

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) is entered into by and between Plaintiff OPEN ACCESS FOR ALL, INC., and Plaintiff ANDRES GOMEZ (collectively as "Plaintiffs"), and Defendant CITY OF VENICE, FLORIDA (“Defendant”). For purposes of this Agreement, Plaintiffs and Defendant shall be referred herein as the “Parties,” and individually, as a “Party.” The Agreement is effective on the date last signed by the Parties (the “Effective Date”).

This Agreement is made as a compromise between the Parties for the complete and final settlement of all of their claims, differences, and causes of action as follows:

RECITALS

WHEREAS, Plaintiffs initiated a lawsuit against Defendant in the United States District Court for the Middle District of Florida (the “Court”), Civil Action No. 8:19-cv-00885-WFJ-SPF entitled *Open Access For All, Inc., and Andres Gomez, v. City of Venice, Florida* (the “Lawsuit”) claiming violations of Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131 *et seq.* (“Title II of the ADA”) and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 ("Section 504") in connection with the website www.venicegov.com (the "Website");

WHEREAS, Defendant disputes the allegations in the Lawsuit and denies that the Website violates Title II of the ADA and Section 504; and

WHEREAS, to avoid further costs, burdens, and distractions of litigation, the Parties now desire to settle fully and finally any and all individual claims alleged or that could have been alleged in a complaint filed in any legal, judicial, administrative, or regulatory forum;

NOW THEREFORE, in consideration of the foregoing recitals, and the mutual promises, covenants and undertakings contained herein and incorporated into this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the

Parties HEREBY agree to the following terms and conditions as a full and complete settlement of the Lawsuit and any and all claims related to the allegations made in the Lawsuit:

1. **Recitals.** The aforementioned Recitals are incorporated into this Agreement.
2. **General Release.** In consideration for Defendant entering into this Agreement, and for such other good and valuable consideration received from Defendant, the receipt and sufficiency of which is hereby acknowledged, the Plaintiffs, on behalf of Plaintiffs and any of Plaintiffs' agents, employees, representatives, assigns, heirs, executors, trustees, and partners (collectively, the "Releasing Persons"), hereby fully releases, acquits, satisfies, and forever discharges Defendant, together with Defendant's respective past, present, and future officers, commissioners, directors, servants, employees, agents, attorneys, members and constituents, and other representatives (collectively, the "Released Parties") from any and all claims, demands, liabilities, debts, judgments, expenses, actions, causes of action, and suits of any kind whatsoever, for reimbursement of attorneys' 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 Lawsuit and Plaintiffs' alleged visits to the Website existing as of the Effective Date of this Agreement, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, real or imaginary, or actual or potential, including, without limitation, those pursuant to Title II of the ADA, Section 504 or equivalent state or local law, including any violation of any United States, state, or local law or in equity regarding acts or omissions by the Released Parties prior to the Effective Date of this Agreement (collectively, the "Released Claims").

3. **Attorneys' Fees, Costs, Expenses, and Payments.** As a full and complete compromise and settlement of all Released Claims, Defendant shall pay, and Plaintiffs agree to

accept the total sum of Ten Thousand and 00/100 Dollars (\$10,000.00) (the "Settlement Payment") as payment in full. The Settlement Payment consists of: (i) Nine Thousand Five Hundred and 00/100 Dollars (\$9,500.00) 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 (a) is the result of good-faith negotiations conducted by and between the Parties; (b) represents the sole consideration for the release of the Released Claims; and (c) constitutes fair and reasonable consideration for the release of any and all Released Claims.

The Parties expressly acknowledge and agree that the Settlement Payment is made in satisfaction of any and all claims which were raised, or could or should have been raised in the Lawsuit, by Plaintiffs, whether known or unknown, including without limitation, for Plaintiffs' attorneys' fees, court costs, associated expenses, general releases, damage claims, if any, and any and all other claims relating to the Lawsuit. No later than ten (10) days after the Effective Date and upon Defendant's receipt of an executed copy of this Agreement and an IRS W-9 completed by Scott R. Dinin, P.A., Settlement Payment in a single check and made payable to "Scott R. Dinin, P.A. IOTA" shall be delivered to Scott R. Dinin, P.A., 4200 NW Seventh Avenue, Miami, Florida 33127. Defendant will issue a 1099-MISC form to Scott R. Dinin, P.A. reflecting the Settlement Payment amount.

It shall be Plaintiffs and Plaintiffs' counsel's sole responsibility to pay taxes, if any, on the Settlement Payment. Plaintiffs and Plaintiffs' counsel hereby indemnify, defend, and hold harmless the Released Parties from the 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 Defendant pursuant to this Agreement.

4. **Accessibility Measures.** By December 31, 2021, Defendant shall ensure that any service, publications, policies, documents, agenda items, or content (collectively as “Electronic Documents”) generated by the Defendant and published to the Website, shall be fully accessible to individuals who are visually-impaired, using Web Content Accessibility Guidelines v1.0 as a guideline. Nothing contained in this Agreement shall require Defendant to remediate Electronic Documents that exists on the Website prior to December 31, 2021.

Defendant shall not be liable and/or responsible to publish Electronic Documents that are technically impossible to be understandable by screen reader applications such as: (i) blueprints, (ii) architectural drawings, (iii) diagrams, (iv) complex and/or atypical images, (v) tables (vi) scanned historical publications, and (vii) any image where there is no logical methodology to create an alternate description.

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 Defendant shall be required only to conform the Website to the minimum requirements set forth in any such legislation or regulation within the timeframe for compliance set forth in such legislation or regulation.

5. **No Other Proceedings.** Plaintiffs represent that, other than the Lawsuit, Plaintiffs have not filed any charges, complaints, lawsuits, or other proceedings against the Released Parties relating to the Released Claims with any court or municipal, state, or federal agency charged with the enforcement of any law.

6. **No Knowledge of Potential Claimants.** Plaintiffs represent and warrant that Plaintiffs are unaware of any potential plaintiff, putative class member, or other counsel who

intends to make demands or bring litigation based on the Released Claims against the Defendant. Plaintiffs further represent and warrant that Plaintiffs have not been notified nor otherwise informed of any such intention or consideration thereof.

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

8. **Dismissal with Prejudice.** Within seven (7) days from the Effective Date of this Agreement, the Plaintiffs shall file with the Court a stipulation of dismissal of the Lawsuit with prejudice, in the form attached hereto as "Exhibit A". The Parties further agree that this Agreement shall not be filed with the Court, except as necessary for enforcement purposes, or unless otherwise required by the Court.

9. **Invalidation.** If any provision of this Agreement is invalidated by a court of competent jurisdiction, then all of the remaining provisions of this Agreement shall remain in full force and effect, provided that the Parties may still effectively realize the complete benefit of the promises and considerations conferred hereby.

10. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties hereto with respect to the matters set forth herein and supersedes in its entirety any and all agreements and communications, whether written or oral, previously made in connection with such matters. Any agreement to amend or modify the terms or provisions of this Agreement must be in writing and executed by both of the Parties hereto. No waiver of any provision of this Agreement will be valid unless it is in writing and signed by the Party against whom such waiver is charged.

11. **Non-Admission of Liability.** This Agreement is the result of a compromise and settlement and shall never be construed as an admission of any liability, wrongdoing, responsibility, or unlawful conduct by Defendant or the Released Parties. The Parties acknowledge that this Agreement has been entered into by the Parties to avoid the costs and uncertainty of continued litigation.

12. **Binding Nature of Settlement Agreement.** This Agreement shall be binding upon each of the Parties and upon their respective heirs, administrators, representatives, executors, successors, and assigns, and shall inure to the benefit of each Party and to its respective heirs, administrators, representatives, executors, successors, and assigns.

13. **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.

14. **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 and Section 504 (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 Middle District of Florida.

15. **Counterparts.** The Parties agree that this Agreement and any and all other documents in connection with settlement of this matter may be executed in exact counterparts, each of which shall be deemed an original but both of which taken together shall constitute one and the same instrument. Any signature page delivered by facsimile transmission or e-mail shall be treated in all manner and respects as an original document.

16. **Notices.** All formal letters, notices, requests, demands, and other communications required or permitted to be given to the Parties pursuant to this Agreement shall be in writing, provided by electronic mail, facsimile, and/or next-day (excluding Saturday and Sunday) express delivery service, and addressed as follows:

For Plaintiffs:	Scott R. Dinin, Esq. Scott R. Dinin, P.A. 4200 NW 7th Avenue Miami, FL 33127 Phone: (786) 431-1333 E-mail: inbox@dininlaw.com
For Defendant:	Kelly M. Fernandez Persson, Cohen & Mooney, P.A. 236 Pedro Street Venice, FL 34285 E-mail: kfernandez@swflgovlaw.com

[SIGNATURES TO APPEAR ON THE FOLLOWING PAGE]

Open Access For All, Inc.

Dated: _____

By: _____

Name: _____

Title: _____

Andres Gomez

Dated: _____

By: _____

City of Venice, Florida

Dated: _____

By: _____

Name: _____

Title: _____

“EXHIBIT A”

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

Civil Action Number: 8:19-cv-00885-WFJ-SPF

OPEN ACCESS FOR ALL, INC.,
and ANDRES GOMEZ,

Plaintiffs,

v.

CITY OF VENICE, FLORIDA,

Defendant.

JOINT STIPULATION OF DISMISSAL WITH PREJUDICE

IT IS HEREBY STIPULATED AND AGREED by and between the parties through their undersigned counsel that the above-captioned action is dismissed with prejudice pursuant to Federal Rules of Civil Procedure 41(a)(1)(A)(ii). The parties further stipulate that each party shall bear its own attorneys' fees, costs and expenses.

Dated this ____ day of July, 2019.

Scott R. Dinin, Esq.
SCOTT R. DININ, P.A.
4200 NW 7th Avenue
Miami, Florida 33127
Tel: (786) 431-1333
Fax: (786) 513-7700
E-mail: inbox@dininlaw.com
Counsel for Plaintiff

Randol Didier Mora, Esq.
Trask, Metz & Daigneault LLP
1001 S. Fort Harrison Avenue, Suite 201
Clearwater, Florida 33756
Tel: (727) 733-0494
E-mail: randy@cityattorneys.legal
Counsel for Defendant