Memorandum

MIAMI-DADE COUNTY

Date: March 9, 2011

To: Hon. Commissioner Sally A. Heyman
District 4

From: R. A. Cuevas, Jr.
County Attorney

Subject: Steward's Proposal for acquisition of Jackson Health System

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Steward Health Care System LLC ("Steward") has submitted an Execution Document for Due Diligence Process (the "Proposal") to the County for the acquisition of Jackson Health System ("JHS"). You have asked several questions about this matter. This memorandum responds to your questions and other issues raised when this matter was before the Commission.

I

Your first question asks whether the half-penny sales surtax can be transferred to the proposed new owner.

The County has levied a half-penny County Public Hospital Sales Surtax. The proceeds of this tax can only be used "for the operation, maintenance, and administration of the county public general hospital" defined as a hospital "owned, operated, maintained or governed" by the County or the Public Health Trust ("PHT"). Section 212.055(5), Fla. Stat. As a condition of levying the surtax, the County is required to contribute annually from general county revenues a statutorily defined percentage of the total county budget for the "operation, administration, and maintenance of the county public general hospital." *Id.* The voters of Miami-Dade County approved the levy by referendum. It is my understanding that the combined total of County surtax and maintenance of effort revenues contributed annually to the PHT is over $360 million.

The continued availability of these revenues depends upon whether the hospital, following the contemplated transaction, is a "county public general hospital" as defined in the statute. The Proposal provides "in order to eliminate the [County's] risks associated with the operations of JHS, Steward will assume all responsibility for operations of JHS by acquiring all of the property, plant, equipment and operations of JHS."[1] The Proposal's reference to a continued "robust role" for the County after acquisition by Steward is limited to "providing oversight and input regarding the prioritization of capital, participation in the development of programs for the community, the monitoring quality and patient safety initiatives and the oversight of funds received from the County, whether through the Half-Penny Tax or other sources, for the support of the uninsured/underinsured." Neither the statute authorizing the tax, nor the ballot question posed to the voters to implement it, envision the County's limited role which would result from the transaction suggested in the Proposal.[2] For these reasons, the Proposal does not appear to provide a sound basis for transfer of these revenues to a private owner/operator as proposed by Steward.

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[1] The Proposal is unclear as to the extent of JHS assets to be acquired: whether it's limited to designated facilities managed by the PHT, or includes other facilities operated under the PHT umbrella such as clinics, HMO's, community practices and rentals.

[2] The ballot question provided that the surtax proceeds would be used "for the operation, maintenance and administration of Jackson Memorial Hospital to improve health care services such as: emergency room treatment/trauma care for life-threatening injuries; critical care for infants and children; obstetric and gynecological services; treating cancer and heart disease; treating severe burns, spinal cord injuries, and Alzheimer's disease."

II

Your second question asks whether any agreement we make with Steward binds "our partners, i.e., UM and FIU?" PHT holds Basic Affiliation Agreements and annual operating agreements with the University of Miami and with Florida International University. These agreements establish the relationships between UM/FIU Physicians and PHT. Both Affiliation Agreements contain succession clauses providing that should governance become the responsibility of the County Commission or other entity designated by the Commission, the County Commission or other entity shall succeed the Trust in its rights and obligations under the Agreements. The Affiliation Agreements have four year termination clauses. The Proposal's effect on these agreements should be explored with UM and FIU.

III

Your third question asks what obligations arise out of the proposed due diligence procedure.

The obligations are that the PHT will, within the time frames envisioned in the Proposal, make its records available to Steward and will direct PHT staff to work with Steward on an analysis, evaluations, tours, meetings and discussions thereon.[3] After completion of the due diligence period, Steward will present a proposal to the County for acquisition of JHS. The County will then be free to "shop" that proposal for 30 days to other parties and have two weeks after the close of the 30 day period to compare all proposals received. Steward would have an opportunity to amend its proposal in light of competing proposals submitted by other interested parties and wants the County to respond within one week. The County would have the option of accepting Steward's amended proposal, rejecting it, or entering into negotiations with any other interested party. Should any other party reach successful negotiations with the County, Steward "would be reimbursed by the acquiring party for the costs applicable to its due diligence."[4]

IV

The property on which Jackson Memorial sits is subject to a reverter that provides that it reverts to the City of Miami "in the event Dade County fails to operate a hospital on said premises or on other premises within Dade County offering comparable hospital facilities." The deed further contains a condition that the County shall provide care for the poor, indigent and needy within Miami-Dade County.

The PHT has contracts with various unions that may be affected by the Proposal. The continued applicability of the labor contracts to the surviving entity is an issue under federal law.

JHS also has a number of partners beyond UM and FIU, for example, community practice relationships, whose contractual relationships with JHS may be impacted by the Proposal. Prior to acquisition, as part of the due diligence period, the parties will need to inventory contracts, certificates of need, reimbursement agreements. Those may contain various commitments, for example to provide indigent care, or methods and limitations for assignment.

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[3] The Proposal does not define the level of commitment of PHT resources to the due diligence effort, and is unclear as to how to accomplish the exclusivity that Steward requires during the due diligence period consistent with the requirements of the Public Records law.

[4] The Proposal is silent as to how the reimbursement costs are calculated, how long that reimbursement commitment will be outstanding, and whether it extends beyond this initial process.

Under the state licenses issued for operation of PHT facilities, a change of ownership for hospital and other health care facilities requires sixty day notice to the state, which performs a discretionary review of the change. This approval may affect the length of the due diligence period. Additional licensure and regulatory approval is needed for change of ownership of the JHS non-facility components, for example, the managed care division.

The County has issued a series of bonds in the approximate amount of $273 million for the PHT with an annual debt service of approximately $24.9 million. The bonds pledge all revenues from the operation of the PHT. The legal and financial implications of the Proposal to these bonds must be addressed.

In 2005 and 2006, the County borrowed approximately $87 million under Florida's Sunshine State loan program to benefit the PHT. The legal and financial implication of the Proposal to these loans must be addressed.

As a final matter, the County has the authority to convey JHS pursuant to the usual competitive bid process to the "highest and best bidder" under Florida Statutes section 125.35. It also has the authority to convey a county hospital by means of a negotiated sale under Florida Statutes section 155.40. Embarking on the due diligence procedure contemplated by the Proposal could as a practical and legal matter preclude the ability thereafter to change to a competitive bid process.

The foregoing are the major legal issues presented by the Proposal. We are available to address any of these issues in greater depth at yours or the Commission's convenience.

cc: Hon. Chairman Joe A. Martinez and Members,
Board of County Commissioners
Hon. Carlos Alvarez, Mayor
George M. Burgess, County Manager
Eneida O. Roldan, MD, MPH, MBA,
President and CEO of the PHT
Chair John H. Copeland, III, and Members
of the Public Health Trust