

# MEMORANDUM

Agenda Item No. 10(A)(1)

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**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**DATE:** October 6, 2015

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

**SUBJECT:** Resolution authorizing the County Mayor to execute a lease agreement with the City of Miami and Better Way of Miami, Inc. for the property located at 800, 810, 820 N.W. 28 Street within the City of Miami for the purpose of providing homeless transitional and supportive housing; authorizing the County Mayor to exercise provisions contained therein; and approving waiver of Resolution No. 130-06

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The accompanying resolution was prepared by the Miami-Dade Homeless Trust and placed on the agenda at the request of Prime Sponsor Commissioner Audrey M. Edmonson.



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R. A. Cuevas, Jr.  
County Attorney

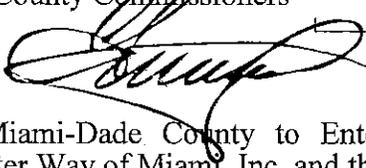
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# Memorandum



**Date:** October 6, 2015

**To:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez  
Mayor 

**Subject:** Resolution Allowing Miami-Dade County to Enter into a Renewed Lease Agreement Between Better Way of Miami, Inc. and the City of Miami

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## **Recommendation**

It is recommended that the Board of County Commissioners ("Board") enter into a renewed long-term lease agreement with Better Way of Miami, Inc. (a Florida non-profit corporation previously named Better Way, Inc. and hereinafter referred to as "Better Way") for the continued use of the City of Miami-owned property to provide housing for homeless households. To allow continuation of such use, Miami-Dade County must agree to continue to refrain from enforcing a deed restriction placed on the property located at 800, 810, and 820 N.W. 28 Street ("Property"). Both the Miami-Dade County Homeless Trust Executive Committee and the Miami-Dade County Homeless Trust Board voted in favor of the renewed lease agreement on May 8, 2015 and on May 22, 2015, respectively, and recommend supporting Better Way and the City of Miami's ("City") request.

In 1980, the County deeded the Property to the City. The County subsequently agreed not to enforce a deed restriction, which would require the Property to be used as a baseball or sports complex. The Board authorized the County to sign the lease between the City and Better Way in 1993 pursuant to Resolution No. R-132-93, as well as a lease extension in 1997 pursuant to Resolution No. R-711-97.

## **Scope**

Better Way accepts residents on a countywide basis.

## **Fiscal Impact/Funding Source**

There is no fiscal impact to the County for the execution of this lease agreement. However, the County does currently, through the Homeless Trust, provide operating support totaling \$1,732,599.00 for Better Way's homeless assistance programs located on the Property.

## **Track Record/Monitor**

Victoria Mallette, Executive Director for the Miami-Dade County Homeless Trust, will be responsible for monitoring the Property to ensure it continues to be used to assist homeless individuals.

## **Background**

On February 20, 1980, Miami-Dade County transferred the deed to the Property located at 800, 810, and 820 to the City, subject to a reverter clause requiring the property to be used for a baseball or sports complex or associated uses. Subsequently, the City desired to lease

such property to Better Way for the purpose of transitional housing and related services for the homeless. On February 16, 1993, the Board authorized the County to enter into the lease with the City and Better Way, and agreed not to enforce the reverter clause as long as the lease remained in effect. The current lease was previously extended and expires on December 11, 2016.

Better Way and the City request that the County enter into a renewed lease between Better Way and the City. The lease contains a provision in which the County agrees not to enforce the reverter clause as long as the new lease remains in effect. The County would enter into this lease solely in its capacity as owner of the reverter and reversionary interest contained in the deed of the Property. The new lease has a term of 20 years and the nominal rent Better Way shall pay the City throughout the term of the lease is \$1.00. Better Way and the City may extend the lease for two (2) additional terms of five (5) years each.

Since commencing operations on the Property, Better Way has successfully operated housing programs and ancillary services benefitting the County's Homeless Continuum of Care. Because the County must waive the restrictive covenant before the City of Miami and Better Way can enter into a lease, it is also recommended that the Board of County Commissioners waive the requirements of Resolution No. R-130-06 requiring execution of the lease agreement by all parties, prior to the Board's approval.

If approved by the Economic Development Committee on August 27, 2015, staff requests that this item be forwarded to the September 1, 2015 Board of County Commissioners Meeting for consideration, as the lease is still pending additional review and final approval from the City of Miami. All parties seek to ensure a seamless execution of said lease and that housing and services continue to remain in place for the homeless men and women that Better Way of Miami serves.

Attachment



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Russell Benford, Deputy Mayor



# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Jean Monestime  
and Members, Board of County Commissioners

**DATE:** October 6, 2015

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

**SUBJECT:** Agenda Item No. 10(A)(1)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's \_\_\_\_\_, 3/5's \_\_\_\_\_, unanimous \_\_\_\_\_) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved \_\_\_\_\_ Mayor  
Veto \_\_\_\_\_  
Override \_\_\_\_\_

Agenda Item No. 10(A)(1)  
10-6-15

RESOLUTION NO. \_\_\_\_\_

RESOLUTION AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE A LEASE AGREEMENT WITH THE CITY OF MIAMI AND BETTER WAY OF MIAMI, INC. FOR THE PROPERTY LOCATED AT 800, 810, 820 N.W. 28 STREET WITHIN THE CITY OF MIAMI FOR THE PURPOSE OF PROVIDING HOMELESS TRANSITIONAL AND SUPPORTIVE HOUSING; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXERCISE PROVISIONS CONTAINED THEREIN; AND APPROVING WAIVER OF RESOLUTION NO. 130-06

**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:

**Section 1.** Authorizes the County Mayor or County Mayor's designee to execute a lease agreement, in substantially the form attached hereto and made a part hereof as Exhibit A, with the City of Miami and Better Way of Miami, Inc. for the property located at 800, 810, 820 N.W. 28 Street within the City of Miami, for the purpose of providing transitional and supportive housing to disabled and homeless individuals.

**Section 2.** Authorizes the County Mayor or County Mayor's designee to exercise provisions contained therein.

**Section 3.** Approves waiver of provisions of Resolution No. R-130-06 requiring execution by all parties of the lease agreement prior to approval by this Board for the reasons stated in the accompanying County Mayor's memorandum.

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:

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

The Chairperson thereupon declared the resolution duly passed and adopted this 6<sup>th</sup> day of October, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

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

HARVEY RUVIN, CLERK

By: \_\_\_\_\_  
Deputy Clerk

Approved by County Attorney as  
to form and legal sufficiency.



Shannon D. Summerset-Williams

**LEASE AGREEMENT**

**FROM**

**THE CITY OF MIAMI**

**AND**

**MIAMI-DADE COUNTY**

**TO**

**BETTER WAY, INC.**

**FOR THE USE OF**

**BECKHAM HALL**

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**LEASE AGREEMENT**

**THIS LEASE AGREEMENT** (hereinafter "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between The City of Miami, a municipal corporation under the laws of the State of Florida, hereinafter called the "City," and Miami-Dade County, a political subdivision of the State of Florida, hereinafter called the "County" and Better Way, Inc., a not-for-profit corporation incorporated under the laws of the State of Florida, hereinafter called the "Lessee."

**WITNESSETH:**

**WHEREAS**, the City entered into a lease with the Lessee for the purpose of providing transitional rental housing for very-low income individuals or families which are homeless on a parcel of land ("Property") legally described in Exhibit "A".

**WHEREAS**, the current lease expires on December 11, 2016, and due to annual project funding the lease needs to be extended in order for the programs offered by the Lessee to receive funding.

**WHEREAS**, the City seeks to continue to lease and Lessee agrees to lease the property, which is located at 800, 810 and 820 NW 28<sup>th</sup> Street, Miami, FL more specifically described in exhibit A;

**NOW THEREFORE**, in consideration of the Properties and mutual covenants hereinafter contained to be observed and performed, the Parties do hereby consent and agree as follows:

**1. DESCRIPTION OF PROPERTY.**

The City hereby leases unto the Lessee and the Lessee hereby leases from the City, the properties located at 800, 810 and 820 NW 28<sup>th</sup> Street in Miami, Florida, together with the buildings, machinery and equipment thereto ("Property"), the location of which is more specifically described in Exhibit A attached hereto.

**2. PURPOSE.**

The Properties described in Section 1 above are to be used by the Lessee solely for the purpose of providing transitional and supportive housing for very-low income individuals and families who are disabled and/or homeless. Additionally the Leased Property shall be used for limited ancillary uses related to the furnishing of such housing and services.

**3. TERM.**

The term of this Agreement shall be for a period of twenty (20) years, beginning on December 12, 2016 (the "Effective Date") and expiring on December 11, 2036, unless sooner terminated as provided in Sections 10 and 11. Subject to the terms and conditions contained herein, the Parties hereto shall have the right to mutually agree for an extension of this Agreement on terms and conditions as are deemed appropriate.

**4. OPTION TO EXTEND.**

In the event the City and the Lessee mutually wish to extend this Agreement, this Agreement may be extended for a maximum of two (2) additional five (5) year terms (hereinafter the "Additional Term"), beyond the initial twenty (20) year term, subject to the same terms and conditions of this Agreement. If the Lessee desires to exercise its option for an Additional Term, the Lessee shall give the City written notice of its intention to exercise the option a minimum of one hundred and eighty (180) days prior to the expiration of the Agreement.

Upon receipt of the written notice, the City Manager, in his/her sole discretion, shall either extend the Agreement or reject the Additional Term within sixty (60) days of receipt of notice.

## **5. HOLDOVER.**

In the absence of any written agreement to the contrary, if the Lessee should remain in occupancy of the Property after the expiration of the lease term, it shall so remain as a tenant from month-to-month and the Rent shall be the same Rent as the last in effect. Either party may terminate the agreement upon expiration of the lease term by providing 30 days written notice of termination. All other provisions of this Agreement applicable to such tenancy shall remain in full force and effect.

## **6. CONTINUOUS DUTY TO OPERATE.**

Except where the Properties are rendered untenable by reason of fire or other casualty, the Lessee shall at all times during this Agreement (i) occupy the Property upon the Effective Date; (ii) shall thereafter continuously conduct operations on the Properties in accordance with the terms of this Agreement and shall at all times keep the Properties fully stocked with materials, trade fixtures and furnishings necessary to operate the Properties. The Lessee shall have the obligation to fund all materials, trade fixtures and furnishings necessary to operate the Property as housing.

## **7. RENT.**

The Lessee shall pay to the City a nominal, annual Rental Fee of One Dollar and Zero Cents (\$1.00) ("Rental Fee") to occupy and use the Property throughout the term of this Lease Agreement. The first annual Rental Fee payment to be made by the Lessee shall be on or prior to the Effective Date and on the first day of each Agreement Year thereafter. For purposes of this Agreement, Agreement Year shall mean any period of time consisting of twelve (12) consecutive calendar months commencing on the Effective Date and each anniversary thereafter. Payments shall be made payable to the "City of Miami" and shall be mailed to the "City of Miami, Department of Real Estate and Asset

Management, 444 S.W. 2<sup>nd</sup> Avenue, 3<sup>rd</sup> Floor, Miami, Florida 33130," Attention: Lease Manager or at such other address as may be designated from time to time.

## **8. UTILITIES.**

The Lessee shall pay for all utilities, including but not limited to, telephone, electricity, fuel, gas, water, storm water fees, garbage and sewage disposal facilities used by the Lessee during its occupancy of the Properties, as well as all costs related to the installation of any connections, lines and/or equipment necessary.

## **9. TAXES OR ASSESSMENTS.**

Any and all charges, taxes or assessments, levied against the Leased Property and/or personal property of any kind shall be paid by the Lessee before any fine, penalty, interest or costs is added for nonpayment. In the event the Lessee appeals an Assessment, the Lessee shall immediately notify the City of its intention to appeal said Assessment and shall furnish and keep in effect a surety bond of a responsible and substantial surety company reasonably acceptable to the City Manager, or his/her designee, or other security reasonably satisfactory to the City Manager, or his/her designee, in an amount sufficient to pay one hundred percent of the contested Assessment with all interest on it and costs and expenses, including reasonable attorneys' fees, to be incurred in connection with it.

## **10. DEFAULT**

The occurrence of any one or more of the following events is deemed an "Event of Default":

(a) If the Lessee defaults in the due and punctual payment of any installment of any Rent when due and payable in accordance with this Agreement, and such default continues for more than thirty (30) days after written notice that the sum is due;

(b) If either party defaults in the due performance or observance of any covenant or condition or provision under this Agreement, other than the payment of Rent, and such default continues for more than thirty (30) days after written notice of the default from the non-defaulting party, provided that if such default cannot be cured within thirty (30) days,

the defaulting party shall have a reasonable period of time (not to exceed one hundred and eighty (180) days) to cure such default so long as the defaulting party commences the cure within thirty (30) days and diligently prosecutes same to completion. If any Event of Default occurs, the party not at fault shall have the right to terminate this Agreement upon thirty (30) days written notice.

(c) The waiver (either expressed or implied by law) by either party of any default of any term, condition or covenant herein contained shall not be a waiver of any subsequent default of the same or any other term, condition or covenant herein contained. No waiver made by either party with respect to performance, or manner or time thereof, of any obligation of the other party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligations of the other party, or conditions to its own obligation, beyond those expressly waived, and to the extent thereof, or a waiver in regard to any other rights of the party making the waiver or in regard to any obligation of the other party.

No remedy conferred upon or reserved to the City or the Lessee shall be considered exclusive of any other remedy, but shall be cumulative and shall be in addition to every other remedy given under this Agreement or existing at law or in equity or by statute; and every power and remedy given by this Agreement to the City or the Lessee may be exercised from time to time and as often as occasion may arise or as may be deemed expedient by the City or the Lessee. No delay or omission of City or Lessee to exercise any right or power arising from any default shall impair any right or power, nor shall it be construed to be a waiver of any default or any acquiescence in it.

For the purpose of any of the provisions of this Agreement, neither the City (including the City Manager) nor the Lessee, as the case may be, shall be considered in breach of or in default in any of its obligations under this Agreement in the event of unavoidable delay in the performance of any such obligations due to strikes, lockouts, acts of God, inability to obtain labor or materials, or to settle insurance claims, due to governmental restrictions, enemy action, civil commotion, fire, hurricane, flood, casualty, or other similar causes beyond the reasonable control of a party (collectively "Unavoidable Delay"), but not including such party's insolvency or financial condition, it

being the purpose and intent of this Section that in the event of the occurrence of any such Unavoidable Delay the time or times for the performance of the covenants and provisions of this Agreement shall be extended for the period of Unavoidable Delay; provided, however, that the party seeking the benefit of the provisions of this Section shall, within thirty (30) days after such party shall have become aware of such Unavoidable Delay, give written notice to the other party thereof of the cause or causes thereof and the time anticipated to be delayed.

#### **11. RIGHT TO CANCEL BY CITY.**

The City reserves the right to cancel, terminate and declare this Agreement null and void, relating to one or more or to all of the Properties enumerated in Section 1 of this Agreement by giving forty-five (45) days written notice to vacate, but only in the event that Lessor determines that the Leased Property is needed for a specific public purpose and provided that the City pays Lessee the unamortized cost of any improvements undertaken by Lessee upon the Property in accordance with Section 15 hereof. The amortization period herein referenced shall be based on a 10 year period but in no event shall it extend past the expiration of the lease term. If the Termination of this Agreement is caused by a Default in accordance with Section 10 hereof, the City will not be responsible for the cost of any improvements.

#### **12. ASSIGNMENT AND SUBLETTING OF LEASED PROPERTY**

Lessee shall not, at any time during the term of this Agreement, sublet any part of the Property, or assign this Agreement or any portion or part thereof, except and by virtue of written authorization granted by the Miami City Commission, which sublease or assignment shall be conditioned upon the proposed sublessee's or assignee's compliance with all City of Miami conflict of interest provisions and all applicable City Charter and Code provisions.

It is understood that the building located at 810 NW 28<sup>th</sup> Street, Miami, FL is currently subleased by Greater Miami Service Corps.. Should they wish to continue subleasing the space with substantially the same terms and conditions as the current

Sublease Agreement that commenced on May 1, 1992, the City Manager may approve the new sublease without obtaining Miami City Commission approval.

### **13. SUCCESSORS AND ASSIGNS**

This Lease Agreement shall be binding upon the parties herein, their heirs, executors, legal representatives, successors and assigns.

### **14. CONDITION AND MAINTENANCE OF THE PROPERTIES.**

The Lessee accepts the Property in their "as is" present condition and state of repair, without any representation by or on behalf of the City, and agrees that the City shall, under no circumstances, be liable for any latent, patent or other defects in the Property.

The Lessee, at its sole cost and expense, agrees to maintain the interior and exterior of the Property, including but not limited to, portions used for ingress and egress, in good order and repair at all times, and in attractive, clean, safe and sanitary conditions during its use and occupancy of the Properties and shall cause no waste or injury thereto. This shall include, but not be limited to, the parking areas utilized by the Lessee's motor vehicles (if any), the plumbing and other pipes, all components of the heating, air conditioning and ventilation systems, electrical systems, telephone, gas, public utility systems and lines, parking surfaces, landscaping, fencing, windows, roof, paint and other elements of the structure or structures on the Property. In the event that any portion of the Property becomes obsolete or worn out in use so that it can not properly perform its function as intended, then the Lessee shall replace the same at its sole cost and expense.

The Lessee shall be responsible for any and all costs associated with the maintenance, repair and housing operations at said Properties, including but not limited to janitorial services and supplies, repair, maintenance, construction/rehabilitation costs, utilities, all occupational and other licenses necessary for the housing operations, personnel, equipment, utilities, security and insurance costs incurred for its operations.

**15. ALTERATIONS, ADDITIONS, REPAIRS OR REPLACEMENTS.**

Except in the event of an emergency, the Lessee shall not make any alterations, additions, repairs or replacements required or permitted to be performed by Lessee unless and until the Lessee shall have caused plans and specifications therefore to be prepared, at Lessee's sole expense, by an architect or other duly qualified professional and shall do its best efforts to have obtained the approval of the City Manager or his/her designee, within thirty (30) days of the Lessee's request for same, which approval may be conditioned or withheld for any or no reason whatsoever [if said alteration, repair or replacement does not necessitate plans, than such turn-around of the City's approval will be within (14) days]. In the event of an emergency, the Lessee may reasonably proceed to perform such emergency repair work and shall immediately notify the City of such work.

The Lessee shall be solely responsible for applying and acquiring all necessary permits, including but not limited to, building permits. The Lessee shall be responsible for all costs associated with any alterations including, but not limited to design, construction, installation, and permitting costs.

All alterations, additions, repairs or replacements must comply with all statutes, laws, ordinances and regulations of the State of Florida, Miami-Dade County, the City of Miami and any other agency that may have jurisdiction over the Property as it presently exists and as may be amended hereafter. By the installation of any alterations, additions, repairs or replacements, the City shall not be excluded from the Property.

**16. OWNERSHIP OF IMPROVEMENTS.**

As of the Effective Date and throughout the use period, title to the Property and all improvements thereon shall be vested in the City. Furthermore, title to all alterations made in or to the Properties, whether or not by or at the expense of Lessee, shall, unless otherwise provided by written agreement, immediately upon their completion, become the property of the City and shall remain and be surrendered with the Properties.

## **17. VIOLATIONS, LIENS AND SECURITY INTERESTS.**

The Lessee, at its expense and with due diligence and dispatch, shall secure the cancellation or discharge of or bond off same in the manner permitted by law, all notices of violations arising from or otherwise in connection with Lessee's improvements or operations in the Properties which shall be issued by any public authority having or asserting jurisdiction. The Lessee shall promptly pay its contractors and material men for all work and labor done at Lessee's request. Should any such lien be asserted or filed, regardless of the validity of said liens or claims, Lessee shall bond against or discharge the same within fifteen (15) calendar days of the filing of said encumbrance. In the event the Lessee fails to remove or bond against said lien by paying the full amount claimed, the Lessee shall pay the City, upon demand, any amount paid out by the City, including City's costs, expenses and reasonable attorneys' fees.

The Lessee further agrees to hold the City harmless from and to indemnify the City against any and all claims of any contractor, subcontractor, material man, laborer or any other third person with whom the Lessee has contracted or otherwise is found liable for, in respect to the Property. Nothing contained in this Agreement shall be deemed, construed or interpreted to imply any consent or agreement on the part of the City to subject the City's interest or estate to any liability under any mechanic's or other lien asserted by any contractor, subcontractor, material man or supplier thereof against any part of the Property or any of the improvements thereon and each such contract shall provide that the contractor must insert a statement in any subcontract or purchase order that the contractor's contract so provides for waiver for lien and that the subcontractor, material man and supplier agree to be bound by such provision.

## **18. CITY'S RIGHT OF ENTRY.**

The Lessee shall permit the City and its agents, representatives, employees, and/or designees of the City to enter into the Properties, based upon availability of the same, at all reasonable times upon advance written notice for any reasonable purpose; provided, however, that the City's rights under this Section shall not unreasonably interfere with the

operation of the Properties or the performance of the Lessee's obligations under this Agreement.

## **19. SURRENDER OF PROPERTIES.**

Upon the expiration or earlier termination of the Agreement, or the discontinuance of one or more properties for use as housing facilities hereunder, the Lessee will surrender the respective Property in good and a substantial state of repair, reasonable wear and tear excepted, subject to the repair and maintenance obligations provided in Section 14 herein. At the expiration of the lease, additional terms or at the discontinuance in use of one or more of the Properties leased herein, all fixtures and keys relating to any or all of the subject Property or Properties revert back to the City.

## **20. INDEMNIFICATION.**

To the extent authorized pursuant to §768.28, Fla. Stat., the Lessee shall indemnify, hold harmless and defend the City and County from and against any and all claims, suits, actions, damages or causes of action of whatever nature, for any personal injury, loss of life or damage to property sustained in or on the Property, by reason of or as a result of Lessee's use or operations thereon, and from and against any orders, judgments or decrees which may be entered thereon, and from and against all costs, attorney's fees, expenses and liabilities incurred in and about the defense of any such claims and the investigation thereof; even if the claims, costs, liabilities, suits, actions, damages or causes of action arise from the negligence or alleged negligence of the City or County, including any of its employees, agents or officials.

## **21. INSURANCE.**

Lessee shall maintain throughout the term of this Lease and through any extensions, renewals or holdover, the insurance listed in Exhibit B attached hereto.

**22. NO LIABILITY FOR PERSONAL PROPERTY.**

Lessee agrees to insure or self-insure their personal property and hereby waive all rights to recovery for loss or damage by any means and waive all rights to recovery for loss or damage by any means and waive all rights to recovery for loss and damage to such property by any cause whatsoever. Lessee hereby waives all rights of subrogation against the City under any policy or policies Lessee may carry or on property placed or moved on the Property.

**23. SAFETY.**

The Lessee will allow City inspectors, agents or representatives the ability to monitor its compliance with safety precautions as required by federal, state or local laws, rules, regulations and ordinances. By performing these inspections, the City, its agents, or representatives are not assuming any liability by virtue of these laws, rules, regulations, and ordinances. Lessee shall have no recourse against the City, its agents, or representatives from the occurrence, non-occurrence, or result of such inspection(s).

**24. 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 City and Lessee 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:**  
County Mayor  
Stephen P. Clark Center  
111 NW 1<sup>st</sup> Street, Suite 2910  
Miami, Florida 33128-1994

**With Copies to:**  
City Attorney

**To Lessee:**  
Better Way, Inc.

City of Miami  
444 SW 2<sup>nd</sup> Avenue  
Suite 945  
Miami, Florida 33130

800 NW 28<sup>th</sup> Street  
Miami, Florida  
ATTN:

Director  
Department of Real Estate and  
Asset Management  
City of Miami  
444 SW 2<sup>nd</sup> Avenue, 3<sup>rd</sup> Floor  
Miami, Florida 33130

## **25. ADVERTISING.**

The Lessee shall provide and the City shall reasonably allow signage that is in accordance with Lessee's branding standards for signage at housing facilities. The Lessee shall not permit any signs, decoration, or advertising matter to be placed upon the exterior of the Properties without having first obtained the approval of the City's Director of the Department of Real Estate and Asset Management or his/her designee, which approval may be withheld for any or no reason, at his/her sole discretion. Lessee must further obtain approval from all governmental authorities having jurisdiction, and must comply with all applicable requirements set forth in the City of Miami Code and Zoning Ordinance.

Upon the cancellation of this Agreement, Lessee shall, at its sole cost and expense, remove any sign, decoration, advertising matter or other thing permitted hereunder from the Property. If any part of the Properties is in any way damaged by the removal of such items, said damage shall be repaired by Lessee at its sole cost and expense. Should Lessee fail to repair any damage caused to the Property within ten (10) days after receipt of written notice from the City directing the required repairs, the City shall cause the Property to be repaired at the sole cost and expense of Lessee. Lessee shall pay the City the full cost of such repairs within five (5) days of receipt of an invoice indicating the cost of such required repairs.

## MISCELLANEOUS

### **26. COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAWS.**

The Lessee shall comply with all sanitary, health and public safety laws and ordinances of the City, and all other applicable laws, ordinances and codes of federal, state and local governments as they apply to this Agreement. The Lessee shall comply therewith as the same presently exist and as they may be amended hereafter.

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, regardless of any conflict of law or other rules which would require the application of the laws of another jurisdiction.

### **27. DEED RESTRICTIONS**

The County hereby agrees not to impose or enforce any deed restrictions running with the land which may appear on the Deed of the Property for such a period of time during which this Lease Agreement shall be in effect and not revoked in accordance with the provisions contained herein. The County signs this Agreement solely in its capacity as owner of the reverter and reversionary interest contained in the Deed of the Property, which Deed was granted from the County to the City on February 20, 1980. Nothing contained in this Agreement shall restrict or govern the rights of the County when acting in any other capacity, including but not limited to when acting in its capacity as sovereign, when exercising its police powers or powers to take by eminent domain, and/or when acting in its capacity as an enforcement authority.

### **28. CONFLICT OF INTEREST.**

The Lessee is aware of the conflict of interest laws of the City of Miami, Florida (Miami City Code Chapter 2, Article V), as amended, and agrees that it will fully comply in all respects with the terms of said laws and any future amendments thereto.

To the best of their knowledge and belief, City and Lessee both state that no person under their employ who presently exercises any functions or responsibilities in connection with this Agreement has any personal financial interests, direct or indirect in this Agreement. The Lessee further covenants that, in the performance of this Agreement, no person or entity having such conflicting interest shall be utilized in respect to services provided hereunder. Any such conflict of interest(s) on the part of Lessee, its employees or associated persons, or entities must be disclosed in writing to the City.

**29. NON-DISCRIMINATION.**

No party shall discriminate as to race, color, religion, sex, national origin, age, disability, or marital status in connection with its occupancy and/or use of the Properties and improvements thereon. Lessee will use reasonable efforts so that minority applicants are employed and that employees are fairly treated during employment without regard to their sex, age, race, color, religion, ancestry, marital status, or national origin. Such action may include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination.

**30. ADA**

Lessee shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act ("ADA") in the course of utilizing the Property, including Titles I and II of the ADA (regarding non-discrimination on the basis of disability) and all applicable regulations, guidelines and standards.

**31. MINORITY/WOMEN BUSINESS UTILIZATION.**

The Lessee shall use its best efforts to purchase/contract fifty-one (51%) of its annual goods and services requirements from Hispanic, Black and Women businesses/Providers registered/certified with the City's Office of Minority/Women Business Affairs. Such lists are available to the Provider at the City's Office of Minority/Women Business Affairs.

### **32. HAZARDOUS MATERIALS.**

The Lessee shall, at its sole cost and expense, at all times and in all respects comply with all federal, state and local laws, statutes, ordinances and regulations, rules, rulings, policies, orders, administrative actions and administrative orders, including, without limitation, any Hazardous Material Laws ("Hazardous Materials Laws") relating to industrial hygiene, environmental protection or the use, storage, disposal or transportation of any flammable explosives, toxic substances or other hazardous, contaminated or polluting materials, substances or wastes, including, without limitation, any "Hazardous Substances", "Hazardous Wastes", "Hazardous Materials" or "Toxic Substances, under any such laws, ordinances or regulations (collectively "Hazardous Materials").

The Lessee shall, at its sole cost and expense, procure, maintain in effect, and comply with all conditions of any and all permits, licenses and other governmental and regulatory approvals relating to the presence of Hazardous Materials within, on, under or about the Property required for the Lessee's use, or storage of, any Hazardous Materials in or about the Property in conformity with all applicable Hazardous Materials Laws and prudent industry practices regarding management of such Hazardous Materials. Upon termination or expiration of this Agreement, the Lessee shall, at its sole cost and expense, cause all Hazardous Materials, including their storage devices, placed in or about the Property by the Lessee or at the Lessee's direction, to be removed from the Property and transported for use, storage or disposal in accordance and compliance with all applicable Hazardous Materials Laws.

The City acknowledges that it is not the intent of this Article to prohibit the Lessee from operating in the Property for the uses described in the Section of this Agreement entitled "Purpose". The Lessee may operate according to the custom of the industry, so long as the use or presence of Hazardous Materials is strictly and properly monitored according to, and in compliance with, all applicable governmental requirements. The requirements of this Section of the Agreement shall survive the

expiration or termination of this Agreement.

### **33. RADON GAS.**

Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. Lessee may have an appropriately licensed person test the Properties for radon. If the radon level exceeds acceptable EPA standards, the Lessee may choose to reduce the radon level to an acceptable EPA level.

### **34. LITIGATION.**

Any dispute herein shall be resolved in the courts of Miami-Dade County, Florida. The parties shall attempt to mediate any dispute without litigation. However, this is not intended to establish mediation as a condition precedent before pursuing specific performance, equitable or injunctive relief.

### **35. COURT COSTS AND ATTORNEY FEES.**

In the event it becomes necessary for the Landlord to institute legal proceedings to enforce or interpret the provisions of this Lease, Tenant shall pay the Landlord's court costs and attorney's fees as provided by Florida Statutes Section 57.105 through all trial and appellate levels. Tenant acknowledges that Florida law provides for mutuality of attorney's fees as a remedy in contract cases and specifically and irrevocable waives its right to collect attorney's fees from the Landlord under applicable laws, including specifically, but not limited to Section 57.105, Florida Statutes. It is the express intent of the parties hereto that in no event will the Landlord be required to pay Tenant's attorney's fees and court costs for any action arising out of this Lease. In the event that Tenant's waiver under this section is found to be invalid then Tenant agrees that the Landlord's liability for Tenant's attorney's fees and court costs shall not exceed the sum of \$100.00. In the event that the waiver and limitations contained herein are found to be invalid, or

are otherwise not upheld, then the provisions of this Section shall become null and void and each party shall be responsible for its own attorney's fees and costs.

**36. WAIVER OF JURY TRIAL.**

The parties hereby knowingly, irrevocably, voluntarily and intentionally waive any right either may have to a trial by jury in respect of any action, proceeding or counterclaim based on this Agreement, or arising out of, under or in connection with this Agreement or any amendment or modification of this Agreement, or any other agreement executed by and between the parties in connection with this Agreement, or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party hereto. This waiver of jury trial provision is a material inducement for the City and the Lessee entering into the subject transaction.

**37. NON-WAIVER OF DEFAULT.**

Any failure by the City at any time or from time to time to enforce and require the strict keeping and performance of any of the terms or conditions of this Agreement shall not constitute a waiver of any such terms or conditions at any future time and shall not prevent the City from insisting on the strict keeping and performance of such terms or conditions at any later time. No waiver of any right hereunder shall be effective unless in writing and signed by the City.

**38. TIME OF ESSENCE.**

It is expressly agreed by the parties hereto that time is of the essence with respect to this Agreement. If the final day of any period falls on a weekend or legal holiday, then the final day of said period or the date of performance shall be extended to the next business day thereafter.

**39. FURTHER ACTS.**

In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by the parties, the parties each agree to perform, execute and/or

deliver or cause to be performed any and all such further acts, deeds and assurances as may be necessary to consummate the transactions contemplated hereby.

**40. AMENDMENTS AND MODIFICATIONS.**

No amendments or modifications to this Agreement shall be binding on either party unless in writing, signed by both parties and approved by the City Manager, Lessee and County Mayor or his/her designee. The City Manager is authorized to make non-substantive amendments or modifications to this Agreement as needed, including extensions to this Agreement beyond the initial lease term contemplated in Section 4 herein.

**41. SEVERABILITY.**

In the event any section, clause or sentence of this Agreement or any future amendment is declared invalid by a court of competent jurisdiction, such section, clause or sentence shall be stricken from the subject Agreement and the balance of the Agreement shall not be affected by the deletion thereof.

**42. CAPTIONS.**

Title and section headings are for convenient reference and are not a part of this Agreement.

**43. INTERPRETATION.**

This Agreement is the result of negotiations between the parties and has been typed/printed by one party for the convenience of both parties. Should the provisions of this Agreement require judicial or arbitral interpretation, it is agreed that the judicial or arbitral body interpreting or construing the same shall not apply the assumption that the terms hereof shall be more strictly construed against one party by reason of the rule of construction nor that an instrument is to be construed more strictly against the party which itself or through its agents prepared same, it being agreed that the agents of both parties have equally participated in the preparation of this Agreement.

**44. CONSTRUCTION OF AGREEMENT.**

This Agreement shall be construed and enforced according to the laws of the State of Florida.

**45. COVENANTS BINDING.**

All covenants and agreements contained herein shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the Parties; provided that, the Lessee shall not sublet in whole or in part, nor assign this lease or any part of it, nor grant any concession on the premises, without having first obtained the written authorization of the City Manager of the City, which approval may be conditioned or withheld in the City Manager's sole discretion.

**46. Public Records**

Lessee understands that the public shall have access, at all reasonable times, to City contracts, subject to the provisions of Chapter 119, Florida Statutes, and agrees to allow access by the City and the public to all documents subject to disclosure under applicable law.

**47. ENTIRE AGREEMENT.**

This instrument and its attachments constitute the sole and only Agreement of the parties hereto and correctly sets forth the rights, duties and obligations of each to the other as of its date. Any prior agreements, promises, negotiations or representations not expressly set forth in this Agreement are of no force or effect.

**48. AUTHORITY.**

Each of the parties hereto acknowledges it is duly authorized to enter into this Agreement and that the signatories below are duly authorized to execute this Agreement on behalf of the respective parties to this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement  
of the day and year first above written.

**CITY OF MIAMI**, a municipal  
Corporation of the State of Florida.

**MIAMI-DADE COUNTY**, a political  
Subdivision of the State of Florida.

**By:** \_\_\_\_\_  
Daniel J. Alfonso  
City Manager

**By:** \_\_\_\_\_  
Carlos A. Gimenez  
County Mayor

**ATTEST:**

**ATTEST:**

**By:** \_\_\_\_\_  
Todd B. Hannon  
City Clerk

**By:** \_\_\_\_\_  
Harvey Ruvlin  
Clerk of the Court

**Approved as to Form and Correctness:**

**LESSEE**

Better Way, Inc., a not for profit corporation  
of the State of Florida

**By:** \_\_\_\_\_  
Victoria Méndez  
City Attorney

**By:** \_\_\_\_\_

**Approved as to Insurance Requirements:**

**By:** \_\_\_\_\_  
Ann-Marie Sharpe, Director  
Department of Risk Management

## EXHIBIT A: LEGAL DESCRIPTION OF PROPERTIES

A portion of Tract "A" of DADE COUNTY YOUTH HALL TRACT, according to the plat thereof recorded in Plat Book 62 at Page 96 of the Public Records of Dade County, Florida, being more particularly described as follows:

Begin at the point of intersection of the East line of the West 201.43 feet of said Tract "A" with the NORTH line of said Tract "A"; thence run S 00°22'31" W for a distance of 239.82 feet; thence run N 89°15'23" E for a distance of 70.48 feet; thence run N 89°40'02" E for a distance of 51.74 feet; thence run S 75°49'19" E for a distance of 9.80 feet; thence run S 71°28'25" E for a distance of 19.83 feet; thence run S 89°53'33" E for a distance of 159.80 feet; thence run NORTH for a distance of 31.40 feet; thence run N 52°15'11.5" E for a distance of 43.13 feet; thence run EAST for a distance of 77.69 feet to the point of intersection with the East line of said Tract "A"; thence run NORTH, along the East line of said Tract "A," for a distance of 164.80 feet to the point of curvature of a circular curve to the left; thence run Northwesterly along the arc of said circular curve to the left, having a radius of 25.00 feet, through a central angle of 90°00'00", for an arc distance of 39.27 feet to the point of tangency with the North line of said Tract "A"; thence run WEST along the North line of said Tract "A," for a distance of 395.53 feet to the POINT OF BEGINNING.

Containing 2.226 Acres, more or less.

## EXHIBIT B

### Lessee's Insurance Requirements

#### I. Commercial General Liability

##### A. Limits of Liability

Bodily Injury and Property Damage Liability	
Each Occurrence	\$1,000,000
General Aggregate Limit	\$ 2,000,000
Personal and Adv. Injury	\$ 1,000,000
Products/Completed Operations	\$ 1,000,000
Damage to Rented Premises	\$100,000

##### B. Endorsements Required

City of Miami & Miami Dade County listed as additional insured  
Contingent & Contractual Liability  
Premises and Operations Liability  
Primary and Non Contributory

#### II. Business Automobile Liability

##### A. Limits of Liability

Bodily Injury and Property Damage Liability	
Combined Single Limit	
Owned/Scheduled Autos	
Including Hired, Borrowed or Non-Owned Autos	
Any One Accident	\$ 1,000,000

##### B. Endorsements Required

City of Miami and Miami Dade County listed as an additional insured

#### III. Worker's Compensation

Limits of Liability  
Statutory-State of Florida  
Waiver of Subrogation

Employer's Liability

##### A. Limits of Liability

\$100,000 for bodily injury caused by an accident, each accident  
\$100,000 for bodily injury caused by disease, each employee

\$500,000 for bodily injury caused by disease, policy limit

**IV. Professional Liability/Errors and Omissions Coverage**

Combined Single Limit	
Each Claim	\$1,000,000
General Aggregate Limit	\$1,000,000
Retro Date Included	

**V. Property Coverage**

The Lessee shall maintain at all times during the term of this agreement coverage on all Buildings (Real Property), including fixtures, and improvements, along with Business Personal Property affording coverage against all risk of direct physical loss, including coverage for windstorm and hail, sprinkler leakage, and flood, if applicable. The coverage should be written on a full replacement cost basis with the City of Miami listed as loss payee on this coverage. Time Element coverage should be included.

**VI. Umbrella Liability (Excess Follow Form)**

A. Limits of Liability	
Each Occurrence	\$1,000,000
Policy Aggregate	\$1,000,000

City of Miami and Miami Dade County listed as an additional insured

**The above policies shall provide the City of Miami with (30) days written notice of cancellation or material change from the insurer, or in accordance to policy provisions.**

Companies authorized to do business in the State of Florida, with the following qualifications, shall issue all insurance policies required above:

**The company must be rated no less than "A-" as to management, and no less than "Class V" as to Financial Strength, by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent. All policies and /or certificates of insurance are subject to review and verification by Risk Management prior to insurance approval.**