and have denied and continue to deny any liability for the allegations, but desire to enter into a compromise settlement of the Lawsuit in good faith, to avoid future litigation and attendant costs.

Therefore, for valuable consideration, in order to resolve and settle finally, fully and completely all matters or disputes that now exist or may exist between them, the parties hereby enter into this Settlement Agreement and Release (also referred to as the "Release" or "Settlement Agreement") and hereby agree as follows:

### Definitions

1. **Plaintiffs:** "Plaintiffs" shall mean Andres Gomez and Open Access for All, Inc.
2. **Defendant:** "Defendant" shall mean the City of Rockledge, Florida; its past, present, and future elected officials, employees, agents, attorneys, representatives, council members, officers, directors, administrators, and managers, all individually and in their official capacities.
3. **Insurer:** "Insurer" shall include the insurers and third-party administrators of the Defendant, including the Florida Municipal Insurance Trust and the Florida League of Cities; as well as their respective agents, officers, officials, employees, representatives, attorneys, successors, assigns, and any other entity or person in privity with jointly or severally.
4. **The Lawsuit:** The "Lawsuit" is defined as the lawsuit styled *Open Access for All, Inc. and Andres Gomez v. City of Rockledge, Florida*, Case Number 6:19-cv-00558-GAP-DCI, filed in the United States District Court for the Middle District of Florida, the factual allegations and circumstances underlying the lawsuit, and any and all potential legal claims which could have been asserted in the proceeding against Defendant.

### Terms and Releases

1. **Settlement Amount.** Defendant, by and through the Insurer, will issue to Plaintiffs and their attorneys settlement proceeds in the total amount of Eight Thousand Five Hundred Dollars(\$8,500.00). The settlement proceeds are inclusive of fees and costs. Neither party shall be construed to be a prevailing party for the purpose of a court award of fees and

costs. The proceeds will become due within a reasonable time upon execution of this Settlement Agreement and Release.

The settlement amount fully satisfies each and every claim in the Lawsuit, and fully satisfies any and all claims for damages, attorneys' fees, costs, and expenses which Plaintiffs or Plaintiffs' attorneys may have in connection with the Lawsuit

2. **Dismissal with Prejudice:** Within one business day of the execution of this Settlement Agreement and Release, the parties will file a Joint Stipulation of Dismissal with Prejudice of the Lawsuit. The Joint Stipulation of Dismissal with Prejudice will dismiss the Lawsuit with prejudice and will state that each party will bear its own attorneys' fees and costs.

3. **Release and Indemnification by Plaintiffs:** In exchange for and in consideration of the obligations and rights set forth herein, Plaintiffs release, acquit and forever discharge the Defendant and the Insurer, of and from any and all claims, appeals, causes of action, suits, debts, dues, sums of money, damages, claims for attorney's fees, judgments, and demands whatsoever, in law or in equity, which Plaintiffs ever had, now have, or hereinafter may have against Defendant and Insurer, including without limitation any and all claims that were or could have been brought in the Lawsuit. This Release includes any claims for compensatory damages, injunctive relief, declaratory relief, punitive damages, interest, costs, attorney's fees, civil rights violations, violations of Title II of the Americans with Disabilities Act, violations of Section 504 of the Rehabilitation Act, claims brought pursuant to Section 505 of the Rehabilitation Act, claims brought under 42 U.S.C. § 1983, claims for violation of the Fourteenth Amendment to the United States Constitution, federal claims, state claims, statutory claims, common law claims, or any other claim or damage of any nature whatsoever.

Plaintiffs agree to indemnify, protect, and save harmless Defendant and Insurer from all judgments, any and all liens, costs, and expenses whatsoever arising on account of any action, claim or demand which may be brought hereafter by any person or entity, on account of any injury, loss or damages resulting from the allegations or the Lawsuit. Plaintiffs further agree that at the time of the execution of this Settlement Agreement and Release there are not outstanding claims by way of reimbursement or subrogation by insurance carriers, medical providers, or other entities for amounts paid on behalf of Plaintiffs by reason of the allegations or Lawsuit. Alternatively, if there are outstanding claims, Plaintiffs will fully satisfy and resolve those claims and will indemnify and hold Defendant and Insurer harmless from such claims and will satisfy any such outstanding claims which may be outstanding at present time, including but not limited to, any hospital liens, medical liens, insurance liens, attorney liens, or liens held by Medicare, Medicaid, or any other federal or state agency.

4. **Accessibility of PDF Content on [www.cityofrockledge.org](http://www.cityofrockledge.org).** Beginning July 1, 2022, Defendant will begin to publish any new Portable Document Format (PDF) content on [www.cityofrockledge.org](http://www.cityofrockledge.org) so that such new PDF content is accessible to individuals who are visually-impaired. Such new PDF content will conform to the existing WCAG 2.0 Level A guidelines for accessibility.

Defendant is not obligated to remediate PDF content that already exists on [www.cityofrockledge.org](http://www.cityofrockledge.org) before July 1, 2022.

Regardless of any other provision of this Settlement Agreement, Defendant is not obligated by this Settlement Agreement to make any record, document, electronic file, or other material (including, without limitation, third-party submissions to Defendant, development-related applications and supporting documents or materials, site plans, development plans, maps, surveys, drawings, schematics, documents with handwriting, and hard copy documents scanned or aggregated into PDF) accessible to individuals who are visually-impaired if such action is technically infeasible or unreasonably costly as reasonably determined by the City.

If any record, document, electronic file or other material published on [www.cityofrockledge.org](http://www.cityofrockledge.org) is not compatible with screen reader software and is required to be compatible, the City may as an alternative to making a particular record, document, electronic file or other material compatible with screen reader software, offer to read such document to a visually-impaired individual within 5 business days of a request.

Defendant is not obligated by this Settlement Agreement to make accessible to individuals who are visually-impaired any web page or web content on any domain other than [www.cityofrockledge.org](http://www.cityofrockledge.org), regardless of whether Defendant provides any link from [www.cityofrockledge.org](http://www.cityofrockledge.org) to any such other domain.

Defendant is not obligated by this Settlement Agreement to make accessible to individuals who are visually-impaired any document not created or posted by Defendant.

Should the United States promulgate any regulation or enact legislation requiring that state and local governments make web content accessible to visually-impaired individuals, Defendant shall not be required, as of the effective date of such regulation or legislation, by this Settlement Agreement to make any content on [www.cityofrockledge.org](http://www.cityofrockledge.org) accessible in any manner or to any degree greater than that which may be required by such regulation or legislation.

5. **Resolution of Disputes.** If any of the parties hereto claim that any portion of this Settlement Agreement and Release have been violated (“breach”), the party alleging the breach will give written notice (including reasonable particulars), of such violation to the party alleged to be in breach. The party alleged to be in breach of the settlement agreement will respond to such written notice of breach no later than sixty calendar (60) days after (“Cure Period”). If the parties are unable to reach a mutually acceptable resolution during the Cure Period, or an extension thereof, the party alleging a breach of this agreement may seek enforcement of compliance with this Settlement Agreement.

6. **No Admission of Fault:** By entering into this Settlement Agreement, Defendant does not admit any liability to the Plaintiffs or to any other person arising out of any claims asserted, or that could have been asserted in the Lawsuit, and expressly denies any and all such liability. Defendant enters into this Settlement Agreement at the advice of and in cooperation with the Insurer, to avoid further legal expenses and costs, disruption to its operations, and to otherwise avoid the vexations of litigation. Defendant and Insurer specifically deny liability for the claims brought by Plaintiffs and deny any wrongdoing whatsoever.

7. **Severability:** Should a court or other competent authority render invalid any provision of this Settlement Agreement and Release, the parties agree that this shall not in any manner affect the enforceability of the other provisions.

8. **Voluntariness:** Plaintiffs affirm and acknowledge that they have read the foregoing Settlement Agreement and Release, consulted with their attorney regarding its terms, that they fully understand the meaning of the terms, and that the Release is a voluntary, full and final compromise, release and settlement of all claims, demands, injuries, damages, actions or causes of action, known or unknown, against Defendant.

9. **Neutral Interpretation:** Any controversy over the construction of this Settlement Agreement and Release shall be decided neutrally and without regard to events of authorship or negotiation.

10. **Counterparts.** This Settlement Agreement and Release may be executed in counterparts and each executed counterpart shall be effective as the original. All faxed, emailed, or electronic signatures affirming this Settlement Agreement and Release constitute an original signature.

11. **Modifications or Amendments.** Modifications or amendments to this Settlement Agreement and Release must be in writing and executed by the parties.

12. **Final Settlement:** This Settlement Agreement and Release constitutes the complete understanding of the parties hereto and supersedes any and all prior agreements, promises, representations, or inducements, whether oral or written, concerning its subject matter. No promises or agreements made subsequent to the execution of this Settlement Agreement and Release by the parties shall be binding unless reduced to writing and signed by authorized representative of the parties.

13. **Signatures.** This Settlement Agreement and Release becomes effective upon the execution below by Plaintiffs and Defendant.

For Andres Gomez:

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Andres Gomes

For Open Access for All, Inc.

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

For the City of Rockledge, Florida

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