Memorandum

MIAMI-DADE COUNTY

EDSS
Agenda Item No. 3(B)

Date: January 12, 2011

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

From: George M. Burgess
County Manager

Subject: Resolution Authorizing a Memorandum of Understanding with the City of Miami for demolition of the Elizabeth Virrick II public housing development

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RECOMMENDATION

It is recommended that the Board of County Commissioners (Board) authorize the County Mayor or the County Mayor's designee to execute a Memorandum of Understanding (MOU) between the City of Miami (City) and the County to demolish the Elizabeth Virrick II public housing development managed by Miami-Dade Public Housing Agency (MDPHA). The buildings have been declared unsafe and are scheduled for demolition.

SCOPE

The existing dilapidated and unsafe 56-unit Elizabeth Virrick II public housing development is located at 2820 and 2828 NW 23 Avenue, Miami, FL, in Commission District 3.

FISCAL IMPACT/FUNDING SOURCE

There is no fiscal impact to Miami-Dade County for demolishing the buildings. The City will provide the funding through its allocation of Neighborhood Stabilization Program (NSP) Round 1 funds for asbestos abatement and demolition of the Elizabeth Virrick II public housing development. However, the County plans to build approximately 124 public housing units on the site with Building Better Communities General Obligation Bond funds.

TRACK RECORD/MONITOR

The MOU between the County and City establishes the responsibilities, project management, indemnification, insurance, termination/remedies, record retention/ownership, standards of compliance, relationship between the parties, and general provisions. The City's Department of Community Development, as the project manager, is responsible for overall coordination and oversight relating to the performance of the abatement, and demolition work under the MOU.

BACKGROUND

The Elizabeth Virrick II public housing development was constructed in 1968 and consists of seven two-story buildings on 1.94 acres of land. Dilapidated conditions have existed for many years and the Board authorized a request (through Resolution R-998-05 and further amended by Resolution R-26-10) to the US Department of Housing and Urban Development (US HUD) to demolish the public housing development. US HUD approved the County's request.

Subsequent to the Board's adoption of Resolution R-26-10, the City of Miami contacted MDPHA and offered their available NSP funds, at no cost to the County, to demolish Elizabeth Virrick II. The City has also agreed to abate and remove the asbestos from the site. Accordingly, the City and the County desire to enter into a MOU to facilitate the demolition of Elizabeth Virrick II.

Attachment

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: February 1, 2011

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.

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN MIAMI-DADE COUNTY AND THE CITY OF MIAMI FOR THE FUNDING, ASBESTOS ABATEMENT, AND DEMOLITION OF ELIZABETH VIRRICK II PUBLIC HOUSING DEVELOPMENT LOCATED AT 2820 AND 2828 NW 23 AVENUE, MIAMI, FLORIDA THROUGH THE CITY'S NEIGHBORHOOD STABILIZATION PROGRAM, SUBJECT TO APPROVAL OF THE CITY OF MIAMI BOARD OF COMMISSIONERS

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, the Board authorizes the County Mayor or the County Mayor's designee to execute the Memorandum of Understanding (MOU), with the City of Miami, in substantially the form attached, for the funding, asbestos abatement, and demolition of Elizabeth Virrick II public housing development located at 2820 and 2828 NW 23 Avenue, Miami, Florida through the City's Neighborhood Stabilization Program, subject to the approval of the County Attorney's Office and the City of Miami Board of Commissioners, and further authorizes the County Mayor or the County Mayor's designee to take all actions necessary to accomplish same and to execute all necessary agreements following approval by the County Attorney's Office; and to exercise amendment, modification, renewal, cancellation and termination clauses on behalf of Miami-Dade County, Florida.

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:

Joe A. Martinez, Chairman
Audrey M. Edmonson, Vice Chairwoman

Bruno A. Barreiro	Lynda Bell
Jose "Pepe" Diaz	Carlos A. Gimenez
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Natacha Seijas	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared the resolution duly passed and adopted this 1st day of February, 2011. 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

MEMORANDUM OF UNDERSTANDING
BETWEEN
MIAMI-DADE COUNTY AND THE
CITY OF MIAMI

This Memorandum of Understanding (hereinafter "MOU") is made and entered into this ____day of_____, 2011 by and between the Miami-Dade County, a political subdivision of the State of Florida (hereinafter "County"), and the City of Miami, a body politic (hereinafter "City").

RECITALS

WHEREAS, on November 13, 2008, the City Commission adopted Resolution No. R-08-0641 which authorized the City to accept Neighborhood Stabilization Program (hereinafter "NSP") funds in the amount of $12,063,702 from the United States Department of Housing and Urban Development (hereinafter "HUD") under the Housing and Economic Recovery Act of 2008; and

WHEREAS, the NSP provides emergency assistance to governmental entities, such as the City of Miami and the County, to acquire foreclosed properties that might otherwise become sources of abandonment and blight and rehabilitate, resell, redevelop these properties to stabilize neighborhoods and stem the decline of house values on neighboring homes; and

WHEREAS, the NSP can also be used to demolish blighted structures; and

WHEREAS, the NSP program defines a "blighted structure" as a structure that exhibits objectively determinable signs of deterioration sufficient to constitute a threat to human health, safety, and public welfare; and

WHEREAS, the County owns and operates a fifty-six (56) unit public housing development commonly known as Elizabeth Virrick II, located at 2820 and 2828 NW 23 Avenue, Miami, Florida (hereinafter the "Site"); and

WHEREAS, the Site is located within the municipal boundaries of the City; and

WHEREAS, the Miami-Dade County Board of County Commissioners pursuant to Resolution No. R-998-05, as amended by Resolution No. R-26-10, authorized the County to submit a Demolition/Disposition Application to HUD; and

WHEREAS, on June 23, 2010 HUD approved the demolition/disposition and development plan of the Site; and

WHEREAS, the Site meets the definition of a blighted structure for NSP purposes because it is vacant, dilapidated, boarded up, contains asbestos containing material, and constitutes a threat to human health, safety and the public welfare; ; and

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WHEREAS, the City, and the County desire to demolish the existing dilapidated and unsafe units using the City's NSP funds because the Site is located within the municipal boundaries and pursuant to the Miami-Dade County Substantial Amendment Action Plan, the County is prohibited from using its NSP funds within the municipal boundaries of the City; and

NOW THEREFORE, in consideration of the premises and mutual covenants and promises contained herein, the County and the City agree as follows:

ARTICLE I
PURPOSE

The purpose of this MOU is to provide approval by the County for the abatement and removal of asbestos and demolition of fifty-seven (57) public housing units located within the Site by the City, in accordance with all applicable laws, codes and regulations using the City's NSP funds as enumerated herein.

ARTICLE II
TERM OF THE MOU

2.1 The term of this MOU shall commence on the last date of execution by the parties and continue until February 15, 2012, or upon completion of demolition work, whichever comes first.

2.2 The parties agree that time is of the essence in the performance of each and every obligation under this MOU.

ARTICLE III
RESPONSIBILITIES OF THE PARTIES

3.1 City's Responsibilities. The City hereby agrees as follows:

(a) To ensure that any appropriate environmental review is conducted in accordance with 24 CFR Part 58 prior to committing any funding to project activities and that environmental clearance is received.

(b) To comply, including ensuring compliance by their contractors and subcontractors, with all applicable laws and regulations, including but not limited to the following:

1) 24 CFR Part 85, OMB A-128, OMB A-87, and with the applicable notices related to NSP and CDBG.

2) Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap; ADA...Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the basis of race, color, or national origin; the Hatch Act of 1940 which limits the political activity of public employees involved in programs supported by federal funds, as amended; the Americans with Disabilities Act of 1990 banning discrimination against individuals with disabilities; the Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; Title VIII of the Civil Rights Act of 1968, as amended, and Executive Order 11063, which prohibits discrimination in housing on the basis of race, color, religion, sex, or national origin; Executive Order 11246, as amended which requires equal employment opportunity; and with the Energy Policy and Conservation Act (Pub. L. 94-163) which requires mandatory standards and policies relating to energy efficiency.

3) All applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15).

4) To ensure compliance, including compliance by all contractors and subcontractors, with all federal requirements with respect to Labor Standards/Davis Bacon, Section 3, Fair Housing and Equal Opportunity.

(c) To complete an asbestos survey, at the City's sole cost, for the Site prior to demolition.

(d) To solely fund the asbestos abatement and demolition of the Site. (hereinafter the "Work").

(e) To competitively procure the services of qualified contractors to perform the Work under approved procurement guidelines.

(f) To provide a clean, buildable site after demolition.

3.2 <u>County's Responsibilities.</u> The County hereby agrees as follows:

(a) To ensure that the Site is secured by fencing at the County's sole costs.

(b) To assist the City with accumulating the necessary documentation to substantiate compliance with the NSP and the City's NSP Substantial

Amendment such as appraisals, work write-ups and cost estimates, target area information, inspection reports and other documents as required.

ARTICLE IV
PROJECT MANAGEMENT AND NOTICE

4.1 The Project Manager for the County is Jorge R. Cibran, Director, Facilities Development Division, Miami-Dade Public Housing Agency, 701 NW 1 Ct., Miami, Florida 33136, telephone number (786) 469-4118. The Project Manager for the City is Ann Kashmer telephone number (305) 416-2097. The parties shall direct all matters arising in connection with the performance of this MOU, other than notices, to the attention of the Project Managers for attempted resolution or action. The Project Managers shall be responsible for overall coordination and oversight relating to the performance of this MOU.

4.2 All notices, demands, or other communications to Miami-Dade County under this MOU shall be in writing and shall be deemed received if sent by certified mail to:

Miami-Dade County
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128
Attn: County Manager

All notices, demands, or other communications to the City under this MOU shall be in writing and shall be deemed received if sent by certified mail to:

City of Miami
3500 Pan American Drive
Miami, Florida 33133-5504
Attn.: City Manager

The County and the City shall also provide a copy of all notices to the Project Managers. All notices required by this MOU shall be considered delivered upon receipt. Should any party change its address, written notice of such new address shall promptly be sent to the other parties.

ARTICLE V
INDEMNIFICATION

5.1 The County assumes any and all risks of personal injury, bodily injury and property damage attributable to the negligent acts or omissions of the County and the officers, employees, servants, and agents thereof. The County warrants and represents that it is self-funded for liability insurance, or has liability insurance, both public and property, with such protection being applicable to the County officers, employees, servants and agents while acting within the scope of their employment with the County.

5.2 The City assumes any and all risks of personal injury, bodily injury and property damage attributable to the negligent acts or omissions of the City and the officers, employees, servants, and agents thereof. The City warrants and represents that it is self-funded for liability insurance, or has liability insurance, both public and property, with such protection being applicable to the City's officers, employees, servants and agents while acting within the scope of their employment with the City.

5.3 The County and the City further agree that nothing contained herein shall be construed to interpret as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the United States or its agents and agencies to be sued; (3) the consent of the State of Florida or its agents and agencies to be sued; or (4) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.

ARTICLE VI
INSURANCE

6.1 The parties hereto acknowledge that the County and the City are self-insured governmental entities subject to the limitations of Section 768.28, Florida Statues. The County and the City shall maintain a fiscally sound and prudent risk management program with regard to their obligations under this MOU in accordance with the provisions of Section 768.28, Florida Statutes. The County and the City shall collect and keep on file documentation of insurance of any and all contractors contracted to provide the services or product used in conjunction with this MOU in any way. The County and the City shall further require all contractors to include the County and the City as named insured and shall provide the County and the City with a copy of the insurance policy purchased by any contractor prior to commencement of the Services.

ARTICLE VII
TERMINATION/REMEDIES

7.1 If any party fails to fulfill its obligations under this MOU in a timely and proper manner, the other parties shall have the right to terminate their participation under this MOU by giving written notice of any deficiency. The party in default shall then have thirty (30) calendar days from receipt of notice to correct the deficiency. If the defaulting party fails to correct the deficiency within this time, this MOU shall terminate at the expiration of the thirty (30) day time period.

7.2 Any party may terminate this MOU at any time for convenience upon ninety (90) calendar days prior written notice to the other party. Any such termination shall be effected by delivery to the other of a Notice of Termination specifying the

extent to which performance of work under the MOU is terminated, and the date upon which such termination becomes effective.

7.3 In the event a dispute arises which the Project Managers cannot resolve between themselves, the parties shall have the option to submit to nonbinding mediation. The mediator or mediators shall be impartial, shall be selected by parties, and the cost of the mediation shall be borne equally by the parties. The mediation process shall be confidential to the extent permitted by law.

7.4 This MOU has no third-party beneficiaries (intended or incidental), who may enforce obligations of any party should the MOU be terminated.

ARTICLE VIII
RECORDS RETENTION/OWNERSHIP

The County and the City shall maintain records and each party shall have inspection and audit rights as follows:

8.1. Maintenance of Records: All parties shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this MOU including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five (5) years from the expiration or termination date of this MOU.

8.2. Examination of Records: All parties or their designated agents shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this MOU. Such examination may be only within five years from the expiration or termination of this MOU and upon reasonable notice, time and place.

The parties further agree that the County, the City or their duly authorized representatives, HUD, the Comptroller General of the United States or other local or federal governmental agencies shall have access to and the right to examine and reproduce any of the County or City's books, documents, papers and records and of their subcontractors and suppliers which apply to all matters of this MOU. Such records shall subsequently conform to Generally Accepted Accounting Principles requirements, and shall only address those transactions related to this MOU. The right of access is not limited to the required record retention period set forth herein, but shall last as long as the records are retained.

8.3. Extended Availability of Records for Legal Disputes: In the event that any party should become involved in a legal dispute with a third party arising from performance under this MOU, the other parties shall extend

the period of maintenance for all records relating to this MOU until the final disposition of the legal dispute, and all such records shall be made readily available.

ARTICLE IX
STANDARDS OF COMPLIANCE

9.1 The County and City, their employees, subcontractors, partners or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this MOU to which their activities are subject.

9.2 The County and the City shall allow public access to all project documents and materials it maintains in accordance with the provisions of Chapter 119, Florida Statutes. Should the County and/or the City assert any exemptions to the requirements of Chapter 119 and related statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be both upon the County and the City.

9.3 All parties assure that no person shall be excluded on the grounds of race, color, creed, national original, handicap, age, sex, marital status, or sexual preference, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this MOU. All parties shall take all measures necessary to effectuate these assurances.

ARTICLE X
RELATIONSHIP BETWEEN THE PARTIES

10.1 The County and the City are independent contractors. No party is an employee or agent of any other party. Nothing in this MOU shall be interpreted to establish any relationship other than that of independent contractors, between the County and the City, or between their respective employees, agents, subcontractors, partners, or assigns, during or after the performance of this MOU.

ARTICLE XI
GENERAL PROVISIONS

11.1 Notwithstanding any provisions of this MOU to the contrary, the parties shall not be held liable for any failure or delay in the performance of this MOU that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, acts of God, or for any other cause of same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but this MOU shall otherwise remain in effect.

11.2 In the event any provisions of this MOU shall conflict, or appear to conflict, the MOU, including all exhibits, attachments and all other documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.

11.3 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this MOU by the parties, their successors and assigns shall not be deemed a waiver of any rights or remedies, nor shall it relieve the other parties from performing any subsequent obligations strictly in accordance with the term of this MOU. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this MOU specifically referred to therein and shall not be deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.

11.4 Should any term or provision of this MOU be held, to any extent invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this MOU, to the extent that the MOU shall remain operable, enforceable and in full force and effect to the extent permitted by law.

11.5 This MOU may be amended only with the written approval of the parties hereto.

11.6 This MOU states the entire understanding and agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this MOU. The parties recognize that any representations, statements or negotiations made by the staff of either party does not suffice to legally bind either party in a contractual relationship unless they have been reduced to writing and signed by their authorized representative(s). This MOU shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.

IN WITNESS WHEREOF, the parties or their duly authorized representatives hereby execute this MOU on the date first written above.

ATTEST:
Harvey Ruvin, Clerk

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

_____
Deputy Clerk

By: _____
George M. Burgess
County Manager

Approved for legal form and sufficiency:

By: _____
Terrence A. Smith
Assistant County Attorney

CITY OF MIAMI, a municipal corporation of the State of Florida

ATTEST:

Priscilla A. Thompson,
City Clerk

_____
City Clerk

By: _____
Carlos A. Migoya
City Manager

Approved as to
Insurance Requirements:

By: _____
Gary Reshefsky
Risk Management Director

Approved for legal form and sufficiency:

By: _____
Julie O. Bru, City Attorney

Doc. No.: 255697