Memorandum

MIAMI-DADE COUNTY

Agenda Item No. 12(A)(1)

Date: October 6, 2009

To: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

R. A. Cuevas, Jr.
County Attorney

Subject: Resolution Approving and Authorizing Conciliation Agreement Between *Julio Ortiz Fuentes and Miami-Dade County*

Recommendation
It is recommended that the Board of County Commissioners ("Board") authorize settlement of the Fair Housing Complaint filed by Julio Ortiz Fuentes according to the terms and conditions specified in the attached Settlement Agreement, subject to the approval of the United States Department of Housing and Urban Development (US HUD).

Scope
The Settlement Agreement only applies to Mr. Fuentes' discrimination claims against the County.

Fiscal Impact/Funding Source
The fiscal impact to the County is $3,380.00 and shall be paid from Section 8 New Construction funds.

Track Record/Monitor
Not applicable.

Background
On August 23, 2007, Mr. Fuentes, who is disabled and is a Section 8 New Construction Program resident,[1] requested a reasonable accommodation to be transferred to a unit with air conditioning near his doctor after receiving a statement from his physician that the lack of air-conditioning in his apartment exacerbated his disability. On October 10, 2007, Miami-Dade Public Housing Agency (MDPHA) approved Mr. Fuentes' request, but placed him on a transfer waiting list. Mr. Fuentes was eventually transferred to one of the County's Section 8 New Construction buildings. However, because he was not transferred immediately, Mr. Fuentes dual-filed an administrative complaint with US HUD and the Florida Commission on Human Relations (FCHR) alleging that MDPHA discriminated against him based upon his disability in violation of the Fair Housing Amendments Act and the Florida Fair Housing Act. He also alleged that MDPHA harassed/retaliated against him because he filed the Fair Housing Complaint.

On February 5, 2008, the FCHR issued a cause finding against MDPHA and its private management company, Royal American Management, Inc. for failing to transfer Mr. Fuentes or alternatively installing an air conditioning unit in his old unit. The FCHR did not find that the County harassed or retaliated against Mr. Fuentes because he filed the complaint. On March 12, 2008, MDPHA offered Mr. Fuentes a transfer to a two-bedroom unit with air conditioning at the Singer Plaza development located at 1310 NW 16 Street. The unit was accepted by Mr. Fuentes. Subsequently, on May 7, 2008, FCHR's legal counsel issued a "Legal Concurrence: Cause" in which it was concluded that the County violated the Fair Housing Act for failing to provide Mr. Fuentes with a reasonable accommodation, but also concluded there was no

[1] The Section 8 New Construction program was formerly administered by the Miami-Dade Public Housing Agency (MDPHA). However, when US HUD took possession of MDPHA, the program was transferred to the Miami-Dade Office of Community and Economic Development.

evidence of harassment. The FCHR negotiated a conciliation agreement on Mr. Fuentes' behalf which included payment of $3,380.00. This amount reflected an estimate of Mr. Fuentes' moving costs. Notwithstanding FCHR's conciliation efforts, Mr. Fuentes has the right under federal and state law to file a civil action against the County, wherein he is likely to allege that the FCHR's finding supports his claim of discrimination and his entitled to the recommended conciliation amount.

It is well established law that a housing provider has an obligation to provide prompt responses to a request for a reasonable accommodation. An undue delay in responding to a reasonable accommodation request may be deemed to be a failure to provide a reasonable accommodation and subject the housing provider to liability under the Fair Housing Act. If Mr. Fuentes were successful in filing a lawsuit, under the Fair Housing Act, his relief may include actual damages, punitive damages, injunctive and other equitable relief and attorney's fees and costs.

In lieu of filing suit, Mr. Fuentes has decided that he is willing to settle for $3,380.00, which is the same amount reflected in the FCHR conciliation agreement. It is therefore in the best interest of the County that this matter be settled. This settlement would be subject to approval of the Board of County Commissioners and US HUD. The proposed settlement would contain the following terms, as more fully set forth in the attached settlement agreement: (1) the County will pay Mr. Fuentes a monetary settlement in the amount of $3,380.00; (2) Mr. Fuentes and the County would sign mutual releases from any and all claims either party would have against the other; and (3) the County does not admit liability by entering into the settlement agreement.

It is therefore recommended that this Board approve the attached Settlement Agreement in substantially the form attached hereto, subject to US HUD's approval as this settlement is in the best interest of the County.

Attachment

Cynthia W. Curry
Senior Advisor to the County Manager

MEMORANDUM
(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: October 6, 2009

FROM: R. A. Cuevas, Jr. County Attorney

SUBJECT: Agenda Item No. 12(A)(1)

Please note any items checked.

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

✓ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____) to approve**

✓ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(1)
10-6-09

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE, SUBJECT TO THE APPROVAL OF THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, TO EXECUTE A SETTLEMENT AGREEMENT AND PAYMENT IN THE AMOUNT OF $3,380.00 TO RESOLVE THE FAIR HOUSING COMPLAINT OF JULIO ORTIZ FUENTES

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the execution of a Settlement Agreement and payment of $3,380.00 to resolve the Fair Housing Complaint of Julio Ortiz Fuentes, in substantially the form attached hereto and made a part hereto, subject to the approval of the United States Department of Housing and Urban Development; and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

Bruno A. Barreiro	Audrey M. Edmonson
Carlos A. Gimenez	Sally A. Heyman
Barbara J. Jordan	Joe A. Martinez
Dorrin D. Rolle	Natacha Seijas
Katy Sorenson	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 6th day of October, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

HARVEY RUVIN, CLERK

Approved by County Attorney as
to form and legal sufficiency._____

Terrence A. Smith

By:_____
Deputy Clerk

SETTLEMENT AGREEMENT

This AGREEMENT (the "Agreement") is entered into as of this ___ day of _____ 2009 (the "Effective Date") by JULIO ORTIZ FUENTES ("Fuentes") and MIAMI-DADE COUNTY (the "County").

WHEREAS, Fuentes and the County were parties to that certain administrative complaint filed with the Florida Commission on Human Relations ("Florida Commission") and the United States Department of Housing and Urban Development ("HUD") captioned *Julio Fuentes v. Miami-Dade Housing Agency*, FCHR No. 27-92337H and HUD No. 04-08-0124-8 (the "Complaint"); and

WHEREAS, Fuentes and the County previously negotiated a conciliation of the Complaint; and

WHEREAS, prior to the conciliation agreement being submitted to the Miami-Dade Board of County Commissioners, Fuentes requested that the Florida Commission close his case; and

WHEREAS, notwithstanding the closure of the case, the County granted Fuentes' reasonable accommodation request by transferring him to a dwelling unit with air conditioning located at 1310 NW 16 Street # 511, Miami, Florida 33125; and

WHEREAS, Mr. Fuentes also requested that the County install a fan in one of the rooms of his dwelling unit because it was not air conditioned; and

WHEREAS, the County has granted Fuentes' request and installed the fan; and

WHEREAS, Fuentes acknowledges that he is fully satisfied with the reasonable accommodation provided by the County; and

WHEREAS, Fuentes desires in lieu of filing a court action against the County to amicably resolve and settle all disputes, claims, controversies, and differences between or among the parties; and

WHEREAS, the County also desires to amicably resolve and settle all disputes, claims, controversies, and differences between or among each other; and

WHEREAS, the Parties expressly deny any liability to the other Parties,

NOW THEREFORE, in consideration of the covenants undertaken herein by the Parties, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. The County shall pay Fuentes Three Thousand Three Hundred Eighty and No/100 Dollars ($3,380.00) (the "Settlement Funds") within thirty (30) days of the Effective Date of this Agreement. The Settlement Funds shall be made payable to Julio Fuentes.

2. Within three (3) days of clearance of the Settlement Funds, Fuentes and the County shall execute and deliver the releases in the form attached as Exhibits "A," and "B."

3. In addition to the conditions set forth in Paragraphs 1 and 2, this Agreement and the parties' obligations hereunder are contingent upon the final approval of this Agreement by the Board and HUD, which shall be within the Board and HUD's sole discretion. :If the Board or HUD, in their sole discretion, do not approve this Agreement, this Agreement shall be null and void. Fuentes understands that such approval is an express contingency to the settlement of this matter.

4. The Effective Date of this Agreement shall be the date upon which the Mayor or the Mayor's designee executes same.

5. The parties warrant that (i) they have executed this Agreement with full knowledge of their rights; (ii) they have received independent legal advice from their attorneys with respect to the matters herein set forth and the rights and asserted rights arising out of said matters; and (iii) they have not relied on any statements or representations (other than representations set forth in this Agreement) by any other party or its representatives.

6. The parties agree to be responsible for their own attorney's fees and any other costs associated with the Complaint.

7. This Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of Florida.

8. The parties agree that any dispute arising out of, or associated with, this Agreement shall be litigated in and only in Miami-Dade County, Florida, USA.

9. No waiver or modification shall be binding unless executed in writing by all parties.

9. The parties hereby acknowledge that in connection with any claim or dispute arising out of or relating to this Agreement, including any litigation, arbitration or other proceeding alleging a breach of the terms of this Agreement, the prevailing party or parties shall recover, in addition to damages, costs or equitable relief otherwise recoverable, actual reasonable attorneys' fees and costs incurred by such prevailing party or parties prosecuting or defending such claim or dispute.

10. Each party has participated in the drafting and preparation of this Agreement, and this Agreement shall be construed as a whole according to the fair meaning and not for or against any party.

11. This Agreement constitutes the entire, integrated agreement made by and among the parties. This Agreement fully supersedes any and all prior or contemporaneous understandings, representations, warranties, and agreements, pertaining to the subject matter hereof.

12. Each of the parties hereto represents and warrants that it has full and complete authority to enter into and execute this Agreement under the terms set forth above.

13. This Agreement may be executed and delivered in separate counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts together shall constitute but one and the same instrument and agreement.

IN WITNESS HEREOF, the parties have entered into this Agreement as of the Effective Date.

For Petitioner:

JULIO ORTIZ-FUENTES

Date: 9/4/09

For Respondent:

MIAMI-DADE COUTNY
BY THE BOARD OF COUNTY
COMMISSIONERS

GEORGE M. BURGESS
County Manager

Date:

Attest:

Clerk of the Board

Approved for form and legal sufficiency:

Terrence A. Smith
Assistant County Attorney

Exhibit "A"

RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, JULIO ORTIZ FUENTES ("First Party"), for and in consideration of Ten and 00/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by First Party, does hereby remise, release, acquit, satisfy and forever discharge MIAMI-DADE COUNTY together with its directors, officers, attorneys, employees, agents, insurers, heirs, successors and assigns (hereinafter collectively referred to as the "Second Party"), of and from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialities, covenants, contracts, controversies, agreements, promises, variances, trespasses, attorneys' fees, costs, judgments, executions, claims, damages, and demands whatsoever, in law or in equity under the Fair Housing Amendments Act, the Florida Fair Housing Act, the Americans with Disabilities Act, the Rehabilitation Act of 1973, the U.S. Housing Act of 1937, the Section 8 New Construction program, the Section 8 Housing Choice Voucher Program, and any other applicable laws or regulations, which the First Party ever had, now has, or may have against the Second Party, from the beginning of the world to the day of this Release; provided, however, that this release is expressly limited to the claims which were asserted or alleged in that certain administrative action which was brought by the First Party against the Second Party in that certain action captioned *Julio Fuentes v. Miami-Dade Housing Agency*, FCHR No. 27-92337H; HUD No. 04-08-0124-8, which includes the administrative complaint filed with the Florida Commission on Human Relations and the United States Department of Housing and Urban Development.

This will also acknowledge that the undersigned has been given the opportunity to seek advice from legal counsel regarding the effect of the signing, swearing to, and delivering of this Release; that no promise, inducement or agreement not expressed herein has been made to the First Party; that First Party has not assigned any claim against Second Party to any person; that this Release contains the entire agreement between the parties; and that the terms of this Release are contractual and not a mere recital.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this _____ day of _____ 2009.

_____ By: _____

Witness JULIO ORTIZ FUENTES

_____

Witness

Exhibit "B"

RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, MIAMI-DADE COUNTY ("First Party"), for and in consideration of Ten and 00/100 Dollars ($10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by First Party, does hereby remise, release, acquit, satisfy and forever discharge JULIO ORTIZ FUENTES, together with his agents attorneys, insurers, heirs, successors and assigns (hereinafter collectively referred to as the "Second Party"), of and from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialities, covenants, contracts, controversies, agreements, promises, variances, trespasses, attorneys' fees, costs, judgments, executions, claims, damages, and demands whatsoever, in law or in equity under the Fair Housing Amendments Act, the Florida Fair Housing Act, the Americans with Disabilities Act, the Rehabilitation Act of 1973, the U.S. Housing Act of 1937, the Section 8 New Construction program, the Section 8 Housing Choice Voucher Program, and any other applicable laws or regulations, which the First Party ever had, now has, or may have against the Second Party, from the beginning of the world to the day of this Release; provided, however, that this release is expressly limited to the claims which were asserted or alleged in that certain administrative action which was brought by the First Party against the Second Party in that certain action captioned *Julio Fuentes v. Miami-Dade Housing Agency*, FCHR No. 27-92337H; HUD No. 04-08-0124-8, which includes the administrative complaint filed with the Florida Commission on Human Relations and the United States Department of Housing and Urban Development.

This will also acknowledge that the undersigned has been advised by counsel regarding the effect of the signing, swearing to, and delivering of this Release; that no promise, inducement or agreement not expressed herein has been made to the First Party; that First Party has not assigned any claim against Second Party to any person; that this Release contains the entire agreement between the parties; and that the terms of this Release are contractual and not a mere recital.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this _____ day of _____ 2009.

MIAMI-DADE COUNTY

By: _____

COUNTY MANAGER

_____

Witness

_____

Witness