Memorandum

MIAMI-DADE COUNTY

Date: October 5, 2010

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

Agenda Item No. 12(A)(1)

From: George M. Burgess
County Manager

R.A. Cuevas, Jr.
County Attorney

Subject: Resolution Approving and Authorizing Conciliation Agreement Between Obidiah Clayton and Miami-Dade County

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RECOMMENDATION

It is recommended that the Board of County Commissioners ("Board") authorize settlement of the lawsuit entitled Obidiah Clayton v. Miami-Dade County, Case No. 08-24941 CC 23 according to the terms and conditions specified in the attached Settlement Agreement.

Scope

The Settlement Agreement only applies to the Plaintiff in the lawsuit.

Fiscal Impact/Funding Source

The fiscal impact to the County is $509 and shall be paid from the Miami-Dade Housing Agency's Section 8 Housing Choice Voucher funds.

Track Record/Monitor

Not applicable.

Background

The Plaintiff, Obidiah Clayton, brought a two-count complaint against the County for breach of contract and unjust enrichment action. The Plaintiff was a former Section 8 landlord who failed to maintain his housing unit in October 2006 in compliance with the housing quality standards (HQS) established by the United States Department of Housing and Urban Development. As a result of the Plaintiff's non-compliance with HQS, the County, following written notification to the Plaintiff, abated his rental payments for the months of November 2006 through January 2007. In February 2007, following the Plaintiff's compliance with HQS the County executed a new Housing Assistance Payment ("HAP") contract with the Plaintiff. In November 2007, the County reduced the Plaintiff's rental payment by $234.00 because it discovered that the Plaintiff was overpaid in October 2006, when the County paid the full amount of the rent rather than a prorated amount because of his non-compliance with HQS.

The Plaintiff alleged that abatement of the payments constituted a breach of the HAP and as a result of not making his monthly rental payments the County was unjustly enriched. The Plaintiff further argued that he was not paid for the month of February 2007 and that the partial rental payment in the amount of $234.00 for the month of November 2007 also constituted a breach of the HAP and that the County was unjustly enriched. The County filed a motion for summary judgment in which the County successfully argued that abatement of payments is both authorized by the Section 8 regulations governing the program and the HAP executed between the County and the Plaintiff. The County also successfully proved that it paid the rent for February 2007. However, in an order granting the County's motion for summary judgment, the Court reserved ruling to allow the County to submit a supplemental motion on the issue of whether the County breached the HAP when it reduced payment to the Plaintiff in the month of November 2007.

Although the County complied with the Court's order and submitted its supplemental motion, the Court did not rule on the motion. Subsequently, the Plaintiff noticed and the Court scheduled the case for a jury trial on the only remaining claim, i.e. whether the County owed the Plaintiff $234.00 for the month of November 2007. The Plaintiff has agreed to settle this matter if the County agrees to pay $234.00, plus his court costs, which total $275.00. Additionally, the County and the Plaintiff would execute mutual releases. Although the County would more than likely succeed in this case, the County has evaluated the overall cost to the County if it went to a jury trial versus payment of the diminutive amount of $509.00. Based on this evaluation the County believes that costs of litigating this case before a jury even if it won would be much higher than simply paying the Plaintiff. Therefore, it is recommended that the Board approve the attached resolution authorizing the County Mayor or the County Mayor's designee to execute the Settlement Agreement.

Attachment

Assistant County Manager

MEMORANDUM
(Revised)

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

DATE: October 5, 2010

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)
10-5-10

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING THE COUNTY MAYOR OR THE COUNTY MAYOR'S DESIGNEE TO EXECUTE A SETTLEMENT AGREEMENT AND PAYMENT IN THE AMOUNT OF $509.00 TO RESOLVE THE LAWSUIT ENTITLED OBIDIAH CLAYTON V. MIAMI-DADE COUNTY

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 that this Board hereby approves the execution of a Settlement Agreement and payment of $509.00 to resolve the lawsuit entitled *Obidiah Clayton v. Miami-Dade County*, Case No. 08-24941 CC 23, in substantially the form attached hereto and made a part hereto; 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 5th day of October, 2010. 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

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Terrence A. Smith

IN THE COUNTY COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 08-24941 CC 23 (4)

OBADIAH CLAYTON,

Plaintiff,

v.

MIAMI-DADE COUNTY,

Defendant.

SETTLEMENT AGREEMENT

This SETTLEMENT AGREEMENT (the "Agreement") is entered into as of this 21st day of September 2010 (the "Effective Date") by OBADIAH CLAYTON ("Clayton") and MIAMI DADE COUNTY ("County").

WHEREAS, Clayton and the County are parties to that certain lawsuit pending in the County Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida captioned *Obadiah Clayton v. Miami-Dade County*, Case No. 08-24941 CC 23 (4) (the "Lawsuit"); and

WHEREAS, the Parties desire 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 Clayton Five Hundred and Nine No/100 Dollars ($509.00) (the "Settlement Funds"), which is inclusive of court costs, within ten (10) days of

the Effective Date of this Agreement. The Settlement Funds shall be made payable to Obadiah Clayton.

2. Within three (3) days of clearance of the Settlement Funds, Clayton and the County shall execute and file a stipulation for dismissal with prejudice of the Lawsuit.

3. Within three (3) days of clearance of the Settlement Funds, Clayton and the County shall execute and deliver to counsel for the other party the releases in the form attached as Exhibits "A," and "B," respectively.

4. All parties shall bear their own attorneys' fees, and no party shall move for an award of attorney's fees and/or court costs, except that if litigation is required to enforce this Agreement, the prevailing party in such litigation shall be entitled to an award of reasonable attorney's fees and costs, if any, solely for the enforcement activities undertaken after the dispute resolution process described below has been completed.

5. In addition to the conditions set forth in Paragraphs 1, 2 and 3, this Agreement and the parties' obligations hereunder are contingent upon the final approval of this Agreement by the Miami-Dade Board of County Commissioners ("Board"), which shall be within the Board's sole discretion. The County agrees to submit a resolution and this Agreement to the Board for their consideration no later than October 5, 2010. If the Board, in its sole discretion, does not approve of the Agreement, this Agreement shall be null and void. Plaintiff understands that such approval is an express contingency to the settlement of this matter.

6. The Court shall retain jurisdiction to enforce the terms of this Agreement.

7. 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.

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

9. 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.

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

11. In the event that any one or more provisions of this Agreement shall be declared illegal, invalid, unenforceable and/or void by a court of competent jurisdiction, such provision or portion of this Agreement shall be deemed to be severed and deleted from this

Agreement, but this Agreement shall in all other respects remain unmodified and continue in full force and effect.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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 Settlement Agreement as of the Effective Date.

Dated: September 21, 2010

For the Plaintiff OBADIAH CLAYTON

Catherine A. Riggins, Esq.
Fla. Bar No. 0630004
18521 N.W. 28th Place
Miami, Florida 33056

OBADIAH CLAYTON

For the Defendant MIAMI-DADE COUNTY

R.A. CUEVAS, JR.
MIAMI-DADE COUNTY ATTORNEY
Suite 2810, Stephen P. Clark Center
111 N.W. 1st Street
Miami, Florida 33128-1993
(305) 375-5151

Terrence A. Smith
Assistant County Attorneys
Florida Bar No. 847471

George M. Burgess, County Manager

Exhibit "A"
RELEASE

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, OBADIAH CLAYTON ("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, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, attorneys' fees, costs, judgments, executions, claims, damages, and demands whatsoever, in law or in equity under the Housing Assistance Payment Contract between the parties, the U.S. Housing Act of 1937, the Section 8 Housing Choice Voucher Program regulations at 24 C.F.R. part 982 or 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 legal action pending between the First Party and Second Party in that certain lawsuit captioned *Obadiah Clayton v. Miami-Dade County*, Case No. 08-24941 CC 23 (4).

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_____, 2010.

_____
Witness

By: _____
OBADIAH CLAYTON

_____
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 OBADIAH CLAYTON, together with his 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, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, attorneys' fees, costs, judgments, executions, claims, damages, and demands whatsoever, in law or in equity under the Housing Assistance Payment Contract between the parties, the U.S. Housing Act of 1937, the Section 8 Housing Choice Voucher Program regulations at 24 C.F.R. part 982 or 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 legal action pending between the First Party and Second Party in that certain lawsuit captioned *Obadiah Clayton v. Miami-Dade County*, Case No. 08-24941 CC 23 (4).

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 _____, 2010.

_____
Witness

By: _____
GEORGE M. BURGESS
County Manager

_____
Witness