



**CITY OF BELLE ISLE, FLORIDA
CITY COUNCIL AGENDA ITEM COVER SHEET**

Meeting Date: February 19, 2019

To: Honorable Mayor and City Council Members

From: B. Francis, City Manager

Subject: Settlement Agreement with Juan Carlos Gil

Background: In November 2018, the City was notified it was being sued by Juan Carlos Gil. The complaint was that Mr. Gil, who is determined to be legally blind, could not successfully navigate our website or review any records from our website because our computer system could not translate written text to voice; therefore our website is not considered ADA compliant. The City contacted the City's insurance company and the insurance company negotiated a settlement agreement with Mr. Gil's attorney.

According to the FLC attorney, Juan Carlos Gil has filed about 219 lawsuits in federal court. Of those, about 32 have been against municipalities; 17 have been against counties; a couple have been against other constitutional officers (sheriffs, clerks, etc.); and the rest have been against businesses. There is another plaintiff (Joel Price) that has sued multiple municipalities and counties with the same lawyer (Scott Dinin).

Since this time, the City has contacted other municipalities and companies that specialize in ADA compliance.

Staff Recommendation: Approve the Settlement Agreement.

Suggested Motion: I move we approve the Settlement Agreement with Juan Carlos Gil and have the Mayor sign the Agreement.

Alternatives: Do not approve and go to court.

Fiscal Impact: \$8,000 (paid by FLIT)

Attachments: Settlement Agreement

SETTLEMENT AGREEMENT AND RELEASE

Plaintiff alleges that he is visually impaired and that certain content on Defendant's website, www.cityofbelleislefl.org, is not accessible to visually-impaired individuals who use screen reader software (the "allegations"). As a result, Plaintiff claims he has been denied access to certain content on Defendant's website. Plaintiff 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. **Plaintiff:** "Plaintiff" shall mean Juan Carlos Gil, as well as his executors, administrators, personal representatives, successors and assigns, and any other person in privity with him.
2. **Defendant:** "Defendant" shall mean the City of Belle Isle, 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 *Juan Carlos Gil v. City of Belle Isle, Florida*, Case Number 6:18-cv-1789-JA-TBS, 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 Plaintiff and his attorneys settlement proceeds in the total amount of Eight Thousand Dollars (\$8,000.00). 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 Plaintiff or Plaintiff's 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 Plaintiff:** In exchange for and in consideration of the obligations and rights set forth herein, Plaintiff releases, acquits and forever discharges 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 Plaintiff ever had, now has, 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.

Plaintiff agrees 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. Plaintiff further agrees 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 Plaintiff by reason of the allegations or Lawsuit. Alternatively, if there are outstanding claims, Plaintiff 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.cityofbelleislefl.org.** Beginning March 1, 2021, Defendant will begin to publish any new Portable Document Format (PDF) content on www.cityofbelleislefl.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.cityofbelleislefl.org before March 1, 2021.

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.cityofbelleislefl.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. The offer to read may be in the form of a statement offering a reader on the website's accessibility statement.

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.cityofbelleislefl.org, regardless of whether Defendant provides any link from www.cityofbelleislefl.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.cityofbelleislefl.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 Plaintiff 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 Plaintiff 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:** Plaintiff affirms and acknowledges that he has read the foregoing Settlement Agreement and Release, consulted with his attorney regarding its terms, that he fully understands 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 Plaintiff and Defendant.

For Juan Carlos Gil:

By: 
Juan Carlos Gil

Date: 2-8-19

For the City of Belle Isle

Date: _____

By: _____