

MEMORANDUM

Agenda Item No. 8(E)(1)

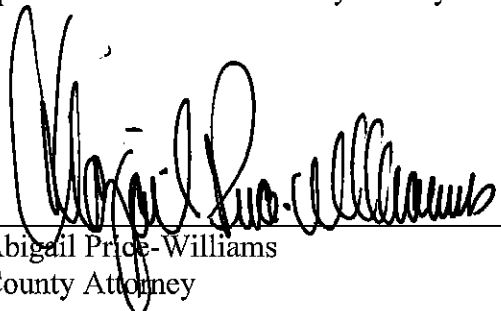
TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: February 22, 2017

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving the settlement of the lawsuit styled Jose D. Mitrani, P.E. v. Munilla Construction Management LLC, DBA MCM, and Miami-Dade County, Case No. 11-44032 CA 22, pending in the Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, in the amount of \$15,000.00 and authorizing the County Mayor to execute the attached Settlement Agreement and to enforce all terms contained therein

The accompanying resolution was prepared by the Miami-Dade Fire and Rescue Department and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman.



Abigail Price-Williams
County Attorney

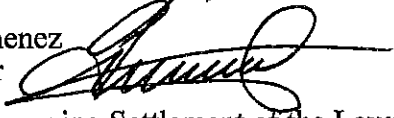
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Memorandum



Date: February 22, 2017

To: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

From: Carlos A. Gimenez
County Mayor 

Subject: Resolution Approving Settlement of the Lawsuit titled Jose D. Mitrani P.E. v. Munilla Construction Management, LLC, DBA MCM and Miami-Dade County, Case No. 11-44032 CA 22, in the amount of \$15,000

RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) approve the settlement of the Lawsuit titled Jose D. Mitrani, P.E. v. Munilla Construction Management, LLC, DBA MCM, and Miami-Dade County pending in the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Case No. 11-44032 CA 22, (Lawsuit). Pursuant to the Settlement Agreement, attached hereto as Exhibit A, Miami-Dade County (County) will pay Jose Mitrani ("Mitrani") \$15,000 as full compensation for all claims that Mitrani had or may have related to consulting services he provided to the Miami-Dade Fire Rescue Department (MDFR) in connection with the construction of the Training Facility and Change Proposal Request #16 (CPR #16).

SCOPE OF AGENDA ITEM

The impact of this settlement is countywide.

FISCAL IMPACT/FUNDING SOURCE

The fiscal impact to the County is \$15,000 and shall be paid from the Fire District Operating budget.

TRACK RECORD/MONITOR

Execution of the Settlement Agreement will be overseen by Scott Mendelsberg, Assistant Director, and MDFR.

BACKGROUND

In November of 2008, MCM was awarded a contract to construct the MDFR's Training Facility. Construction began in January of 2009 and was completed in August of 2010, at a cost of \$26.7 million. Construction was completed within the projected schedule and within the budgeted amount. The Training Facility is located adjacent to MDFR's headquarters at 9300 NW 41 Street, Doral, Florida. It is a 44,000 square foot multi-use, state of the art complex built on 11 acres of land. It is designed to provide superior fire rescue training programs and a wide range of training opportunities to benefit emergency and rescue personnel, law enforcement, and public and private organizations.

In the Spring of 2009, MDFR sought to hire Mitrani as an "Owner's Scheduling Consultant" in connection with the construction of the Training Facility. MDFR executed a CPR with MCM whereby Mitrani would be paid using an allowance account in the contract between the County

Honorable Chairman Esteban L. Bovo Jr.
And Members, Board of County Commissioners

and MCM. Mitrani began performing consulting services for the County in May 2009. At no point was a written agreement entered into between Mitrani and the County for these services.

In August 2009, the OIG initiated an investigation into the manner in which Mitrani was retained by MDFR. Its findings and recommendations were included in the OIG's report issued in May 2010. In that report, the OIG concluded that the use of an allowance account to hire Mitrani contravened sound contract administration principles, subverted the qualification and selection process, and created a conflict of interest. The OIG relied on the fact that Mitrani was not hired through any of the available and approved County procurement processes and because Mitrani was paid by MCM, the same entity Mitrani was overseeing as a consultant for MDFR. The OIG concluded that the MDFR could have instead hired Mitrani through any number of other available and approved County procurement processes including hiring Mitrani as a sub-consultant to the architect already under contract with the County for the construction of the Training Facility. Herminio Lorenzo, the Fire Chief at the time, issued a memorandum in response to the OIG's report stating that the hiring of Mitrani by MDFR was done in good faith and that MDFR was unaware it could not hire Mitrani using an allowance account. The OIG recommended MDFR cancel the CPR. Following the OIG's Report, the MDFR stopped paying Mitrani. At that time, MDFR had paid Mitrani a total of \$110,466. However, there remained approximately \$47,250 in unpaid sums. MDFR does not dispute that Mitrani performed work for which he has not been paid.

In 2011, Mitrani filed this Lawsuit seeking to be paid the \$47,250 in unpaid sums. The County and Mitrani have engaged in settlement discussions and have recently agreed to the terms of the attached proposed Settlement Agreement. Pursuant to the Settlement Agreement, the County will pay Mitrani \$15,000 to settle all claims and disputes related to any work performed by Mitrani for the MDFR related to the construction of the Training Facility. The County believes that this is a reasonable and fair resolution of the Lawsuit. Upon approval of this Settlement Agreement by the Board, the Parties will file a Stipulation of Dismissal of this Lawsuit with Prejudice.



Russell Benford
Deputy Mayor

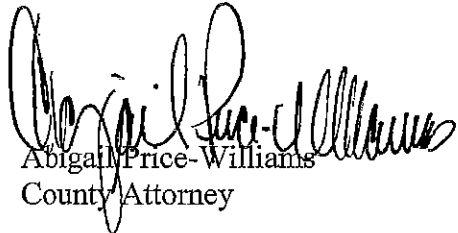


MEMORANDUM

(Revised)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: February 22, 2017

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(E)(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 ____, 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. 8(E)(1)
2-22-17

RESOLUTION NO. _____

RESOLUTION APPROVING THE SETTLEMENT OF THE LAWSUIT STYLED JOSE D. MITRANI, P.E. V. MUNILLA CONSTRUCTION MANAGEMENT LLC, DBA MCM, AND MIAMI-DADE COUNTY, CASE NO. 11-44032 CA 22, PENDING IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-DADE COUNTY, FLORIDA, IN THE AMOUNT OF \$15,000.00 AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE ATTACHED SETTLEMENT AGREEMENT AND TO ENFORCE ALL TERMS 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 hereby approves the settlement of the lawsuit styled Jose D. Mitrani, P.E. v. Munilla Construction Management, LLC, DBA MCM, and Miami-Dade County, currently pending in the Circuit Court of the Eleventh Judicial Circuit, in and for Miami-Dade County, Florida, Case No. 11-44032 CA 22, in the amount of \$15,000.00 and authorizes the County Mayor or County Mayor's designee to execute the Settlement Agreement, a copy of which is attached hereto as Exhibit A and is incorporated by this reference, and to enforce all terms contained therein.

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:

- | | |
|-------------------------------------|----------------------|
| Esteban L. Bovo, Jr., Chairman | |
| Audrey M. Edmonson, Vice Chairwoman | |
| Bruno A. Barreiro | Daniella Levine Cava |
| Jose "Pepe" Diaz | Sally A. Heyman |
| Barbara J. Jordan | Joe A. Martinez |
| Jean Monestime | Dennis C. Moss |
| Rebeca Sosa | Sen. Javier D. Souto |
| Xavier L. Suarez | |

The Chairperson thereupon declared the resolution duly passed and adopted this 22nd day of February, 2017. 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

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

D.F.

Daniel Frastai

EXHIBIT A

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

JOSE D. MITRANI, P.E.

CASE NO.: 11-44032 CA 22

Plaintiff,

v.

MUNILLA CONSTRUCTION
MANAGEMENT, LLC, DBA MCM, and
MIAMI-DADE COUNTY, a political
subdivision of the State of Florida,

Defendants.

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into by and between the Plaintiff, JOSE D. MITRANI ("MITRANI"), and Defendant, MIAMI-DADE COUNTY, FLORIDA (the "COUNTY"), (collectively, the "Parties").

PURPOSE

The parties to this Agreement memorialize the resolution of all disputes of whatever nature asserted by and between the above-stated Parties arising out of or relating to the litigation styled above (the "Action").

AGREEMENT

The Parties agree as follows:

1. SETTLEMENT SUM. The COUNTY agrees to pay to MITRANI, the sum of **Fifteen Thousand Dollars (\$15,000.00)** (the "Settlement Sum") as full and final settlement of the Action within thirty (30) days after approval of this Agreement by the Miami-Dade County Board

of County Commissioners. The Settlement Sum shall be made payable to Diane S. Perera P.A., Trust Account, and delivered to the law office of Diane S. Perera, P.A., 12485 SW 137 Ave. #106, Miami, Florida 33186.

2. **DISMISSAL WITH PREJUDICE**. Within ten (10) days of receipt of the Settlement Sum, Mitrani shall file a Stipulation of Voluntary Dismissal with Prejudice of the County from this Action, with each Party to bear its own attorneys' fees and costs.

3. **RELEASE**. Upon the execution of this Agreement and in consideration of the payment of the Settlement Sum and the terms contained herein, the Parties hereby expressly release, acquit and forever discharge each other, together with each other's Board of County Commissioners, elected officials, officers, directors, principals, employees, departments, divisions, agents, consultants, contractors, and attorneys, of and from any and all claims, rights, demands and/or causes of action of any and every kind or nature whatsoever which each Party has or may ever claim to have, whether previously asserted or unasserted, arising out of and/or by reason or in any way related to the above-referenced Action, the work performed by MITRANI in connection with the construction of the Training Facility for the Miami-Dade Fire Rescue Department, and Change Proposal Request 16.

4. **AGREEMENT COMPROMISES DISPUTED CLAIMS**. This Agreement is made and entered into as a compromise of disputed claims and shall not constitute or be construed or asserted as an admission of liability on the part of any Party. The Parties expressly acknowledge and agree that all claims asserted or unasserted between them related to the Action, the work performed by MITRANI on the construction of the Training Facility for the Miami-Dade Fire Rescue Department, and Change Proposal Request 16 are hereby fully and amicably resolved.

5. **GOVERNING LAW.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida.

6. **JURISDICTION AND VENUE.** Any and all legal actions arising from or relating to this Agreement shall be commenced in the Court of this Action.

7. **SEVERABILITY.** If any provision of this Agreement is found to be unenforceable, the remaining provisions shall nevertheless be carried into effect.

8. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement and understanding of the Parties hereto, supersedes any prior agreement between the Parties, whether written or oral, and may not be changed, altered or modified except in writing and executed by the Parties hereto. Each Party acknowledges that no representation, inducement, promises or agreements, orally or otherwise, was made by any Party, or anyone acting on behalf of any Party, unless such representation, inducement, promises or agreements is embodied in this Agreement.


9. **REPRESENTATION BY COUNSEL.** Each Party was represented by its own counsel in this matter. Furthermore, the Parties obtained advice from said counsel concerning the meaning, scope and effect of this Agreement, or voluntarily waived such an opportunity.

10. **AUTHORIZATION AND AUTHORITY.** Each Party represents and warrants to the other that: (a) it is duly authorized and competent to execute this Agreement, (b) it has all necessary corporate power and authority to enter into this Agreement and to perform the agreements contained in this Agreement, and (c) the person signing this Agreement on behalf of such party is authorized to execute and deliver this Agreement on behalf of such party. This Agreement may be signed in one or more counterparts, may be transmitted by facsimile or scanned email transmission and all counterparts together shall constitute this Agreement. This Agreement

is subject and contingent on approval by the Miami-Dade County Board of County Commissioners.

AGREED AND CONSENTED

JOSE D. MITRANI

By: 

Title: -

Date: Feb. 9, 2017

MIAMI-DADE COUNTY, FLORIDA

By: _____

Title: _____

Date: _____