

MEMORANDUM

Agenda Item No. 8(N)(2)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: April 18, 2023

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution approving Settlement Agreement in *Enrique Madrinan v. Miami-Dade County*, Case No. 22-cv-20917 in the amount of \$325,000.00 to resolve any and all claims between the parties; and authorizing the County Mayor to execute the Settlement Agreement and exercise all provisions contained therein

Resolution No. R-369-23

The accompanying resolution was prepared by the Transportation and Public Works Department and placed on the agenda at the request of Prime Sponsor Commissioner Eileen Higgins.


Geri Bonzon-Keenan
County Attorney

GBK/ks

Memorandum



Date: April 18, 2023

To: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

From: Daniella Levine Cava 
Mayor

Subject: Resolution Approving Settlement Agreement in *Enrique Madrinan v. Miami-Dade County*, Case No. 22-cv-20917-KMW and Authorizing the County Mayor to Execute the Settlement Agreement

Executive Summary

The attached resolution seeks approval of a Settlement Agreement between Miami-Dade County (the “County”) and Enrique Madrinan (“Mr. Madrinan”), a handicapped plaintiff, who suffered a fall at a County intersection near the Financial District Metromover Station (South Miami Avenue and 14th Street). Mr. Madrinan brought a federal claim alleging violations of the Americans with Disabilities Act of 1990 (“ADA”) and a state law claim for negligence. The lawsuit, pending in the United States District Court for the Southern District of Florida, is styled *Enrique Madrinan v. Miami-Dade County*, Case No. 22-cv-20917-KMW. The parties have tentatively reached an agreement to settle the action globally for \$325,000.00, subject to approval by the Board of County Commissioners (“Board”). The settlement also ensures that modifications are to be made that allow wheelchair accessibility to the curb-and-gutter section of the southeast corner of the intersection of South Miami Avenue and 14th Street. The Department of Transportation and Public Works has already completed these site modifications.

Recommendation

It is recommended that the Board approve the attached Settlement Agreement and Release between the County and Mr. Madrinan. The Agreement, which is attached to the resolution, resolves all claims brought by Mr. Madrinan against the County for alleged violations of the ADA, the Rehabilitation Act of 1973, and Florida law for \$325,000.00.

Scope

The physical site at issue in the lawsuit is located at South Miami Avenue and 14th Street, Miami, Florida, which is in Commission District 5, represented by Commissioner Eileen Higgins.

Delegation of Authority

This item authorizes the County Mayor or the County Mayor’s designee to execute the Settlement Agreement on behalf of the County and to carry out all obligations and exercise all rights contained therein.

Fiscal Impact/Funding Source

Under the terms of the Settlement Agreement, the County will pay Mr. Madrinan \$325,000.00 as full and final settlement of all disputes relating to the issues arising from the litigation. The settlement will be paid from the Public Works General Fund.

Track Record/Monitor

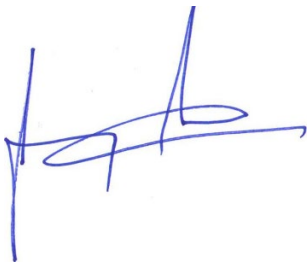
Department of Transportation and Public Works Chief Administrative Officer, James E. Fisher, will oversee administration of the Settlement Agreement.

Background

Plaintiff Enrique Madrinan, a paraplegic and wheelchair-bound individual, suffered a fall at the southeastern intersection of South Miami Avenue and 14th Street, Miami, Florida. The County determined that the particular area where Mr. Madrinan fell is under the jurisdiction of the County. Mr. Madrinan alleged that the area where he fell did not comply with the ADA, and further alleged that its non-compliant condition caused the fall. Mr. Madrinan underwent various surgeries and rehabilitative stays that he alleged were caused by the fall, and further alleged ongoing harms, impairment, and damages stemming from the accident, which he claimed had exacerbated various conditions he suffered from as a paraplegic.

Mr. Madrinan brought claims for injunctive relief, compensatory damages, and attorney fees under the ADA, the Rehabilitation Act, and Florida law. The ADA authorizes the award of attorney's fees to a prevailing party in addition to damages.

The settlement between the County and Plaintiff provides that the County shall pay Mr. Madrinan the total sum of \$325,000.00 to resolve all claims between the parties and shall further ensure that, within 180 days of the effective date of the Settlement Agreement, modifications that allow wheelchair accessibility to the curb-and-gutter section of the southeast corner of the intersection of South Miami Avenue and 14th Street are completed. The Department of Transportation and Public Works has already completed the required site modifications. In consideration of the terms of the Settlement Agreement, Mr. Madrinan agrees to release the County from all claims he has or may have related to the events alleged in the litigation.



Jimmy Morales
Chief Operations Officer



MEMORANDUM

(Revised)

TO: Honorable Chairman Oliver G. Gilbert, III
and Members, Board of County Commissioners

DATE: April 18, 2023

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(N)(2)

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(N)(2)
4-18-23

RESOLUTION NO. _____ R-369-23

RESOLUTION APPROVING SETTLEMENT AGREEMENT IN
ENRIQUE MADRINAN V. MIAMI-DADE COUNTY, CASE NO.
22-CV-20917 IN THE AMOUNT OF \$325,000.00 TO RESOLVE
ANY AND ALL CLAIMS BETWEEN THE PARTIES; AND
AUTHORIZING THE COUNTY MAYOR OR COUNTY
MAYOR'S DESIGNEE TO EXECUTE THE SETTLEMENT
AGREEMENT AND EXERCISE ALL PROVISIONS
CONTAINED THEREIN

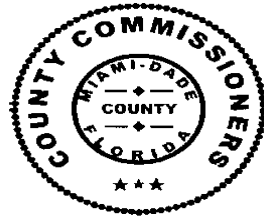
WHEREAS, this Board desires to accomplish the purpose outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board approves the Settlement Agreement in *Enrique Madrinan v. Miami-Dade County*, Case No. 22-cv-20917, in substantially the form attached hereto as Exhibit 1, between Miami-Dade County and Enrique Madrinan in the amount of \$325,000.00 to be paid to Enrique Madrinan to resolve any and all claims between the parties. This Board further authorizes the County Mayor or County Mayor's designee to execute the Settlement Agreement for and on behalf of Miami-Dade County, and to exercise all provisions contained therein.

The foregoing resolution was offered by Commissioner **Danielle Cohen Higgins** , who moved its adoption. The motion was seconded by Commissioner **Oliver G. Gilbert, III** and upon being put to a vote, the vote was as follows:

Oliver G. Gilbert, III, Chairman	aye		
Anthony Rodríguez, Vice Chairman	aye		
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	aye
Roberto J. Gonzalez	aye	Keon Hardemon	aye
Danielle Cohen Higgins	aye	Eileen Higgins	aye
Kionne L. McGhee	aye	Raquel A. Regalado	aye
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 18th day of April, 2023. 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

LUIS G. MONTALDO, CLERK AD INTERIM

By: Basia Pruna
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to be "AVZ", written over a horizontal line.

Anita Viciano Zapata

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release is entered into this ____ day of _____, 2023, by and between Plaintiff, ENRIQUE MADRINAN, and Defendant, MIAMI-DADE COUNTY (the "County"), a political subdivision of the State of Florida (collectively, with Plaintiff, the "Parties").

WHEREAS, Plaintiff filed an action against Miami-Dade County for alleged violations of Title II of the Americans with Disabilities Act (the "ADA"), 42 U.S.C. §12131 *et seq.*, and for claims arising from Section 504 of the Rehabilitation Act (the "RA"), 29 U.S.C. §794 *et seq.*, and Florida law; and

WHEREAS, the action is styled *Enrique Madrinan v. Miami-Dade County*, Case No. 22-cv-20917-Williams (the "Action"), currently pending in the United States District Court for the Southern District of Florida; and

WHEREAS, the County does not admit, and expressly denies, a violation of any federal, state or local statute (including, but not limited to, the ADA and the RA), or any other wrongdoing or liability whatsoever; 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 for other good and valuable consideration, the sufficiency of which is hereby acknowledged, and subject to the terms and conditions set forth herein, 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.

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, or (c) the date on which the BCC overrides a County Mayor veto of this Agreement.
3. **County Approval Process.** The Parties acknowledge that before the County may settle any claims or enter into any binding contractual obligations pursuant to this Agreement, the County must obtain the approval of the BCC and the subsequent assent of 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).
4. **Signature Required.** The Parties acknowledge that Miami-Dade County Resolution No. 130-06 requires that all non-County parties execute this Agreement before the Agreement may be placed on the BCC's agenda. Accordingly, Plaintiff agrees to execute this Agreement before the County and as a precondition of the presentation of this Agreement to the BCC.
5. **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 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.

6. **Payment Terms.** Within 14 days of the Effective Date, the County shall pay Plaintiff the total sum of \$325,000.00 (Three Hundred Twenty-Five Thousand Dollars) by check made out to the trust account for Plaintiff's counsel, Goldberg and Hirsh P.A.
7. **Site Modifications.** Within 180 days of the Effective Date, the County shall ensure that modifications that allow wheelchair accessibility to the curb-and-gutter section of the southeast corner of the intersection of South Miami Avenue and 14th Street, the site at issue in the Action, are completed.
8. **Release of Claims.** In consideration of the above terms, and upon approval of this Settlement Agreement by the BCC, Plaintiff agrees to execute the attached "Release of All Claims" and shall thereby release, acquit, satisfy, and forever discharge the County, including all of its officials, employees, attorneys and representatives, from any and all claims (whether asserted or not), actions, causes of action, demands, rights, damages, costs, claims for attorneys' fees, loss of service, expenses and compensation whatsoever, which Plaintiff now possesses or which may hereafter accrue on account of or in any way related to any and all known and unknown events or occurrences, both foreseen and unforeseen, in any way related to the events described and the facts alleged in the Action.
9. **Fees and Costs.** Each party shall bear its own attorney fees and costs with respect to the Action. In any action to enforce this Agreement, the prevailing party shall be entitled to

their reasonable fees, expenses and costs in accordance with 42 U.S.C. § 12205 and applicable law.

10. **Governing Law.** This Agreement shall be construed under, and interpreted in accordance with, the laws of the State of Florida, without regard to its choice of law rules.

11. **Jurisdiction.** The Parties agree that the United States District Court, Southern District of Florida shall have exclusive jurisdiction over the subject matter of this Agreement and the Parties for the duration of the performance of the terms and provisions of this Agreement.

12. **Entire Agreement.** This Agreement, together with the attached Release of All Claims, constitutes the entire agreement and understanding between the Parties to this Agreement with respect to the subject matter of this Agreement.

13. **Rule of Construction.** 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 presumption or interference shall apply against any party hereto to its construction.

14. **Successors and Assigns.** The Parties agree that this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and/or assigns, including any successor owners, operators, lessors or lessees of the Property.

15. **Authority to Execute.** By executing this Agreement, the undersigned warrant and represent that they are authorized to enter into this Agreement and to bind their respective Parties to these terms.

16. **Severability.** If any provision of this Agreement shall be 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.

17. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed original, but all of which shall constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement by their duly authorized representatives as of the last date set forth below.

STATE OF FLORIDA

Plaintiff ENRIQUE MADRINAN

COUNTY OF Miami-Dade.

By: [Signature]

Date: _____

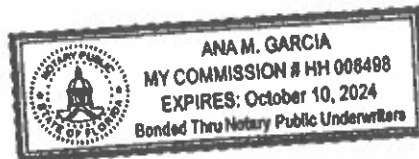
The foregoing instrument was acknowledged before me by means of _____ physical presence or
_____ online notarization, this 21st day of March, 2023, by Enrique Madrinan.

[Signature]
Notary Public – State of Florida

Ana M. Garcia
[PRINT, TYPE, OR STAMP NAME OF NOTARY PUBLIC]

Personally Known ☒ OR Produced Identification _____

[Type of Identification Produced: _____]



ATTEST:

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

By: _____
Clerk of the Board

By: _____
County Mayor

Date: _____

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

RELEASE OF ALL CLAIMS

That **ENRIQUE MADRINAN**, being of lawful age, on behalf of himself, his heirs, executors, administrators, successors, and assigns (hereinafter referred to collectively as the "RELEASOR"), for the sole consideration of \$325,000.00 (Three Hundred Twenty-Five Thousand Dollars and no cents), the sufficiency of which consideration will not be contested, does hereby releases, acquits and forever discharges **MIAMI-DADE COUNTY**, including all of Miami-Dade County's employees, agents, officers, Commissioners, attorneys, officials, administrators, departments, and agencies, whether currently known or unknown (the "County") (also referred to collectively as "RELEASEES") from any and all claims (whether asserted or not), actions, causes of action, demands, rights, damages, costs, claims for attorneys' fees, loss of service, expenses and compensation whatsoever, which the RELEASOR now possesses or which may hereafter accrue on account of or in any way related to any and all known and unknown events or occurrences, both foreseen and unforeseen, in any way related to the events described and the facts alleged in the case styled *Enrique Madrinan v. Miami-Dade County*, Case No. 22-cv-20917-Williams, which is pending in the United States District Court for the Southern District of Florida (the "Action").

It is understood and agreed that this settlement is the compromise of a doubtful and disputed claim, that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released, and that RELEASEES deny liability therefor, admit to no wrongdoing, and intend merely to avoid litigation.

The undersigned hereby declares and represents that the injuries sustained are or may be permanent and progressive and that recovery therefrom is uncertain and indefinite and in making this Release it is understood and agreed, that the undersigned relies wholly upon the undersigned's judgment, belief and knowledge of the nature, extent, effect and duration of said injuries and liability therefor and is made without reliance upon any statement or representation of the party or parties hereby released or their representatives or by any physician or surgeon by them employed.

RELEASEES further declare and represent that no promise, inducement or agreement not herein expressed has been made to the signatory below, and that this Release contains the entire agreement between the parties hereto, and that the terms of this Release are contractual and not a mere recital. Undersigned further releases all persons named or referenced herein from any claim for litigation costs and/or attorney's fees, at both the trial and appellate courts.

RELEASOR agrees to set aside sufficient funds from the above settlement funds to cover any and all Medicare and Medicaid bills, claims, penalties, interest, fines and liens whatsoever arising out of the occurrence set forth in the Action. RELEASOR is responsible for compliance with all notice and other requirements pursuant to the Medicare Secondary Payer Statute (MSPS) codified at 42 U.S.C. §1395y(b)(2) and any other legislation, rule, statute law or ordinance pertaining to the Medicare or Medicaid payments or claims arising out of the occurrence set forth in the Action. RELEASOR agrees to hold harmless and indemnify RELEASEES for any and all bills, claims, penalties, interest, fines, liens, damages, double damages, demands, actions or causes of action whatsoever arising from Medicare or Medicaid's payment of or other processing of or participation regarding said claim arising out of the Action and/or any notice or other requirements of MSPS and/or 42 C.F.R. § 411.24(e), (g), (h), (i)(1) (2009) as amended arising in connection with the Action and/or any other legislation, rule, law, statute or ordinance addressing Medicare or Medicaid arising in connection with the Action, and from all damages, costs and expenses therefrom including, but not limited to, attorneys' fees and costs which RELEASEES may bear and incur by reasons thereof. RELEASOR further agrees to fully cooperate and provide RELEASEES with any and all material required by Medicare (CMS) to properly report the claim.

RELEASOR understands that any failure on his/her part to adhere to the conditions in the preceding paragraph and satisfy any ultimate Medicare lien, could result in liability to RELEASEES and their counsel and, therefore, RELEASOR agrees, in consideration of this settlement, and the monies to be paid in furtherance thereof, to hold harmless, defend and indemnify RELEASEES and their counsel should RELEASOR violate any of these conditions or fail to satisfy any Final Demand Letter (Final Medicare Lien) resulting in either a suit, claim or judgment by Medicare (CMS) against RELEASEES and their counsel for the payments/reimbursement or conditional payments together with all interests, penalties, attorney's fees, costs, fines, and/or double damages claimed as a result of such non-payment.

RELEASOR agrees that RELEASEES and their counsel have insisted that Medicare's interest be protected and the foregoing paragraphs represent material conditions of this settlement and RELEASOR thus accepts and agrees to these conditions.

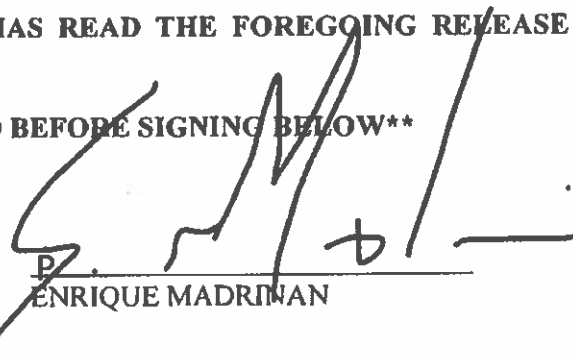
RELEASOR accepts responsibility for and agree to pay out of the settlement funds any and all liens, claims for reimbursement, bills and assigned or subrogated claims or interests,

regardless of whether disclosed to RELEASOR including, but not limited to, all liens, claims for reimbursement, assigned or subrogated claims or interests of collateral source payers as defined by Florida law, federal and state tax liens, Medicare or Medicaid liens, Social Security liens, hospital liens, workers compensation liens, any claims of insurers or other persons or entities that provide medical, rehabilitative, hospital, psychological or other healthcare benefits, federal or statutory common law liens, attorney's fees and costs, and other assigned or subrogated claims or interest, which may be applicable to injuries or claims arising out of or related to any claims asserted by them or which could have been asserted by them or on their behalf arising out of the occurrence which is the subject of the Action.

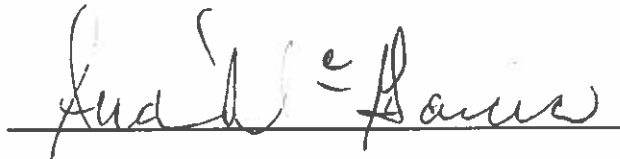
RELEASOR further agrees to indemnify and hold harmless RELEASEES from all manner of action and actions, causes and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, costs, expenses, covenants, contracts, controversies, agreements, promises, damages, judgments, executions, claims and demands whatsoever in law or in equity, which have or may be asserted by any third party arising out of any hospital bills, medical bills, rehabilitative bills, psychiatric bills, and all other bills or expenses of whatever kind whatsoever incurred by RELEASOR arising out of the occurrence set forth in the Action or out of any lien arising by operation of law or otherwise out of such bills or expenses, including but not limited to all attorney's fees and costs.

THE SIGNATORY BELOW HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.

****CAUTION: READ BEFORE SIGNING BELOW****


ENRIQUE MADRINAN

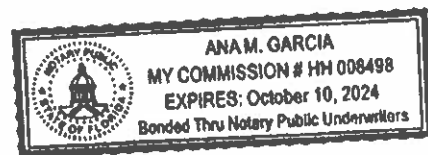
The foregoing instrument was acknowledged before me by means of ☒ physical presence or
☐ online notarization, this 21st day of March, 2023, by Enrique Madrinan



Notary Public – State of Florida

Ana M. Garcia

[PRINT, TYPE, OR STAMP NAME OF NOTARY PUBLIC]



Personally Known ☒ OR Produced Identification ☐

[Type of Identification Produced: _____]