

MEMORANDUM

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Agenda Item No:
2(C)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: December 9, 2009

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

SUBJECT: Resolution amending Resolution
No. R-303-08 to provide that Hialeah
multi-purpose facility will be owned
and operated by City of Hialeah

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Rebeca Sosa.



R. A. Cuevas, Jr.
County Attorney

RAC/cp

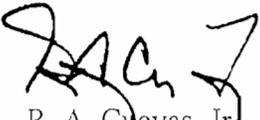


MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

DATE: November 3, 2009

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

SUBJECT: Agenda Item No.

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
- Ordinance creating a new board requires detailed County Manager'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.
11-3-09

RESOLUTION NO.

RESOLUTION AMENDING RESOLUTION NO. R-303-08 TO PROVIDE THAT HIALEAH MULTI-PURPOSE FACILITY WILL BE OWNED AND OPERATED BY CITY OF HIALEAH; DIRECTING THE PUBLIC HEALTH TRUST TO NOTIFY DISTRICT COMMISSIONER OF ALL MEETINGS RELATING TO DEVELOPMENT AND LEASE OF HEALTH CARE CENTER; REQUIRING THAT DISTRICT COMMISSIONER HAVE ACCESS TO MULTI-PURPOSE FACILITY; APPROVING TERMS OF BUILDING BETTER COMMUNITIES GENERAL OBLIGATION INTERLOCAL AGREEMENT WITH CITY OF HIALEAH FOR MULTI-PURPOSE FACILITY AND DIRECTING COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SUCH AGREEMENT

WHEREAS, on March 18, 2008 this Board adopted Resolution No. R-303-08 approving the allocation of \$14 million from the Building Better Communities General Obligation Bond Program (the "BBC GOB Program") to fund the development of a multi-purpose facility that would be developed by the City of Hialeah (the "City") on behalf of the County on City-owned land on the corner of Palm Avenue and Okeechobee Road, and would include a health care center, affordable housing units and parking for such facility ("Project"); and

WHEREAS, it is in the best interest of the County to have the City develop, own and operate the Project on its own behalf and assume responsibility for cost overruns and liability associated with the construction and future operation of the Project; and

WHEREAS, as a City-owned and operated Project, the City shall, among other things, lease, for no monetary consideration, no less than 6,000 square feet of built-out space in the Project to the Public Health Trust to be operated as a health care center for a term of thirty years with two automatic thirty year and one automatic nine year options to renew and

provide no less than thirty-five ground level parking spaces reserved for employees of and visitors to the health care center; and

WHEREAS, the County Commissioner of the Commission District in which the Project will be located shall be notified of all negotiation and discussion meetings between the City and the Public Health Trust on issues regarding the development and leasing of the health care center; and

WHEREAS, this Board further desires to insure that the City utilizes the Project facilities for their intended purposes; and

WHEREAS, the District Commissioner of the Commission District in which the Project will be located shall have access to the common areas of the Project open to all members of the general public and shall have the ability to reserve, subject to availability, those areas of the Project that are utilized as meeting, conference, activity, and/or community space for the purpose of holding public meetings and other such County events,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board hereby amends Resolution No. R-303-08 to provide that the Project will be owned and operated by the City and not by the County.

Section 2. This Board hereby directs the Public Health Trust to notify the County Commissioner of the Commission District in which the Project will be located of all negotiation and discussion meetings between the City and the Public Health Trust on issues regarding the development and leasing of the health care center.

Section 3. This Board hereby approves the terms of the BBC GOB Program Interlocal Agreement by and between the County and the City and the Declaration of Restrictive Covenants in substantially the form attached hereto as Exhibit A, which Agreement requires that the District

Commissioner of the Commission District in which the Project will be located shall have access to the common areas of the Project that are open to all members of the general public and shall have the ability to reserve, subject to availability, those areas of the Project that are utilized as meeting, conference, activity, and/or community space for the purpose of holding public meetings and other such County events.

Section 4. This Board hereby directs the County Mayor or the Mayor's designee to execute such BBC GOB Program Interlocal Agreement with the City.

The Prime Sponsor of the foregoing resolution is Commissioner Rebeca Sosa. It 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:

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

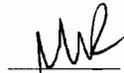
The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of November, 2009. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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.



Monica Rizo

EXHIBIT A

**AGREEMENT
BETWEEN
THE CITY OF HIALEAH FLORIDA
AND
MIAMI-DADE COUNTY**

Multi-Purpose Facilities - District 6/Project Number 220.3-75448
Palm Center Affordable Housing Units/ Project Number 249.2-73391
Jackson Health Center – Hialeah/Project Number 310-70512

THIS AGREEMENT (the "Agreement") by and between Miami-Dade County, a political subdivision of the State of Florida (the "County"), through its governing body, the Board of County Commissioners of Miami-Dade County, Florida (the "Board") and the City of Hialeah, Florida, a municipal corporation organized under the laws of the State of Florida, through its governing body, the Mayor and Commissioners of the City of Hialeah, Florida (the "Municipality") is entered into this _____ day of _____, 2009.

WITNESSETH

WHEREAS, on July 20, 2004, the Board enacted Resolution Nos. R-912-04, R-913-04, R-914-04, R-915-04, R-916-04, R-917-04, R-918-04 and R-919-04 authorizing the issuance of \$2.926 billion in general obligation bonds for capital projects and on November 2, 2004, a majority of those voting approved the bond program (the "BBC GOB Program"); and

WHEREAS, the aforementioned Resolutions include specific countywide projects, neighborhood projects for the Unincorporated Municipal Service Area and municipalities and associated allocations for activities such as but not limited to development, improvement, rehabilitation, restoration or acquisition of real property; and

WHEREAS, Multi-Purpose Facilities - District 6/Project Number 220.3-75448, Palm Center Affordable Housing Units/ Project Number 249.2-73391, and Jackson Health Center – Hialeah/Project Number 310-70512, (the "Project") is eligible for funding from the BBC GOB Program in a total amount not to exceed \$14,000,000 (the "Funding Allocation"); and

WHEREAS, the Municipality is undertaking completion of construction of a multi-purpose facility, to include an affordable housing building with at least 72 units, a health care center of no less than 6,000 square feet, and a parking garage to be located at the intersection of Palm Avenue and Okeechobee Road, Hialeah which was specifically approved as part of the BBC GOB Program or is eligible for funding from one of the programs to be funded under the BBC GOB Program; and

WHEREAS, the Multi-Purpose Facilities - District 6/Project Number 220.3-75448, Palm Center Affordable Housing Units/ Project Number 249.2-73391, and Jackson Health Center – Hialeah/Project Number 310-70512 is estimated to cost \$14,000,000

(the "Total Project Cost") and will be funded from the sources listed in Exhibit 1, fully subject to and contingent upon the availability of BBC GOB program proceeds and the execution of subsequent agreement(s) between the County and the Municipality; and

WHEREAS, pursuant to the terms of this Agreement the County has agreed to allocate \$1,500,000 from the Series 2008 B Bonds for the Project (the "Funding Cycle Allocation"); and

WHEREAS, the Commissioners of both the County and the Municipality have authorized, by resolution, their respective managers to enter into this Agreement for this Funding Cycle Allocation describing their respective roles in the funding for the Project costs with respect to such Funding Cycle Allocation,

NOW THEREFORE, pursuant to Resolution No. R-595-05, which specifically authorizes the County Manager to execute such agreements, sub-agreements and other required contracts and documents, to expend Building Better Communities bond funds received for the purpose described in the funding request, and in consideration of the mutual promises and covenants contained herein and the mutual benefits to be derived from this Agreement, the parties hereto agree as follows:

Section 1. **Purpose:** The purpose of this Agreement is to clarify the parties' roles and obligations regarding the funding being provided with respect to the Project.

Section 2. **Funding Responsibilities:**

- a. **Project Funding Plan:** A Project funding plan identifying the Funding Allocation to be funded by the County solely from BBC GOB Program proceeds and the costs to be funded by the Municipality through a local funding plan or written project funding commitments from third parties is attached as Exhibit 1. Included shall be a projected timetable for this Funding Cycle Allocation and the amount funded to date, if any.
- b. **Representations of the Municipality:** The Municipality covenants and warrants that it has, in combination with the Funding Allocation, the amount of funding necessary for the completion of the Project. The additional sources of funding are listed in Exhibit 1.
- c. **Responsibilities of the County:** The County agrees to provide solely from BBC GOB Program proceeds for the Funding Cycle Allocation in an amount equal to \$1,500,000. This amount represents a portion of the amount necessary to complete the Project. This sum shall be provided in accordance with the reimbursement procedures contained in the County's GOB Administrative Rules attached as Attachment 1. In the event that the Project Milestones for this Funding Cycle Allocation, as defined and set forth in Exhibit 1 of this Agreement are not within 10% of completion, the dollars to be funded for subsequent Milestones may be delayed for one calendar year in accordance with the Administrative Rules, see Section 18 of this Agreement.



Section 3. **Obligations of the Municipality:** As consideration for the receipt of the BBC GOB Program funding, the Municipality shall:

- a. Develop and complete construction of the Project within four (4) years of the date of the execution of the Declaration of Restrictive Covenants; and
- b. Develop, construct and operate the Project (including all buildings and the land upon which they are constructed) exclusively for the public purpose of providing affordable housing, health care and parking to serve the housing, health care uses and the existing facilities; and
- c. Rent the affordable housing developed on the Property to a qualified household as defined in Section 17-121 through Section 17-128 of the Code of Miami-Dade County making one-hundred forty percent (140%) or less of median income; and
- d. Lease, for no monetary consideration, no less than 6,000 square feet of built-out space in the Project to the Public Health Trust to be operated as a health care center for a term of thirty years with two automatic thirty year and one automatic nine year options to renew, however, in the event the Public Health Trust terminates its lease with the Municipality for the health care center in the Project, the City and the County shall jointly agree upon and approve a replacement tenant; and
- e. Reserve no less than thirty-five (35) ground-level parking spaces for employees of and visitors to the care center; and
- f. Own and operate the Project at all times; and
- g. Grant the District Commissioner of the Commission District in which the Project will be located access to the common areas of the Project that are open to all members of the general public and provide the District Commissioner the ability to reserve, subject to availability, those areas of the Project that are utilized as meeting, conference, activity, and/or community space for the purpose of holding public meetings and other such County events.

These obligations of the Municipality shall be incorporated into a Declaration of Restrictive Covenants, in substantially the form attached hereto as Exhibit 2, and such Declaration of Restrictive Covenants shall be executed and recorded by the Municipality in the public records of Miami-Dade County. The County's shall not remit to the City all or any portion of the Funding Cycle Allocation until after it has received evidence that the Declaration of Restrictive Covenants in substantially the form attached hereto as Exhibit 2 has been executed and recorded by the Municipality in the public records of Miami-Dade County.

Section 4. **Effective Date and Term:** This Agreement shall take effect upon execution and shall terminate upon the completion of the Project, including the completion of all final closeout documentation.

Section 5. **Compliance with Codes and Laws:** Each party agrees to abide by all Applicable Laws necessary for the development and completion of the Project. "Applicable Law" means any applicable law (including, without limitation, any

environmental law), enactment, statute, code, ordinance, administrative order, charter, tariff, resolution, order, rule, regulation, guideline, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, or other direction or requirement of any governmental authority, political subdivision, or any division or department thereof, now existing or hereinafter enacted, adopted, promulgated, entered, or issued. Notwithstanding the foregoing, "Applicable Laws" and "Applicable Laws" shall expressly include, without limitation, all applicable zoning, land use, DRI and Florida Building Code requirements and regulations, all applicable impact fee requirements, all requirements of Florida Statutes, specifically including, but not limited to, Section 255.05 related to payment and performance bonds, Section 255.20 related to contractor selection and Section 287.055 related to competitive selection of architects and engineers, all requirements of Chapters 119 and 286 of the Florida Statutes, Section 2-11.15 of the Code (Art in Public Places), and all other applicable requirements contained in this Agreement and Attachment 1, which exhibit is hereby incorporated in this Agreement by this reference.

Section 6. Contractual obligation to comply with certain County requirements:

All records of the Municipality and its contractors pertaining to the Project shall be maintained in Miami-Dade County and, upon reasonable notice shall be made available to representatives of the County. In addition, the Office of Inspector General of Miami-Dade County shall have access thereto for any of the purposes provided in Sec. 2-1076 of the Code of Miami-Dade County.

The Municipality shall cause each contract to include a provision that contractor shall comply with all requirements of Section 2-1076, and that contractor will maintain all files, records, accounts of expenditures for contractor's portion of the Work and that such records shall maintained within Miami-Dade County and County shall have access thereto as provided in this Agreement.

The Municipality shall comply with the requirements of Florida Statutes related to retainage of funds due a contractor and shall include appropriate language in its construction contracts and shall require the contractor to include such language in its subcontracts.

All applicable County Rules, Regulations, Ordinances, Resolutions, Administrative Orders, and the County Charter referenced in this agreement are posted on the County's website: "miamidade.gov".

Section 7. Access and Audits: The Municipality shall maintain adequate records to justify all charges, expenses, and costs incurred which represent the funded portion of the Project for at least three (3) years after completion of the Project. The County shall have access to all books, records, and documents as required in this section for the purpose of inspection or auditing during normal business hours.

Pursuant to Section 2-1076 of the Miami-Dade County Code the County shall have the right to engage the services of an independent private-sector inspector general ("IPSIG") to monitor and investigate compliance with the terms of this

Agreement. The Office of the **MIAMI-DADE COUNTY INSPECTOR GENERAL (IG)** shall have the authority and power to review past, present and proposed County programs, accounts, records, contracts and transactions, and contracts such as this Agreement for improvements some cost of which is funded with County funds.

As such, the IG may, on a random basis, perform audits on this Agreement throughout the duration of said Agreement (hereinafter "random audits"). This random audit is separate and distinct from any other audit by the County.

The IG shall have the power to retain and coordinate the services of an **Independent Private Sector Inspector General (IPSIG)** who may be engaged to perform said random audits, as well as audit, investigate, monitor, oversee, inspect, and review the operations, activities and performance and procurement process including, but not limited to, project design, establishment of bid specifications, bid submittals, activities of the Municipality and contractor and their respective officers, agents and employees, lobbyists, subcontractors, materialmen, staff and elected officials in order to ensure compliance with contract specifications and detect corruption and fraud. The IG shall have the power to subpoena witnesses, administer oaths and require the production of records. Upon ten (10) days written notice to the Municipality (and any affected contractor and materialman) from IG, the Municipality (and any affected contractor and materialman) shall make all requested records and documents available to the IG for inspection and copying.

The IG shall have the power to report and/or recommend to the Board whether a particular project, program, contract or transaction is or was necessary and, if deemed necessary, whether the method used for implementing the project or program is or was efficient both financially and operationally. Monitoring of an existing project or program may include reporting whether the project is on time, within budget and in conformity with plans, specifications, and applicable law. The IG shall have the power to analyze the need for, and reasonableness of, proposed change orders.

The IG is authorized to investigate any alleged violation by a contractor of its Code of Business Ethics, pursuant Miami-Dade County Code Section 2-8.1.

The provisions in this section shall apply to the Municipality, its contractors and their respective officers, agents and employees. The Municipality shall incorporate the provisions in this section in all contracts and all other agreements executed by its contractors in connection with the performance of this Agreement. Any rights that the County has under this Section shall not be the basis for any liability to accrue to the County from the Municipality, its contractors or third parties for such monitoring or investigation or for the failure to have conducted such monitoring or investigation and the County shall have no obligation to exercise any of its rights for the benefit of the Municipality.

Section 8. Relationship of the Parties: The parties agree that the Municipality is an independent entity responsible solely for the Project and not an agent or servant of the County. No party or its officers, elected or appointed officials,

employees, agents, independent contractors or consultants shall be considered employees or agents of any other party, nor to have been authorized to incur any expense on behalf of any other party, nor to act for or to bind any other party, nor shall an employee claim any right in or entitlement to any pension, workers' compensation benefit, unemployment compensation, civil service or other employee rights or privileges granted by operation of law or otherwise, except through and against the entity by whom they are employed.

Section 9. **Liability:** The parties to this Agreement shall not be deemed to assume any liability for the negligent or wrongful acts, or omissions of the other party. Nothing contained herein shall be construed as a waiver, by either party, of the liability limits established in Section 768.28 of the Florida Statutes. The Municipality acknowledges that the County, its employees, commissioners and agents are solely providing funding assistance for the Project and are not involved in the design, construction, operation or maintenance of the Project.

Section 10. **Breach, Opportunity to Cure and Termination:**

- (a) Each of the following shall constitute a default by the Municipality:
- (1) If the Municipality uses the Funding Cycle Allocation for costs not associated with the Project (i.e. ineligible costs), and the Municipality fails to cure its default within thirty (30) days after written notice of the default is given to the Municipality by the County; provided, however, that if not reasonably possible to cure such default within the thirty (30) day period, such cure period shall be extended for up to one hundred eighty (180) days following the date of the original notice if within thirty (30) days after such written notice the Municipality commences diligently and thereafter continues to cure.
 - (2) If the Municipality shall breach any of the other covenants or provisions in this Agreement other than as referred to in Section 10(a)(1) and the Municipality fails to cure its default within thirty (30) days after written notice of the default is given to the Municipality by the County; provided, however, that if not reasonably possible to cure such default within the thirty (30) day period, such cure period shall be extended for up to one hundred eighty (180) days following the date of the original notice if within thirty (30) days after such written notice the Municipality commences diligently and thereafter continues to cure.
- (b) Each of the following shall constitute a default by the County:
- (1) If the County shall breach any of the covenants or provisions in this Agreement and the County fails to cure its default within thirty (30) days after written notice of the default is given to the County by the Municipality; provided, however, that if not reasonably possible to cure such default within the thirty (30) day period, such cure period shall be extended for up to one hundred eighty (180) days following the date of the original

notice if within thirty (30) days after such written notice the County commences diligently and thereafter continues to cure.

(c) Remedies:

- (1) Upon the occurrence of a default as provided in Section 9(a)(1) and such default is not cured within the applicable grace period, in addition to all other remedies conferred by this Agreement, the Municipality shall reimburse the County, in whole or in part as the County shall determine, all funds provided by the County hereunder.
- (2.) Either party may institute litigation to recover damages for any default or to obtain any other remedy at law or in equity (including specific performance, permanent, preliminary or temporary injunctive relief, and any other kind of equitable remedy).
- (3) Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by any party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default.
- (4) Any failure of a party to exercise any right or remedy as provided in this Agreement shall not be deemed a waiver by that party of any claim for damages it may have by reason of the default.

(d) Termination:

- (1) Notwithstanding anything herein to the contrary, either party shall have the right to terminate this Agreement, by giving written notice of termination to the other party, in the event that the other party is in material breach of this Agreement.
- (2) Termination of this Agreement by any Party is not effective until five (5) business days following receipt of the written notice of termination.
- (3) Upon termination of this Agreement pursuant to Section 9(d)(1) above, no party shall have any further liability or obligation to the other party except as expressly set forth in this Agreement; provided that no party shall be relieved of any liability for breach of this Agreement for events or obligations arising prior to such termination.

Section 11. **Litigation Costs/Venue:** In the event that the Municipality or the County institutes any action or suit to enforce the provisions of this Agreement, the prevailing party in such litigation shall be entitled to reasonable costs and attorney's fees at the trial, appellate and post-judgment levels. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The County and the Municipality agree to submit to service of process and jurisdiction of the State of Florida for any controversy or claim arising out of or relating to this Agreement or a breach of this Agreement. Venue for any court action between the parties for any such controversy arising from or related to this Agreement shall be in the Eleventh Judicial Circuit in and for Miami-Dade

County, Florida, or in the United States District Court for the Southern District of Florida, in Miami-Dade County, Florida.

Section 12. Naming Rights and Advertisements: In the event that any naming rights or advertisement space is offered on a facility constructed or improved with BBC GOB Program funds, then Miami-Dade County's name, logo, and slogan shall appear on the facility not less than once and equal to half the number of times the most frequent sponsor or advertiser is named, whichever is greater. Lettering used for Miami-Dade County will be no less than 75% of the size of the largest lettering used for any sponsor or advertiser unless waived by the Board. The Municipality must include the following credit line in all promotional marketing materials related to this funding including web sites, news and press releases, public service announcements, broadcast media, programs, and publications: "THIS PROJECT IS SUPPORTED BY THE BUILDING BETTER COMMUNITIES BOND PROGRAM AND THE MAYOR AND BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY."

Section 13. Notice: Any notice, consent or other communication required to be given under this Agreement shall be in writing, and shall be considered given when delivered in person or sent by facsimile or electronic mail (provided that any notice sent by facsimile or electronic mail shall simultaneously be sent personal delivery, overnight courier or certified mail as provided herein), one business day after being sent by reputable overnight carrier or 3 business day after being mailed by certified mail, return receipt requested, to the parties at the addresses set forth below (or at such other address as a party may specify by notice given pursuant to this Section to the other party):

The County:
George M. Burgess, County Manager
Miami-Dade County, Stephen P. Clark Center
111 NW 1 Street, Suite 2910
Miami, Florida 33128

The Municipality:
Frederick H. Marinelli
Grants Director
501 Palm Avenue
Hialeah, Florida 33011

Section 14. Modification and Amendment: Except as expressly permitted herein to the contrary, no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and equal dignity herewith.

Section 15. Joint Preparation: The preparation of this Agreement has been a joint effort of the parties, and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

Section 16. Headings: Captions and headings in this Agreement are for ease of reference only and do not constitute a part of this Agreement and shall not affect the meaning or interpretation of any provisions herein.

Section 17. Waiver: There shall be no waiver of any right related to this Agreement unless in writing and signed by the party waiving such right. No delay or failure to exercise a right under this Agreement shall impair such right or shall

be construed to be a waiver thereof. Any waiver shall be limited to the particular right so waived and shall not be deemed a waiver of the same right at a later time or of any other right under this Agreement. Waiver by any party of any breach of any provision of this Agreement shall not be considered as or constitute a continuing waiver or a waiver of any other breach of the same or any other provision of this Agreement.

Section 18. Representation of the Municipality: The Municipality represents that this Agreement has been duly authorized, executed and delivered by Mayor and Commissioners, as the governing body of the City of Hialeah, Florida and it has granted the City Manager, or his designee, the required power and authority to execute this Agreement. The Municipality agrees to a) maintain the Project for a minimum of 25 years, b) agrees to govern itself, in regards to the subject Project, in accordance with Article 6 of the County Charter, c) keep the Project open safely and properly maintained for all Miami-Dade County residents, and d) allow all Miami-Dade County residents equal access and use of the Project and not discriminate when charging facility admission fees based on where a resident resides in the County. The Municipality also agrees to accept and comply with the Administrative Rules as stated in Attachment 1 and as may hereafter be amended.

Section 19. Representation of the County: The County represents that this Agreement has been duly approved, executed and delivered by the Board, as the governing body of the County, and it has granted the Miami-Dade County Manager the required power and authority to execute this Agreement. The County agrees to provide the Funding Cycle Allocation to the Municipality for the purpose of developing and improving the Project in accordance with each of the attached Exhibit Forms, incorporated herein as Exhibits A-J of Attachment 1 (Administrative Rules). Miami-Dade County shall only be obligated to reimburse the Municipality provided the Municipality is not in breach of this agreement and the Municipality has demonstrated that it has adequate funds to complete the Project. The County shall administer, in accordance with the appropriate regulations, the funds available from the BBC GOB Program as authorized by Board Resolutions. Any and all reimbursement obligations of the County shall be fully subject to and contingent upon the availability of funding from the County for the specific purpose contained herein. The Municipality shall be solely responsible for submitting all documentation, as required by the specific Administrative Rules incorporated herein as Attachment 1, to the County Manager or his designee for this purpose.

Section 20. Invalidity of Provisions, Severability: Wherever possible, each provision of the Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, provided that the material purposes of this Agreement can be determined and effectuated.

Section 21. Indemnity: The Municipality does hereby agree to indemnify and hold harmless the County to the extent and within the limitations of Section

768.28 Florida Statutes, subject to the provisions of that statute, whereby the Municipality shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$100,000, or any claim or judgments or portions thereof, which when totaled with all other occurrences, exceeds the sum of \$200,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence of the Municipality. However, nothing herein shall be deemed to indemnify the County from any liability or claim arising out of the negligent performance or failure of performance of the County or any unrelated third party.

The County does hereby agree to indemnify and hold harmless the Municipality to the extent and within the limitations of Section 768.28 Florida Statutes, subject to the provisions of that statute, whereby the County shall not be held liable to pay a personal injury or property damage claim or judgment by any one person which exceeds the sum of \$100,000, or any claim or judgments or portions thereof, which when totaled with all other occurrences, exceeds the sum of \$200,000 from any and all personal injury or property damage claims, liabilities, losses or causes of action which may arise solely as a result of the negligence of the County. However, nothing herein shall be deemed to indemnify the Municipality from any liability or claim arising out of the negligent performance or failure of performance of the Municipality or any unrelated third party.

Section 22. **Assignment:** The Municipality may not assign all or any portion of this Agreement without the prior written consent of the County.

Section 23. **Entirety of Agreement:** This Agreement, and the attachments thereto, incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in this Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representations or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.

IN WITNESS THEREOF, the parties through their duly authorized representatives hereby execute this AGREEMENT with an effective date of _____, 2009.

City of Hialeah, Florida

By: _____
City Mayor Date

For the Board of Commissioners,
City of Hialeah, Florida

_____, CLERK

Attest:

By: _____
Clerk Date

MIAMI-DADE COUNTY, FLORIDA

By: _____
County Mayor

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

Stephen P. Clark Center
111 NW 1 Street
Miami, Florida 33128

HARVEY RUVIN, CLERK

Attest:

By: _____
Deputy Clerk Date

Approved by County Attorney as
to form and legal sufficiency.

**Miami-Dade County
Building Better Communities**

<u>Hiialeah</u>				<u>Palm Avenue Center</u>			
				Multi-Purpose Facilities - District 6/Project Number 220.3-75448 Palm Center Affordable Housing Units/ Project Number 249.2-73391 Jackson Health Center - Hiialeah/Project Number 310-70512			
REVENUES				EXPENSES			
FY 2008-09 GOB Allocation	Future GOB Allocations	Other Funding Allocations *	Total Estimated Revenues	Milestones	Projected Start Date	Projected End Date	Total Estimated Expenses
			0	Project Administration			0
			0	Project Administration (Non-GOB)			0
			0	Land Acquisition			0
			0	Land Acquisition (Non-GOB)			0
			0	Pre-design, Planning, including preliminary engineering			0
			0	Pre-design, Planning, including preliminary (Non-GOB)			0
			0	A&E Selection			0
			0	A&E Selection (Non-GOB)			0
677,400			677,400	Design	7/1/2008	10/31/2009	677,400
			0	Design (Non-GOB)			0
60,000			60,000	Dry run/permit	10/1/2008	1/31/2010	60,000
			0	Dry run/permit (Non-GOB)			0
			0	Contractor Selection			0
			0	Contractor Selection (Non-GOB)			0
762,600	12500000 **		762,600	Construction On Going	9/1/2009	12/31/2011	13,262,600
			0	Construction On Going (Non-GOB)			0
			0	Construction Substantially Complete			0
			0	Construction Substantially Complete (Non-GOB)			0

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REVENUES			EXPENSES			
FY 2008-09 GOB Allocation	Future GOB Allocations	Other Funding Allocations *	Total Estimated Revenues	Milestones	Projected Schedule Start Date End Date	Total Estimated Expenses
			0	Other (loan & relocation fees)		0
			0	Other (Non-GOB)		0
1,500,000	0	0	1,500,000	TOTALS		14,000,000

* Other Funding (List sources and amounts)

Funding Source	Amount
Total	0

Overall Project Narrative/Description

The City of Hialeah will be constructing three buildings within the property referred as "Palm Center", Located at 255 Palm Avenue. It will include a 350 car parking garage, a 72 unit elderly housing (5 stories) apartment building and an approximately 8,000 S.F. Jackson Health Clinic.

GOB Total Funding Allocation Narrative/Description

The City of Hialeah will be constructing three buildings within the property referred as "Palm Center", Located at 255 Palm Avenue. It will include a 350 car parking garage, a 72 unit elderly housing (5 stories) apartment building and an approximately 8,000 S.F. Jackson Health Clinic. **Future BBC GOB allocations are fully subject to and contingent upon the availability of BBC GOB program proceeds and the execution of subsequent agreement(s) between the County and the City of Hialeah.

GOB 2008-09 Funding Allocation Narrative/Description

The 2008-09 monies are being used for architectural, structural, MEP and civil engineering services. As well as for the inclusion of LEED Design Services as required by Miami-Dade County. The City of Hialeah will commence full scale construction on 09/01/09.

***For municipalities and public agencies, this exhibit, along with the entity's resolution, conforms with Article III, Section 1, 2Ae of the Building Better Communities Bond Program (GOB) Administrative Rules.

DECLARATION OF RESTRICTIVE COVENANTS

THIS DECLARATION OF RESTRICTIVE COVENANTS (“Covenant”) is made this ____ day of _____, 2009, by the City of Hialeah (the “City”), a municipality of the State of Florida, in favor of Miami-Dade County (the “County”), a political subdivision of the State of Florida.

WHEREAS, City owns the land located on the corner of Palm Avenue and Okeechobee Road and legally described in Exhibit “A” (the “Property”), attached hereto and incorporated herein by reference; and

WHEREAS, the City intends to develop a multi-purpose facility on the Property to include a health care center, affordable housing units and parking for such facility (“Project”) with Building Better Communities General Obligation Bonds provided by the County to the City, fully subject to and contingent upon the availability of BBC GOB program proceeds and the execution of subsequent agreement(s) between the County and the City, in the total amount of \$14,000,000, and

NOW, THEREFORE, in consideration of providing funding for the development of the Project and other good and valuable consideration, the City hereby voluntarily covenants and agrees to the following restrictions that are intended and shall be deemed to be covenants running with the land and binding upon the City, its successors and assigns:

- 1) The foregoing recitations are true and correct and are hereby incorporated herein by this reference; and
- 2) The City shall develop and complete construction of the Project on the Property within four (4) years of the date of the execution of this Declaration; and

- 3) The Property and the building constructed thereon shall be devoted exclusively to the public purpose of providing affordable housing, health care and parking to serve the housing, health care uses and the existing facilities; and
- 4) The affordable housing developed on the Property shall be rented to a qualified household as defined in Section 17-121 through Section 17-128 of the Code of Miami-Dade County making one-hundred forty percent (140%) or less of median income; and
- 5) The City shall lease, for no monetary consideration, no less than 6,000 square feet of built-out space in the Project to the Public Health Trust to be operated as a health care center for a term of thirty years with two automatic thirty year and one automatic nine year options to renew, however, in the event the Public Health Trust terminates its lease with the Municipality for the health care center in the Project, the City and the County shall jointly agree upon and approve a replacement tenant; and
- 6) No less than thirty-five (35) ground-level parking spaces shall be reserved for employees of and visitors to the care center; and
- 7) The City shall own and operate the project at all times; and
- 8) The District Commissioner of the Commission District in which the Project will be located shall have access to the common areas of the Project that are open to all members of the general public and shall have the ability to reserve, subject to availability, those areas of the Project that are utilized as meeting, conference, activity, and/or community space for the purpose of holding public meetings and other such County events.

In the event that the conditions set forth in section 3, 4, 5, 6, 7 and 8 above are not met, as determined or decided in the sole discretion of the Board of County Commissioners of Miami-

Dade County, title to the Property and building shall immediately vest in Miami-Dade County, and the City shall deed the Property and building together with all of its contents by Warranty Deed to Miami-Dade County without recourse to any Court or any entitlement to any compensation therefore whatsoever.

Covenant Running with the Land. This Declaration of Restrictive Covenants is to run with the land in perpetuity from the date this Declaration is recorded unless this Declaration of Restrictive Covenants has been modified, amended or released by a written instrument executed by Miami-Dade County as authorized by and through its Board of County Commissioners at its sole discretion.

Enforcement. Miami-Dade County is the beneficiary of these covenants and restrictions and as such may enforce these covenants and restrictions by an action in law or equity, including without limitation a decree of specific performance or mandatory or prohibitory injunction, against any person or persons, entity or entities, violating or attempting to violate the terms of these covenants and restrictions.

Inspection. It is understood and agreed that any inspector from Miami-Dade County shall have the right at any time during normal working hours to enter and investigate the use of the Property to determine if the conditions of this Declaration of Restrictive Covenants are being complied with.

Severability. If any covenant, restriction or provision contained in this document is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other covenant, restriction, condition or provision contained herein, all of which shall remain in full force and effect. This document shall be construed in accordance with the laws of the state of Florida and venue shall be Miami-Dade County, Florida.

Effective Date. This Declaration of Restrictive Covenants shall become effective upon recordation in the public records of Miami-Dade County, Florida.

IN WITNESS WHEREOF, the City of Hialeah has caused this Declaration of Restrictive Covenants to be executed by its duly authorized officers on the date and year first above-written.

City of Hialeah

_____ By: _____

_____ Name: _____

Witness Name Printed

_____ Title: _____

_____ Attest: _____

_____ Name: _____

Witness Name Printed

_____ Title: _____

STATE OF FLORIDA :
: ss
COUNTY OF MIAMI-DADE :

I HEREBY CERTIFY that on this ____ day of _____, 2009, before me an officer authorized to administer oaths and take acknowledgments personally appeared _____ and _____, personally known to me, or that produces the following identifications: _____ to be the _____, and _____ of the City of Hialeah, a municipal corporation under the laws of the State of Florida, and in whose names the foregoing instrument is executed and that officer(s) severally acknowledge before me that (he/she) executed said instrument acting under the authority duly vested by the City of Hialeah.

WITNESS my hand and official seal in the County and State aforesaid, the day and year last aforementioned.

Notary Signature

Printed Notary Name

My Commission Expires:

Seal