

CAUSE NO. D-1-GN-15-002291

BRIAN RODGERS,
Plaintiff,

v.

THE CITY OF AUSTIN,
Defendant.

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IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

98TH JUDICIAL DISTRICT COURT

SETTLEMENT AGREEMENT AND RELEASE

This SETTLEMENT AGREEMENT AND RELEASE (hereinafter referred to as the “Agreement”) is made and entered into by BRIAN RODGERS (the “Plaintiff”) and the CITY OF AUSTIN (the “City”) (hereinafter, Plaintiff and the City will collectively be referred to as the “Parties”) on the dates acknowledged below.

WHEREAS, Plaintiff filed his Original Petition on June 11, 2015, against the City in a lawsuit named and styled *Brian Rodgers v. City of Austin*; Cause No. D-1-GN-15-002291, in the 98th District Court, Travis County, Texas (the “Lawsuit”);

WHEREAS, the Lawsuit arises out of the City’s alleged failure to properly respond to a series of requests for public information which were submitted by Brian Rodgers to the City pursuant to the Texas Public Information Act (TPIA) and identified in paragraph 1(a) and in Exhibits P-1, P-2, P-3, and P-4 of Rodgers’ Original Petition (hereinafter the “Events”);

WHEREAS, further litigation of the Lawsuit will require extensive preparation and expense on behalf of the Parties unless they fully and finally settle, terminate, and dismiss the Lawsuit with prejudice at this time;

WHEREAS, the Parties desire to avoid such preparation and expense, and desire to terminate this Lawsuit among the Parties, to compromise and settle the Parties’ differences, and to terminate and dismiss the Lawsuit with prejudice; and

NOW, THEREFORE, in consideration of the promises and the covenants set forth herein and in full compromise, release and settlement, accord and satisfaction, payment and discharge of all alleged or potential claims or causes of action possessed by or belonging to the Parties in the past or present, which were or could have been alleged in the Lawsuit, the Parties covenant and agree as follows:

1. Mutual Release and Covenant Not to Sue

As consideration for the promises and covenants set forth herein, and for other good and valuable consideration, the Parties on their own behalf and on behalf of all persons or entities which may claim by, through, or under them, including, but not limited to, their respective heirs, successors, assigns, shareholders, members, representatives, agents, attorneys, insurers, employees, officials, city council members, attorneys, departments, and subrogees, do hereby knowingly and voluntarily release, remise, acquit and forever discharge each other, and any of their current, past, or future partners or affiliate entities, successors, assigns, agencies, agents, attorneys, city council members, departments, employees, insurers, managers, mayors, principals, officials, or representatives, from any and all causes of actions, claims, liabilities, or lawsuits, arising from or relating to the Lawsuit, the Events, or from any transactions or occurrences that were or could have been asserted in the Lawsuit. The Parties agree that this Agreement is a post-dispute agreement entered into knowingly and voluntarily, and the Parties release one another from any recovery whatsoever, which was or could have been sought in the Lawsuit.

2. Dismissal of the Lawsuit with Prejudice

Plaintiff and his legal counsel acknowledge and agree that within ten (10) business days of receiving the payment described in Paragraph 3, below, they shall dismiss with prejudice the

Lawsuit by filing or causing to be filed with the Court an instrument fully and finally dismissing with prejudice this Lawsuit against the City.

3. Payment/Consideration to Plaintiff from the City

As consideration for the promises and covenants set forth herein, the dismissal of the Lawsuit with prejudice, and other good and valuable consideration, and provided that all Parties to the Agreement have signed below, the City will pay or cause to be paid to Plaintiff the gross amount of FIVE THOUSAND DOLLARS (\$5,000) within 30 days of execution of this agreement. The Parties acknowledge and agree that such payment shall be made to: "Brian Rodgers."

4. Tax Consequences

The Parties understand and agree that whatever tax treatment is ultimately given to this settlement will have no bearing on the finality of the Agreement, and said tax consequences shall be the sole responsibility of Plaintiff.

5. No Further Payments or Consideration

Except as provided in Paragraph 3, Plaintiff acknowledges and agrees that he is not entitled to and will not make any claim for further payment of any kind, including, but not limited to payments for court costs or attorney's fees from the City, arising out of or related to the Events or the facts of the Lawsuit.

6. Agreement Not an Admission of Liability

The Parties acknowledge and agree that neither the Agreement, nor any of its terms and conditions, constitute an admission of any wrongdoing or any liability on the part of the Parties.

7. Entire Agreement

This Agreement sets forth the entire agreement between the Parties and fully replaces any and all prior understandings, statements, or agreements (verbal or written) between the Parties.

8. Waivers and Amendment

The Parties agree that no breach of any provision hereof can be waived unless in writing. Waiver of any breach shall not be deemed to be a waiver of any other breach of the same or other provisions hereof, nor shall such waiver constitute a continuing waiver. This Agreement may be amended only by a written agreement executed by the Parties.

9. Severability

The Parties agree that if any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable, this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never been a part of this Agreement, and the remaining provisions of the Agreement shall remain in full force and effect. The Parties further agree that in lieu of each such illegal, invalid, or unenforceable provision, there shall be added automatically as part of this Agreement a provision as similar in terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

10. Applicable Law

The Parties agree that this Agreement is to be governed by and construed under the laws of the State of Texas. The Parties further agree venue for any action brought, related to or in connection with a breach of this Agreement shall be in Travis County, Texas.

11. Attorney's Fees and Costs

The Parties agree that they shall bear and pay their own attorney's fees and costs of court arising from all events related to the Lawsuit and this Agreement.

12. Binding Effect

The Parties agree that this Agreement shall be binding on, and inure to the benefit of the employees, representatives, heirs, legal representatives, subsequent owners, successors, and assigns of the Parties.

13. Enforcement of Agreement

The Parties acknowledge and agree that this Agreement is admissible in any subsequent proceeding between the Parties, including, but not limited to, a lawsuit between the Parties relating to the Lawsuit or this Agreement.

14. Representation by Legal Counsel

The Parties acknowledge and agree that they have been represented and advised by legal counsel of their own choosing in negotiations for and the preparation of this Agreement, the Parties have read this agreement, or had it read to them by legal counsel, and that the Parties are each fully aware of the contents and legal effect of this Agreement.

15. Voluntary Agreement

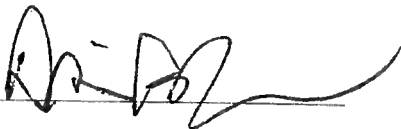
The Parties acknowledge and agree that they have carefully read this Agreement and know the contents thereof and that they sign the same freely, knowingly, and voluntarily. The Parties further agree that the promises and covenants made herein are not made under duress, coercion, or undue influence.

16. Contract Execution

The Parties acknowledge and agree that this Agreement may be executed in multiple counterparts and/or facsimile copies with the same force and effect as if all signatures were set forth on a single non-facsimile instrument. This Agreement shall be executed by the Parties before a notary public who shall acknowledge and notarize as provided by law that under oath each party has sworn he, she, or it has made and entered into this Agreement with the authority and the capacity so expressed.

IT IS SO AGREED.

PLAINTIFF BRIAN RODGERS

By: 

DATE: 10-24-15

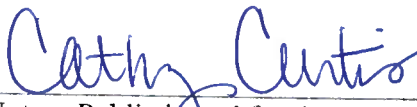
CITY OF AUSTIN, TEXAS

By: 
SUE EDWARDS

DATE: 10-27-2015

Its: ASSISTANT CITY MANAGER

Sworn to and subscribed before me by Sue Edwards on 10-27-15


Notary Public in and for the State of Texas

My commission expires:



UNSWORN DECLARATION

My name is Brian Rodgers, my date of birth is December 30, 1955, and my address is 111 W. 9th Street, Austin, Texas 78703, in the United States. Pursuant to Tex. Civ. Prac. & Rem. Code § 132.001(a), I, Brian Rodgers do declare under penalty of perjury, that I am the plaintiff in a suit named and styled *Brian Rodgers v. City of Austin*; Cause No. D-1-GN-15-002291, in the 98th District Court, Travis County, Texas, and I acknowledge that, by my signature below, that I have executed the foregoing SETTLEMENT AGREEMENT AND RELEASE for the purposes and consideration therein expressed.

DATE:

10/24/15



Brian Rodgers