

**SETTLEMENT AGREEMENT
BETWEEN EDDIE I. SIERRA AND
THE CITY OF DAYTONA BEACH, FLORIDA**

This Settlement Agreement (“Agreement”) is made by and between the City of Daytona Beach, Florida (“City”) and Eddie I. Sierra (“Sierra” or “Plaintiff”) (individually, a “Party” and collectively, the “Parties”).

In consideration of the promises made by each Party to the other in this Agreement and other valuable consideration, the Parties hereby agree as follows:

1. Recitals. Sierra has instituted litigation against the City, titled Eddie I. Sierra v. City of Daytona Beach, Florida, United States District Court, Middle District of Florida, Orlando Civil Division, Case No. 6:18-CV-IS62-ORL-40-GJK (the “Lawsuit”), concerning the accessibility of the City’s video content on its website. Sierra alleges that he is hard of hearing and deaf and has requested that live streams of City Commission meetings and archived videos of public meetings posted on the City’s website be closed captioned. This Agreement is made for the purpose of settling the Lawsuit and resolving all claims Sierra has, or that may arise out of his request for captioning and accessibility of the City website, or which were raised or could have been raised in the Lawsuit.

2. Live Streaming Captions. Meetings of the Daytona Beach City Commission occurring after June 30, 2019 that are live streamed on the City’s website shall be closed captioned.

3. Captioning of Archived Videos.

(a) Archived videos of City Commission meetings occurring after June 30, 2019, appearing on the City’s website, shall be closed captioned.

(b) The City shall not be required to caption archived videos of City Commission meetings held prior to June 30, 2019, except as required under subparagraph (c).

4. Captioning Criteria. Captions required under this Agreement shall meet Web Content Accessibility Guidelines (WCAG) 2.0 success criteria for captioning of live and archived content, as published by the Web Accessibility Initiative (WAI) of the World Wide Web Consortium (W3C).

5. Payments to/for Plaintiff. The City shall pay the sum of \$1,500.00 to the Plaintiff and the sum of \$9,000.00 to the Plaintiff’s attorney, J. Courtney Cunningham, PLLC, for a total of \$10,500.00, via check payable to the Trust Account of J. Courtney Cunningham, PLLC, within thirty (30) days of the Effective Date (defined below) of this Agreement.

6. Other Fees and Costs. Except as provided in paragraph 5, each Party shall bear its own attorney’s fees and costs.

7. Release. This Agreement resolves all claims the Plaintiff has or that may arise out of Plaintiff's request for captioning and accessibility of the City website or which were raised or could have been raised in the Lawsuit. Except for the City's obligation to comply with the specific requirements of paragraphs 2, 3, 4 and 5 of this Agreement, the Plaintiff knowingly and voluntarily releases, waives, and forever discharges any and all claims, rights, demands, and causes of action, of any kind whatsoever, known or unknown, foreseen or unforeseen, foreseeable or unforeseeable, and any consequences thereof, which were brought or could have been brought in the Lawsuit.

8. Effect of Agreement. The Parties agree that this Agreement does not constitute an admission of liability, and the City expressly denies violating the Americans with Disabilities Act, the Rehabilitation Act of 1973, or any other law relating to Sierra's request or the Lawsuit. This Agreement does not constitute and shall not be deemed to be a finding or determination by a court of law nor an admission by any party regarding the merits, validity or accuracy of any allegations, claims or defenses asserted by either party in the Lawsuit. This Agreement represents the compromise of disputed claims in lieu of extensive litigation.

9. Dismissal of Lawsuit. Upon approval and execution of this Agreement by the City, counsel for Plaintiff will file with the Court a joint motion to dismiss the Lawsuit with prejudice, with a proposed order dismissing the Lawsuit with prejudice.

10. Cure Provision. In the event Sierra asserts in the future that the City has violated any provision of this Agreement, Sierra shall provide written notice to the City, via certified mail with return receipt requested, and the City shall have thirty (30) days to cure the alleged violation before any action is taken by Sierra to enforce this Agreement. Notice to the City shall be given as follows:

City Manager
301 S. Ridgewood Ave.
Daytona Beach, FL 32114

With copy to:
City Attorney
301 S. Ridgewood Ave.
Daytona Beach, FL 32114

11. Entire Agreement. This Agreement contains the entire agreement between the Parties related to the Lawsuit. This Agreement replaces any prior or contemporaneous oral representation or understanding about the settlement. This Agreement may not be amended or modified except in writing signed by both Parties. Each Party acknowledges that in entering into this Agreement, it has not relied upon any representations, warranties, promises, or conditions made by the other Party or the other Party's agents that are not specifically set forth in this Agreement. Each Party acknowledges that it has freely executed this Agreement after independent investigation, with the advice of independent counsel and without fraud, duress, or undue influence, understands the content of this Agreement, and is capable of understanding the content of this Agreement.

12. Construing of Agreement. No provision of this Agreement shall be construed against a Party by reason of the fact that it may have been drafted by such Party or such Party's counsel. The Parties agree that this Agreement was drafted jointly by the Parties and their respective counsel.

13. Saving Clause. If any provision of this Agreement is held to be invalid or unenforceable or is deemed to be in conflict with any applicable law or regulation, the invalid, unenforceable or conflicting provision shall be replaced with a provision that accomplishes, to the extent possible, the original purpose of such provision in a valid and enforceable manner, and the remainder of this Agreement shall remain binding upon the Parties.

14. Effective Date. This Agreement shall become effective on the date it is signed by the last Party signing it (the "Effective Date").

15. Counterpart Execution. This Agreement may be signed in counterparts, each of which shall be deemed an original, and may be signed electronically and transmitted electronically or via facsimile, each of which shall be deemed an original.

THE CITY

Eddie I. Sierra

By: _____

Derrick L. Henry, Mayor

Date: _____

Attest: _____

Letitia LaMagna, City Clerk

Approved as to legal form:

By: _____

Robert Jagger, City Attorney

By: _____

Printed Name: _____

Date: _____