

RESOLUTION NO. 19-08-62

A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING AND AUTHORIZING THE PROPOSED SETTLEMENT AGREEMENT IN THE MATTER OF JUAN CARLOS GIL VS. ISLAMORADA, VILLAGE OF ISLANDS; AUTHORIZING THE APPROPRIATE VILLAGE OFFICIALS TO EXECUTE THE SETTLEMENT AGREEMENT AND TO TAKE ALL ACTIONS NECESSARY TO IMPLEMENT THE TERMS AND CONDITIONS OF THE SETTLEMENT AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, Juan Carlos Gil (the "Plaintiff"), through his legal counsel, has presented a proposed settlement in the lawsuit for declaratory and injunctive relief under Title II of the Americans with Disabilities Act and the Rehabilitation Act, filed in United States District Court for the Southern District of Florida, Civil Action No. 19-cv-10036-KMM entitled Juan Carlos Gil v. Islamorada, Village of Islands (the "Matter") for consideration and acceptance by Islamorada, Village of Islands (the "Village"); and

WHEREAS, the Village Council of Islamorada, Village of Islands, Florida, (the "Village Council") desires to consider settlement of the Matter by a proposed Settlement Agreement, a copy of which is attached hereto as Exhibit "A" (the "Settlement Agreement"); and

WHEREAS, the Village Council finds that settlement of the Matter is in the best interest of the Village.

NOW THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:

Section 1. Recitals. The above Recitals are true and correct and are incorporated herein by this reference.

Section 2. Approval of the Settlement Agreement. The Village Council hereby approves the proposed Settlement Agreement in the matter of Juan Carlos Gil vs. Islamorada, Village of Islands, a copy of which is attached hereto as Exhibit "A", together with such non-material changes acceptable to the Village Attorney.

Section 3. Authorization of Village Officials. The appropriate Village officials including the Mayor, Village Manager and Village Attorney are authorized to execute and deliver the Settlement Agreement and any additional documents pertaining to the Settlement Agreement, and to take all action necessary to implement the terms and conditions of the Settlement Agreement.

Section 4. Authorization of Fund Expenditure. The Village Manager is authorized to expend funds to implement the terms and conditions of the Settlement Agreement attached hereto as Exhibit "A".

Section 5. Effective Date. This Resolution shall be effective immediately upon its adoption.

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Motion to adopt by Councilman Jim Mooney, second by Councilman Ken Davis.

FINAL VOTE AT ADOPTION

VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS

| | |
|---------------------------|--------|
| Mayor Deb Gillis | YES |
| Vice Mayor Mike Forster | YES |
| Councilman Ken Davis | YES |
| Councilwoman Cheryl Meads | ABSENT |
| Councilman Jim Mooney | YES |

PASSED AND ADOPTED ON THIS 8TH DAY OF AUGUST, 2019.



DEB GILLIS, MAYOR

ATTEST:



KELLY TOTH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY
FOR THE USE AND BENEFIT OF ISLAMORADA,
VILLAGE OF ISLANDS ONLY:



ROGET V. BRYAN, VILLAGE ATTORNEY

SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Settlement Agreement and General Release ("Agreement") is entered by and between Plaintiffs, ("Plaintiffs"), and Defendant, Village of Islamorada (the "Village"). The Village and Plaintiffs are collectively referred to as the "Parties."

RECITALS

A. Plaintiff initiated a lawsuit against the Village in the United States District Court for the Southern District of Florida (the "Court"), Civil Action No. 19-cv-10036-KMM entitled, Juan Carlos Gil v. Village of Islamorada, Florida (the "Village Lawsuit") claiming that the Village's website www.islamorada.fl.us (the "Village Website"), contains barriers that prevent the full and equal use of the Village Website by persons who are visually impaired, in violation of Title II of the Americans with Disabilities Act, 42 U.S.C. ~~cc~~ 12131 et seq. ("Title II of the ADA") and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. ~~cc~~ 794 ("Rehabilitation Act"); and

B. The Village disputes the allegations in the Village Lawsuit and expressly denies that the Village Website violates Title II of the ADA, the Rehabilitation Act, or any other comparable regulation or statute; and

C. By entering into this Agreement, the Village does not admit wrongdoing or liability; however, to avoid further costs, burdens, and distractions of litigation, the Parties now desire to settle fully and finally any and all claims alleged or that could have been alleged in a complaint filed in any legal, judicial, administrative, or regulatory forum;

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following terms and conditions as a full and complete settlement of the Village Lawsuit and any and all claims related to the allegations made

in the Village Lawsuit.

AGREEMENT AND GENERAL RELEASE

1. **Recitals.** The above stated recitals are true and incorporated herein by reference.
2. **Effective Date.** The Effective Date of this Agreement is the date the last party (here, the Village) signs the Agreement.
3. **Dismissal with Prejudice.** Within seven (7) days from the Effective Date of this Agreement, Plaintiff shall file with the Court a stipulation of dismissal of the Village Lawsuit with prejudice. The stipulation will request that the Court dismiss the Village Lawsuit with prejudice and retain jurisdiction for two years to enforce this Settlement Agreement.
4. **General Release.** Plaintiff, on behalf of himself and any of Plaintiff's agents, employees, family members, representatives, assigns, heirs, executors, trustees, partners, along with anyone claiming by or through them (collectively, the "Releasing Parties"), hereby releases, acquits, and forever discharges the Village, and all current and former Village agents, officers, and employees (collectively, "Released Parties"), from any and all cause of action, claims, demands, liabilities, debts, judgments, expenses, grievances, damages, appeals, and charges ("Claims") that Releasing Parties have, or may have, against the Released Parties that arose at any time prior to the Effective Date of this Agreement whether or not the Releasing Parties have asserted such Claims. This release includes, but is not limited to reimbursement of attorney's fees, costs, expert fees, litigation expenses, and damages including any compensatory, punitive, and any other damages, if any, and all other legal responsibilities arising from or relating to the allegations made in the Village Lawsuit and Plaintiff's alleged visits to the Village Website, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, real or imaginary, or actual or potential pursuant to Title II of the ADA, the Rehabilitation Act, or equivalent federal, state, or

local law, including any violation of any federal, state, or local law regarding acts or omissions by the Released Parties prior to the Effective Date of this Agreement.

5. **Attorney's Fees, Costs, Expenses, and Payments.** As a full and complete compromise and settlement of all Claims, Town shall pay, and Plaintiff agrees to accept the total sum of \$8,500.00 (Eight Thousand Five Hundred Dollars) ("Settlement Payment"). The Settlement Payment consists of: (i) Eight Thousand and 00/100 Dollars (8,000.00) for Plaintiff's attorneys' fees, expert fees, court cost, and other associated expenses; and (ii) Five Hundred and 00/100 Dollars (\$500.00) for Plaintiff's general release of any and all claims for attorneys' fees, court costs, associated expenses, and damages. The Settlement Payment will be made payable to Scott R. Dinin, P.A., Iota (Federal Taxpayer Identification Number 90-0643694) and shall be paid within 30 days of the Village's receipt of an executed copy of this Agreement. Scott R. Dinin, P.A., will distribute the Settlement Payment to satisfy all costs, fees, and damages related to the Village Lawsuit and Claims. It shall be Plaintiff and Plaintiff's counsel's sole responsibility to pay taxes, if any, on the Settlement Payment. Plaintiff and Plaintiff's counsel hereby indemnify, defend, and hold harmless the Village from assessment of any taxes, interest, and penalties that the IRS or any other taxing authority, court, or tribunal determines should have been paid in connection with any monies paid by the Village pursuant to this Agreement.

6. **No Knowledge of Potential Claimants.** Plaintiff represents and warrants that Plaintiff is unaware of any potential plaintiff, putative class member, or other counsel who intends to make demands or bring litigation against the Village based on the Claims against the Village. Plaintiff further represents and warrants that Plaintiff has not been notified nor otherwise informed of any such intention or consideration thereof.

7. **No Other Proceedings.** Plaintiff represents that, other than the Village Lawsuit,

Plaintiff has not filed any charges, complaint, lawsuits, or other proceedings against the Village arising from or relating to the Claims with any court or local, state, or federal agency charged with the investigation or enforcement of any law. The Parties expressly intend and agree that this Agreement shall inure to the benefit of all visually impaired persons who utilize a screen reader to access the Village Website, of which visually impaired persons shall constitute third-party beneficiaries to this Agreement. Such third-party beneficiaries shall be entitled to enforce the non-monetary provisions of this Agreement against the Village.

8. **Covenant Not to Sue.** Plaintiff covenants that neither he, nor any person or entity acting on his behalf, will file, charge, claim, sue, encourage, aid, or participate in any legal action or administrative proceeding against the Released Parties relating to the Claims.

9. **Accessibility Measures.** The parties agree and confirm that prior to the receipt of Mr. Gil's request for accommodation and commencement of this lawsuit the Village's website contained (and continues to contain) a Notice of Accessibility, with a dedicated disability accommodation phone number and email address.

By January 2, 2023, the Village shall use commercially reasonable efforts to achieve substantial conformance of the Village Website in all material respects with the Web Content Accessibility Guidelines (WCAG) 2.0 Level AA, published by the Web Content Accessibility Initiative of the World Wide Web Consortium, unless a lesser degree of website accessibility is articulated through federal law or by court rule or order. The Village is not required to remediate or make accessible documents, including documents in a portable document format (PDF), on the Village Website prior to the Effective Date of this Agreement. Reasonable efforts shall not include requiring the Village to undertake efforts whose cost, difficulty or impact on the Village's website-related business operations could constitute an undue financial or administrative burden

or fundamental alteration, as defined in Title II of the ADA, to the Village's website-related business operations.

The Village may publish on the Village Website the following material in a format not accessible to individuals who are visually impaired and, on or before seventy-five (75) days after publication, provide an accessible version of the non-accessible material that conforms to the WCAG 2.0 Level AA guidelines for accessibility: Village Commission agenda items not created by the Village that are not received by the Village in accessible format conforming to at least WCAG 2.0 Level AA. In no event shall this provision regarding agenda items be enforceable in the case of an emergency and/or natural disaster that affects the Village's normal operations.

The Village shall not be obligated by this Agreement to make a document or other material (including, without limitation, third-party submissions to the Village, site plans, development plans, utility rate tables, maps, blueprints, architectural drawings, handwritten correspondence, technical drawings, and any other image, diagram, or chart for which there is no logical methodology to create an alternate description that will make the image understandable to an individual using screen reader software), accessible to individuals who are visually impaired if such action would be technically infeasible, unreasonably costly, or both. However, if technology later becomes available to make any such document or material accessible to individuals who are visually-impaired so as to conform to at least WCAG 2.0 Level AA at reasonable cost, the Village shall, within a reasonable amount of time, make such document or material accessible as would otherwise be required by this Agreement.

The Parties further agree that the Village can link to third-party websites and shall not be responsible for ensuring that third party content or plug-ins that are not owned by the Village, but are otherwise located on or linked to the Village Website, conform to WCAG 2.0 Level AA, and

shall not be liable if third party content or plug-ins are inaccessible to individuals with disabilities.

There will be no breach of this Agreement unless (a) an independent consultant determines that a person with a visual impairment who has average screen reader competency using a prominent commercially available screen reader such as Jaws, Voiceover, or NVDA in combination with one of the following browsers (in versions of which are currently supported by their publishers): Internet Explorer, Firefox, Safari, and Chrome cannot reasonably access information and services contained within the Village Website; and (b) the Village fails to remedy the issue using reasonable efforts within a reasonable period of time of not less than sixty (60) calendar days of receiving the accessibility consultant's opinion. If the independent consultant determines that the reasonable time using reasonable efforts to remedy the items found not to be usable will extend beyond sixty (60) days, then the Parties may agree on a longer period of time without leave of Court so long as the extension is documented in writing and executed by the Parties. If the independent consultant finds that a particular item found not to be usable cannot be remedied using reasonable efforts, the Village shall not be obligated to remedy that item.

The term of this Agreement shall commence as of the Effective Date and remain in effect for eighteen months from December 31, 2022. If legislation is passed modifying Title II of the ADA or if the United States Department of Justice or any other federal government entity promulgates final ADA Title II regulations regarding website accessibility during the term of this Agreement, this Agreement shall automatically, without further action by the Parties, be modified such that the Village shall be required only to achieve compliance with the minimum requirements set forth in any such legislation or regulation within the time frame for compliance set forth in such legislation or regulation.

10. **No Admission of Liability.** By entering into this Agreement, the Village does not

admit that it, or anyone on its behalf, has done anything wrong or unlawful to Plaintiff or that any of Plaintiff's rights have been violated. The Parties further understand and acknowledge that nothing in this Agreement is to be construed as an admission of liability on the part of the Village or any employee, official, or agent of the Village. The Parties acknowledge that this Agreement has been entered into by the Parties to avoid the costs and uncertainty of continued litigation.

11. **Joint Preparation.** The Parties agree that the language in this Agreement expresses their mutual intent, and the resulting document must not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

12. **Consultation with Counsel.** The Parties acknowledge that they have sought and received whatever competent advice and counsel was necessary for them to form a full and complete understanding of their rights and obligations under this Agreement.

13. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida and Title II of the ADA (where applicable) without regard to principles of conflicts of law. Any suit arising as a result of a breach of this Agreement or relating to enforcement of this Agreement shall be filed in the United States District Court for the Southern District of Florida.

14. **Authority.** Each Party represents that each person, or authorized counsel, executing this Agreement on its behalf has been authorized to sign on behalf of the respective Party and to fully bind it to the terms of this Agreement and that the respective Parties have the power and authority to perform their respective obligations as provided by this Agreement.

15. **Merger, Modification, Waiver.** This document incorporates, includes, and supersedes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein; and the Parties agree that there are no commitments,

agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the Parties agree that no deviation from the terms of this Agreement shall be predicated upon any prior representations or agreements, whether oral or written. No change or modification of this Agreement is valid unless in writing and signed by all Parties. No waiver of any of the provisions of this Agreement is valid unless in writing and signed by the party against whom it is sought to be enforced.

16. **Non-Disparagement.** Plaintiff further covenants and agrees not to make or publish any statement or take any action that tends to defame, disparage, humiliate, embarrass, or discredit Village and/or the Released Parties, through any medium whatsoever, including but not limited to, social media or internet-based outlets, the website of Plaintiff's counsel, the press or other media outlet and sources. Nothing in this agreement shall be construed to prevent the Village and/or the Released Parties from disclosing and/or otherwise producing a copy of this Agreement pursuant to any request made by any person pursuant to Chapter 119, Florida Statutes. The Parties specifically agree that any disclosure of this Agreement by the Village and/or the Released Parties pursuant to any request made by any person pursuant to Chapter 119, Florida Statutes, is not a breach of this Agreement.

17. **Severability.** The Parties acknowledge and agree that if any court determines that any part, term, or provision of this Agreement is invalid, illegal, or in conflict with any federal or Florida law, such determination will not affect the validity of the remaining portions or provisions of the Agreement.

18. **Counterparts.** This Agreement may be executed in counterparts, each of which, when executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have made and executed this Agreement on the respective dates under each signature: Village of Islamorada through its Village Manager, and Mr. Juan Carlos Gil, duly authorized to execute same.

PARTIES

Plaintiff

By: 
Juan Carlos Gil

September 4, 2019
Date

Defendant

Village of Islamorada, through its Village Manager, Seth Lawless

By: 
Village Manager

Sept. 9, 2019
Date

Approved as to form by:

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BURKE, PIPER & HOCHMAN, P.A.
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