

# Memorandum



**Date:** March 18, 2008

Agenda Item No. 12(A)(1)

**To:** Honorable Chairman Bruno A. Barreiro and  
Members, Board of County Commissioners

**From:**   
George M. Burgess  
County Manager

R. A. Cuevas, Jr.  
County Attorney

A handwritten signature in black ink, appearing to read "R. A. Cuevas, Jr.", written over a horizontal line.

**Subject:** Resolution Approving and Authorizing Settlement of Pending Litigation Between MIA Consulting Group, Inc. and Miami-Dade County

## RECOMMENDATION

It is recommended that the Board of County Commissioners ("Board") authorize settlement of the pending litigation between MIA Consulting Group, Inc. ("MIA Group") and Miami-Dade County ("County") on the terms and conditions specified in the attached Settlement Agreement.

## BACKGROUND

In July 2000, the Board of County Commissioners approved Resolution R-903-00 that authorized the establishment of the Florida not-for-profit corporation, MDHA Development Corporation (MDHADC), with the intent to develop the Ward Towers Assisted Living Facility (ALF).

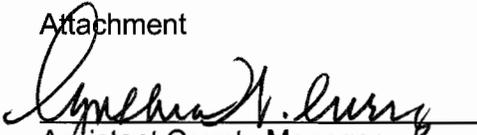
In July 2004, MDHADC issued two Requests for Proposals seeking bids for assisted living facility and management services. MIA Group, a management firm that specializes in operating assisted living facilities, submitted its bid to MDHADC but was rejected as being "not responsible." The "not responsible" finding was based in part on a memorandum prepared by the Miami-Dade Department of Human Services (DHS). MIA Group's principal was formerly an officer in MIA Consulting, Inc. (MIA Consulting), which served as the management agent for Helen Sawyer Assisted Living Facility (Helen Sawyer), a public housing development owned by the County, until MIA Consulting dissolved in July 2003. The memorandum alleged that MIA Consulting engaged in misconduct during its operation of Helen Sawyer. There was no official finding of misconduct by the County and nor has either MIA Group or MIA Consulting been disbarred or suspended by the County or the U.S. Department of Housing and Urban Development (US HUD).

On January 12, 2005, MIA Group filed a lawsuit seeking damages, injunctive relief and attorney's fees against the MDHADC, the County and Independent Living Systems, LLC (ILS), which was the successful bidder. The basis of the lawsuit challenged: (1) whether the MDHADC complied with County's procurement procedures; (2) whether the MDHADC could engage in such procurement activities without the consent of the Board; and (3) whether the MDHADC should have relied on the DHS memorandum without first giving MIA Group an opportunity to respond to the allegations.

There is a companion item that is being presented to the Board regarding a Transitional Agreement, which addresses all of the projects and funds that have been conveyed or allocated to MDHADC. Pursuant to the Transitional Agreement, MDHADC will be required to return certain projects and funds and retain others. Notwithstanding this Transitional Agreement, it is recommended that the Board approve the settlement agreement to resolve the pending litigation against MDHADC and the County. It should be noted that although the County has reached an agreement with MIA Group, the MDHADC has refused to agree to the terms of the settlement and therefore is not a party to the agreement. Although MDHADC is not a party to the agreement, MIA Group has agreed to dismiss the lawsuit against all parties with prejudice, which means they will not be able to re-file the lawsuit against the County, ILS or the MDHADC. We believe that it is in the best interest of the County to proceed with the settlement.

It is therefore recommended that this Board approve the settlement of the pending litigation with MIA Group on the following terms: 1) the County pay MIA Group \$10,650.00, inclusive of attorney's fees; 2) MIA Group agrees to waive any and all claims it may have against the County and ILS; and 3) the parties will execute mutual releases of any other claims they may have against the other which arise out of this litigation. The \$10,650 will be paid from the funds that are returned by MDHADC to the County pursuant to the Transitional Agreement.

Attachment

  
Assistant County Manager



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Bruno A. Barreiro  
and Members, Board of County Commissioners

**DATE:** March 18, 2008

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

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

Please note any items checked.

- "4-Day Rule" ("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
- Bid waiver requiring County Manager's written recommendation
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- Housekeeping item (no policy decision required)
- No committee review

Approved \_\_\_\_\_ Mayor

Agenda Item No. 12(A)(1)

Veto \_\_\_\_\_

03-18-08

Override \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

RESOLUTION APPROVING AND AUTHORIZING  
EXECUTION OF SETTLEMENT AGREEMENT  
RESOLVING PENDING LITIGATION BETWEEN MIAMI-  
DADE COUNTY AND MIA CONSULTING GROUP, INC.

**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 of the pending litigation between the County and MIA Consulting Group, Inc., in substantially the form attached and made a part hereto; and authorizes the Mayor or designee and the County Attorney 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:

- |                      |                                    |
|----------------------|------------------------------------|
|                      | Bruno A. Barreiro, Chairman        |
|                      | Barbara J. Jordan, Vice-Chairwoman |
| Jose "Pepe" Diaz     | Audrey M. Edmonson                 |
| Carlos A. Gimenez    | Sally A. Heyman                    |
| Joe A. Martinez      | Dennis C. Moss                     |
| Dorin D. Rolle       | Natacha Seijas                     |
| Katy Sorenson        | Rebeca Sosa                        |
| Sen. Javier D. Souto |                                    |

The Chairperson thereupon declared the resolution duly passed and adopted this 18<sup>th</sup> day of March, 2008. 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 CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

CASE NO. 04-26233 CA 11

MIA CONSULTING GROUP, INC. )  
)  
Plaintiff, )  
)  
)  
)  
vs. )  
)  
)  
MIAMI-DADE COUNTY, a political )  
subdivision of the State of Florida, )  
MDHA DEVELOPMENT CORP., )  
a Florida Non profit corporation, and )  
INDEPENDENT LIVING SYSTEMS, )  
LLC, a Florida Limited Liability )  
Corporation )  
)  
Defendants. )  
\_\_\_\_\_ )

**SETTLEMENT AGREEMENT**

This SETTLEMENT AGREEMENT (the "Agreement") is entered into as of this \_\_\_ day of October 2007 (the "Effective Date") by MIA CONSULTING GROUP, INC. ("MIA"), MIAMI DADE COUNTY ("County"), and INDEPENDENT LIVING SYSTEMS, LLC. ("ILS") (collectively referred to herein as the "Parties").

WHEREAS, MIA, the County, ILS, and MDHA Development Corporation (the "Corporation") are parties to that certain lawsuit pending in the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida captioned *MIA Consulting, Inc. v. Miami-Dade County, MDHA Development Corp., and Independent Living Systems, LLC.*, Case No. 04-26233 CA 11 (the "Lawsuit"); and

WHEREAS, the Parties desire to amicably resolve and settle all disputes, claims, controversies, and differences between or among each other as set forth in this Agreement; 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. Within ten (10) days of the Effective Date, the County shall execute and deliver to MIA a letter in substantially the form attached hereto as Exhibit "A."

2. Within twenty (20) days of the Effective Date, the County shall pay MIA Ten Thousand Six Hundred and Fifty and No/100 Dollars (\$10,650.00) (the "Settlement Funds"). The Settlement Funds shall be made payable to the Stack Fernandez Anderson & Harris, P.A. Trust Account.

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

4. Within three (3) days of clearance of the Settlement Funds, MIA, the County, and ILS shall execute and deliver to counsel for the other Parties the releases in the form attached as Exhibits "B," "C," and "D," respectively.

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

7. 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.

8. 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. The Parties have 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.

MIA CONSULTING, INC.

By: \_\_\_\_\_  
Concepcion Bretos,  
as President

MIAMI-DADE COUNTY

By: \_\_\_\_\_ [Print]  
As \_\_\_\_\_ [Title]

INDEPENDENT LIVING SYSTEMS, LLC.

By: \_\_\_\_\_ [Print]  
As \_\_\_\_\_ [Title]

## **Exhibit “A”**

[Letterhead of Miami-Dade County]

[Date]

Ms. Concepcion Bretos  
President  
MIA Consulting Group, Inc.  
5208 Alton Road  
Miami, Florida 33140

**Re: *MIA Consulting Group, Inc. v. MDHA Development Corp, et al,*  
Miami-Dade County Circuit Court, Case No. 04-26233-CA-11**

Dear Ms. Bretos:

In connection with the settlement of the above-referenced legal action, Miami-Dade County ("County"), upon review of the relevant bid documents, submissions and applications concludes that any determination that MIA Consulting, Inc. was non responsible by MDHA Development Corporation ("Corporation") was, in the County's opinion, unwarranted and we disagree with the Corporation's decision.

Very truly yours,

George M. Burgess  
County Manager

cc: Terrence Smith, Esq.  
Assistant County Attorney

Mitchell Bierman, Esq.  
Attorney for MDHA Development Corporation

Brian J. Stack, Esq.  
Attorney for MIA Consulting Group, Inc.

## **Exhibit “B”**

**RELEASE**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, MIA CONSULTING GROUP, INC. ("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, and INDEPENDENT LIVING SYSTEMS, LLC., together with their directors, officers, attorneys, employees, agents, insurers, successors and assigns (hereinafter collectively referred to as the "Second Parties"), 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, which the First Party ever had, now has, or may have against the Second Parties, 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 Parties in the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida captioned *MIA Consulting, Inc. v. Miami-Dade County, MDHA Development Corp., and Independent Living Systems, LLC.*, Case No. 04-26233 CA 11 (the "Lawsuit"). Notwithstanding anything to the contrary contained herein, First Party does not release or remise any claims against MDHA Development Corporation.

This will also acknowledge that the undersigned has been advised by counsel regarding the effect of the signing, swearing to, and delivering of this Limited 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 Parties to any person; that this Limited Release contains the entire agreement between the parties; and that the terms of this Limited Release are contractual and not a mere recital.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this \_\_\_\_ day of \_\_\_\_\_ 2007.

MIA CONSULTING GROUP, INC.

By: \_\_\_\_\_  
Concepcion Bretos, President

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

## **Exhibit “C”**

**RELEASE**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, MIAMI-DADE COUNTY, a political subdivision of the State of Florida ("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 MIA CONSULTING GROUP, INC., , together with their directors, officers, attorneys, employees, agents, insurers, successors and assigns (hereinafter collectively referred to as the "Second Parties"), 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, which the First Party ever had, now has, or may have against the Second Parties, 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 Parties in the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida captioned *MIA Consulting, Inc. v. Miami-Dade County, MDHA Development Corp., and Independent Living Systems, LLC.*, Case No. 04-26233 CA 11 (the "Lawsuit").

This will also acknowledge that the undersigned has been advised by counsel regarding the effect of the signing, swearing to, and delivering of this Limited 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 Parties to any person; that this Limited Release contains the entire agreement between the parties; and that the terms of this Limited Release are contractual and not a mere recital.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this \_\_\_\_\_ day of \_\_\_\_\_ 2007.

MIAMI-DADE COUNTY

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ (print name)  
\_\_\_\_\_ (print title)

\_\_\_\_\_  
Witness

## **Exhibit “D”**

**RELEASE**

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned, INDEPENDENT LIVING SYSTEMS, LLC. ("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 MIA CONSULTING GROUP, INC., , together with their directors, officers, attorneys, employees, agents, insurers, successors and assigns (hereinafter collectively referred to as the "Second Parties"), 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, which the First Party ever had, now has, or may have against the Second Parties, 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 Parties in the Circuit Court for the Eleventh Judicial Circuit in and for Miami-Dade County, Florida captioned *MIA Consulting, Inc. v. Miami-Dade County, MDHA Development Corp., and Independent Living Systems, LLC.*, Case No. 04-26233 CA 11 (the "Lawsuit").

This will also acknowledge that the undersigned has been advised by counsel regarding the effect of the signing, swearing to, and delivering of this Limited 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 Parties to any person; that this Limited Release contains the entire agreement between the parties; and that the terms of this Limited Release are contractual and not a mere recital.

IN WITNESS WHEREOF, we have hereunto set our hands and seal this \_\_\_\_ day of \_\_\_\_\_ 2007.

INDEPENDENT LIVING SYSTEMS, LLC.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
(print name)  
(print title)