

MEMORANDUM

Agenda Item No. 8(O)(1)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: November 1, 2022

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving and authorizing the County Mayor to execute a Settlement Agreement between Ingram Park Apartments, LLC; the City of Opa-Locka; and Miami-Dade County, which includes dismissal of a lawsuit, release of all claims and payment of \$105,920.00 by Ingram Park Apartments, LLC to the City in satisfaction of all unpaid water and sewer bills through December 2019; and authorizing the County Mayor to exercise any rights contained therein

Resolution No. R-1058-22

The accompanying resolution was prepared by the Water and Sewer Department and placed on the agenda at the request of Prime Sponsor Senator René García.



Geri Bonzon-Keenan
County Attorney

GBK/uw

Memorandum



Date: November 1, 2022

To: Honorable Chairman Jose “Pepe” Diaz
and Members, Board of County Commissioners

From: Honorable Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Subject: Approval of Settlement Agreement to Resolve a Lawsuit between Ingram Park Apartments, LLC, the City of Opa-Locka and Miami-Dade County

Executive Summary

The attached resolution seeks approval of a Settlement Agreement (Agreement) between the City of Opa-Locka (City), Miami Dade County (County), and a City of Opa-Locka Utility customer, Ingram Park Apartments, LLC (the “Plaintiff”). The Settlement Agreement resolves a lawsuit that was brought against the City and the County related to alleged improper billing practices by the City and the alleged breach of unspecified contractual obligations by the County. Pursuant to the terms of the Agreement, Plaintiff will pay the City \$105,920.00 as full and final satisfaction of all unpaid water and sewer bills owed to the City through December 2019 and will dismiss its lawsuit against the County and the City with prejudice. In exchange, the City and County will release any liens imposed on the Plaintiff’s property for the nonpayment of water bills

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the Agreement, which is attached to the accompanying resolution as Exhibit 1, and authorize the County Mayor or County Mayor’s designee to execute the Agreement.

Scope

The City of Opa-Locka is located in Districts 1, 2, and 13, which are represented by Vice-Chairman Gilbert, Commissioner Jean Monestime and Commissioner Rene Garcia, respectively.

Delegation of Authority

This item authorizes the County Mayor or County Mayor’s designee to execute the Settlement Agreement for and on behalf of the County and to exercise any rights contained therein.

Fiscal Impact/Funding Source

Because the County is not paying or receiving any money through the Agreement, there will be no fiscal impact to the County.

Track Recorder/Monitor

Frances Morris, Chief Financial Officer for the Miami Dade Water and Sewer Department (WASD), will oversee implementation of the Settlement Agreement.

Background

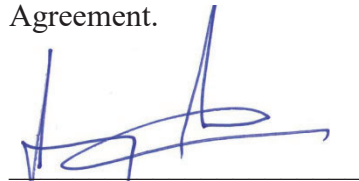
On July 18, 2017, the Board approved, via Resolution No. R-769-17, a Memorandum of Understanding (MOU) between the County and the City through which the County was to take over billing and collection services for the City’s water and sewer utility in exchange for payment of a fee by the City for the County’s billing and collection services. In addition, as part of the MOU, the County was to be repaid for various debts owed by the City to WASD and other County departments for a variety of services that had been provided to the City in the past.

Between 2018 and 2020, as a part of its efforts to overhaul the City's billing practices, the County installed new water meters for all of the City's customers and, since then, has been utilizing a team of County and City employees to read the new meters. The new water meters within the City measure the water usage accurately, and the bills are based on meter readings rather than estimates. These improvements to the billing system, however, have understandably resulted in higher bills for many customers, who are now seeing their actual water usage at the rates set by the City reflected on their bills. Some of the utility customers who have seen increases in their water and sewer bill have disputed the accuracy of the billings and filed complaints against the City and the County alleging, among other claims, a breach of contract.

The Plaintiff filed a lawsuit against the City and the County: Ingram Park Apartments, LLC v. Miami-Dade County and City of Opa-Locka, Florida, 20-008684-CA-01 (the “Ingram Case”), in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. The Plaintiff are seeking damages for breach of contract and injunctive relief.

After several years of litigating these matters, the Plaintiff, the City and the County have reached a settlement of the case. In exchange for Plaintiff paying the City \$105,920.00 as full and final settlement of all unpaid water and sewer bills through December 2019, the City and the County will release any liens that have been imposed against the Plaintiff’s properties prior to December 2019. All claims that any party has against the others will be released through the settlement, and the Ingram Case will be dismissed with prejudice.

Because of the inherent uncertainty of litigation, WASD believes that it is in the County’s best interest to resolve the dispute between the Parties. WASD recommends approval of the Settlement Agreement.



Jimmy Morales
Chief Operations Officer



MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: November 1, 2022

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(O)(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
- ☐ Statement of social equity required
- ☐ Ordinance creating a new board requires detailed County Mayor's report for public hearing
- ☒ No committee review
- ☐ Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ 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. 8(O)(1)
11-1-22

RESOLUTION NO. _____ R-1058-22

RESOLUTION APPROVING AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE A SETTLEMENT AGREEMENT BETWEEN INGRAM PARK APARTMENTS, LLC; THE CITY OF OPA-LOCKA; AND MIAMI-DADE COUNTY, WHICH INCLUDES DISMISSAL OF A LAWSUIT, RELEASE OF ALL CLAIMS AND PAYMENT OF \$105,920.00 BY INGRAM PARK APARTMENTS, LLC TO THE CITY IN SATISFACTION OF ALL UNPAID WATER AND SEWER BILLS THROUGH DECEMBER 2019; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY RIGHTS CONTAINED THEREIN

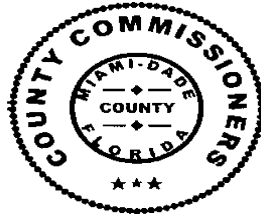
WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves and authorizes the County Mayor or County Mayor's designee to execute a Settlement Agreement between Ingram Park Apartments, LLC; the City of Opa-Locka; and the County, in substantially the form attached hereto as Exhibit 1. The Settlement Agreement includes payment of \$105,920.00 by Ingram Park Apartments, LLC to the City in exchange for a release of any liens imposed against the Plaintiff's properties for unpaid water and sewer bills through December 2019; a release of any and all claims as to all parties; and dismissal of a lawsuit brought against the County and the City with prejudice. This Board further authorizes the County Mayor or County Mayor's designee to exercise any rights contained therein.

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

Jose "Pepe" Diaz, Chairman	aye		
Oliver G. Gilbert, III, Vice-Chairman	aye		
Sen. René García	aye	Keon Hardemon	aye
Sally A. Heyman	aye	Danielle Cohen Higgins	aye
Eileen Higgins	aye	Kionne L. McGhee	aye
Jean Monestime	aye	Raquel A. Regalado	aye
Rebeca Sosa	aye	Sen. Javier D. Souto	aye

The Chairperson thereupon declared this resolution duly passed and adopted this 1st day of November, 2022. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.



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

HARVEY RUVIN, CLERK

Basia Pruna

By: _____
 Deputy Clerk

Approved by County Attorney as
 to form and legal sufficiency.

SED

Sarah E. Davis

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is entered into this ____ day of May, 2022, by and between **INGRAM PARK APARTMENTS, LLC (PLAINTIFFS)**; the **CITY OF OPA-LOCKA**, a Florida Municipal Corporation (the “City”); and **MIAMI-DADE COUNTY**, a political subdivision of the State of Florida (the “County”) (collectively, with the City, “DEFENDANTS”, and with PLAINTIFFS, collectively, the “Parties”).

WHEREAS, PLAINTIFFS initiated a lawsuit in the Circuit Court for Eleventh Judicial Circuit in and for Miami-Dade County, Florida, Case No.: 20-008684-CA-01, through which Plaintiffs sought recovery of damages for Breach of Contract and Declaratory Relief that allegedly arose out of the City’s provision of, and billing for, water service to Plaintiffs as well as the City’s alleged intent to place liens on Plaintiffs’ property for non-payment of water service bills (hereinafter, the “Lawsuit”); and

WHEREAS, Plaintiffs’ latest version of the Complaint, the Amended complaint, also alleges that the County has breached an unspecified contractual obligation to the **Plaintiffs** and should also in some unspecific way be held responsible for damages; and

WHEREAS, the Parties want to avoid the associated expense and uncertainty of litigation, and, therefore, desire to amicably resolve their dispute and settle all of their respective claims,

NOW, THEREFORE, in consideration of the foregoing recitals and following premises, terms and conditions and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the Parties agree as follows:

TERMS AND CONDITIONS

1. **Incorporation of Recitals.** The Parties agree that the above recitals are true and correct and that those recitals are incorporated by reference and form a part of this Agreement. The properties at issue in the Complaint are set forth in Exhibit “A” attached hereto.
2. **Effective Date.** The Effective Date of this Agreement shall be the sooner of: (a) the date of the expiration of the County Mayor’s veto period after the approval of this Agreement by the Board of County Commissioners of Miami-Dade County (the “BCC”) without the County Mayor vetoing the BCC’s resolution approving same, or (b) the date on which the County Mayor approves the BCC-approved resolution authorizing the execution of this Agreement, as set forth in Section 3 of this Agreement, or (c) the date on which the BCC overrides a County Mayor veto of this Agreement.
3. **City and County Approval Processes.** The Parties acknowledge that before the City or County may settle any claims or enter into any binding contractual obligations pursuant to this Agreement, the City and the County must obtain the approval of their respective Boards and the subsequent assent of, as applicable, the City Mayor or the County Mayor (or, if the County Mayor vetoes any legislation approving this Agreement, an override of the County Mayor’s veto by the BCC).
 - a. **BCC Approval.** The Parties acknowledge that County Resolution No. 130-06 requires that all non-County parties must execute this Agreement before the Agreement may be placed on the BCC’s agenda. Accordingly, Plaintiffs and the City agree to execute this Agreement before the County and as a precondition of the presentation of this Agreement to the County Mayor/designee and the BCC. After such execution, Plaintiffs and the City agree that

neither may withdraw from or modify the terms of its settlement, as presented in this Agreement except as provided in Paragraph 3(c) below.

b. **The Parties' Obligations Before BCC Approval.** None of the Parties shall be required to file any document compromising any claims they may have against the other Parties and shall not have to release the other Parties until the Effective Date.

c. **Consequence Upon Failure to Obtain BCC Approval.** If the BCC does not approve this Agreement or override a County Mayor veto of this Agreement, and after all opportunities for BCC reconsideration have passed, the Parties shall return to the status quo existing before the Parties' preparation of this Agreement, and the fact that the County, the City and Plaintiffs sought to negotiate a resolution to their dispute, including any supporting documents necessary to present this Agreement to the BCC, shall be inadmissible for all reasons and shall not prejudice any of their pre-existing rights and remedies with respect to each other or any other person or entity.

4. **Agreement to Settle: No Admission of Liability.** Subject to the terms and conditions of this Agreement, the Parties hereby agree that the terms of this Agreement, the payment of any monies, or any other action of forbearance taken pursuant to this Agreement shall in no way constitute, nor be construed as, an admission of liability or acknowledgment of the validity of any allegation, finding or conclusion, by the Parties, or their respective agents, but rather are made as a contractual settlement by way of compromise for the purpose of settling the claims, controversies, and differences addressed herein and to avoid the expense and uncertainty of litigation. Moreover, this Agreement shall not be admissible in any proceeding for any

purpose, except for the purpose of establishing a claim of default or violation of the provisions contained herein.

a. **Payment Terms.** Upon receipt of this signed Settlement Agreement and Release, **PLAINTIFFS** shall pay unto **DEFENDANT CITY OF OPA-LOCKA** the total sum of **\$105,920.00 USD** (One Hundred and Five Thousand Dollars Nine Hundred and Twenty Dollars and 00/100 Cents), of which \$21, 420 shall be through relinquishment of any claims to their security deposit and immediate payment of \$84,500 and the **DEFENDANTS** shall release all claims for any outstanding amounts due on the properties whose water accounts are the subject of the Lawsuit (the “Properties”) that may have accrued through December 2019, and all liens imposed by the City and/or County related thereto in full and complete settlement of all matters in dispute in the Lawsuit.

b. **Payment Method.** Plaintiffs shall pay the sum due above to the City by cashier’s check to the order of City of Opa-Locka, sent by overnight courier to Burnadette Norris-Weeks P.A., 401 NW 7th avenue, Fort Lauderdale, FL 33311.

5. **Plaintiffs’ Release.** Upon release of and in consideration of the releases of lien referenced above, **PLAINTIFFS**, and their subsidiaries, affiliates, successors and assigns hereby release, acquit, satisfy, and forever discharge the **DEFENDANTS**, and their officials, employees, attorneys and representatives, from any and all actions and causes of actions, damages, judgments, claims, counterclaims and demands whatsoever, liquidated or un-liquidated, contingent or fixed, known or unknown, determined or undetermined, at law or in equity which they now have or may have from the beginning of time to the date of these presents and/or that otherwise could have been brought against the **DEFENDANTS** in the Lawsuit.

6. **City's and County's Releases.** As part and parcel of this Settlement and Release Agreement and in consideration of the settlement sum to be paid to the City, **DEFENDANTS** do hereby release, acquit and discharge, and by these present have hereby released, acquitted and forever discharged, **PLAINTIFFS**, along with their subsidiaries, affiliates, successors and assigns from any and all claims, causes of action, rights of action, damages, accounts and/or reckonings, of whatever name or nature, including, but not limited to, any and all actions for damages sounding or arising in tort, in contract, or by statute, and any and all other claims, actions and/or causes of action which were alleged in, or which could have been alleged by **DEFENDANTS**, as a counterclaim in the Lawsuit and/or pertaining to or arising out of or relating to the Lawsuit provided that **PLAINTIFFS** are not released from paying any water bills for the Properties identified in the Lawsuit, which accrued after December 2019.

7. **Dismissal of the Lawsuit.** Within ten (10) days of the Effective Date of this Agreement, Plaintiffs' counsel shall file a Notice of Voluntary Dismissal with prejudice in the Lawsuit. Each Party agrees to bear its own attorneys' fees and costs.

8. **Florida Law Applies; Exclusive Venue.** This Agreement shall be construed under the laws of the State of Florida without regard to its choice of law provisions. Venue for any dispute arising out of this Agreement shall lie exclusively with Judges in Section 44 of the Complex Business Litigation Division in the Eleventh Judicial Circuit in and for Miami-Dade County.

9. **Entire Agreement: Modification.** This Agreement together with all documents required to be executed hereunder constitutes the entire agreement and understanding between the Parties to this Agreement with respect to the subject matter of this Agreement. No

supplement, modification, or amendment to this Agreement shall be binding unless it is duly executed in writing by all Parties.

10. **Rule of Construction: Opportunity to Review.** The Parties represent and agree that they have participated equally in the negotiation of the terms and provisions set forth in this Agreement and that no presumptions or inference shall apply against any Party hereto as to its construction. The Parties declare that: (a) they have completely read the terms of this Agreement, (b) they have discussed the terms of the Agreement with legal counsel of their choice, and (c) they fully understand and voluntarily accept the terms for the purpose of making a full and final compromise, adjustment and settlement of claims.

11. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, representatives, agents, attorneys, officers, directors, predecessors, affiliates, parents, subsidiaries, successors or assigns in connection with any legal action arising out of the Agreement.

12. **Authority to Execute and Bind.** By executing this Agreement, the undersigned warrant and represent that they are authorized to enter into this Agreement and empowered to bind their respective Parties to these terms and, where applicable, their parents, affiliates, subsidiaries, successors, assignees and related entities. Further, the Parties represent that they have not assigned any of their respective rights or claims that are the subject of this Agreement to any third party.

13. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions of this Agreement.

14. **Severability.** The Parties have attempted to create an Agreement that is lawful

and enforceable in all respects. The validity of this Agreement shall not be affected by any subsequent changes in federal, state or County law, whether through legislation or judicial interpretation, which create, eliminate, or change the rights and obligations of the Parties. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of this Agreement is held to be invalid, void, or unenforceable, the balance of the provisions shall, nevertheless, remain in full force and effect and shall in no way be affected, impaired, or invalidated.

15. **Counterparts; Electronic Signatures.** The Parties agree that this Agreement, and any and all other documents in connection with this Agreement, may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same Agreement. This Agreement may be executed as facsimile, email, or electronic originals, and each copy of this Agreement bearing the facsimile, email, or electronic transmitted signature of any Party's authorized representative shall be deemed to be an original.

(Remainder of Page Left Blank Intentionally)

IN WITNESS WHEREOF, the Parties have executed this Agreement and Mutual Releases by their duly authorized representatives as of the date of year appearing by their respective signatures.

ATTEST:

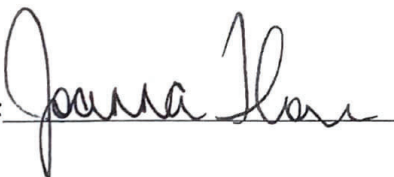
MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF COUNTY
COMMISSIONERS

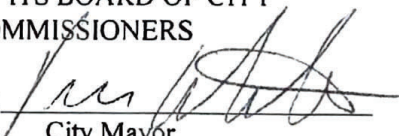
By: _____
Harvey Ruvin
Clerk of the Board

By: _____
Daniella Levine Cava
County Mayor

ATTEST:

CITY OF OPA LOCKA, FLORIDA
BY ITS BOARD OF CITY
COMMISSIONERS

By:  _____

By:  _____
City Mayor

(SIGNATURES CONTINUE ON NEXT PAGES)

IN THE PRESENCE OF

[Signature]

WITNESS

INGRAM PARK APARTMENTS LLC

By *[Signature]*

Jon Arnold, as Manager of ARMOS Investments LLC, General Partner of Ingram Park Holdings LLLP, its sole member/manager.

STATE OF FLORIDA

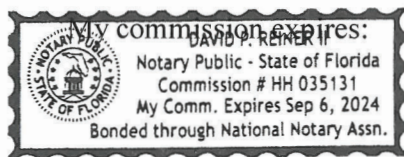
COUNTY OF MIAMI DADE

Before me, the undersigned authority, this ___ day of May, 2022 personally appeared Jon Arnold, as Manager of ARMOS Investments LLC, General Partner of Ingram Park Holdings LLLP, sole member/manager of INGRAM PARK APARTMENTS, LLC, who, after being duly sworn, deposed and stated that he has read the above and foregoing Settlement Agreement and Release, and that he knows and appreciates the contents thereof, and has executed same of his own free act and deed.

Personally Known *[initials]* Produced _____ as identification.

WITNESS my hand and official seal in the County and State last aforesaid this 26 day of May, 2022.

(SEAL)



[Signature]

Notary Signature

David P. Reimer

Printed Notary Signature

EXHIBIT “A”

Ingram Park Apartments LLC properties:

- 14460 NW 22 AVE, Opa-Locka, Fla 33054 (08-2122-005-1260);
- 14255 NW 22 AVE, Opa-Locka, Fla 33054 (08-2122-005-1780);
- 14265 NW 22 AVE, Opa-Locka, Fla 33054 (08-2122-005-1790);
- 14305 NW 22 AVE, Opa-Locka, Fla 33054 (08-2122-005-1800);
- 14315 NW 22 AVE, Opa-Locka, Fla 33054 (08-2122-005-1810);
- 14325 & 14335 NW 22 AVE, Opa-Locka, Fla 33054 (08-2122-005-1820);
- 14345 & 14355 NW 22 AVE, Opa-Locka, Fla 33054 (08-2122-009-0010);
- 14370 NW 22 AVE, Opa-Locka, Fla 33054 (08-2122-009-0170); and
- 14350 NW 22 AVE, Opa-Locka, Fla 33054 (08-2122-009-0190).