Memorandum

MIAMI-DADE COUNTY

Date: September 1, 2011

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

Agenda Item No. 8(F)(1)(F)

From: Alina T. Hudak
County Manager

Subject: Retroactive Lease Agreement to Lease from the City of Miami, City Owned Property Located at 971 N.W. 2 Street, Miami for the Operation of a State-Funded Primary Care Facility
Property # 01-3136-081-0020

RECOMMENDATION

It is recommended that the Board approve the attached resolution authorizing execution of a Retroactive Lease Agreement for the City owned property located at 971 N.W. 2 Street, Miami, with the City of Miami. The property shall continue to be used for the operation of the State-funded Dr. Rafael A. Peñalver Clinic primary care facility. This Lease Agreement is retroactive due to lengthy negotiations with the City of Miami. The City Commission approved the lease on April 14, 2011. There are two other related Lease Agreements on this agenda.

PROPERTY:	971 N.W. 2 Street, Miami
COMMISSION DISTRICT:	5
COMMISSION DISTRICTS IMPACTED:	Countywide
OWNER:	City of Miami a Political Municipality of the State of Florida
OWNER'S TRACK RECORD:	The County has no record of negative performance issues with the City of Miami.
USE:	Operation of a State-funded Primary Care Facility (Dr. Rafael A. Peñalver Clinic).
JUSTIFICATION:	This item will allow continued operation of the State-funded Primary Care Facility (Dr. Rafael A. Peñalver Clinic) on City owned property. The County adopted Resolution No. R-1120-90 on October 16 1990, authorizing leases with the City of Miami whereby the County leased from the City of Miami two parcels of land located at (1) 971 N.W. 2 Street, Miami, and (2) 1009 N.W. 5 Street, Miami, for the development of two State-funded primary care facilities. The leases were for a period of twenty (20) years from October 1, 1990 through September 30, 2010, and the rental rate was $1.00 per year. To continue operations, the term for each property must be extended since there are no more renewal option periods.

Separately, in an unrelated lease, the City rented from the County, property located at 111 N.W. 1 Street, Miami (SPCC) in the 30th floor transmitter room and on the roof for radio antennae.

The City of Miami advised that in order to maintain the rental rate at $1.00 per year that it charged the County for the two City owned pieces of property, the City sought an amendment with the County to reduce the rental rate it paid to the County for the space it leased at the 111 N.W. 1 Street, Miami (SPCC) 30th floor transmitter room and roof, from $14,000.00 per year to $1.00 per year. The facility at 971 N.W. 2 Street, Miami is funded by the State of Florida through the Department of Health (DOH). The DOH provides the maintenance for the facility as well as all utility costs.

LEASE TERM: Five years and six months with one additional five-year renewal option period.

EFFECTIVE DATES: Commencing (1) upon the passage of the resolution of the Miami-Dade County Board of County Commissioners approving this Retroactive Lease Agreement, and (2) retroactively to October 1, 2010, and terminating April 30, 2016.

RENTAL RATE: The annual rent for the initial five years and six months and the subsequent five-year renewal option period will be One Dollar ($1.00) each year.

FISCAL IMPACT: No County funds will be utilized. The funding source is State Funds which have been budgeted by the State of Florida Department of Health in the Miami-Dade County Health Department Trust Fund.

The Retroactive Occupancy Cost:

Annual Base Rent:	Total Dollars	PSF
FY 2010-2011: (one-year)	$ 1.00	$ 0.00
Retroactive base rent:	$ 1.00	$ 0.00

Occupancy Cost for the remaining four years and six months of the initial five-year six-month period.

Annual Base Rent:	Total Dollars	PSF
FY 2011-2012	$ 1.00	$ 0.00
FY 2012-2013	$ 1.00	$ 0.00
FY 2013-2014	$ 1.00	$ 0.00
FY 2014-2015	$ 1.00	$ 0.00
FY 2015-2016 (6-month)	$ 0.50	$ 0.00
Total base rent:	$ 4.50	

Indirect Expense to the State of Florida Department of Health:

The County will not be impacted financially by the proposed lease agreement since the County does not contribute any funding towards the clinic operation. The State of Florida contractually funds the Department of Health to support its community activities.

Total Cost
for the initial lease term
including retroactive rent: $5.50

The total projected fiscal impact for the initial five years six-month term of the lease and the five-year renewal option period is $10.50.

LEASE CONDITIONS:

The DOH is responsible for roof and roof leaks, water, common areas, parking lot and the structure of the building, as well as electricity, water, waste disposal, janitorial, custodial and security services. The DOH is fully responsible for the maintenance, repair and operation of the facility.

CANCELLATION PROVISION:

Either party, be it the Tenant through its County Mayor or designee, or the Landlord through its City Manager or designee may cancel this Lease Agreement in the event of a material breach of the lease, which continues uncured after having giving the other party at least thirty (30) days' prior written notice.

CURRENT LEASE:	The current Lease Agreement was approved by the Board on October 16, 1990 by Resolution No. R-1120-90 for a twenty year term for $1.00 annually and restricts the use to the provision of public health care. Although the lease expired September 30, 2010, the City has allowed the DOH to remain on the property under the same terms and conditions until a new lease agreement is approved.
MONITOR:	Tania Llado, Chief Real Estate Officer
DELEGATED AUTHORITY:	Authorizes the County Mayor or County Mayor's designee to execute the retroactive lease agreement and exercise the renewal and cancellation provisions.

Wendi J. Norris, Director
General Services Administration

MEMORANDUM
(Revised)

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

DATE: September 1, 2011

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

SUBJECT: Agenda Item No. 8(F)(1)(F)

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**

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Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(F)(1)(F)
9-1-11

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF A RETROACTIVE LEASE AGREEMENT AT 971 NORTHWEST 2 STREET, MIAMI, WITH CITY OF MIAMI, A POLITICAL MUNICIPALITY OF THE STATE OF FLORIDA, FOR PREMISES TO BE UTILIZED BY STATE OF FLORIDA DEPARTMENT OF HEALTH, MIAMI-DADE COUNTY HEALTH DEPARTMENT FOR THE OPERATION OF A STATE-FUNDED PRIMARY CARE FACILITY AT AN ANNUAL NOMINAL FEE OF ONE DOLLAR ($1.00), WITH TOTAL FISCAL IMPACT NOT TO EXCEED $10.50 FOR THE FIVE YEAR AND SIX-MONTHS TERM OF THE LEASE AGREEMENT AND THE FIVE-YEAR RENEWAL OPTION PERIOD; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE ANY AND ALL OTHER RIGHTS CONFERRED 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 Retroactive Lease Agreement between Miami-Dade County and City of Miami, a Political Municipality of the State of Florida, for premises to be utilized by the State of Florida Department of Health, Miami-Dade County Health Department (DOH), with total fiscal impact not to exceed $10.50 for the five-year six-months term of the Lease Agreement and the five-year renewal option period, in substantially the form attached hereto and made a part hereof; authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County; and authorizes the County Mayor or County Mayor's designee to exercise any and all other rights conferred 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:

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

Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
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 1st day of September, 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. JEB

Jason E. Bloch

LEASE AGREEMENT

THIS LEASE AGREEMENT made on the day of , 2011, with an "Effective Date" of October 1, 2010, by and between CITY OF MIAMI, a Florida Municipal Corporation of the State of Florida, hereinafter called the "LANDLORD," and MIAMI-DADE COUNTY, a political subdivision of the State of Florida, hereinafter called the "TENANT".

WHEREAS, the Miami-Dade County Board of County Commissioners approved a prior lease agreement for the same property contemplated herein by way of Miami-Dade County Resolution No. R-1120-90, at its meeting of October 16, 1990 which approved the lease of vacant land for twenty (20) years commencing on October 1, 1990 through September 30, 2010; and,

WHEREAS, during the prior tenancy, the TENANT constructed a public health clinic on the vacant lot, which was financed entirely by the State of Florida Department of Health; and

WHEREAS, the TENANT desires to continue use of such property for such use and LANDLORD desires to continue to allow TENANT to occupy and use such property, and thus to create a new lease for such property; and

WHEREAS, the Miami-Dade County Board of County Commissioners approved the instant Lease Agreement for the property contemplated herein by way of Miami-Dade County Resolution No. R , at is meeting of , 2011; and

WHEREAS, the City of Miami has also authorized and approved the instant Lease Agreement by its City Commission, and as otherwise required; therefore

WITNESSETH:

That LANDLORD, for and in consideration of the restrictions and covenants herein contained, hereby leases to TENANT and TENANT hereby agrees to lease from LANDLORD the demised premises located at 971 N.W. 2 Street, Miami, Florida a/k/a Folio # 01-4138-003-0690 Legal Description RIVERVIEW PB 5-43 ALL BLK G, as illustrated in the attached Exhibit A, hereinafter called the "Demised Premises."

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TO HAVE AND TO HOLD unto the said TENANT for a term of Five (5) years and Six (6) months, commencing October 1, 2010 (the "Effective Date"), and terminating Five (5) years thereafter, for an annual rental of One Dollars and 00/100 ($1.00), payable in advance, beginning on the date hereof and on the anniversary date of each and every year thereafter at City of Miami, Finance Department, 444 S.W. 2nd Avenue, 6th Floor, Miami, Florida 33130 or at such other place and to such other person as LANDLORD may from time to time designate in writing, as set forth herein. Provided that this Lease Agreement shall not become effective until it has been approved by the Miami-Dade County Board of County Commissioners and further providing that if the Board fails to approve the Lease Agreement within one-hundred fifty (150) days of the Lease being transmitted by the City, this Lease Agreement shall automatically lapse and not be of further force and effect.

IT IS FURTHER MUTUALLY UNDERSTOOD AND AGREED BY THE RESPECTIVE PARTIES HERETO:

ARTICLE I
USE OF DEMISED PREMISES

The Demised Premises shall be limited to the area described as RIVERVIEW PB 5-43 ALL BLK G located at 971 N.W. 2 Street, Miami, Florida a/k/a Folio # 01-4138-003-0690. The Demised Premises shall be used by TENANT for the operation of a public health clinic. The clinic shall offer primary health care services for the entire lease period.

ARTICLE II
CONDITION OF DEMISED PREMISES

TENANT hereby accepts the Demised Premises to be in a state of good repair and suitable for usage by TENANT at the commencement of this Lease Agreement. The Demised Premises are leased in "As Is" condition.

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ARTICLE III
UTILITIES

TENANT, during the term hereof, shall pay all charges for water, waste disposal services, other utilities, if any, and electricity and garbage and sewage disposal services used by TENANT.

ARTICLE IV
MAINTENANCE

TENANT agrees to provide, repair or replace, as necessary, and maintain and keep in good repair, condition, and appearance, during the term of this Lease Agreement or any extension or renewal thereof, the interior and exterior of the Demised Premises. The TENANT will have sole responsibility for the maintenance, repair and operation of the Demised Premises.

ARTICLE V
ALTERATIONS BY TENANT

Except as may be necessary for the ongoing operations on the Demised Premises, TENANT may not make any alterations, additions, or improvements in or to the Demised Premises without the written consent of LANDLORD, which consent shall not be unreasonably withheld, conditioned, or delayed. All additions, fixtures, and removable partitions, office furniture, etc., shall remain TENANT's property and may be removed by TENANT upon the expiration of the Lease Agreement or any renewal or cancellation thereof.

ARTICLE VI
DESTRUCTION OF DEMISED PREMISES

In the event the Demised Premises or any portion thereof should be destroyed or so damaged by fire, windstorm, or other casualty, either party may cancel this Lease Agreement for its convenience by the giving of written notice to the other at any time after the occurrence of the fire, windstorm, or other casualty. In the event of cancellation under this Article, neither party shall be responsible to the other party for any expense associated with the cancellation.

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ARTICLE VIII
NO LIABILITY FOR PERSONAL PROPERTY

All of TENANT'S personal property placed or moved in the Demised Premises above described shall be at the risk of TENANT or the owner thereof. LANDLORD shall not be liable to TENANT for any damage to said personal property unless caused by or due to negligence or willful misconduct of LANDLORD, LANDLORD's agents or employees.

ARTICLE IX
ADVERTISING

TENANT shall not permit any signs or advertising matter to be placed on portion of the Demised Premises except with prior written approval by the LANDLORD, which approval shall not be unreasonably withheld, conditioned, or delayed. Signs or advertising matter existing as of the Effective date shall be deemed approved by the LANDLORD. Signs and advertising shall comply with County and City Sign Codes and Sign Regulations.

ARTICLE X
LANDLORD'S RIGHT OF ENTRY

Subject to applicable law, including laws affecting patient privacy, LANDLORD or any of its agents shall have the right to enter said Demised Premises during all reasonable working hours, upon the giving of twenty-four (24) hours' prior notice (unless an emergency exists, in which case LANDLORD shall give earliest practicable notice) to examine the same or to make such repairs, additions, or alterations as may be deemed necessary for the safety, comfort, or preservation thereof of said Demised Premises.

ARTICLE XI
LIABILITY FOR DAMAGE OR INJURY

TENANT shall not be liable for any damage or injury which may be sustained by any party or person on the Demised Premises other than the damage or injury caused solely by the negligence of TENANT, subject to all limitations of Florida Statutes, Section 768.28, as amended.

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ARTICLE XII
PEACEFUL POSSESSION

Subject to the terms, conditions, and covenants of this Lease Agreement, LANDLORD agrees that TENANT shall and may peaceably have, hold, and enjoy the Demised Premises above described, without hindrance or molestation by LANDLORD.

ARTICLE XIII
SURRENDER OF DEMISED PREMISES

TENANT agrees to surrender to LANDLORD at the end of the term of this Lease Agreement, or any prior, written extension which is granted, said Demised Premises in as good condition as said Demised Premises were at the beginning of the term of this Lease Agreement, ordinary wear and tear and damage by fire and windstorm or other acts of God excepted. All permanent improvements, in their then existing conditions, shall become the property of LANDLORD without any compensation due to TENANT.

ARTICLE XIV
INDEMNIFICATION AND HOLD HARMLESS

TENANT and the LANDLORD do hereby agree to indemnify and hold harmless each other to the extent and within the limitations of Section 768.28, Florida Statutes, as amended, subject to the provisions of that Statute whereby TENANT and the LANDLORD shall not be held liable to pay a personal injury or property damage claim or judgments 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 and causes of action which may arise solely as a result of the respective negligence of the LANDLORD or TENANT.

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ARTICLE XV
ASSIGNMENT OR SUBLET

The LANDLORD agrees to the assignment and delegation of all of the TENANT's rights, duties and responsibilities of the Lease Agreement to the Florida Department of Health, Miami-Dade County Health Department, which agreement is made a part hereof, immediately upon execution by LANDLORD and TENANT of this Lease Agreement, for the initial term and any renewal periods.

Except as provided for herein, TENANT shall not assign this Lease Agreement or any part thereof or sublet all or any part of the Demised Premises without prior written consent of LANDLORD, which shall not be unreasonably withheld, conditioned or delayed. Any assignment or subletting consented to by LANDLORD shall be evidenced in writing in a form acceptable to LANDLORD.

Pursuant to Section 255.2502, Florida Statues, as amended, the LANDLORD understands, accepts and agrees that "The State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature."

ARTICLE XVI
SUCCESSORS IN INTEREST

It is hereby covenanted and agreed between the parties that all covenants, conditions, agreements, and undertakings contained in this Lease Agreement shall extend to and be binding on the respective successors and assigns of the respective parties hereto, the same as if they were in every case named and expressed.

ARTICLE XVII
CANCELLATION

Either party, be it the TENANT through its County Mayor or his designee, or the LANDLORD through its City Manager or his designee, shall have the right to cancel this Lease Agreement in the event of a material breach of this Lease Agreement, which continues uncured after having given the other party at least thirty (30) days' prior written notice.

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ARTICLE XVIII
OPTION TO RENEW

Provided this Lease Agreement or other agreements between are not in default, TENANT is hereby granted the option to extend this Lease Agreement for one (1) additional five-year (5) renewal option period, upon expiration of the initial lease term period under the same terms and conditions of the initial Lease Agreement term by requesting a written option to renew of the City Manager by sending notice as provide in Article XIX more than 90 days prior to expiration of the initial lease term.

ARTICLE XIX
NOTICES

All notices or other communications which may be given pursuant to this Agreement shall be in writing and shall be deemed properly served if delivered by personal service or by certified mail addressed to TENANT and LANDLORD at the addresses indicated herein or as the same may be changed from time to time. Such notice shall be deemed given on the day on which personally served or if by certified mail, on the fifth day after being posted or the date of actual receipt, whichever is earlier.

To City:
City Manager
City of Miami
3500 Pan American Drive
Miami, Florida 33133

To County:
General Services Administration, Director
Stephen P. Clark Center
111 NW 1st Street, Suite 2460
Miami, Florida 33128-1994

With Copies to:
City Attorney
City of Miami
444 SW 2nd Avenue
Suite 945
Miami, Florida 33130

Department of Public Facilities
Asset Management Division
City of Miami
444 SW 2nd Avenue, 3rd Floor
Miami, Florida 33130

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ARTICLE XX
INSURANCE

TENANT is self insured in accordance with and subject to the limitations of Section 768.28, Florida Statutes and shall provide evidence of acceptable self-insurance under the laws of the State of Florida to the County's Department of Risk Management. TENANT represents that its self-insurance program covers actions to recover for injury or loss of property, personal injury or death caused by the negligent or wrongful acts or omission of its officers and employees.

ARTICLE XXI
PERMITS, REGULATIONS & SPECIAL ASSESSMENTS

TENANT covenants and agrees that during the term of this Lease Agreement TENANT will obtain any and all necessary permits and approvals and that all uses of the Demised Premises will be in conformance with all applicable laws, including all applicable zoning regulations.

Any and all charges, taxes, or assessments levied against the Demised Premises shall be paid by TENANT and failure to do so will constitute a breach of this Lease Agreement.

ARTICLE XXXI
GOVERNING LAW

This Lease Agreement, including any exhibits, or amendments, if any, and all matters relating thereto (whether in contract, statute, tort or otherwise) shall be governed by and construed in accordance with the laws of the State of Florida. The parties will resolve any disputes between them pursuant to the provisions of the Florida Government Disputes Resolution Act, § 164.101-164.1061, F.S., as amended.

ARTICLE XXI
WRITTEN AGREEMENT

This Lease Agreement contains the entire agreement between the parties hereto and all previous negotiations leading thereto.

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IN WITNESS WHEREOF, LANDLORD and TENANT have caused this Lease Agreement to be executed by their respective and duly authorized officers the day and year first above written.

CITY OF MIAMI,
A FLORIDA MUNICIPAL CORPORATION

ATTEST:_____
PRISCILLA A. THOMPSON
CITY CLERK

By:_____
TONY E. CRAPP, JR.
CITY MANAGER
(LANDLORD)

APPROVED AS TO LEGAL FORM AND CORRECTNESS:

BY:_____
JULIE O. BRU
CITY ATTORNEY

APPROVED AS TO INSURANCE REQUIREMENTS:

By: _____
GARY RESHEFSKY
RISK MANAGEMENT DIRECTOR

(OFFICIAL SEAL)

ATTEST:

HARVEY RUVIN, CLERK

By:_____
DEPUTY CLERK

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

By: _____

COUNTY MAYOR
(TENANT)

Approved as to Form and Legal Sufficiency:

_____

County Attorney's Office

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EXHIBIT A

LEGAL DESCRIPTION
OF PROPOSED LEASE TO DADE COUNTY
AT HENDERSON PARK

Lot 7 less the East 10 feet, Lots 8 and 9, Lot 10 less the West 25 feet and Lot 14 less the East 10 feet and less the South 10 feet, Lots 12 and 13 less the South 10 feet, Lot 11 less the West 25 feet and less the South 10 feet thereof, all in Block G, of "Riverview", according to the Plat thereof, as recorded in Plat Book 5 at Page 43 of the Public Records of Dade County, Florida. Containing 1.10 acre more or less.