CITY OF MIAMI
OFFICE OF INDEPENDENT AUDITOR GENERAL

AUDIT OF THE CITY OF MIAMI HOUSING PROGRAMS
AUDIT NO. 07-009

Prepared By
Office of Independent Auditor General

Victor I. Igwe, CPA, CIA
Auditor General

LEWIS BLAKE, CPA, SENIOR STAFF AUDITOR
June 11, 2007

Honorable Members of the City Commission
City of Miami
3500 Pan American Dr.
Coconut Grove, FL 33133-5504

Re: Audit of the City of Miami’s Housing Programs
Audit No. 07-009

At the City Commission meeting of July 27, 2006, the City Commission passed and adopted Resolution number 06-01655, which directed the Office of the Independent Auditor General to conduct an audit of the City of Miami’s Housing Programs administered by the Community Development Department.

The audit included an examination of financial transactions, operations, compliance with applicable Sections of the Code of Federal Regulations, City Code, contractual provisions, procurement process, selected controls, and other guidelines. Our audit focused on the activities and/or transactions that were authorized and processed during the period January 2000, through August 2006.
Sincerely,

Victor Igwe
Victor I. Igwe, CPA, CIA
Director
Office of Independent Auditor General

Cc: The Honorable Mayor Manuel A. Diaz
    Pete Hernandez, Chief Administrator/City Manager
    Members of the Audit Advisory Committee
    Larry Spring, Chief Financial Officer
    Michael J. Boudreaux, Acting Chief of Strategic Planning, Budgeting & Performance
    Peter W. Korinis, Chief Information Officer
    Mary Conway, Chief of Operations
    Jorge L. Fernandez, City Attorney
    Barbara Gomez, Director, Community Development Department
    Priscilla A. Thompson, City Clerk
    Diana M. Gomez, CPA, Director, Finance Department
    File
# AUDIT OF COMMUNITY DEVELOPMENT HOUSING PROGRAM
FOR THE PERIOD JANUARY 2000, THROUGH AUGUST 2006

## TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>INTRODUCTION</strong></td>
<td>1</td>
</tr>
<tr>
<td><strong>SCOPE AND OBJECTIVES</strong></td>
<td>3</td>
</tr>
<tr>
<td><strong>METHODOLOGY</strong></td>
<td>4</td>
</tr>
<tr>
<td><strong>SUMMARY OF AUDIT FINDINGS</strong></td>
<td>5</td>
</tr>
<tr>
<td>Community Development Department</td>
<td>5</td>
</tr>
<tr>
<td>Impairments to the Performance of Audit Procedures</td>
<td>5</td>
</tr>
<tr>
<td>Lack of Documentation Evidencing Adequate Project Evaluation</td>
<td>5</td>
</tr>
<tr>
<td>Inadequate Maintenance of the ABS System</td>
<td>5</td>
</tr>
<tr>
<td>Loan Servicing Not Performed Timely</td>
<td>5</td>
</tr>
<tr>
<td>Rivers Development Group (Las Rosas Apartments)</td>
<td>6</td>
</tr>
<tr>
<td>Bame Development Corporation (New Hope Overtown)</td>
<td>7</td>
</tr>
<tr>
<td>East Little Havana CDC (Brickell View)</td>
<td>7</td>
</tr>
<tr>
<td>Latin Q Tower</td>
<td>8</td>
</tr>
<tr>
<td>Economic Development Department</td>
<td>9</td>
</tr>
<tr>
<td>Affordable Housing Trust Fund / 234 Tower LLC. Condominium Project</td>
<td>9</td>
</tr>
<tr>
<td>Community Development Department</td>
<td>9</td>
</tr>
<tr>
<td>Affordable Housing Trust Fund / Miami Recovers Program</td>
<td>9</td>
</tr>
<tr>
<td>Inadequate Disbursement Documentation</td>
<td>10</td>
</tr>
<tr>
<td>State Housing Initiatives Partnership Program (SHIP)</td>
<td>11</td>
</tr>
<tr>
<td>Ralph Plaza II</td>
<td>11</td>
</tr>
<tr>
<td>Appearance of a Conflicting Interest</td>
<td>12</td>
</tr>
<tr>
<td>Defaulted Loans</td>
<td>12</td>
</tr>
<tr>
<td>Lack of IDIS to ABS Reconciliation</td>
<td>12</td>
</tr>
<tr>
<td>Record Retention and Lack of Access to Records</td>
<td>12</td>
</tr>
<tr>
<td><strong>AUDIT FINDINGS AND RECOMMENDATIONS</strong></td>
<td>13</td>
</tr>
<tr>
<td>Community Development Department</td>
<td>13</td>
</tr>
<tr>
<td>Impairments to the Performance of Audit Procedures</td>
<td>13</td>
</tr>
<tr>
<td>Lack of Documentation Evidencing Adequate Project Evaluation</td>
<td>17</td>
</tr>
<tr>
<td>Inadequate Maintenance of the ABS System</td>
<td>21</td>
</tr>
<tr>
<td>Loan Servicing Not Performed Timely</td>
<td>23</td>
</tr>
</tbody>
</table>
RIVERS DEVELOPMENT GROUP (LAS ROSAS APARTMENTS) ................................................................. 25
BAME DEVELOPMENT CORPORATION (NEW HOPE OVERTOWN) .................................................. 36
EAST LITTLE HAVANA CDC (BRICKELL VIEW) .................................................................................. 39
LATIN Q TOWER ................................................................................................................................ 43
ECONOMIC DEVELOPMENT DEPARTMENT ...................................................................................... 50
AFFORDABLE HOUSING TRUST FUND / 234 TOWER LLC. CONDOMINIUM PROJECT ................. 50
COMMUNITY DEVELOPMENT DEPARTMENT .................................................................................... 54
AFFORDABLE HOUSING TRUST FUND / MIAMI RECOVERS PROGRAM ........................................... 54
INADEQUATE DISBURSEMENT DOCUMENTATION ......................................................................... 66
STATE HOUSING INITIATIVES PARTNERSHIP PROGRAM (SHIP) ...................................................... 69
RALPH PLAZA II ................................................................................................................................... 73
APPEARANCE OF OCCURRENCE OF CONFLICTING INTERESTS .................................................. 77
DEFAULTED LOANS ............................................................................................................................... 85
LACK OF IDIS TO ABS RECONCILIATION ............................................................................................. 91
RECORD RETENTION AND LACK OF ACCESS TO RECORDS ............................................................ 97
EXHIBIT I ............................................................................................................................................. 102
EXHIBIT II .............................................................................................................................................. 105
EXHIBIT III ............................................................................................................................................ 106
EXHIBIT IV ............................................................................................................................................ 107
EXHIBIT VI ............................................................................................................................................ 109
EXHIBIT VII .......................................................................................................................................... 110
AUDITEE’S WRITTEN RESPONSES ................................................................................................. 111
INTRODUCTION

The City of Miami (City) Community Development Department (CD) is responsible for administering the City’s Housing Programs. The City receives a majority of its housing loan/grant funds from the U.S. Department of Housing and Urban Development (HUD). The major types of housing loan/grant funds received include Community Development Block Grant (CDBG), Home Investment Partnership (HOME), and Housing Opportunities for People with Aids (HOPWA). In addition, the City receives similar funding from the State of Florida’s State Housing Initiative (SHIP) program. These funding programs are designed to benefit very low, low and moderate-income persons and are disbursed to recipients in the form of forgivable (grants) or repayable loans. For example, in accordance with Title 24 Part 92, Section 92.254 of the United States Code of Federal Regulations (CFR), HOME loans may be amortized and written-off (‘forgiven’) over the period of affordability, thereby reducing the amount to be recaptured on a prorata basis for the time the borrower has owned and occupied the HOME-assisted housing. If said housing does not continue to be the principal residence of the borrower for the duration of the period of affordability, the City may recoup all or a portion of the HOME assistance received by the borrower.

Another source of housing program funds is the City’s Affordable Housing Trust Fund (AHTF). The AHTF is primarily funded by revenue generated from development bonuses. Article 9, Section 914 of the City’s Zoning Ordinance provides that up to twenty-five (25) percent in square footage may be approved for parcels located within certain zoning districts. For every additional square foot of buildable space and/or every additional square foot of additional dwelling units approved as a development bonus, the user shall make a nonrefundable developer contribution of $12.40 to the City’s Affordable Housing Trust Fund. For every additional square foot of parking space approved as a development bonus, the user shall make a nonrefundable developer contribution of $3.92 to the City’s AHTF. The fund balance in the AHTF as of September 30, 2006 totaled approximately $7 million.
The HUD and State funds are granted to CD for the purpose of disbursement to eligible homeowners, renters, developers, and local organizations for affordable housing.

CD obtains and evaluates affordable housing proposals for funding. The proposals are then approved/disapproved by the City’s Housing and Commercial Loan Committee (HCLC). Once approved, the City’s Office of City Attorney assists CD in preparing the related loan agreements between the City and the project sponsors. The terms, and the specified affordable units, are stipulated in the loan agreement. Loans may be provided for acquisition, rehabilitation, new construction of housing, and tenant-based rental assistance. Construction costs may include design/architectural fees, development fees, financing fees, impact fees, and other “soft” construction costs. Construction funding may also provide for land acquisition, as well as “hard” construction costs such as construction materials/labor and equipment rental. All loans carry low interest rates and are fully reserved because collections of said loans are not assured. As of September 30, 2005 loans outstanding totaled approximately $60 million and as of September 30, 2006, it increased to $74 million.
SCOPE AND OBJECTIVES

This audit was performed pursuant to City Commission direction and in accordance with Section 48 of the City of Miami’s (City) Charter titled, “Office of the Independent Auditor General.” As part of its oversight responsibilities the Office of the Independent Auditor General (OIAG) performs various types of audits to determine the extent of compliance with the provisions of City Code and other applicable laws/guidelines, terms of contracts, programs, and/or lease agreements between the City and private companies. The purpose of this audit was to review/examine certain financial transactions and determine the nature, propriety and validity of said transactions. The audit also evaluated the extent to which internal control practices promoted and encouraged compliance with City Code provisions, policies, procedures, contracts/agreements, and other applicable guidelines.

The audit covered the period January 2000 through August 2006. In general, the audit focused on the following broad objectives:

- To evaluate the effectiveness of internal control as it relates to the processing of financial transactions, contracts, grants and loans.
- To determine whether selected expenditures and other transactions were properly authorized, documented, economical, and served a public purpose.
- To determine whether grant-funded projects are properly accounted for, monitored, and documented.
- To evaluate the internal controls relating to the status of the City’s Housing Programs, including adequacy of project files, compliance with the terms of contracts, requests for services, change orders, draw downs, close out of projects, and deliverables.
- Other audit procedures as deemed necessary.
METHODOLOGY

We conducted our audit in accordance with *Generally Accepted Government Auditing Standards*, issued by the Comptroller General of the United States and applicable standards contained in the *Standards for the Professional Practice of Internal Auditing*, issued by the Institute of Internal Auditors. The audit methodology included the following:

- Obtained an understanding of internal controls by interviewing and inquiring of appropriate personnel, reviewing applicable written policies and procedures, and observing personnel performing the controls; assessed control risk; and planned substantive testing.
- Performed substantive testing consistent with the audit objectives.
- Examined, on a test basis, applicable transactions and records.
- Determined compliance with all the objectives noted on page 3.
- Performed other audit procedures as deemed necessary.
- Drew conclusions based on the results of the testing, made corresponding recommendations, and obtained the auditee’s responses and corrective action plans.
SUMMARY OF AUDIT FINDINGS

COMMUNITY DEVELOPMENT DEPARTMENT

IMPAIRMENTS TO THE PERFORMANCE OF AUDIT PROCEDURES
Throughout the fieldwork for this audit engagement, OIAG experienced the following scope limitations and impairments to the performance of the audit which drastically prolonged its duration:

- CD made an employment offer to the then Deputy Auditor General (DAG) which impaired the DAG’s objectivity/independence.
- Access to CD personnel was restricted to only one (1) individual in the department – the Assistant Director.
- Lack of timely response to OIAG’s written memoranda of understanding (MOU).

LACK OF DOCUMENTATION EVIDENCING ADEQUATE PROJECT EVALUATION
There was no evidence indicating how each project proposal rating was derived (e.g. specific points given for site control, project feasibility, project sponsor's capacity, etc.). As a result, we were unable to determine whether the ratings assigned to proposals were appropriately assigned and whether the projects in the City’s best interest were selected.

INADEQUATE MAINTENANCE OF THE ABS SYSTEM
Two (2) separate and equal HOME and CDBG loan amounts (of $1.15 million each) were erroneously entered into the ABS loan servicing system. Instead, the system should have indicated one HOPWA loan for $2.3 million.

LOAN SERVICING NOT PERFORMED TIMELY
An examination of loan servicing files for selected project sponsors disclosed that verifications of project sponsors’ negative cash flow from operations were not performed
by CD staff in a timely manner. For 2 loans, CD staff took 1 and 2 years respectively to verify the borrowers’ inability to pay.

**RIVERS DEVELOPMENT GROUP (LAS ROSAS APARTMENTS)**

- There was no evidence of a scoring evaluation indicating whether the Las Rosas project was competitively rated against other proposals.
- The HCLC approved the use of funds to include land acquisition however, there is no evidence that the committee was informed during its May 25, 2004 meeting that the funds (loan) being considered for approval would be used to pay for land that was purchased and paid for on April 01, 2004. Pursuant to CD policy, all reimbursements must be supported by purchases made subsequent to the HCLC date.
- There was no documentation evidencing RDG’s demonstrated effectiveness or prior experience in developing affordable housing projects or evidence of a joint venture with an experienced contractor/developer.
- There was no documentation evidencing that RDG’s inexperience in developing such projects was communicated to the HCLC for consideration.
- The “Certification of All Funds Received” form on file did not sufficiently disclose all available funding as of the date funding and project substitution was requested.
- Based on the text in the Restrictive Covenant, it appears that the restriction on the use of the land for affordable housing commences on the date of issuance of all certificates of occupancy (CO) required for the project. However, the Las Rosas project was never started or completed and no CO was ever issued.
**BAME DEVELOPMENT CORPORATION (NEW HOPE OVERTOWN)**

- There was no evidence of a scoring evaluation indicating whether the BAME New Hope Overtown project was competitively rated against other proposals.
- There was no evidence of a “Certificate of All Funds Received” form or other such documentation ensuring that BAME had procured funding other than that which was provided by the City.
- CD disbursed $1,378,886.57 (or 94.3%) of the $1,462,456 loan amount to BAME while only 9 of the 40 units were partially constructed, and later demolished.
- One hundred percent (100%) of budgeted "hard" cost funding totaling $880,520.50 was disbursed with no evidence of a similar percentage of project completion.
- There is no evidence in a defaulted loan report provided by CD that the BAME New Hope loan is in default and has been referred to the City Attorney’s Office for collection.

**EAST LITTLE HAVANA CDC (BRICKELL VIEW)**

- There was no evidence of a scoring evaluation indicating whether the Brickell View Terrace project was competitively rated against other proposals.
- There was no evidence of a “Certificate of All Funds Received” form or other such documentation verifying that ELHCDC had obtained other funding.
- CD disbursed $372,901 to ELHCDC for pre-development costs however, construction never commenced on the site.
- ELHCDC was granted a 6 month extension to complete construction. The deadline for project completion was May 19, 2007; however, a photo dated May 23, 2007 indicates that there is a “for sale” sign on the project site.
LATIN Q TOWER

• Total soft cost disbursements for the Latin Q Tower project exceeded the $90,000 limit imposed by the HCLC by $417,709.

• There was no evidence that four (4) of the invoices relating to Draw #3, totaling $397,237, were supported by the required documentation and cancelled checks. According to a handwritten notation on the "Reimbursement Request" for Draw #3 dated 1/24/05, "BGR [the CD Director] approved the disbursement to be processed without back-up documentation as of 3/1/05."

• A questionable budget modification procedure may have resulted in questionable disbursement. There were three (3) draws for soft cost expenditures totaling $658,205 which left only $199,007 remaining in the budget to be reallocated. However, a budget modification was performed to allocate $832,212 from soft costs back to hard costs (in lieu of the $199,007 that was actually available to be reallocated).

• The HCLC approved the use of funds to include land acquisition however, there is no evidence that the committee was informed during its November 5, 2004 meeting that the funds (loan) being considered for approval would be used to pay for land that was purchased and paid for on September 29, 2004. Pursuant to CD policy, all reimbursements must be supported by purchases made subsequent to the HCLC date.

• According to the IDIS report for Latin Q Tower, $1.78 million (or 99%) of the $1.8 million loan amount has been disbursed. However, upon a visit to the project site on March 14, 2007, there was no evidence indicating that the project had been substantially (or at least 50%) completed.
ECONOMIC DEVELOPMENT DEPARTMENT

AFFORDABLE HOUSING TRUST FUND / 234 TOWER LLC. CONDOMINIUM PROJECT

The 234 Tower, LLC Condominium Project was administered by the City’s Department of Economic Development.

Based on the outcome that was realized in connection with this project as discussed in detail on pages 52 though 56, it appears that said result may not have been consistent with the objective of providing subsidized/affordable housing to the City’s workforce residents.

COMMUNITY DEVELOPMENT DEPARTMENT

AFFORDABLE HOUSING TRUST FUND / MIAMI RECOVERS PROGRAM

- There were several instances where property owners indicated that they had homeowners insurance (and/or had a mortgage) however, there was no evidence of an insurance report required by Resolution 06-0519. According to said Resolution, “if the applicant’s home is insured, insurance coverage must first be utilized towards the cost of repairs; subsequently, City assistance will be utilized to cover the deductible or any repairs not covered by the insurance.” It is highly probable that owners filed and received insurance proceeds immediately after Hurricane Wilma but prior to applying for Miami Recovers funding. Consequently, there is a high probability that such owners received Miami Recovers funds in excess of their insurance deductibles or in excess of the amount not covered by insurance.

- There was no photograph evidencing hurricane damages to support $19,150 of expenditures.
• A homeowner made an insurance claim and received insurance proceeds for $2,052.30. There was a $1,000 deductible. Pursuant to Miami Recovers guidelines the owner should have only received $1,000 - the amount of the deductible; however, the owner received $30,801. There were no photographs to support that the funds were expended on hurricane related damages.

• Another homeowner received an insurance estimate for $4,294, which was less than the deductible. Pursuant to Miami Recovers guidelines the owner should only have received a maximum of $4,294 for hurricane related damages; however, the owner received $50,062 (or $45,768 in excess of the maximum eligible amount) of Miami Recovers funding. There were no photographs to support that the funds were expended on hurricane related damages.

• Eight (8) of the 38 property owners received assistance in excess of $35,000 per unit/property address. The total overage was $282,248.59 (or 20.08% of the $1,351,807 total loan amount for the entire population) and the average overage was $35,281.07 per property address.

• Fourteen (14) of the 38 accounts obtained less than the 3 required bids. However, it is reasonable to assume that the increased demand for contractors during the aftermath of Hurricane Wilma contributed to CD’s inability to obtain the required number of bids.

**INADEQUATE DISBURSEMENT DOCUMENTATION**

• Three (3) of the 478 HOME-invoices examined were not supported by copies of cancelled checks or releases of liens as required. The total amount of the 3 invoices that were not adequately supported in accordance with CD policies was $91,906.10.

• Eight (8) of the 319 CDBG-invoices tested were not supported by copies of cancelled checks (for soft costs) or notarized releases of liens (for hard costs) in
accordance with CD Finance Unit Policy. The total amount of invoices for which there was no evidence of cancelled checks or notarized releases of liens was $533,541.03.

**STATE HOUSING INITIATIVES PARTNERSHIP PROGRAM (SHIP)**

- There was no evidence of periodic verification of borrowers’ compliance with stipulated loan requirements before individual loans were amortized and written-off annually. 1 of 28 property owners ceased to own and occupy property located at 1245 NW 38 Street since June 2002. There was no evidence that the loan balance totaling approximately $30,802 (as of June 2002) was repaid to the City as required.

- There was $78,239.95 of grant funding subject to statutorily mandated recapture requirements; however, there was no evidence of promissory notes and/or other documentation that fulfilled the recapture requirements.

**RALPH PLAZA II**

- Allapattah Construction, Inc.’s service as the General Contractor for ABDA in the pre-development phase of Ralph Plaza I and Ralph Plaza II appears to be a conflicting interest.

- The letter dated February 12, 2001 requesting permission to award the Ralph Plazas I and II construction contract to Allapattah Construction, Inc was approved by the current Director of the Community Development department, who at the time was the Assistant Director.

- The AIA forms submitted by Allapattah Construction, Inc. were signed by Carlos Martel as Contractor for Allapattah Construction, Inc. and $52,095.13 was paid to him with description denoting “GC” (General Contractor).

- Please note that the appropriate agency will make the final determination.
**APPEARANCE OF A CONFLICTING INTEREST**

There is an appearance of conflicting interests with respect to certain individuals involved with the 234 Tower LLC Condominium and the FFC projects as discussed on pages 82 through 89. Please note that the appropriate agency will make the final determination.

**DEFAULTED LOANS**

A Loan Aging Report prepared by the Community Development department disclosed that approximately $18 million (or 24%) of total $74 million outstanding loans, were in default as of January 23, 2007. However, upon audit inquiry, the CD Director stated that the total loans in default as of May 2007 were approximately $10.2 million (or 14%) due to extensions and term modifications granted by the Loan Committee. We noted that the extensions granted included 5 loan transactions totaling $5.4 million. Three (3) of the 5 loan transactions totaling $2.7 million were for East Little Havana CDC and the remaining $2.7 million were for Overtown Condominium LLC and Barcelona Condominium, LLC. Please note that the loan extensions, contract term modifications, and the supporting documents were not reviewed as part of this audit.

**LACK OF IDIS TO ABS RECONCILIATION**

Our audit disclosed that IDIS is not reconciled to the ABS loan servicing system. Such reconciliation will enhance accountability.

**RECORD RETENTION AND LACK OF ACCESS TO RECORDS**

OIAG made several requests to CD for 9 files which have not been provided to date. CD’s inability to provide the above files to OIAG prevented us from verifying CD’s compliance with Federal program requirements and from executing any tests related to the audit of CD’s Housing Programs as it relates to these files.
AUDIT FINDINGS AND RECOMMENDATIONS

COMMUNITY DEVELOPMENT DEPARTMENT

IMPAIRMENTS TO THE PERFORMANCE OF AUDIT PROCEDURES

Generally Accepted Government Auditing Standards Chapter 8.10 state that “Auditors should also report significant constraints imposed on the audit approach by data limitations or scope impairments, including demands of access to certain records or individuals.” Furthermore, according to the Institute of Internal Auditors (IIA) Standards No. 1130 for the Professional Practice of Internal Auditing, “If independence or objectivity is impaired, the details of the impairment should be disclosed to appropriate parties.” The glossary to the IIA Standards states that, “Impairments to individual objectivity and organizational independence may include personal conflicts of interest, scope limitations, restrictions on access to records, personnel, and properties, and resource limitations (funding).” In addition, Section 48 of the City Charter states that “the Independent Auditor General shall have free and unrestricted access to city government employees, officials, records and reports and when appropriate require all branches, departments, agencies and officials of city government to provide oral and written reports and to produce documents, files and other records.

According to Practice Advisory No. 1130-1 of the IIA Standards, a scope limitation is a restriction placed upon the internal auditing department that precludes the department from accomplishing its objectives and plans. Among other things, a scope limitation may restrict the:

- Scope defined in the charter
- Department's access to records, personnel, and physical properties relevant to the performance of audits
- Approved audit work schedule
- Performance of necessary auditing procedures
- Approved staffing plan and financial budget (110.01.5b)
Throughout the field work for this audit engagement, OIAG experienced the following scope limitations and impairments to the performance of the audit which drastically prolonged its duration:

- At the beginning of the audit, CD made an offer of employment to the then Deputy Auditor General (DAG) which included a 10% increase in salary. The salary negotiation created an impairment to the DAG’s objectivity, which caused the DAG to lose personal independence of overseeing the audit. The Director and Assistant Director (who is a licensed CPA in Florida) of CD were well aware that the DAG was overseeing the CD Housing Program audit field work and should have been aware that such an offer would compromise the DAG’s independence (as described in Chapter 3 of the Generally Accepted Government Auditing Standards) with respect to the audit. As a result of the City’s Employee Relations department intervention, the DAG was transferred to another department and the expeditious completion the audit was affected.

- As evidenced by the e-mail at Exhibit I (on pages 109 through 111) access to CD personnel was restricted to only one (1) individual in the department – the Assistant Director. This restriction delayed and impaired the performance of the audit as described below:
  - During the audit field work, CD employees did not respond to audit inquiries specifically related to their daily routine functions. CD Staff advised auditors to direct all inquiries to the Assistant Director of CD. As a result, OIAG was unable to expeditiously request and receive information from the “process owners” (i.e. the CD staff who actually performed the procedures/processes). Timely receipt of information and documentation was vital to the performance and timely completion of the audit.
  - Our audit test of corroborating various policies and procedures provided by the Assistant Director with the “process owners” who actually performed the various procedures/processes was greatly impaired.
Lack of timely response to OIAG’s written memoranda of understanding (MOU). MOUs are used to clarify OIAG’s understanding of observations noted during audit fieldwork and to solicit the auditee’s response to said observations. OIAG submitted a total of 15 MOUs to CD. Please see the schedule below displaying the dates MOUs were issued by OIAG, the dates CD responded to the MOUs, and an analysis of the time it took CD to respond based on the usual two week time allotted to auditees:

<table>
<thead>
<tr>
<th>Description</th>
<th>Date MOU was Issued</th>
<th>Date OIAG Received CD Response</th>
<th>Time it took CD to Respond (Weeks)</th>
<th>Reasonable Response Time Allowed (Weeks)</th>
<th>Difference (Weeks)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Las Rosas</td>
<td>9/12/2006</td>
<td>9/22/2006</td>
<td>2</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>MOU1</td>
<td>01/29/07</td>
<td>04/14/07</td>
<td>11</td>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>MOU2</td>
<td>02/12/07</td>
<td>05/31/07</td>
<td>15.4</td>
<td>2</td>
<td>13.4</td>
</tr>
<tr>
<td>MOU3</td>
<td>02/21/07</td>
<td>03/06/07</td>
<td>2</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>MOU4</td>
<td>03/13/07</td>
<td>04/02/07</td>
<td>3</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>MOU5</td>
<td>03/14/07</td>
<td>04/16/07</td>
<td>4.7</td>
<td>2</td>
<td>2.7</td>
</tr>
<tr>
<td>MOU6</td>
<td>03/22/07</td>
<td>05/29/07</td>
<td>9.7</td>
<td>2</td>
<td>7.7</td>
</tr>
<tr>
<td>MOU7</td>
<td>03/22/07</td>
<td>05/29/07</td>
<td>9.7</td>
<td>2</td>
<td>7.7</td>
</tr>
<tr>
<td>MOU8</td>
<td>03/22/07</td>
<td>05/29/07</td>
<td>9.7</td>
<td>2</td>
<td>7.7</td>
</tr>
<tr>
<td>MOU9</td>
<td>03/22/07</td>
<td>04/16/07</td>
<td>3.5</td>
<td>2</td>
<td>1.5</td>
</tr>
<tr>
<td>MOU10</td>
<td>03/22/07</td>
<td>04/17/07</td>
<td>3.6</td>
<td>2</td>
<td>1.6</td>
</tr>
<tr>
<td>MOU12</td>
<td>03/13/07</td>
<td>05/29/07</td>
<td>11</td>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>MOU13</td>
<td>03/26/07</td>
<td>04/16/07</td>
<td>3</td>
<td>2</td>
<td>1</td>
</tr>
<tr>
<td>MOU14</td>
<td>04/16/07</td>
<td>05/29/07</td>
<td>6</td>
<td>2</td>
<td>4</td>
</tr>
<tr>
<td>MOU15</td>
<td>05/09/07</td>
<td>06/04/07</td>
<td>3.7</td>
<td>2</td>
<td>1.7</td>
</tr>
</tbody>
</table>

Average difference in Time it took CD to Respond vs the Two Week Time Given

CD’s lack of response to MOUs within a reasonable time frame hindered the finalization of the audit and the issuance of the audit report.

OIAG’s requests for files were delayed for days, weeks, and even months, which delayed the completion of the audit field work and the issuance of the report.

Recommendation
Pursuant to the above mentioned standards and the City Charter, OIAG should have full access to all CD staff so as not to impair OIAG’s performance of audit procedures. Furthermore, CD staff should be more cognizant of their responsibility to timely comply with OIAG requests for MOU responses and all other procedures within the scope of the audit.

Auditee’s Response and Action Plan
This audit observation was first discussed with the auditee during the last exit conference held on June 4, 2007. CD expressed a desire to respond in writing to the findings noted above. At this meeting it was agreed that all pending responses should be provided to the OIAG by 5:00 PM of the following business day. As of the date of this report, no written response was provided.
LACK OF DOCUMENTATION EVIDENCING ADEQUATE PROJECT EVALUATION

The Community Development Department (CD) is charged with procuring the services of developers who will facilitate the construction of affordable housing for income-eligible City residents. Title 24, Part 85, Section 36(b) of the United States Code of Federal Regulation (CFR) provides that grantees and sub-grantees should adhere to the local laws or rules that regulate their procurement procedures. Article III, Section 18.79(a) of the City Code titled “Competitive Sealed Bidding” mandates that procedures be established to ensure adequate and reasonable competition for all purchases of goods and services. The City’s procurement procedures require bids, Requests for Proposals (RFPs), and/or quotations be obtained for certain transactions. Competition ensures that the prices paid are reasonable and consistent with the quality of services rendered. Title 24, Part 85, Section 85.36(c)(1) of the CFR states that “All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §85.36.”

According to the Integrated Disbursement and Information System (IDIS), the following amounts were funded during the audit period:

<table>
<thead>
<tr>
<th>FY</th>
<th>HOME</th>
<th>CDBG</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000</td>
<td>922,903.37</td>
<td>1,244,569.08</td>
<td>2,167,472.45</td>
</tr>
<tr>
<td>2001</td>
<td>935,915.69</td>
<td>0.00</td>
<td>935,915.69</td>
</tr>
<tr>
<td>2002</td>
<td>5,095,417.32</td>
<td>178,800.00</td>
<td>5,274,217.32</td>
</tr>
<tr>
<td>2003</td>
<td>5,631,993.44</td>
<td>1,268,787.00</td>
<td>6,900,780.44</td>
</tr>
<tr>
<td>2004</td>
<td>3,956,596.00</td>
<td>5,476,000.00</td>
<td>9,432,596.00</td>
</tr>
<tr>
<td>2005</td>
<td>9,094,053.00</td>
<td>425,000.00</td>
<td>9,519,053.00</td>
</tr>
<tr>
<td>TOTALS</td>
<td>$25,636,878.82</td>
<td>$8,593,156.08</td>
<td>$34,230,034.90</td>
</tr>
</tbody>
</table>

In accordance with Resolutions No. R-04-0189 and 05-0099, selection of loan recipients should be based on rankings and the merits of the project proposals. According to the
current procedures in place, the selection process starts with the solicitation of proposals (RFPs) from developers that are nonprofit Community Development Based Organizations, Community Housing Development Organizations (CHDO), other organizations, private for-profit organizations, and General Partnerships where a certified CHDO is a general partner. There was evidence that RFPs were publicly advertised and that RFP application packets were made readily available to the public during the audit period (January 2000 to August 2006). Said solicitation is advertised in a local newspaper.

Upon receipt of the proposals, CD staff grades the feasibility of each proposal using a rating sheet, the criteria of which are defined in each RFP packet. Each proposal is graded on various criteria including site control, economic factors, organizational capacity/demonstrated effectiveness, community acceptance, and other requirements. After each proposal is graded and depending on the available funding, proposals scoring an aggregate of 75 points or more are recommended to the Housing and Commercial Loan Committee (HCLC) for approval. We were provided with an excel spreadsheet prepared by CD staff, which evidenced a summary of the ratings for projects proposals submitted in response to HOME Investment Partnership (HOME) and Community Development Block Grant (CDBG) loans RFPs for the fiscal years (FY) 2002 through 2006. However, the following exceptions/deficiencies were observed:

- There was no evidence indicating whether project proposals for FY’s 2000 and 2001 were evaluated and rated as we did not receive any spreadsheet/summary of ratings for said projects.
- Pursuant to the proposal packets provided to prospective sponsors for FY’s 2002 through 2006, specific points would be given for site control, project feasibility, project sponsor’s capacity, etc., and would be combined in order to derive the overall project rating. However, there was no evidence indicating how each project proposal rating was derived (e.g. specific points given for site control, project feasibility, project sponsor's capacity, etc.) and whether the projects selected for all years except FY 2003 were rated against other competing
proposals. The CD Contract Manager, stated that once proposals are rated, presented to the loan committee, and approved by the HCLC, the submitted proposals, as well as the methodology for rating them, are discarded in order to conserve file space. However, Title 24 Part 85, Section 85.42(b) of the CFR requires that all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees be retained for three years starting from the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period.

Resolution No. 05-0099 provides that selection of loan recipients be based on rankings and the merits of the project proposal. However, due to the fact that there was no evidence of individual project grading sheets, to determine the proposal ratings, for all project proposals for FY’s 2000 through 2006, we were unable to determine whether the ratings assigned to said proposals were appropriately assigned and whether the projects in the City’s best interest were selected.

Recommendation
OIAG recommends that CD retain the rating methodology as well as the documentation of individual project grading for both selected and unselected proposals for a time period established pursuant to federal and state statutes.

“Florida Department of State General Schedule for Local Governments GS1-L” mandates a 5 year retention period for unsuccessful bids for capital improvement projects. Even though CD is not procuring services directly from a contractor for a “capital project”, CD is indirectly procuring affordable housing development services through project sponsorships that will benefit the citizens of Miami. Accordingly, records and files which document the project sponsor selection process should be retained in order to demonstrate the fairness and transparency of the project sponsor selection process.
Furthermore, best procurement practices require that rating methodologies and results be filed for selected and unselected proposals for future reference. Such practice is useful in the event citizens or unselected developers wish to protest certain project selection and inspect project files pursuant to Florida Statute 119.01.

Auditee’s Response and Action Plan
Please refer to CD response on pages 119 through 133.

Rebuttal to Auditee’s Response
OIAG Rebuttal to “CD Response to Observation #1. Bullet point #1”

“Accountability” to the public is one of the primary duties of City government. CD’s response does not explain how CD fulfilled its duty to be fully accountable to City stakeholders (citizens and grantees) with regards to its project sponsor/developer selection process. Chapter 119.01 Florida Statutes states that, “…Providing access to public records is a duty of each agency.” CD’s “administrative decision” did not facilitate full public disclosure as to “how” and “why” one particular developer was awarded funding over another potential developer. “What the administration feels the City wants to prioritize” for a particular year should be clearly stated and demonstrated in competing developers’ proposals and each proposal should be graded according to its ability to fulfill City housing priorities. Grading sheets for selected projects should be placed in project files, along with those of competing projects, so as to facilitate public scrutiny and review pursuant to FS 119. Such disclosure would eliminate any perception of favoritism, nepotism, and/or the appearance that a particular developer selection was a result of an “arbitrary action in the procurement process” which was “restrictive to competition” (quoted from Title 24 Part 85, Section 85.36(c) (1) of the United States Code of Federal Regulations (CFR)).
INADEQUATE MAINTENANCE OF THE ABS SYSTEM.

ABS is the City’s internal loan servicing system used to track individual loan accounts. New loans are added to the system as program agreements are executed and recorded and funds are disbursed. The system also tracks principal and interest payments made by developers. The loan balances tracked within ABS are reported in the City’s loan portfolio in the financial statements. CD’s ABS system indicated that $2.3 million was disbursed for the Miami River Park project. The initial statement of account relative to this project indicated that the project was funded by HOME and CDBG loans of equal amounts of $1,150,000 each. However, upon review of the related transaction documents and audit inquiry, we determined that the entire $2.3 million loan was actually funded by HOPWA and therefore the two separate and equal HOME and CDBG loan amounts were erroneously entered into the ABS system.

The accurate tracking and reporting of all outstanding loans inventory in ABS is vital since the ABS system is integral in reporting the City’s loan portfolio. Additionally, accuracy of the ABS system is essential in order to track interest payments, accruals, and loan amortization. Lastly, maintaining the accuracy of ABS will facilitate the proper reconciliation of federally funded loan balances as accounted for in the U.S. Housing and Urban Development (HUD) Integrated Disbursement and Information System (IDIS).

Recommendation
Please refer to OIAG Defaulted Loans recommendations on page 93.

Auditee’s Response and Action Plan
Please refer to CD response on pages 119 through 133.

Rebuttal to Auditee’s Response

OIAG Rebuttal to “CD Response to Observation #2”
CD’s response states that the discrepancy in the ABS System (ABS) was due to the fact that the ABS database was incomplete when CD inherited the maintenance of the loan portfolio and that the Miami River Park loan was entered erroneously. However, as the response stated, it has been six (6) years since CD was charged with accounting for the loan portfolio. The response does not provide a reasonable explanation for “why”, after 6 years, ABS does not accurately reflect loan balances, especially since ABS is integral in reporting the loan portfolio in the City’s financial statements.
**LOAN SERVICING NOT PERFORMED TIMELY**

In certain instances project sponsors are obligated to make interest payments on their respective loans; however, if they can provide evidence that a negative cash flow from operations preclude them from making such payments, the interest payments may be deferred and capitalized. CD staff must obtain such evidence annually as necessary. However, an examination of loan servicing files for selected project sponsors disclosed that verifications of project sponsors’ negative cash flow from operations were not performed by CD staff in a timely manner. We noted the following instances where loan servicing was not performed timely:

- **Allapattah Gardens $400,000 loan.** CD staff took one (1) year to request proof of the sponsor’s inability to pay. According to a letter dated August 7, 2006 from CD to the sponsor, the Allapattah Gardens loan “…has been in default since August 19, 2005.” The date of the letter is evidence that collection efforts commenced on 8/7/06 (more than 12 months subsequent to the default date).

- **Santa Clara Apartments $750,000 loan.** CD staff took over two (2) years to request proof of the sponsor’s inability to pay. According to a letter dated August 7, 2006 from CD to the sponsor, the Santa Clara Apartments loan “…has been in default since May 20, 2004.” The date of the letter is evidence that collection efforts commenced on 8/7/06 (more than two years subsequent to the default date).

The timely servicing of all outstanding loan balances will enhance compliance with the applicable terms of the agreements and mitigate the risk of losses of potential program incomes due to statute of limitation and other legal constraints.

**Recommendation**

Please refer to OIAG Defaulted Loans recommendations on page 93.

**Auditee’s Response and Action Plan**
Please refer to CD response on pages 119 through 133.

Rebuttal to Auditee’s Response

OIAG Rebuttal to “CD Response to Observation #3”

CD’s response denies that the project sponsors were in default. In addition, the response does not address the fact that CD staff did not service the loans in a timely manner (i.e. CD staff did not timely request evidence from the project sponsors of their inability to make payments).

When a party to a contract does not comply with the terms of the contract, the party is in **default** of the contract terms. Once the party fulfills the previously defaulted contract terms, the party is no longer in default. CD staff should develop a more effective system of tracking payment terms. For example, if payment terms are monthly, quarterly, or yearly, CD staff should be mindful of and responsive to lack of timely payments or evidence of the inability to make such payments.
At the October 24, 2003 meeting of the Housing and Commercial Loan Committee (HCLC), the CD department recommended approval of a $750,000 award of HOME program funding to Rivers Development Group (RDG) for acquiring a parcel of land located in Coconut Grove. The land was to be used for developing a homeownership project called Grove Pointe. The recommendation was approved as recommended. Subsequently however, the owner(s) of the proposed Grove Pointe site were unwilling to sell the land to RDG. As a result, at the May 25, 2004 HCLC meeting, the CD department, at the request of RDG, made a recommendation to substitute the Grove Pointe project with another project, called Las Rosas Apartments, which involved developing 54 rental units for the elderly on a 0.37 acre site located in West Little Havana. The recommendation included reducing the initial award from $750,000 to $550,000 to be used for land acquisition, preconstruction costs, and soft costs in connection with the Las Rosas project. This second recommendation was unanimously approved by the HCLC. Accordingly, on January 24, 2005 RDG executed loan and disbursement agreements for $550,000, including $10,000 for City administrative fees.

According to the Annual Plan for FY 2004-2005, $1,204,528 of “Brick & Mortar” (new construction) Home Investment Partnerships Program (HOME) funds were awarded to developers for multi-family rental projects. Of this amount, $550,000 (or 45.7% of $1,204,528) was awarded to RDG to construct Las Rosas Apartments at 2300 N.W. 7th Street, Miami, Florida. In addition, we noted that RDG obtained $1,747,500 of outside funding in February 2004; on 2/19/04 RDG received a $747,500 one-year loan from Interamerican Bank, and on 2/23/04 RDG received a $1,000,000 SHIP funding commitment from Miami-Dade Housing Authority (MDHA) for the Las Rosas site acquisition.

This project was never started and the $550,000 that was disbursed was subsequently repaid to the City with interest. However, our review of the Las Rosas project files and related financial transactions disclosed the following internal control deficiencies:
LACK OF DOCUMENTATION EVIDENCING ADEQUATE PROJECT EVALUATION

In accordance with Resolutions No. R 05-0099, selection of loan recipients should be based on rankings and the merits of the project proposals. According to the current procedures in place, the selection process starts with the solicitation of proposals (RFPs) from developers that are nonprofit Community Development Based Organizations, Community Housing Development Organizations (CHDO), other organizations, private for-profit organizations, and General Partnerships where a certified CHDO is a general partner. According to the RFP packets that are provided, “proposals … will be subject to the following scoring evaluations…” wherein CD staff grades the feasibility of each proposal based on various criteria including site control, economic factors, organizational capacity/demonstrated effectiveness, community acceptance, and other requirements. After each proposal is graded and depending on the available funding, proposals scoring an aggregate of 75 points or more are recommended to the Housing and Commercial Loan Committee (HCLC) for approval. We were informed by CD that the Las Rosas project was not awarded pursuant to an RFP process. We were also informed by CD that prior to October 1, 2004 CD adopted a policy whereby all housing projects submitted for consideration were evaluated whether or not they were in response to an RFP. However, it is reasonable to expect that any project, whether selected through an RFP process or other method be evaluated and rated against competing proposals for its feasibility with consideration given to site control, economic factors, organizational capacity/demonstrated effectiveness, community acceptance, and other requirements consistent with prudent project evaluation.

There was no evidence indicating whether the Las Rosas project was competitively rated against other proposals. The CD Contract Manager, stated that once proposals are rated, presented to the loan committee, and approved by the Committee, the submitted proposals, as well as the methodology for rating them, are discarded in order to conserve file space. However, Title 24 Part 85, Section 85.42(b) of the CFR requires that all financial and programmatic records, supporting documents, statistical records, and other
records of grantees or subgrantees be retained for three years starting from the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report for that period. In addition, Florida Department of State, General Records schedule for Local Government agencies (GS1-L) requires a 15 year retention period for awarded bids and a 5 year retention period for un-awarded bids. Due to the fact that there was no evidence that the Las Rosas project was evaluated for previous affordable housing development experience, we were unable to determine whether the project was appropriately evaluated and in the City’s best interest.

**QUESTIONABLE USE OF FUNDS FOR SITE ACQUISITION**

On January 27, 2005 RDG submitted a reimbursement request to the City for “$540,000 for funds expended for October 2004 through December 2004.” The support provided for the request included a CD “Contractor Payment Request” form signed by the President of RDG stating that “I/We hereby agree that the work stated by the contractor has been completed and payment approved to the contractor in accordance with Agreement and contingent upon inspection and concurrence by the Rehabilitation Inspector. It is understood that the actual amount disbursed will be based on the findings of that inspection”. However, the documents that RDG provided to support the Contractor Payment Request were all related to the site purchase (i.e. copies of the settlement statement and related documentation) as opposed to construction or rehabilitation (i.e. Contractor AIA forms, contractor invoices, or waiver and release of lien forms). Furthermore, the CD “Expenditure Report” attached to the payment and request described the purpose of the expenditure as “Acquisition.” Lastly, the “Request/Justification for Reimbursement” form prepared by CD staff (for submittal to the Finance Department in order to prepare the check payable to RDG) indicated “DRAW #1 Land acquisition” as the “Check Stub Description”. The form was approved by a fiscal assistant, the contract analyst, and the Assistant Director for Housing programs and a $530,000 ($550,000 award amount - $10,000 City administration costs - $10,000 retainage) check was disbursed to RDG.
Although RDG requested the reimbursement in January 2005 for “funds expended for October through December 2004” the actual purpose of the reimbursement was for the Las Rosas project site acquisition which had already occurred over a year earlier in April 2004 with outside funds. On 10/13/03 RDG had already executed a sales/purchase contract for the Las Rosas project site and closed the purchase for the vacant land on April 1, 2004 for $1,150,000.

Based on our review of the memorandum submitted to the HCLC (on May 25, 2004) recommending the approval of $550,000 for the Las Rosas project, RDG requested the funds for land acquisition, pre-development, and construction costs and CD concurred with this use of funds. These are all eligible costs for reimbursement under the HUD guidelines however, if the project was properly evaluated and conveyed to the HCLC, it would have been clear that RDG had already purchased the Las Rosas project site with outside funds. Full disclosure of the site purchase to the HCLC could have therefore shown that the City’s funds were not required for land acquisition, and could have been instead restricted to other allowable activities to move the project ahead.

In fact, use of the funds for land acquisition appeared to be questionable since the land purchase date of 4/1/04 preceded the date that the project was approved by the HCLC on 5/25/04. Pursuant to CD policy, all reimbursements must be supported by purchases made subsequent to the HCLC date. On the Las Rosas “Preliminary-Set Up, Project Disbursement” form CD inappropriately inserted the “Period of Reimbursement” “Effective Date” as 11/24/03. This effective date should be subsequent to the “Date of Loan Committee approval to 30 days after Certificate of Occupancy but not to exceed 30 months from the effective date of the Loan Agreement.” The effective date marks the point in time from which expenses incurred are eligible for reimbursement. Therefore, the insertion of the effective date as 11/24/03 prior to the HCLC approval date of 5/25/04, legitimatized the 4/1/04 land acquisition for reimbursement.

*LACK OF CONSIDERATION GIVEN TO FACTORS INDICATING PROJECT INFEASIBILITY; LACK OF PROPER MANAGEMENT & OVERSIGHT BY HCLC*
Competence (or lack thereof) in developing similar projects is an important factor in evaluating a project’s feasibility. There was no documentation evidencing RDG’s demonstrated effectiveness or prior experience in developing similar projects. Under the “Evaluation/Rating Criteria” sheet used to evaluate projects submitted pursuant to an RFP process project, one of the criteria used to evaluate the project sponsor is ‘completing a similar project in two (2) years from the date of a loan agreement.’ There was no such evidence of experience for RDG. This lack of prior experience in developing similar projects should have been a “red flag” to management and communicated to HCLC. As a result, the use of funds and other contract provisions could have been more restrictive or other project sponsors/developers with verifiable prior experience in developing similar multi-family projects could have been considered for funding.

RDG never made significant progress in developing the Las Rosas project. The lack of consideration given to factors such as RDG’s lack of experience suggests that CD did not properly evaluate this project. Furthermore, the lack of disclosure of such factors to the HCLC prevented proper committee oversight of the project evaluation process.

**LACK OF VERIFICATION OF SOURCES/USES OF FUNDS**

The U.S. Department of Housing and Urban Development (HUD) Community Planning and Development Division (CDP) Notice 98-1 provides that a participating jurisdiction (PJ) should have applicants submit a Sources/Uses of funds statement for each project along with commitment letters stating all terms and conditions for all mortgages, grants, subordination agreements, bridge (interim) loans and investment tax credits in order to verify the sources of funds. On the “Certification of All Funds Received” form, used to evaluate projects submitted pursuant to an RFP process, sponsors must certify the accuracy of and list all federal and non-federal awards received per un-audited financial records as of the date of funding application. In addition, sponsors must state the contract period, purpose of the funding, and the amount of the funding. Such certification also
requires sponsors to notify CD should the information change. As such, this form serves as a method of verifying the sources of funds.

Although Las Rosas was not selected pursuant to an RFP process we did note a “Certification of All Funds Received” form in the project file. However, there was no evidence that the “Certification of All Funds Received” form on file was completed to sufficiently disclose all available funding as of the date funding and project substitution was requested. Our audit disclosed that RDG received a SHIP funding commitment of $1 million from MDHA on 2/23/04 and also received $747,500 loan from Interamerican Bank on 2/19/04. However, we noted that the funding commitment and loan were not listed on the “Certification of All Funds Received” form, which was signed and dated by the President of RDG on April 28, 2004. The lack of a properly completed “Certification of All Funds Received” form or other documentation verifying the sources of funds increases the likelihood that an infeasible project may receive funding.

DECLARATION OF RESTRICTIVE COVENANTS

Pursuant to Title 24, Part 92, Section 92.252(b) of the Code of Federal Regulations, HOME-assisted units for new multi-family construction must meet the 20 year affordability requirement, beginning after project completion. As such, deed restrictions must be imposed via covenants running with the land. The “Declaration of Restrictive Covenants” relative to the Las Rosas as stipulated on the loan agreement dated January 24, 2005 signed by the President of RDG stated: “This Covenant shall remain in full force and effect and shall be binding …for a period of twenty (20) years commencing on the date of issuance of all certificates of occupancy required for the project…” Upon audit inquiry, CD staff stated that RDG paid back the loan principal including interest on August 16, 2006, for never starting the construction project and also that the City accrues the benefit of the deed restriction pursuant to the language in the “Declaration of Restrictive Covenants”, which restricts the use of the land for affordable housing. However, the text of the said covenant appears to suggest that restriction commences on
the date of issuance of all certificates of occupancy (CO) required for the project. Said project was never started or completed and no CO was ever issued.

Recommendation
In order to facilitate accountability, public scrutiny, and transparency in the proposal selection process, methodologies for rating proposals should be placed in the project files. In addition, proper consideration should be given to factors such as project sponsor’s experience developing similar projects (or joint venturing with developer/contractor with said experience), sources/uses of funds and the verification of the sources of funds as these are strong indicators of project feasibility. Furthermore, all factors related to the evaluation of project proposals should be disclosed to the HCLC in order to facilitate their oversight of the evaluation process. Lastly, if funds are awarded for land acquisition, restrictive covenants should stipulate that the use of subject parcels be restricted for affordable housing as of the loan agreement execution date.

Auditee’s Response and Action Plan
Please refer to CD response on pages 134 through 142.

Rebuttal to Auditee’s Response

LACK OF DOCUMENTATION EVIDENCING ADEQUATE PROJECT EVALUATION
OIA Rebuttal to CD Response – Paragraphs 3 through 11

As indicated in CD’s response, HUD Notice CPD 98-1 provides guidance on evaluating projects but also allows the PJ to develop its own local guidelines. To this effect, CD asserts that until 2004, it allowed for funding of allocations by both an RFP and outside an RFP process. CD pointed out that Las Rosas was not selected pursuant to an RFP process and therefore specific forms such as the “Evaluation/Rating Criteria” sheet do not apply. However, as stated previously, the response contradicts the fact that the Las Rosas project was effectively merged with the Grove Pointe project, which was selected
through an RFP process and received HCLC approval on October 24, 2003. In addition, the response does not address the observation that there was no evidence indicating how Las Rosas was evaluated for organizational capacity/demonstrated effectiveness (i.e. previous affordable housing development experience) or why it was selected for funding. Furthermore, on 1/22/07, CD indicated to OIAG in writing that Rivers Development Group (Las Rosas project) was selected pursuant to an RFP, as evidenced via a “HOME Program Methods for Obtaining Project Sponsors” spreadsheet completed by CD at the request of OIAG.

Although the Las Rosas project proposal may not have been in direct response to an RFP it was a substitution of the Grove Point project which was awarded pursuant to an RFP. This substitution and/or “merging” of the projects is evidenced as follows:

- As evidenced by the following HCLC meeting excerpts, the substitution and the $550,000 award was approved at the May 25, 2004 HCLC meeting: “The CD Director reported that Rivers Development was originally funded $750,000 in HOME funding for Grove Point….She added that Rivers Development Group was requesting approval for a project substitution from Grove Point to Las Rosas Apartments….She also stated that Staff was recommending a reduced amount of $550,000…”

- A date of 11/24/03 was inserted by CD in the “Period of Reimbursement” section of the “Loan Agreement Recording and Certified Copies Request” and the “Preliminary Set-Up – Project Disbursement” forms. This date is one (1) month subsequent to HCLC approval of the Grove Point project and justified the reimbursement for land acquisition costs made by the developer which occurred on 4/1/04. Pursuant to CD policy, no reimbursements can be made for costs incurred prior to HCLC approval.

The Grove Point project received a rating of “80” on a “HOME-CDBG RFP 2003-2004 Proposals” spreadsheet but there was no evidence of any methodology which explains “how” or “why” Rivers Development received said rating. Such a methodology should be included in CD staff’s evaluation of all projects and would demonstrate the fairness and
transparency of the project sponsor selection process and allow concerned citizens and/or competing developers who are not awarded funding to ascertain “how” and “why” their proposals were not selected over winning proposals.

The duty to be transparent, demonstrate fairness, and to be held accountable for selecting developers is implied in Chapter 119.01 Florida Statutes which states, “…Providing access to public records is a duty of each agency.” Accordingly, grading sheets or whatever rating methodology is to be used for selected projects, should be placed in project files, along with those of competing projects, so as to facilitate public scrutiny and review pursuant to FS 119. In addition, such disclosure would eliminate any perception of favoritism, nepotism, and/or the appearance that a particular developer selection was a result of an “arbitrary action in the procurement process” which was “restrictive to competition” (quoted from Title 24 Part 85, Section 85.36(c) (1) of the United States Code of Federal Regulations (CFR)).

LACK OF CONSIDERATION GIVEN TO FACTORS INDICATING PROJECT INFEASIBILITY; LACK OF PROPER MANAGEMENT & OVERSIGHT BY HCLC

OIAG Rebuttal to CD Response – Paragraphs 15

CD states that “competence is a requirement for the RFP process in the evaluation of projects for presentation to the Loan Committee [and that it is] also evaluated in relation to the partners and/or lenders that are willing to participate in the project.” However, CD again failed to address the fact that there was no evidence documenting CD’s consideration of RDG’s competence and experience. As stated above, competence of a selected developer should be documented by whatever rating methodology and placed in project files (including the ratings of competing developers in order to facilitate comparison, transparency, and fairness) and made available for public scrutiny. As such, CD would fulfill its duty to be held accountable to City stakeholders for all developer selections.
In addition, RDG’s resulting non-compliance and lack of performance coupled with the lack of documentation of CD’s consideration of RDG’s competence and experience raise questions about whether CD performed said evaluation properly and whether the HCLC was provided with the necessary facts to make an award decision.

**QUESTIONABLE USE OF FUNDS FOR SITE ACQUISITION**

**OIAG Rebuttal to CD Response** – Paragraphs 18

CD states that “The recommendation to fund project land acquisition cost was a business decision and rests with the administration. This recommendation was based upon an evaluation of the project and disclosed to the Loan Committee in the Loan Committee Memo, as reflected in the Minutes of the 5/25/04 Loan Committee meeting.” OIAG reviewed the 5/25/04 HCLC meeting minutes and noted no mention of discussion related to the Las Rosas project land acquisition. We also reviewed the 5/25/04 Memo to the HCLC recommending the project proposal and also noted no discussion of the land acquisition including that the land had already been acquired using outside funds. These are facts that should have been presented/disclosed to the HCLC.

An even greater cause for concern is the fact that although land acquisition is an eligible reimbursable expense per HUD guidelines, in this instance the land acquisition appeared to be questionable for reimbursement since the true period of reimbursement should have commenced on 5/24/04 (the date of the HCLC approval of the Las Rosas project) and pursuant to CD policy, no reimbursements can be made for costs incurred prior to HCLC approval. However, the land purchase was closed prior to such approval. Therefore, the land acquisition cost should not have been allowed pursuant to policy.

**LACK OF VERIFICATION OF SOURCES/USES OF FUNDS**

**OIAG Rebuttal to CD Response** – Paragraphs 25 through 28

The issue was not addressed: The “Certificate of All Funds Received” form that was prepared by the developer and placed in the project file was incomplete and did not
disclose all sources of outside funding obtained as of the date the form was prepared. Therefore, there is no evidence that CD properly verified the sources of funds related to the Las Rosas project and that this verification was disclosed to the HCLC for consideration in its award decision.
Title 24 Part 92, Section 92.205(e) of United States (US) Code of Federal Regulations (CFR) requires that a HOME assisted project that is terminated before completion either voluntarily or otherwise, constitutes an ineligible activity and any HOME funds invested in the project must be repaid to the participating jurisdiction’s (PJ) HOME Investment Trust Fund in accordance with Title 24 Part 92, Section 92.503 CFR. The U.S. Department of Housing and Urban Development (HUD) Community Planning and Development Division (CDP) Notice 98-1 provides that a PJ should have an applicant submit Sources/Uses of funds statement for each project. The Sources/Uses of funds statement for any project should reflect the project development budget and should list: (1) all proposed sources (both private and public) of funds and the dollar amount(s) for each respective source, and (2) all uses of funds (including acquisition costs, rehabilitation/or construction costs, financing costs and professional fees) associated with the project. Also, CDP Notice 98-1 requires the PJ to identify the types of documentation necessary to verify the sources and uses of funds and said documentation may be submitted along with the application for HOME funds.

LACK OF PERFORMANCE, LACK OF VERIFICATION OF OUTSIDE FUNDING SOURCES & QUESTIONABLE SOFT/HARD COST EXPENDITURES

On February 24, 2004, the City entered into a $1,462,456 HOME loan agreement with BAME Development Corporation (BAME) to finance the New Hope Overtown (New Hope) project. In return, 21 of the New Hope’s 40 units were to be affordable and sold to low income individuals. The project file indicated that Miami-Dade County awarded BAME $500,000 of Federal funding and the Local Initiative Support Corporation made a commitment of $400,000 towards this project. Our audit disclosed the following deficiencies:
• There was no evidence of a “Certificate of All Funds Received” form or other such documentation ensuring that BAME had procured funding other than that which was provided by the City, as required by CDP 98-1.

• A memorandum written (See Exhibit II on page 112) by the CD Director dated July 6, 2004 to BDC, acknowledged that CD staff was informed on many occasions that the New Hope project construction start-up had been delayed due to lack of construction funding.

• We noted that CD disbursed $1,378,886.57 (or 94.3%) of the $1,462,456 loan amount to BAME and that only 9 of the 40 units (or 22.5% of the units) were partially constructed.

• Upon an on-site visit to the New Hope parcels, there was no evidence of support for the expenditure of $880,520.50 of “hard” construction costs. Every parcel appeared vacant (see picture at Exhibit III on page 113) except for fencing surrounding them. Upon audit inquiry and review of the project file we notes that the 9 unfinished units were demolished by the City in 2006. However, there was no evidence of a reasonable explanation justifying the demolition or the disbursal of 90% of the loan amount for only 9 unfinished units of the 21 units provided for in the Agreement.

• There is no evidence in a defaulted loan status report provided by CD that the BAME New Hope loan is in default and has been referred to the City Attorney’s Office for collection.

• It is reasonable to expect that any project, whether selected through RFP or other method be evaluated and rated against competing proposals for its feasibility with consideration given to site control, economic factors, organizational capacity/demonstrated effectiveness, community acceptance, and other requirements consistent with prudent project evaluation. There was no evidence indicating whether this project was competitively rated against other proposals.

Recommendation
We recommend that in addition to obtaining sources/uses of funds statement for all project proposals that CD staff verify those sources and uses of funds. This verification
should be performed in light of the developer’s overall capacity to handle construction material cost increases and other unexpected events to ensure project completion. Furthermore, verification of the sources and uses of funds would ensure that all projects are viable and that construction of affordable housing for low to moderate income persons will be completed in a timely manner. Lastly, if CHDO’s received funding for hard costs, said funding should be disbursed based on the percentage of project completion as verified by an objective third party.

We agree with the CD’s plan to collect the money disbursed to BAME and to monitor the alternative development plan for the New Hope site.

Auditee’s Response and Action Plan
According to CD’s response to MOU 1 Observation #5 on pages 124 through 125 CD stated that another project sponsor is seeking tax credit funding in an effort to develop the New Hope site and if approved is to pay back the City the amount of $1,650,000 and get the property. Furthermore, CD stated that the “City met with BAME and advised that the organization is debarred from applying to the City for funding for a period a five years, and that collection procedures will continue if [the replacement developer] is not successful in obtaining tax credits.” Please refer to CD’s additional response on pages 143 through 146.
EAST LITTLE HAVANA CDC (BRICKELL VIEW)

On December 13, 2002 the City’s Housing and Commercial Loan Committee (HCLC) awarded East Little Havana Community Development Corporation, Inc. (ELHCDC) $1,164,000 of HOME funding to develop a 119 unit condominium (condo) project known as Brickell View Terrace. Accordingly, on March 11, 2004 the City and ELHCDC entered into an agreement for a HOME-assisted loan for $1,164,000. The purpose of the agreement was to increase the supply of affordable homeownership units by providing 11 HOME-assisted condominium units to low income individuals/families. The project file indicated that other funding sources were anticipated and would be used for the construction of the 119 unit condominium project including an $800,000 award of Federal funds from Miami-Dade County and approximately $22 million to be obtained from private sources. Our audit disclosed the following deficiencies:

- There was no evidence of a “Certificate of All Funds Received” form or other such documentation verifying that ELHCDC had obtained other funding as required by CDP 98-1.
- We noted that CD disbursed $372,901.37 of the $1,164,000 loan amount (or 32% of the loan amount) to ELHCDC for pre-development activities over a five year period. According to an April 20, 2005 email to a City CD staff from a Miami-Dade County Housing Agency (MDHA) staff, MDHA disbursed a total of $428,524 to ELHCDC for the development. However, construction of Brickell View never commenced. An on-site visit to the construction site for this project disclosed no evidence (see picture at Exhibit IV on page 114) to support $801,425.37 ($428,524 + $372,901.37) of Federal funds received for this project.
- According to November 17, 2006 HCLC meeting minutes, ELHCDC was granted a 6 month extension to complete construction. The deadline for project completion was May 19, 2007. However, as the photo dated May 23, 2007 indicates, there is a “for sale” sign on the project site and there is no evidence that construction commenced on the site. In addition, as evidenced by the November
17, 2006, meeting minutes, the “MUSP” permits indicated on the sign were procured with the said HOME funds.

- It is reasonable to expect that any project, whether selected through RFP or other method be evaluated and rated against competing proposals for its feasibility with consideration given to site control, economic factors, organizational capacity/demonstrated effectiveness, community acceptance, and other requirements consistent with prudent project evaluation. There was no evidence indicating whether this project was competitively rated against other proposals.

Upon audit inquiry, the Director of the City’s Community Development department stated that ELHCDC was entitled to the $372,901.37 of predevelopment cost that it received from the City, as indicated on HUD’s web page. However, if CD had verified the validity/availability of all anticipated funding sources necessary for constructing the 119 unit condominium project, as required, it would have determined that the project was not feasible, and therefore, would not have disbursed any Federal funds to the agency. According to the minutes of the November 17, 2006 HCLC meeting, a representative of ELCDC stated that “The project has become greater than – just too big of a bite for us to bite at this time.” Had this verification occurred, the funding could have then been awarded to another agency/developer who demonstrated greater capacity.

On December 16, 2005 the Director of CD reported to the HCLC that ELHCDC had not met the construction deadline for the project and is in default of the June 30, 2005 deadline. As a result, the HCLC de-obligated the remaining unspent HOME funds of $791,098 thus defunding the project to exactly the $372,903 amount that was disbursed. At the September 22, 2006 HCLC meeting the committee voted to collect the outstanding balance of $372,903 plus six percent interest from the date of each draw down. However, at the November 17, 2006 HCLC meeting the committee voted to stop immediate payment of the funds disbursed plus interest, and to allow ELHCDC six months to finalize the project and to come back with the outstanding debt. Six months have expired since the extension granted by the HCLC and based on a site visit to the project (See finding above) we noted no further progress.
Recommendation

We recommend that in addition to obtaining sources/uses of funds statement for all project proposals that CD staff verify those sources and uses of funds. This verification should be performed in light of the developer’s overall capacity to handle construction material cost increases and other unexpected events to ensure project completion. Furthermore, verification of the sources and uses of funds would ensure that all projects are viable and that construction of affordable housing for low to moderate income persons will be completed in a timely manner.

In addition, although the HCLC agreed at both the 12/16/05 and 9/22/06 meeting that ELHCDC was in default, and also voted to collect the funds disbursed plus interest, the project was granted extensions for repayment of the HOME loan. The latest six month extension has expired; therefore, we recommend that the $372,093 HOME loan amount disbursed to ELHCDC be added to the loan default list and that full payment of the principal including applicable interest be demanded from the agency.

Auditee’s Response and Action Plan

Please refer to CD response on pages 149 through 151.

Rebuttal to Auditee’s Response

CD’s response does not address the issue: There was no evidence that CD staff ascertained developer outside funding. It is understood that funds can be disbursed to CHDOs for pre-development; and that the City initially disbursed $30,000 for such purpose; however, according to a February 16, 2005 e-mail from Assistant City Attorney to the Assistant Director for Housing, “the developer could not meet the City’s requirements for funding. It had not obtained firm commitments for financing of the entire project….In order to provide some of the funding, Community Development re-structured the loan to allow for an initial $30,000 of pre-development funding, with the remainder of the funding to be disbursed when the developer could meet the remainder
of the standard City requirements…” This correspondence justified the necessity for CD staff to have verified outside funding for the project before disbursing any additional funds over and above the initial $30,000; but, there is evidence that subsequent to disbursing the said $30,000 on 11/19/04, $330,323 was disbursed on 12/31/04.

In addition, it was especially necessary to verify outside funding for the $23 million project since the City required commencement of construction activities by June 30, 2005 pursuant to the Amendment to the Loan Agreement dated April 6, 2005. It would not be prudent, reasonable, or fair to require a borrower to fulfill such a requirement until their ability to perform and to obtain outside financing was ascertained.
LATIN Q TOWER

City Commission Resolution No. 00-867 granted authority to the City Manager, through the Housing and Commercial Loan Committee (HCLC), to approve/disapprove specific housing loans, including Community Development Block Grant (CDBG) loans. Accordingly, at its September 17, 2004 meeting, the HCLC approved the award of $1.8 million of CDBG funds to Latin Q Tower, LLC (Latin Q Tower) for construction costs associated with the development of seventy-two (72) residential condo units of which sixty (60) units were to be set-aside as CDBG-assisted homeownership units. At the November 5, 2004 HCLC meeting, Community Development department (CD) staff recommended that the use of the $1.8 million of CDBG funds be modified to include land acquisition and soft costs in addition to construction costs; however, the use of the funds for soft costs was limited to 5% (or $90,000) of the $1.8 million loan amount.

SOFT COST DISBURSEMENTS IN EXCESS OF $90,000 LIMIT

Total soft cost disbursements for the Latin Q Tower project exceeded the $90,000 limit imposed at the November 5, 2004 HCLC meeting. Based on our review of the Latin Q Tower disbursement requests $507,709 (See Schedule Below) was disbursed for soft costs. However, this amount exceeded the $90,000 limit by $417,709 (or 464% of the $90,000 limit).
INADEQUATE DISBURSEMENT DOCUMENTATION

Pursuant to CD Finance Unit policy, reimbursement requests for soft costs must be initially supported by copies of checks and/or invoices; however, copies of cancelled checks must be submitted within 60 days of submitting the reimbursement request. There was no evidence that four (4) of the invoices relating to Draw #3, totaling $397,237 (or 78.2%) of the total soft cost disbursements of $507,709 were supported by the required documentation and cancelled checks. See the Schedule above. According to a handwritten notation on the "Reimbursement Request" for Draw #3 dated 1/24/05 (See Exhibit V on page 115), "BGR [the CD Director] approved the disbursement to be processed without back-up documentation as of 3/1/05."

IMPROPER BUDGET MODIFICATION PROCEDURES, & DISCREPANCY BETWEEN BUDGET/DRAW TRACKING SPREADSHEETS

OIAG inspected spreadsheets prepared by CD to monitor the drawdown of funds in accordance with the project budget. Based on our review we noted the following
improper budget modification procedures and a discrepancy between the budget/draw tracking spreadsheets:

- Budget modifications were performed to allocate $857,212 from Hard Costs to Soft Costs (See “Soft Cost Disbursements In Excess Of $90,000 Limit” Observation above). As a result, the original budget of $1.8 million for Hard Costs was adjusted to $942,788 for Hard Costs and $857,212 for Soft Costs.
- On a 3/1/05 draw spreadsheet, prepared by CD, we noted that three (3) Draws totaling $658,205 were made for expenditures related to soft costs. Therefore, only $199,007 ($857,212 - $658,205) remained in the budget for Soft Costs.
- On a 9/27/05 draw spreadsheet, prepared by CD, we noted that another budget modification was performed to allocate $832,212 from Soft Costs back to Hard Costs. The problem with this budget modification is that the 3/1/05 draw spreadsheet, mentioned above, indicated that $658,205 of soft costs had already been expended and only $199,007 remained; therefore, only $199,007 of unexpended Soft Costs was available to be re-allocated.
- There is a discrepancy between the categorization of expenses on the 3/1/05 spreadsheet (showing Draws #1 through 3) and the 9/27/05 spreadsheet (showing Draws #1 through 4). The $658,205 previously listed as Soft Costs expenditures on the 3/1/05 spreadsheet were aggregated and listed as Hard Costs on the 9/27/05 spreadsheet.

**QUESTIONABLE DISBURSEMENT OF FUNDS**

According to Latin Q Tower’s project proposal as presented by CD staff to the HCLC at its 9/17/04 meeting, the entire $1.8 million of CDBG funds were to be used for “construction costs.” Later, at the 11/5/04 HCLC meeting, the use of the $1.8 million of CDBG funds was modified to include land acquisition and soft costs in addition to construction costs; with a 5% (or $90,000) limit on the use of the funds for soft costs.

In concurrence with the original use of the funds for construction costs, the initial Cost Allocation Report (budget) for the project listed the entire $1.8 million of CDBG funds
under the “Hard Costs - Construction” line item of the report. In addition to the $1.8 million of CDBG funds provided by the City, the same budget listed another $1.8 million, to be funded by a private lender (“Bank”), for “Land Acquisition.” Subsequently, several budget modification procedures were performed (See “Improper Budget Modification Procedures, & Discrepancy Between Budget/Draw Tracking Spreadsheets” Observation above) to facilitate reimbursement for the project land acquisition. We noted that $1,116,795 listed as “Hard Costs – Construction” was disbursed for Draw #4 on September 27, 2005. Based on our inspection of said Reimbursement Request and the related support we noted the following:

- The Reimbursement Request, dated September 26, 2005 and signed by the Principal of Latin Q Tower, LLC, was for “$1,122,507 for funds expended for the months of January 05 - September 05”; however, there is no evidence to support that the $1.12 million was expended during said time period. In fact, the support attached to the $1.12 million request included a closing statement for the purchase of the project site that had already occurred one (1) year earlier on September 29, 2004. Furthermore, as mentioned above, the original budget indicated that the site purchase was already funded with $1.8 million from private sources. Upon audit inquiry, we obtained confirmation that the site purchase was financed by a $1.8 million loan with Colonial Bank; and we obtained evidence that the pay-off of the loan was reimbursed by the City via a $1.4 million check dated October 04, 2005 to Colonial Bank.
- The HCLC approved the use of funds to include land acquisition however, there is no evidence that the committee was informed during its November 5, 2004 meeting that the CDBG funds being considered for approval would be used to pay for land that was purchased and paid for on September 29, 2004. Pursuant to CD policy, all reimbursements must be supported by purchases made subsequent to the HCLC date.

LACK OF PERFORMANCE & QUESTIONABLE EXPENDITURES
According to the IDIS report for Latin Q Tower, $1.78 million (or 99%) of the $1.8 million loan amount has been disbursed. The original budget for the project indicated that the funds were to be used for construction costs. Even when the HCLC approved the use of funds to include land acquisition and soft costs, the committee placed a 5% (or $90,000) limit on the use of funds for soft costs. However, upon a visit to the project site on March 14, 2007, there is no evidence indicating that the project has been substantially (or at least 50%) completed (See photograph at Exhibit VII on page 117). As such, less than 50% of the project construction has been completed even though approximately 100% of the CDBG funding was disbursed.

**Recommendation**

Reimbursements should be restricted to the categories and dollar limits imposed by the HCLC.

All reimbursement requests submitted by project sponsors should be adequately supported and documented. CD should ensure that reimbursement for land acquisitions or any other costs are based on transactions that occur subsequent to HCLC approval of the applicable project or if prior to HCLC approval CD should ensure that the facts of the land acquisition are fully disclosed to the committee so it is understood and documented that their approval is retroactive.

Lastly, in order to alleviate the negative effects of construction interest on affordable housing projects, certain awards should be targeted to pay for construction interest. As such, reimbursements would be made based on measurable progress of the projects since construction interest is incurred based on the amounts of hard cost monies drawn down from the primary lenders. In addition, the City could consider moratoriums on property taxes during respective affordability periods. As such, operating expenses for affordable housing projects could be reduced so as to facilitate project affordability.

**Auditee’s Response and Action Plan**
Please refer to CD response on pages 152 through 158.

Rebuttal to Auditee’s Response

Under the “Inadequate Disbursement Documentation” finding above, OIAG noted that there was no evidence that Draw #3, totaling $397,237 was supported by the required documentation (such as invoices) and cancelled checks and that according to a handwritten notation on the "Reimbursement Request" for Draw #3, "BGR [the CD Director] approved the disbursement to be processed without back-up documentation as of 3/1/05." In response to said finding CD asserts that another “similar note was made by the same writer on the same day in the City approved budget modification for the same draw.” Based on OIAG’s review of the “Budget Modification Form” submitted by CD to support this assertion we find that approval of a budget modification form does not constitute approval of a reimbursement request. Furthermore, our review of said form indicated that it is unrelated to the reimbursement request for Draw #3 as it does not mention anything about Draw #3, nor does it mention anything about $397,237, nor does it list any of the Draw #3 items, nor does any of the items sum to $397,237.

CD’s response further states that “the documentation referenced in these written notes had to do with the recording of the closing documents associated with the loan being made to the Developer”; however, a “City of Miami, Department of Community Development, Expenditure Report” prepared by the Latin Q Tower project sponsor (See Exhibit VI on page 116) listed the following items as the “actual expenditures” for the period. The items contradict CD’s response which stated that the $397,237 for Draw #3 (which was noted as approved by CD’s Director without support) was for costs relating to recording the note and mortgage:

<table>
<thead>
<tr>
<th>Item</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Arch. Design, Civil Eng.</td>
<td>$145,000</td>
</tr>
<tr>
<td>Impacts &amp; School Fees</td>
<td>$135,000</td>
</tr>
<tr>
<td>Permits/Fees</td>
<td>$27,237</td>
</tr>
<tr>
<td>Insurance</td>
<td>$90,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$397,237</strong></td>
</tr>
</tbody>
</table>
The above listed costs are classified as “soft costs” and should be supported with invoices from design professionals and insurance companies, as well as with receipts from respective governmental agencies. In addition, pursuant to CD policy, in the absence of cash receipts, all soft costs must be further documented with copies of cancelled checks evidencing payment. It should be noted that per the Clerk’s stamp on the mortgage, recording costs only amounted to $6,300.

Pertaining to CD’s reallocating the use of the CDBG funding from soft costs to land acquisition, the CD response does not address the main issues:

- Land acquisition appears to have been a questionable reimbursement since the land purchase date of 9/22/04 preceded the date that the project was approved by the HCLC on 11/5/04. Pursuant to CD policy, all reimbursements must be supported by purchases made subsequent to the HCLC date.

- There were three (3) draws for soft cost expenditures totaling $658,205 which left only $199,007 remaining in the budget to be reallocated (in lieu of the $832,212 that was actually reallocated).

- Total soft cost disbursements in the amount of $507,709 for the project exceeded the $90,000 limit imposed by the HCLC at its 11/5/04 meeting by $417,709.
The 234 Tower, LLC Condominium Project was administered by the City’s Department of Economic Development.

The Affordable Housing Trust Fund (AHTF) is primarily funded by revenues generated from development bonuses. Article 9, Section 914 of the City’s Zoning Ordinance provides that up to twenty-five (25) percent in square footage may be approved for parcels located within certain zoning districts. For every additional square foot of buildable space and/or every additional square foot of additional dwelling units approved as a development bonus, the user shall make a nonrefundable developer contribution of $12.40 to the City’s Affordable Housing Trust Fund. For every additional square foot of parking space approved as a development bonus, the user shall make a nonrefundable developer contribution of $3.92 to the City’s Affordable Housing Trust Fund. The fund balance in the AHTF as of September 30, 2006 totaled approximately $7 million.

On November 13, 2003, the City Commission enacted Ordinance No. 12436 which established a special revenue fund entitled “234 Tower LLC Condominium Project Fund.” The purpose of the fund was to finance a $1 million grant to 234 Tower LLC for the development of a condominium project called “The Loft” in order to create affordable housing within the City’s central business district (Downtown). As such, 102 of The Loft’s 196 units were to be priced not in excess of 90% of the area’s median sales price. The City and 234 Tower LLC entered into an agreement to this effect on March 12, 2004. It should also be noted that on December 13, 2002 - approximately one (1) year prior to the date of the ordinance creating 234 Tower LLC Condominium Project Fund, said project was approved by the City’s Housing and Commercial Loan Committee (HCLC) to receive $1,000,000 of HOME Investment Partnership (HOME) funding for the project; however, the HCLC de-obligated the project on November 26, 2003 – subsequent to the ordinance date of November 13, 2003. Our review of the Agreement between the City
and 234 Tower LLC and the related 102 affordable condominium sales disclosed the following:

- We noted that all of the 102 subsidized residential condominium units designated as “affordable” were sold at or below 90% of the August 2003 median sales price for Miami. The unit sales prices ranged from $99,000 to $216,000. Income eligibility was not used to qualify purchasers of the units because it was not required by the Agreement.

- We ascertained that 33 of the 102 subsidized affordable units were subsequently sold because there was no period of affordability required. In connection with the 33 re-sales, we noted the following:
  - All 33 re-sales occurred within one year of executing the closing statements resulting in an average gain of $88,174 (59%). In addition, 21 of the 33 re-sales occurred within the same month of executing the closing statements.
  - Only two (2) of the 33 units were re-sold at an affordable price (at or below 90% of the August 2003 median sales price for Miami) in accordance with Ordinance No. 12436 and the March 12, 2004 agreement between the City and 234 Tower, LLC.
  - Three (3) of the 33 individuals who re-sold the subsidized affordable units indicated on the Buyer Profile of the sales application that the units were being purchased as second homes while most others listed reasons for purchasing such as business/real estate opportunity, rental, resale, and investment property.
  - Two (2) of the 33 units were re-sold to private for-profit companies within the same month of executing the closing statements.
  - The mailing addresses for the original owners of 6 subsidized affordable units as indicated on the re-sale warrantee deeds were mailing addresses located in Argentina, Ecuador, Puerto Rico, and New York.

- In connection with the remaining 69 (102-33) units, we noted the following based on a search of the Miami-Dade property appraisal records:
o Only six (6) of the 69 affordable unit owners filed and received the $25,000 homestead exemption allowed for primary residential homes per tax payer. Therefore, 63 of the affordable unit owners either did not know or decided to forgo an exemption that would have reduced their property tax liability; or, the affordable units are not the primary residence of the owners. A $25,000 homestead exemption is allowed for the primary residence of each tax payer while any other property owned by the tax payer will not receive the homestead exemption.

o Two (2) of 69 affordable units listed a different mailing address for the owner than that of the affordable unit purchased; one of the mailing addresses is in Broward County. Upon further investigation of the property records for Miami-Dade and Broward counties we noted that the properties listed as the mailing addresses for those two (2) individuals are also owned by those individuals.

o 50 of the 69 owners’ names are similar to/match the names of owners of other properties in Miami-Dade County.

- Three (3) individuals purchased two (2) affordable units each; and, according to property records, two of these individuals subsequently sold one unit each; one at a $130,100 (113%) gain and the other at an $85,100 (73%) gain. Another individual purchased one affordable and one non-affordable unit.

- One (1) of the 102 affordable units was sold to a special partnership organized under the laws of Puerto Rico.

- According to a search of the City of Miami Employee Directory, seven (7) of the 102 purchasers names match those of City of Miami employees. One of these individuals resold his unit at a $103,100 (83%) gain. We noted that only 1 of the remaining 6 individuals list the affordable unit as their address with the City of Miami and also filed and received the $25,000 homestead exemption allowed for primary residential homes per tax payer.
Based on the audit observations noted above it appears that the final project outcome may not have been consistent with the intended results of providing subsidized/affordable housing to the City’s workforce residents.

One other project received Affordable Housing Trust Fund monies for construction funding. On December 23, 2002 the City and Flagler First Condominiums, LLC entered into a $1.8 million agreement for the development of a condominium project called “The Flagler First Condominium Project” (FFC). The purpose of the project was to create no less than ninety (90) affordable residential condominium units within the City. We noted that the FFC project is similarly structured to the 234 Tower project and therefore the risks inherent in the project outcome are also the same. However, the FFC project is not yet complete. The project deadline was extended to June 30, 2007 per amended agreement, Amendment No. 2, between the City of Miami and Flagler First Condominiums, LLC, granted by City Commission Resolution No. 06-02177.

Recommendation
It should be noted that the appropriate safeguards including income eligibility, an affordability period, and other restrictive covenants have been implemented to address the un-intended results/outcomes observed above.

Auditee’s Response and Action Plan
There were no eligibility requirements for housing units funded by the affordable housing trust fund monies. However, internal control procedures are currently being designed to address all audit observations noted. See written response on pages 159 through 161.
COMMUNITY DEVELOPMENT DEPARTMENT

AFFORDABLE HOUSING TRUST FUND / MIAMI RECOVERS PROGRAM

As noted on page 52 the Affordable Housing Trust (AHTF) is primarily funded by revenue generated from development bonuses. City Commission Resolution No. 05-0700 authorized the transfer of $2 million from the AHTF to a special revenue fund for the purpose of providing housing repair assistance for City residents whose primary residence were impacted by 2005 hurricanes. Said Resolution as amended by Resolution No. 06-0519 provided the “Miami Recovers Guidelines” whereby qualifying residents will be eligible to receive financial assistance in the form of a forgivable loan (after an affordability period of 10 years) pursuant to the following terms:

- The maximum amount of assistance for homeowners will be $35,000 per unit.
- The scope of work for homeowner’s assistance will include damages to their homes (roof, windows, drywall, etc.).
- The assessed value of the unit/property will not exceed $300,000 per unit.
- Assistance will also be provided to multi-family buildings/duplexes that rent to low to moderate income tenants.
- Property owners are required to provide proof of insurance (if the property is insured) or if the property is not insured, owner’s signed affidavit of no insurance. For property owners with insurance the following requirements apply:
  - A written document from the insurer stating how much the insurance will cover toward the work and how much of a deductible the property owner will need to pay is required to be submitted.
  - Insurance coverage must first be utilized towards the cost of repairs; subsequently City assistance will be utilized to cover the deductible.
- Homeowners that received an insurance payment or a FEMA reimbursement for items covered under Miami Recovers repairs will be required to repay the City of Miami the portion of the payment that pertain to those items.
All applicants must prove that they own/reside in the said property and also provide evidence of homestead exemption.

The Community Development department (CD) implemented the Miami Recovers hurricane damages repair program, and issued a written policy (titled “Miami Recovers Disaster Assistance Program”) which supplemented “Exhibit A” of Resolution No. 06-0519. As of October 23, 2006, the outstanding loan balance under the Miami Recovers program was approximately $1.35 million relative to 38 accounts. Our review of all 38 accounts disclosed the following:

**LACK OF WRITTEN DOCUMENT FROM INSURER STATING AMOUNT COVERED BY INSURANCE**

Pursuant to City Resolution No. 06-0519, “Homeowners that receive insurance payment or FEMA reimbursement for items covered under Miami Recovers Program will be required to repay the City the portion of the payment that pertains to those items.” Exhibit A of the resolution, which lists the required procedures for implementing the program states that “a written document from the insurer stating how much the insurance will cover toward work and how much of a deductible the homeowner will need to pay is required to be submitted….if the applicant’s home is insured, insurance coverage must be first utilized towards the cost of the repairs; subsequently, City assistance will be utilized to cover the deductible or any repairs not covered by the insurance.”

Our audit disclosed that 23 (or 60.53%) of the 38 property owners indicated on their Miami Recovers application that their properties were insured. In accordance with Resolution No. 06-0519, assistance from the City should have been limited only to the insurance deductible or any repairs not covered by the insurance. However, there was no evidence in the file of a written document from the insurer stating how much the insurance would cover towards the work and how much deductible the homeowner would need to pay as required by the Resolution. Meanwhile, a total of $872,014.09 was disbursed to the 23 property owners.
The remaining 15 property owners indicated on their Miami Recovers application that they had no home-owner’s insurance policy; however, there is evidence of a current mortgage on at least 6 of the 15 properties. Financial institutions that underwrite home mortgages require home-owner’s insurance policies as a means of protecting their financial investment. According to the Miami-Dade County property records, the total market value of the 15 properties is $2,808,004. It is improbable that such a substantial investment would not be covered, by home-owner’s insurance, against potential losses from hurricane, fire, flooding and other catastrophes. A total of $479,793.32 of Miami Recovers funds was disbursed to the 15 property owners; a total of $197,453.50 of this amount was disbursed to the 6 property owners whose properties have mortgages.

**QUESTIONABLE DISBURSEMENT OF MIAMI RECOVERS FUNDS**

As stated above, the 23 property owners who indicated they had insurance received $872,014.09 of Miami Recovers funding; and 6 property owners with mortgages (who indicated that they had no insurance) received $197,453.50. Therefore, $1,069,467.59 ($872,014.09 + $197,453.50), or 79.11% of the total Miami Recovers funding disbursed is questionable, since it appears that these owners did not submit an insurance report in accordance with Resolution 06-0519. Resolution 06-0519 specifically stated that “insurance coverage must be first utilized towards the cost of the repairs; subsequently, City assistance will be utilized to cover the deductible or any repairs not covered by the insurance.” The evidence necessary to make this determination is a written document from the insurer however, the lack of evidence of CD’s collection of said insurance reports makes it likely that most of these property owners may have received insurance payments and also received Miami Recovers funds in excess of their insurance deductibles or in excess of the amount not covered by insurance.

Besides the overall questionable disbursement of funds due to the likelihood of homeowners having received insurance payments there were specific instances where the
disbursement of funds for costs appeared to be questionable. Pursuant to City Resolution No. 06-0519, the scope of work covered under the Miami Recovers program included “damages to… homes (roof, windows, drywall, etc.)” caused by hurricanes. In addition, the CD “Miami Recovers Disaster Assistance Program” policies used to implement City Resolution 06-0519 states that “the following repairs will be eligible for this program:

A. Plumbing – Only in connection with other eligible repairs.
B. Central Heating and Cooling Systems – Only when associated with work in connection with other eligible repairs.
D. Egress – Doors and/or bulkheads broken and not secure. Stairs at entrance broken and causing hazard.
E. Electrical – Water leakage affecting electrical fixtures, creating fire hazard.
F. Roofing.
G. Glazing.
H. Other Hazardous Conditions – Any documented unsafe condition caused by the hurricane.

Upon examining photographs supporting the expenditures for the 38 homeowners, there was no evidence supporting the following expenditures which totaled $19,150:

- Replacement of bathroom vanity, sinks & faucets - $8,000
- Replacement of kitchen cabinets - $900
- Replacement of kitchen cabinets - $2,800
- Replacement of kitchen cabinets - $3,750

**LACK OF COMPLIANCE WITH MIAMI RECOVERS PROGRAM GUIDELINES**

Our testing disclosed that two months after Hurricane Wilma hit South Florida in October 2005, a homeowner made an insurance claim for hurricane damages and received an estimate of $3,052.30. There is also evidence that the owner subsequently received three insurance claim checks dated 12/15/05 totaling $2,052.30 from the insurance provider. Under Miami Recovers Program guidelines “City assistance will be utilized to cover the deductible or any repairs not covered by the insurance.” As such, based on the damages estimate and subsequent insurance payments received by the property owner, said owner
was only eligible to receive $1,000 ($3,052 damages estimate - $2,052 insurance payment = $1,000 deductible/amount not covered by insurance) of Miami Recovers funding. However, between July 3 and August 22, 2006 (approximately 6 months after receiving the insurance claim checks) the owner received $30,801 (or $29,801 in excess of the eligible amount) of Miami Recovers funding. The Miami Recovers payments received were for the following:

- Storm shutter for $3,600
- Window for $7,530
- Door and frame for $699
- Stucco and concrete structure for $5,200
- Replacement drywall and insulation in family room for $3,200
- Retro fit security bars for $2,200
- Electric for family room ceiling for $750
- Contractor’s fee for $5,770
- Underwriting and other fees $1,852

Our testing disclosed that 5 months after Hurricane Wilma hit South Florida in October 2005, another homeowner made an insurance claim for hurricane damages and received a letter dated February 3, 2006 from the insurance provider stating that "the amount of covered damages do not exceed your Hurricane Deductible of $4,294.00. Therefore, we are unable to make payment to you for this loss." Under Miami Recovers Program guidelines “City assistance will be utilized to cover the deductible or any repairs not covered by the insurance.” As such based on the fact that the property owner’s damages did not exceed $4,294, said property owner was only eligible to receive the amount of damages. However, between August 31 and October 9, 2006 (approximately 7 months after receiving said letter) the owner received $50,062 (or $45,768 in excess of the maximum eligible amount) of Miami Recovers funding. The Miami Recovers payments received were for the following:

- Storm shutter for $6,500
- Window to allow egress for $3,000
- Roof repairs/replacements for $6,300
- Remove existing gutters for $800
- Windows for $9,100
- Siding repairs for $750
- Prep and painting for $5,200
- Stucco and concrete structure for $4,800
- Replace two doors for $1,100
- Remove and dispose security bars for $1,200
- New custom front door for $1,300
- Contractor’s fee for $10,012

**LOANS IN EXCESS OF $35,000 PER UNIT/PROPERTY WERE DISBURSED**

Pursuant to City Resolution 06-0519, “the maximum amount of assistance will be $35,000 per unit.” In addition, the Miami Recovers program guidelines, as described in Exhibit “A” states that: “Assistance is extended one time per address.” However, our audit disclosed that 8 (or 21%) of the 38 property owners received assistance in excess of $35,000 per unit/property. The total overage was $282,248.59 (or 20.08% of the $1,351,807 total loan amount for the entire population) and the average overage was $35,281.07 per property. The percentage overage difference ranged from 0.57% to 457.87% with the average overage percentage per property being 108.09%.

**THE REQUIRED NUMBER OF BIDS WERE NOT OBTAINED**

Pursuant to the CD “Miami Recovers Disaster Assistance Program” policy/ procedures, “three (3) bids will be required and the homeowner will be required to select one (1) bid. In an emergency, only 1 bid will be required. However, the City Inspector will ensure that the bid is reasonable and within 5% of the office estimate.” However, our audit disclosed that 14 (or 35.9%) of the 38 accounts obtained less than the 3 required bids. Of this number, there were 3 properties with only 1 bid and there was no evidence of a documented emergency situation detrimental to the life, health, welfare, or safety of the homeowner as required by the resolution. The remaining 11 properties had 2 bids. However, it is reasonable to assume that the increased demand for contractors during the aftermath of Hurricane Wilma contributed to CD’s inability to obtain the required number of bids.
Recommendation
We recommend that insurance reporting requirements mandated by City Resolution 06-0519 should be enforced. CD inspectors should ensure that all reported damages are supported by photographs in accordance with existing CD policy. In addition, the existence of insurance requirements on mortgaged properties should be confirmed by CD staff.

Auditee’s Response and Action Plan
Please refer to CD response on pages 162 through 174.

Rebuttal to Auditee’s Response

**LACK OF WRITTEN DOCUMENT FROM INSURER STATING AMOUNT COVERED BY INSURANCE**

**OIAG Rebuttal to CD Response** – Paragraphs 1 & 2

CD’s response does not address the issue: There was no evidence of insurance reports for owners with insurance. Although “Exhibit A” of City Resolution 06-0519 does not require homeowners to have insurance or to make an insurance claim as a prerequisite to applying for Miami Recovers funding, it states that “a written document from the insurer stating how much the insurance will cover toward work and how much of a deductible the homeowner will need to pay is required to be submitted….If the applicant’s home is insured, insurance coverage must be first utilized towards the cost of repairs; subsequently, City assistance will be utilized to cover the deductible or any repairs not covered by the insurance.” As such, if home owners indicated on their Miami Recovers application that their property was insured, Exhibit A of the said City resolution required the submittal of a written statement from the insurer indicating how much the insurer would pay and how much deductible the owner should pay. This was a prudent provision set forth by the City Commission so as to avoid needless use of Affordable Housing Trust funds. The intent of the provision was to leverage – and
conserve – Affordable Housing Trust funding with whatever insurance proceeds owners were to receive and therefore benefit the maximum number of City residents.

With regards to CD’s assertion that the City would be named co-payee on ensuing claim checks issued to Miami Recovers recipients, OIAG counter asserts as follows:

Any ensuing claim checks issued to any of the Miami Recovers recipients would have resulted from inspections performed by insurance adjusters before the Miami Recovers worked commenced. As such, it is highly probable that the recipients may have already received and cashed such checks; therefore, it is highly unlikely that the City will receive any portion of such checks. Accordingly, the following inferences can be made:

- Since no insurance claims were required, as CD asserted above, which ostensibly justified the absence of the above mentioned insurance reports, the City will not be receiving ensuing claim checks issued to the Miami Recovers recipients; moreover, since the hurricane damage was already repaired via Miami Recovers funding, and therefore no damage for the insurance company to document, there would be no insurance claim for the homeowner to make.
- Any receipt of ensuing claim checks by any of the Miami Recovers recipients for which there was no insurance report in the file is further evidence that:
  - There should have been an insurance report submitted pursuant to City Resolution 06-0519, and
  - If insurance claim checks were based on insurer adjuster estimates of hurricane damage that were less than the estimates performed by City inspectors, there was an over-expenditure of Miami Recovers funds.

**QUESTIONABLE DISBURSEMENT OF MIAMI RECOVERS FUNDS**

**OIAG Rebuttal to CD Response** – Paragraphs 4 through 6
Contrary to CD’s response, CD policies and procedures specify eligible repairs under the Miami Recovers program (See eligible repairs on page 60). OIAG acknowledges the requirement for storm shutters for new windows; however, upon examining the
photographs attached to the response, there was still no evidence supporting $19,150 of expenditures as detailed on page 60.

The CD response suggesting that the guidelines in City Resolution 06-0519 do not require photographs, does not exempt CD from taking such photographs. Resolutions, Ordinances and any other governmental edicts are only templates or guidelines for public policy; however, governmental departments are responsible for creating procedures that implement public policy on a day-to-day basis. CD should be held accountable for all expenditure of public funds and should create procedures to prudently facilitate such expenditures. As such, proof to a concerned citizen or any other City stakeholder that certain repairs were required is a photograph. Insurance companies require their adjustors to take photographs. Accordingly, CD procedures should mandate the same requirement of its inspectors.

**LACK OF COMPLIANCE WITH MIAMI RECOVERS PROGRAM GUIDELINES**

**OIAG Rebuttal to CD Response to Observations #1 and #2**

CD’s response does not address the issue that CD did not comply with the Miami Recovers Program guidelines as outlined in Resolution 06-0519. Said resolution states that “a written document from the insurer stating how much the insurance will cover toward the work and how much of a deductible the homeowner will need to pay is required to be submitted …City Assistance will be utilized to cover the deductible or any repairs not covered by the insurance.” Both cases detailed in the audit finding above provide clear cases where there was evidence of the amounts of damages, deductibles, and insurance coverage. Therefore, based on the guidelines in the resolution it was clear how much Miami Recovers funding said homeowners were eligible to receive. However, despite this clear evidence said homeowners received a combined amount of $75,569 in excess of the eligible amount.

Furthermore, CD provided no photographs indicating major structural, window, and roof damage for the subject properties. In addition, there were no photographs documenting
ceiling leaks or window leaks. Such photographs would have documented the need for the roof repair in one of the properties, as well as window replacements and other repairs for both properties.

CD's response asserts that the City has a responsibility to serve its citizens during critical times of need. While OIAG agrees with this assertion, OIAG asserts that City departments must follow the guidelines dictated to them by the City Commission and must also be accountable to the citizens of Miami in the same way that for-profit entities like insurance companies must be accountable to their stakeholders. As such City departments must demonstrate that they have expended City revenues legally and prudently. Accordingly, Resolution 06-0519, which requires that property owners submit insurance reports, facilitates such accountability. And, photographs justifying the need for the repairs provides an additional form of accountability that is missing in both cases.

**LOANS IN EXCESS OF $35,000 PER UNIT/PROPERTY WERE DISBURSED**

**OIAG Rebuttal to CD Response** – Paragraph 3

Upon audit inquiry, CD indicated that the language of the resolution was interpreted as “dwelling unit”. However, it is the OIAG position that the intent of City Resolution 06-0159 would have been more appropriately implemented by limiting funding to $35,000 per folio number or “structural unit” as opposed to per dwelling unit. This interpretation is logical and practical since:

- Pursuant to Resolution 06-0519, Miami Recovers applicants must submit an insurance report indicating the amount of damage per the insurance adjuster’s inspection and the amount the insurer will pay. This is evidence that the Miami Recovers funding is to be used as a supplement and not to supplant insurance proceeds.
• 76.32% of the owners that were the subject of the observation had insurance or had a mortgage which most likely required insurance. 60.5% of the property owners funded indicated that their properties were insured.

• Given that many owners have insurance, many more City property owners can be served. For instance, if all owners received the maximum $35,000 allowed, under CD’s interpretation, only ±28 duplex property owners could be served with the $2 million Miami Recovers appropriation, whereas ±57 owners (±104% more) could be served based on a “per structural unit” or “address” interpretation.

• It would be unfair for single family (SF) structures with almost the same adjusted square footage (ASF) as a duplex to receive less funding. As such, OIAG researched property records (See below) and discovered that the duplexes that were funded had ASF ranging from 1423 to 2854. Comparably, there were 11 SF structures with ASFs ranging from 1452 to 2204. In addition, it would not be equitable for the owner of a condominium unit located on the first or second floor of a high rise to be eligible for the same of assistance as a single family homeowner who has to bear the responsibility for repairing a damaged roof.
### Adjusted Square Footage Analysis

<table>
<thead>
<tr>
<th></th>
<th>DUPLEX</th>
<th>SINGLE FAMILY</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Adj Sq Ft</td>
<td>Lot Size (sq ft)</td>
</tr>
<tr>
<td>1</td>
<td>1,423</td>
<td>7,500</td>
</tr>
<tr>
<td>2</td>
<td>1,691</td>
<td>5,750</td>
</tr>
<tr>
<td>3</td>
<td>2,854</td>
<td>4,400</td>
</tr>
<tr>
<td>4</td>
<td>2,339</td>
<td>7,884</td>
</tr>
<tr>
<td>5</td>
<td>2,027</td>
<td>7,000</td>
</tr>
<tr>
<td>6</td>
<td>2,753</td>
<td>7,100</td>
</tr>
<tr>
<td>7</td>
<td>0</td>
<td>1,627</td>
</tr>
<tr>
<td>8</td>
<td>0</td>
<td>1,638</td>
</tr>
<tr>
<td>9</td>
<td>0</td>
<td>1,971</td>
</tr>
<tr>
<td>10</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>11</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Avg. Sq. Ftg</td>
<td>2,181</td>
<td>6,606</td>
</tr>
</tbody>
</table>

**Note:** OIAG researched public property records to ascertain adjusted square footage (ASF) and lot sizes for six (6) duplexes and thirty-one (31) single family (SF) structures that received Miami Recovers funding. The research disclosed that there were nine (9) SF structures with comparable square footage to two (2) of the duplex structures with ASF of 1423 and 1691. The average ASF for the 9 SF structures was 1616. The ASF of the duplexes ranged from 1423 to 2753; and, the ASF of the SF structures ranged from 1452 to 1971. The lot sizes for the duplexes averaged 6606; and, lot sizes for the SF structures averaged 6636.

---

**THE REQUIRED NUMBER OF BIDS WERE NOT OBTAINED**

**OIAG Rebuttal to CD Response** – Paragraph 8

CD staff provided OIAG with a document titled “Miami Recovers Disaster Assistance Program” which describes CD policy and procedures for implementing City Resolution 06-0519. The document states that “3 bids will be required and the homeowner will be required to select one bid. In an emergency, only one bid will be required. However, the Inspector will ensure that the bid is reasonable and within 5% of the office estimate.” As such, contrary to the CD response, CD policies and procedures specify a required number of bids with an exception during an emergency situation. However, it is reasonable to assume that the increased demand for contractors during the aftermath of Hurricane Wilma contributed CD’s inability to obtain the required number of bids.
INADEQUATE DISBURSEMENT DOCUMENTATION

The Community Development (CD) Finance Unit procedures require fund recipients to submit copies of canceled checks to CD within 60 days of submitting a reimbursement request to document the actual payment of soft cost expenditures. Hard cost expenditures must be documented with a release of lien. However, our audit disclosed the following deficiencies:

HOME RELATED INVOICES

- Three (3) (or 0.628%) of the 478 HOME-invoices examined were not supported by copies of cancelled checks or releases of liens as required. The total amount of the 3 invoices that were not adequately supported in accordance with CD policies was $91,906.10 and the related disbursements were made to:

<table>
<thead>
<tr>
<th>Project Sponsor and/or Vendor</th>
<th>Type of Acquisition</th>
<th>Total # of Invoices Reimbursed</th>
<th>Total Amount Reimbursed</th>
</tr>
</thead>
<tbody>
<tr>
<td>BAME Development Corp. (New Hope Overtown)</td>
<td>Hard/Soft Cost</td>
<td>3</td>
<td>91,906.10</td>
</tr>
<tr>
<td>Total</td>
<td>Hard &amp; Soft</td>
<td>3</td>
<td>$91,906.10</td>
</tr>
</tbody>
</table>

CDBG RELATED INVOICES

- There were no documents to evidence that 8 (or 2.5%) of the 319 CDBG-invoices tested were supported by copies of cancelled checks (for soft costs) or notarized releases of liens (for hard costs) in accordance with CD Finance Unit Policy. The total amount of invoices for which there was no evidence of cancelled checks or notarized releases of lien was $533,541.03 and the related disbursements were made to:
<table>
<thead>
<tr>
<th>Project Sponsor and/or Vendor</th>
<th>Type of Acquisition</th>
<th>Total # of Invoices Reimbursed</th>
<th>Total Amount Reimbursed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Latin Q Tower LLC Soft</td>
<td>Soft</td>
<td>6</td>
<td>467,237.00</td>
</tr>
<tr>
<td>Rafael Hernandez Housing Hard</td>
<td>Hard</td>
<td>2</td>
<td>66,304.03</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>8</td>
<td>533,541.03</td>
</tr>
</tbody>
</table>

**Recommendation**

We recommend that CD comply with its procedures and obtain copies of cancelled checks and/or notarized release of liens for all items pursuant to reimbursement requests. A cancelled check and/or notarized release of lien provide further proof of actual expenditure and also ensure that all related contractual terms were properly executed. In addition, such documentation would provide support/evidence in the event of payment disputes with contractors/sub-contractors and would also demonstrate CD’s accountability and stewardship of federal funds.

**Auditee’s Response and Action Plan**

Please refer to CD response on pages 175 through 179.

**Rebuttal to Auditee’s Response**

**OIAG Rebuttal to CD Response to MOU 1 Observation #6 & MOU 6**

The CD response regarding support for hard costs is partially correct. Pursuant to CD Finance Unit Policy, reimbursement requests for hard costs must be supported by, including the items listed in the response, notarized releases of liens which evidence that progress billings have been paid to the project sponsor’s contractor. Otherwise, the AIA form and the attached schedule of values describing the work performed serves only as an invoice or proof of a request for payment which does not document an actual payment to the contractor. Likewise, the CD inspectors review and written approval of the work performed provides no support of actual payment for the work. However, a cancelled
check and/or a notarize release of lien confirms that an actual payment was made and received.

Such documentation would facilitate expeditious settlement of payment disputes initiated by project contractors such as the dispute evidenced in a September 26, 2005 letter to CD regarding progress billings for the New Hope Overtown Project (BAME) totaling ±$199,000. As indicated on page 70, there was still no evidence of notarized releases of liens or cancelled checks for $91,906 of hard & soft cost billings. As such, CD has no physical evidence to refute any claim of non-payment for said amount. Similarly, without having notarized releases of liens for all hard cost billings CD has no physical evidence to refute any claim of non-payment.
STATE HOUSING INITIATIVES PARTNERSHIP PROGRAM (SHIP)

Section 420.9075, 5 (g), Florida Statutes, states that loans or grants for eligible owner occupied housing, constructed, rehabilitated, or otherwise assisted from proceeds provided from the local housing assistance trust fund shall be subject to recapture requirements as provided by the County or eligible municipality in its local housing assistance plan. Strategy 3 of the City’s State Housing Initiatives Partnership Program (SHIP) Local Housing Assistance Plan for the fiscal years 1998 through 2001 stipulates that rehabilitation assistance will be provided to very low, low and moderate income individuals in the form of a zero percent deferred payment loan, secured by the property, forgiven on a pro-rata basis of ten percent per year, as long as the unit remains owned and occupied by the initial applicant.

During the audit period, as part of CD’s procedures, recapture requirements were incorporated into a Promissory note signed by each property owner that received SHIP assistance. As of September 30, 2005, the outstanding loan balance under the SHIP homeownership and rehabilitation programs was approximately $6.8 million relative to 368 accounts. Our review of 28 of the said accounts disclosed the following:

LACK OF VERIFICATION OF COMPLIANCE WITH PERIOD OF AFFORDABILITY

Pursuant to Section XIII of the SHIP Housing Assistance Plan for the Fiscal Years 1998 through 2001, SHIP loans may be amortized and written-off (‘forgiven’) over the period of affordability; therefore, the amount to be recaptured is reduced on a prorata basis for the time the borrower has owned and occupied the SHIP-assisted housing. If the housing does not continue to be the principal residence of the borrower for the duration of the affordability period, the City may recoup all or a portion of the SHIP assistance received by the borrower. However, there are no documents evidencing the periodic verification of borrowers’ compliance with stipulated loan requirements before individual loans were amortized and written-off annually. For example, our review of property records maintained by Miami-Dade County disclosed that 1 of 28 (or 3.6%) property owners ceased to own and occupy property located at 1245 NW 38 Street since June 2002.
However, there was no evidence that the loan balance totaling approximately $30,802 (as of June 2002) was repaid to the City as required.

**SHIP FUNDS TOTALING $78,239.05 WERE NOT SUBJECT TO RECAPTURE REQUIREMENTS**

Our testing further disclosed that SHIP funds totaling $375,543.95 were disbursed to 8 property owners for rehabilitation. We noted that promissory notes with recapture requirements were executed for only $297,304 or (80%) of the total amount disbursed. However, there were no promissory notes and/or other documentation to evidence that the remaining funds totaling $78,239.95 ($375,543.95 minus $297,304) were subject to recapture requirements.

Strategy 3 of the SHIP Local Housing Assistance Plan for the Fiscal Years 1998 through 2001 provides that the maximum amount of assistance for rehabilitation program is $40,000. However, our audit disclosed that the amount of assistance provided to homeowners exceeded the maximum amount allowed under the said Plan for 7 of 8 of the individuals discussed above as shown in Exhibit I. The excess between the total spent for the said individuals and the maximum amount allowed ranged from $1,631 to $14,522.50. Upon audit inquiry, we were informed that the additional and/or excess funds ($78,239.95) were disbursed in the form of grants to cover deficiencies in homes rehabilitated through the SHIP program pursuant to Resolution 02-237. However, Section 420.9075, 5 (g), Florida Statutes requires loans or grants be subject to recapture requirements.

**Recommendation**

SHIP funds disbursed as either grants or loans should be subject to recapture requirements pursuant to Florida Statute as noted above. In addition, a “tickler system” should be implemented in order to monitor respective affordability periods. As such, CD staff should timely verify the continuity of ownership of properties which were the subject of SHIP funding. The tickler system could be set up by month/day in which
respective agreements were executed. Verifications could be made annually during the loan anniversary month/day.

Auditee’s Response and Action Plan
Please refer to CD response on pages 180 through 184.

Rebuttal to Auditee’s Response

SHIP FUNDS TOTALING $78,239.05 WERE NOT SUBJECT TO RECAPTURE REQUIREMENTS

OIAG Rebuttal to CD Response – Paragraph 4 and 8
The above responses do not fully address the issue: There were no promissory notes to evidence that the remaining funds totaling $78,239.95 were subject to recapture requirements or other documentation/language that specifically precluded recapture requirements. Regardless of the CD assertion that supplemental assistance in the form of grants were provided as a result of Commission action to correct certain deficiencies in the single family rehabilitation program, the grant funding was still subject to recapture provisions stated in Section 420.9075(5) (g), Florida Statutes as follows: “loans or grants for eligible owner-occupied housing…rehabilitated…from the local housing assistance trust fund shall be subject to recapture requirements” as provided by the…local housing assistance plan. Accordingly, The City’s 2001 – 2004 LHAP provided for such recapture requirements as follows: “Repayment of the full principal balance of the loan is required if the property receiving the financial assistance is rented, leased or sold during the life of the loan…Homeowners that qualify and receive assistance must execute a Mortgage and Note that will be recorded in the records of Miami-Dade County Clerk of the Circuit Court…” However, there was no evidence that respective notes and mortgages for amounts totaling $78,239.95 were publicly recorded. A schedule of the affected grants/loans is below:
<table>
<thead>
<tr>
<th>Loan Acct #</th>
<th>Original Loan w/ recapture requirements</th>
<th>Additional amount spent w/o recapture requirements</th>
<th>Total spent</th>
<th>LHAP Spending Limit</th>
<th>Difference over (under) LHAP Limit</th>
</tr>
</thead>
<tbody>
<tr>
<td>990095CR</td>
<td>39,407.00</td>
<td>8,850.85</td>
<td>48,257.85</td>
<td>40,000.00</td>
<td>8,257.85</td>
</tr>
<tr>
<td>990113CR</td>
<td>38,469.00</td>
<td>8,295.00</td>
<td>46,764.00</td>
<td>40,000.00</td>
<td>6,764.00</td>
</tr>
<tr>
<td>990055CR</td>
<td>34,346.00</td>
<td>17,755.60</td>
<td>52,101.60</td>
<td>40,000.00</td>
<td>12,101.60</td>
</tr>
<tr>
<td>000233CR</td>
<td>34,450.00</td>
<td>10,070.00</td>
<td>44,520.00</td>
<td>40,000.00</td>
<td>4,520.00</td>
</tr>
<tr>
<td>000311CR</td>
<td>40,000.00</td>
<td>14,522.50</td>
<td>54,522.50</td>
<td>40,000.00</td>
<td>14,522.50</td>
</tr>
<tr>
<td>000127CR</td>
<td>36,213.00</td>
<td>5,418.50</td>
<td>41,631.50</td>
<td>40,000.00</td>
<td>1,631.50</td>
</tr>
<tr>
<td>000042CR</td>
<td>38,790.00</td>
<td>10,212.50</td>
<td>49,002.50</td>
<td>40,000.00</td>
<td>9,002.50</td>
</tr>
<tr>
<td></td>
<td>261,675.00</td>
<td>75,124.95</td>
<td>336,799.95</td>
<td>280,000.00</td>
<td>56,799.95</td>
</tr>
<tr>
<td>000012CR</td>
<td>35,629.00</td>
<td>3,115.00</td>
<td>38,744.00</td>
<td>40,000.00</td>
<td>(1,256.00)</td>
</tr>
<tr>
<td></td>
<td>297,304.00</td>
<td>78,239.95</td>
<td>375,543.95</td>
<td>320,000.00</td>
<td>55,543.95</td>
</tr>
</tbody>
</table>
On April 15, 1998 the City of Miami (City) and Allapattah Business Development Authority, Inc. (ABDA) entered into a $500,000 HOME Investment Partnership (HOME) loan agreement for the development of the Ralph Plaza Townhomes Phase II (Ralph Plaza II) Project. On June 26, 2001 the City’s Housing and Commercial Loan Committee (HCLC) awarded the project an additional $730,000 of HOME funds (of which it later de-obligated $388,489) and on July 16, 2004 awarded the project $815,000 of Community Development Block Grant (CDBG) funds. In total, Ralph Plaza II was awarded $1,656,511 in HOME and CDBG funds.

In a letter dated February 12, 2001 to the Director of CD, ABDA requested permission to award the Ralph Plaza I and Ralph Plaza II construction contract to a for profit, wholly owned subsidiary of ABDA - Allapattah Construction, Inc. The letter also stated that the permission requested would be “understood to be a blank permission that permits the construction subsidiary to proceed to obtain all necessary bids, request for proposals, and any other action necessary to complete Ralph Plaza I and Ralph Plaza II.” This request was approved by the current Director of CD, who at time was the Assistant Director and signed for the Director.

Allapattah Construction, Inc.’s service as the General Contractor for ABDA in the development of Ralph Plaza I and Ralph Plaza II appears to be a conflicting interest. Title 24 Part 85, Section 85.36(b)(3) of the United States Code of Federal Regulations (CFR) states that “No employee, officer, or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.” In addition, it describes that “such a conflict would arise when the employee, officer, or agent …or an organization which employs, or is about to employ, any of the [parties indicated], has a financial or other interest in the firm selected for award.”
As it relates to HOME funds, Title 24 Part 92, Section 92.356 states that no “employee, agent, consultant, [or] officer…of the participating jurisdiction…or sub recipient which are receiving HOME funds” and “who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds there under.” Due to the fact that Allapattah Construction, Inc. is a wholly owned subsidiary of ABDA, with all of the same Officers and Directors, ABDA had a direct financial interest in the contract awarded to Allapattah Construction, Inc. and benefited accordingly.

Section 3.1.9 of the $500,000 HOME loan agreement, as well as Sections 3.1.8 of the $730,000 HOME loan agreement and the $815,000 CDBG loan agreement stipulate that as a condition of disbursement, ABDA was required to provide the City with a list of all its subcontractors and copies of all contracts in excess of $10,000 for the performance of services or the supply of materials in connection with the Project. However, there is no evidence of a contract for the services of the general contractor, Allapattah Construction, Inc., indicating the contractor’s fee and a timeline for project completion.

Section 3.1.5 of each Loan Agreement specified certain Insurance Policies required by the City prior to disbursement of HOME or CDBG funds to ABDA. One such requirement was that ABDA submit to the City “A bid, payment and/or performance bond.” However, in a letter dated October 9, 2002 to CD, ABDA stated that “Allapattah Construction, Inc. is a wholly owned subsidiary of ABDA and as such has been unable to obtain a construction Bond for the project due to lack of an arms length transaction.” Allapattah Construction Inc.’s inability to obtain the necessary bond should have precluded disbursement of the HOME and CDBG funds, in accordance with the contract terms, and also provides further evidence of a conflicting interest.
Based on our review of the Ralph Plaza II project files we were able to ascertain that Allapattah Construction, Inc. received $319,395.81 of HOME funds. The AIA forms submitted by Allapattah Construction, Inc. were signed by Carlos Martell, as ‘Contractor for Allapattah Construction, Inc.’ Based on a listing of expenses related to the $815,000 of CDBG funds we noted that $52,095.13 was paid to “C Martell” with descriptions such as “GC” and “general contractor” suggesting that the payments were actually related to Allapattah Construction, Inc. Based on the IDIS activity reports for Ralph Plaza II we were able to determine that $1,616,298 (or 98%) of the total $1,656,511 funded was drawn down and paid to ABDA. However, of that amount we were unable to determine conclusively the total amount of HOME and CDBG funds paid to Allapattah Construction, Inc. due to inadequate disbursement support for the funds to ABDA. Each Loan Agreement included a related Disbursement Agreement detailing the disbursement procedures for ABDA to receive the funds from the City. Such procedures included submitting draw requests accompanied by lien waivers for hard costs; however, we were not provided with evidence of said requests or waivers for the $815,000 of CDBG funds.

Lastly, Title 24 Part 85, Section 85.36(c)(1) of the United States Code of Federal Regulations (CFR) states that “…all procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §85.36”, and cites “any arbitrary action in the procurement process” as a situation which is “restrictive to competition”. The selection of Allapattah Construction, Inc. as the General Contractor for ABDA precluded competitive bidding in the award of the construction contract.

Recommendation
CD Management should ensure that CD does not participate, under any circumstances, in the selection, award, or administration of a contract supported by Federal funds if a conflict of interest exists.

The observation noted above does not represent a legal opinion. Proffering legal opinions is under the purview of the Office of the City Attorney (OCA). As such, we recommend
that the matter be referred to the OCA, appropriate law enforcement agency and/or Ethics Board for final determination.

Furthermore, a U.S. Department of Housing and Urban Development opinion should be solicited regarding the finding as it relates to both HOME and CDBG funding.

**Auditee’s Response and Action Plan**
An opinion from the Office of the City Attorney (OCA), solicited by CD, agreed that there was a conflict of interest regarding the CDBG funding but disagreed with their being a conflict of interest regarding the HOME funding. OIAG disagrees with the OCA opinion regarding the lack of conflict of interest under the HOME regulations. Please refer to CD response on pages 185 through 190.

**Rebuttal to Auditee’s Response**
As noted above, this observation does not constitute a legal opinion. The matter should be referred to the appropriate agency for final determination.

CD asserted that a bid, construction contract, and performance bond were not required because Allapattah Construction, Inc. is a wholly owned subsidiary of ABDA and only conducted pre-development activities. According to a spreadsheet prepared by CD, $69,260 of the $319,395.81 mentioned above was for “Profit & Overhead”, which could have arguably been earned by another contractor that should have been allowed to bid for the work. The bottom line is that, Allapattah Construction, Inc.’s receipt of HOME and CDBG funding, whether it was for pre-development costs or not, represents a conflicting financial interest since ABDA employed its subsidiary contrary to 24 CFR § 85.36(b) (3) which states: “No employee, officer or agent of the grantee or sub grantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved. Such a conflict would arise when: (iv) An organization that employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for the award.”
APPEARANCE OF OCCURRENCE OF CONFLICTING INTERESTS

The State of Florida “Code of Ethics for Public Officers”, as set forth in Florida Statutes (FS) Chapter 112.313, prohibits conflicting employment or contractual relationships. Chapter 112.313(7) (a) FS states that no public officer or employee of an agency (or local municipality) shall have any contractual relationship with any business entity which is doing business with an agency of which he or she is an officer or employee.

Observation #1
On November 13, 2003, the City Commission enacted Ordinance No. 12436 which established a special revenue fund entitled “234 Tower LLC Condominium Project Fund”. The purpose of the fund was to finance a $1 million grant to 234 Tower LLC for the development of a condominium project called “The Loft” in order to create affordable housing within the City’s central business district (Downtown). As such, 102 of The Loft’s 196 units were to be priced not in excess of 90% of the area’s median sales price. The City and 234 Tower LLC entered into an agreement to this effect on March 12, 2004. Seven (7) of the Lofts’s 102 affordable condo units were purchased by City employees.

Pursuant to Chapter 112.313 FS as described above, there is an appearance of conflicting interests as it relates to these purchases by City employees because the subsidized units purchased by 6 of the 7 City employees appear to have been made for investment purposes and not for use as their primary residences. OIAG reviewed employee personnel files and Miami-Dade County property records for evidence indicating that the condo units are the primary residences of the employees however no such evidence existed. The six units were not listed as the residences in the employee files nor did any of the units have homestead exemptions associated with them.

Observation #2
On September 26, 2001 the Commission enacted Ordinance No. 12132 which established a special revenue fund entitled “Flagler First Condominium (FFC) Project Fund”. The
purpose of the fund was to provide a grant in order to finance the development of affordable housing within the City’s central business district (Downtown). The City and FFC entered into a $1.8 million grant agreement, with $900,000 from the AHTF and $900,000 from the Strategic Initiative Fund.

Section 4.7 of the grant agreement prohibits conflicting interests, and requires written disclosure and Commission approval of all such interests. **Paragraph A** of Section 4.7 states that the developers are aware of conflict of interest laws of the City (Code of the City of Miami, Florida, Chapter 2, Article V), of Miami-Dade County, Florida (Code of Miami-Dade County, Florida, Section 2-11.1), and the State of Florida (as set forth in Florida Statutes) and stipulates that the developers will fully comply with said laws. In addition, **Paragraph B** of Section 4.7 states that the developers covenant that **no person** or entity under their employ, presently exercising any functions or responsibilities in connection with the respective agreements, **has any personal financial interests, direct or indirect** with the City. The section also requires disclosure of employees, associated persons or entities with such conflicting interests. **Paragraph D** of the section requires such disclosures to be in writing so that the City can make a determination regarding the conflicting interests which would be binding on all parties. Lastly, **Paragraph E** of the section is an affirmation made by the respective developers which states that **no employee, agent, consultant, elected official or appointed official of the City** exercising any functions or responsibilities in connection with the respective agreements, or who is in a position to participate in the decision-making process or gain inside information regarding any activities, **has any personal financial interest, direct or indirect**, in the agreements, the proceeds, the respective projects, either for themselves or for those with whom they have family or business ties, during their tenure or for one year thereafter.

Article V, Section 2-611 and 612 of the City Code (Code) provides further conflict of interest provisions which are applicable to and binding upon every member of any board, commission or agency of the City. Article V, Section 2-612 states that no person (officer, official, or employee of the City, including every member of any board, commission or
agency of the city) shall enter into any contract or transact any business with the City or with any person or agency acting for the City. Also, according to Section 2-612 the duration of the prohibitions against conflicting interests shall remain in effect for a period of two (2) years after the officer, official, or employee has left the city or terminated city employment.

Pursuant to Chapter 112.313 FS as described above as well as the grant agreement and Code provisions, there is an appearance of conflicting interests with respect to persons involved in the FFC projects serving as board members of the Downtown Development Authority (DDA). The DDA is a City board under the direct supervision and control of a 15 member board of directors, appointed, and confirmed by the Commission. In addition, there is no evidence that such interests were disclosed and approved in writing by the Commission or that the respective interests in the subject projects were appropriately disclosed pursuant to Article V, Section 2-614 of the Code. The conflicting relationships/interests are as follows:

- A corporate officer for the FFC project developer served as a member of the DDA Board at the time the FFC project contract was executed.
- Affordable Housing Trust fund monies totaling $14,947.35 relative to legal services were disbursed to a law firm whose representative served as a member of the DDA Board.

Recommendation
The Observations noted above do not represent legal opinions. Proffering legal opinions is under the purview of the Office of the City Attorney (OCA). As such, we recommend that the matter be referred to the OCA, appropriate law enforcement agency and/or Ethics Board for final determination as to conflict of interest.

Auditee’s Response and Action Plan
The Chief Financial Officer (CFO) stated that it will be inappropriate for management to respond based on legal opinion obtained from the Office of the City Attorney. Please see the CFO’s written response and the related legal opinion on pages 191 through 196. Also, please see OIAG’s response to the legal opinion on pages 86 through 89.
To: Jorge L. Fernandez, City Attorney
FROM: Victor Igwe, Independent Auditor General
Date: June 06, 2007
Re: Legal Opinion # 07-012

I am in receipt of the above referenced legal opinion issued by the Office of the City Attorney (OCA) dated May 29, 2007 pursuant to a memorandum of understanding (MOU) issued by the Office of Independent Auditor General (OIAG) to the Chief Financial Officer (CFO) relating to certain financial transactions pertaining to the housing program audit. During any audit field work the OIAG issues MOUs to confirm or clarify OIAG’s understanding of all pertinent facts relating to all observations noted during the fieldwork and to solicit the auditee’s response and action plan. The MOU, which was the subject and/or basis of your legal opinion, was to confirm specific facts such as dollar amounts and names, and request additional records or information that would verify the financial transaction.

The OIAG acknowledges that proffering legal opinions is under the purview of the OCA. The OIAG does not issue legal opinions and it is not clear how the MOU that was sent to the CFO could be construed as such. In accordance with Section 48 of the City Charter OIAG has the power and authority among others to conduct “Performance Audits.”
OIAG conducts its audits in accordance with the applicable auditing and accounting standards, including (1) Generally Accepted Government Auditing Standards (GAGAS), issued by the Comptroller General of the United States, (2) AICPA Codification of Statements on Auditing Standards (SAS), (3) Statements on Internal Auditing Standards issued by the Institute of Internal Auditors, (4) Government Accounting and Financial Reporting Standards issued by GASB, (5) FASB Statements of Standards, and (6) Industry, and other Standards. I need to draw your attention to the following auditing standards:

- Chapter 2.09 of GAGAS states that “Performance audits” encompass a wide variety of objectives, including objectives related to assessing program effectiveness and results; economy and efficiency; internal control; compliance with legal or other requirements; and objectives related to providing prospective analyses, guidance, or summary information.

- Chapter 1.25 of GAGAS states that performance audits, (such as the housing audit sanctioned by the Commission) “provide objective analysis so that management and those charged with governance and oversight can use the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability”. Also, Chapter 1.29 (a) of GAGAS states that performance audits involve “assessing the extent to which legislative, regulatory, or organizational goals and objectives [such as affordable housing] are being achieved… and determining whether a program produced intended results or produced results that were not consistent with the program’s objectives”.

- Chapter 6.13(a) of GAGAS states, “In planning, auditors should design the engagement to provide reasonable assurance of detecting fraud, illegal acts, or violations of provisions of contracts or grant agreements that could have a material effect on the subject matter of the attestation engagement. Thus, auditors should assess the risk and possible effects of material fraud, illegal acts, or violations of provisions of contracts or grant agreements on the subject matter of the attestation engagement. When risk factors are identified, auditors
should document the risk factors identified, the auditors' response to those risk factors individually or in combination, and the auditors' conclusions.”

- Chapter 6.15 of GAGAS states, “Audit findings may involve deficiencies in internal control, fraud, illegal acts, and violations of provisions of contracts or grant agreements, and abuse. The elements needed for a finding depend entirely on the engagement objectives. Thus a finding or set of findings is complete to the extent that the audit objectives are satisfied. When auditors identify deficiencies, auditors should plan and perform procedures to develop the elements of the findings that are relevant and necessary to achieve the engagement objectives. The elements of a finding are discussed in paragraphs 6.16 through 6.19.”

- Chapter 6.16 of GAGAS defines “criteria”, one of the key elements of an audit finding, as “The laws, regulations, contracts, grant agreements, standards, measures, or expectations of what should exist, defined business practices, and benchmarks against which performance is compared or evaluated. Criteria identify the required or desired state or expectation with respect to the program or operation. Criteria provide a context for evaluating evidence and understanding the findings.”

- For additional references please see the attached excerpts from GAGAS.

Therefore, based on the above auditing requirements, the analyses of compliance with certain requirements, contractual provisions, restrictive covenants, grant agreements, legal requirements, City Resolutions and Ordinances, as it relates to the financial transactions and preliminary/tentative observations made thereof are well within the scope of the OIAG as provided in the City Charter, GAGAS, SAS, and other controlling auditing standards.

It should be noted that certain performance/compliance audit procedures in some respects may overlap with certain aspects of reviewing financial/business legal issues/requirements, which is one of the educational requirements for all Certified Public Accountants. In fact in the past, OIAG had consulted with and worked very closely with two former Assistant City Attorneys that had strong backgrounds in financial/business legal issues relative to certain financial transactions.
encountered during audit field work. However, any preliminary/tentative observation made by
the OIAG is referred to the OCA, appropriate law enforcement agency and/or Ethics Board for
final determination.

Therefore, I submit that the MOU that was sent to the CFO did not render a legal opinion but
rather made an audit observation and simply requested verification of specific facts such as
dollar amounts and names, and requested additional records or information that could
satisfactorily explain the financial transactions in question. Furthermore, I submit that the scope
of the audit procedures and the issues noted by OIAG in the MOU that was sent to the CFO and
referenced in Legal Opinion #01-012 are within the scope of OIAG’s duties relating to
performance/compliance audit procedures. As such, I respectfully request that any legal opinion
regarding the authority of IAG be rendered with joint consideration of the City Charter
provisions and all applicable auditing standards.

Cc: Honorable Mayor and Members of the City Commission
Pedro G. Hernandez, City Manager
Larry Spring, Chief Financial Officer
Members of the City Audit Advisory Committee
Audit Documentation File
DEFAULTED LOANS

Title 24 Part 570, Section 570.500(a) and Part 92, Section 92.2 of United States (US) Code of Federal Regulations (CFR) defines Program Income as gross income received by the recipient directly generated from CDBG or HOME funds. Sections 570.500(a)(1) and 92.2 of the CFR provide that Program Income includes, but is not limited to payments of principal and interest on loans made using CDBG or HOME funds. In accordance with Section 570.504(b)(5) of the CFR, such income earned from CDBG funds shall be used for activities that meet one of the national objectives, including but not limited to, activities benefiting low and moderate income persons or prevention/elimination of slums or blight. In accordance with Section 92.503 of the CFR, program income must be deposited in the HOME Investment Trust Fund or retained for additional HOME projects.

A note to the Comprehensive Annual Financial Report, for the fiscal year ended September 30, 2005, titled “Note 4 – Receivables”, states: “As part of its Community Development Block Grant (CDBG) program, the City issues single and multi-family housing rehabilitation loans to qualified residents. All repayments of the loans, which carry low interest rates, remain in the loan program. As collection of the loans is not assured the loans are fully reserved.” As of September 30, 2005, said outstanding loans totaled approximately $60 million and it increased to $74 million as of September 30, 2006.

A Loan Aging Report prepared by the Community Development department disclosed that approximately $18 million (or 24%) of total $74 million outstanding loans, were in default as of January 23, 2007. However, upon audit inquiry, the CD Director stated that the total loans in default as of May 2007 were approximately $10.2 million (or 14%) due to extensions and term modifications granted by the Loan Committee. We noted that the extensions granted included 5 loan transactions totaling $5.4 million. Three (3) of the 5 loan transactions totaling $2.7 million were for East Little Havana CDC and the remaining $2.7 million were for Overtown Condominium LLC and Barcelona
Condominium, LLC. Please note that the loan extensions, contract term modifications, and the supporting documents were not reviewed as part of this audit.

Our review of the defaulted loan files, based on the 1/23/07 Loan Aging Report prepared by CD, indicated that collection efforts include correspondence with borrowers demanding payments, late payment notices, and referrals to the Office of the City Attorney for collection/litigation. However, the efforts to collect the outstanding loans were not made consistently, effectively, nor timely as noted below:

- The defaulted loans were not referred to the Office of the City Attorney (OCA) for collection and/or litigation in a timely manner. Our analysis of 47 defaulted loans that were referred to the OCA, as noted on the 1/23/07 Loan Aging Report prepared by CD, totaling approximately $6.9 million. A comparison of the date of referral to the OCA for collection/litigation to the date when the last principal/interest payment was received indicated untimely referrals to the OCA. These untimely referrals significantly contributed to the loss of the City’s ability to collect on the defaulted loans. For example, for 10 of the defaulted loans, totaling approximately $2.06 million, the statute of limitation had expired and/or legal actions filed by other parties negated the City’s financial interest. Please see the analysis below:

<table>
<thead>
<tr>
<th>DEFAULTED LOAN STATUS SUMMARY PER OCA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Active Litigation</td>
</tr>
<tr>
<td>Uncollectible Loans (due to Statute of Limitations Expired &amp; City's Interest Extinguished)</td>
</tr>
<tr>
<td>Decision made to not pursue</td>
</tr>
<tr>
<td>Negotiations for Settlement in Progress</td>
</tr>
<tr>
<td><strong>Total Loans Reported by OCA</strong></td>
</tr>
</tbody>
</table>
On the January 23, 2007 Loan Aging Report, provided by CD, approximately $9.75 million of the $18 million defaulted loans were listed as “under review” and approximately $744,000 were listed as “being sent to law”. Based on these classifications it is unclear to determine exactly what action is being taken relevant to these loans. For example, the last payment received from a borrower relative to a $553,032 outstanding HOME deferred loan was on March 1, 2002. However, as of January 23, 2007 (according to Borrower’s Statement of Account obtained from CD) said loan was still in the process of “being sent to law” for collection/litigation/resolution. Meanwhile, as default loans sit in these arbitrary classifications the risks of loss of collection due to expiration of the statute of limitations and negation of the City’s interest due to actions filed by other parties increases.

Approximately $760,000 of the $18 million defaulted loans on the 1/23/07 Loan Aging Report were listed as “forgiven loans.” Pursuant to Title 24 Part 92, Section 92.254 of the CFR, these HOME loans may be amortized and written-off (‘forgiven’) over the period of affordability, thereby reducing the amount to be recaptured on a prorata basis for the time the borrower has owned and occupied the HOME-assisted housing. If the housing does not continue to be the principal residence of the borrower for the duration of the period of affordability, the City may recoup all or a portion of the HOME assistance received by the borrower. However, since the inception of each loan, there are no documents evidencing the periodic verification of borrowers’ compliance with stipulated loan requirements before individual loans were amortized and written-off annually. Upon audit inquiry, we were informed that affidavits were mailed to all borrowers in January 2007. Said affidavit inquired whether borrowers still lived in the HOME-assisted housing.

The timely recovery of these outstanding loans could be used as Program Income to further provide more affordable housing for low and moderate income persons as allowed by Section 570.500 of the CFR. The lack of timely recovery of outstanding loans
increases the risk of loss of potential Program Income due to statute of limitation constraints and legal actions that could be filed by other related parties.

Recommendation
Servicing loans totaling $74 million and being held accountable for the City’s loan portfolio balances should not rest with CD. Any department, such as CD, that originates loans should not also have the duty of monitoring loan performance and accounting for loan balances. Such responsibility does not facilitate proper “segregation of duties”. An entity’s Treasury department is traditionally held accountable for loans/notes receivable and payable balances, as well as interest income/receivables and payables. Loan servicing/collection duties should be assumed by the City’s Collection department. If the Collections department has insufficient staff to assume such duties, then, at a minimum, the loan servicing/collection duties should be outsourced.

Lastly, we noted that there is a provision in developer/project sponsor loan agreements that stipulate that a developer can defer principal and interest payments due to the City by providing evidence of experiencing negative cash flow. We noted that CD staff relies on a cash flow statement indicating a negative change in cash balance as sufficient evidence of an inability to make timely payments to the City. However, a bank reconciliation indicating an ending balance which is less than the loan payment, coupled with a cash budget indicating more pressing financial obligations, offers better evidence.

Auditee’s Response and Action Plan
Please refer to CD response on pages 197 through 202.

Rebuttal to Auditee’s Response
OIAG Rebuttal to CD Response – Bullet #1
The CD response does not address the main issue: Why CD staff timely initiate collection activity for non-performing loans. Any automated system such as ABS should be based on a sound manual system and internal controls as discussed above on page . Upon
inheriting the loan portfolio from the Finance Department (FD), staff should have been directed to immediately ascertain all non-performing loans over a certain amount. In the absence of ABS, Excel spreadsheets could have been initially used to report such information. Loans for which there was no attractive cost/benefit could have been written-off. Permanent CD staff should have been temporarily augmented with outsourced staff that could have assisted in gathering salient information on each loan in the portfolio. In addition, a collection agency could have been out-sourced temporarily until the entire portfolio was “caught up”. Lastly, a manual tickler system (arranged by “anniversary day”) should have been implemented in order to track due dates of all loans. The concentrated time and energy used to set-up an initial, temporary manual collection system, as well as the cost of the associated out-sourcing might have been recouped in:

- Increased collections and interest revenue to the City.
- Work efficiencies gained by permanent CD staff.
- Increased funding available for more affordable housing projects.

OIAG Rebuttal to CD Response – Bullet #2
The CD response denies that the developers, such as the developer of the Barcelona Condo project, who failed to perform certain actions stipulated in their respective contracts, were in default. However, when a party to a contract does not comply with the terms of the contract, the party is in default of the contract terms. Once the party fulfills the previously defaulted contract terms, the party is no longer in default. Even if HCLC extensions were sought and approved, the parties were still in default of the original contract terms. As such, their default status should be disclosed and closely monitored. It should be noted that of the $9,139,970.96 that CD indicated was not in default, one (1) entity has three loans with principal balances totaling $2,719,306 (or 29.75% of $9,139,970.96); furthermore, there are three (3) other entities, with the same principal business address, with principal balances totaling $2,732,395 (or 29.9% of $9,139,970.96). Together, the six (6) loans total $5,451,701 (or 59.6% of the said total). Such recurrences on a list of defaulted projects further illustrates the need to periodically disclose the performance of such projects to the public as part of CD’s duty to be fully accountable to the citizen’s of Miami for selecting certain developers.
OIAG Rebuttal to CD Response – Bullet #3

Contrary to the implication of the CD response, the purpose of monitoring the ownership of the mortgaged properties is to facilitate continuous affordability of the properties. It is the OIAG position that CD staff should be proactive and not reactive to the possible sale of affordable housing units to individuals who are not income-eligible. If borrowers are reminded, via a proactive affordability monitoring program, that their homes must remain affordable, they would be less likely or tempted to sell their property to investors or other individuals who may not be income eligible.

Lastly, contrary to the CD response, OIAG proffers that monitoring adherence to respective affordability can be performed efficiently and easily by:

1. **Setting-up a tickler system by anniversary “day” for each loan**; the tickler file would have an amortization of each loan which would indicate the applicable principal balance and the amount to amortize yearly so that appropriate adjustments could be made in the ABS system. The amortization table could be created at the commencement of the loan term.

2. On respective anniversary days, CD staff could **research Miami-Dade property records** in order to ascertain whether or not the borrower is still the homeowner.

3. If there is continuous ownership, the loan should be amortized accordingly so as to facilitate financial reporting accuracy; however, if there is no continuous ownership reflected in property records, the current owners should be contacted by CD staff so as to ensure that the owners are income-eligible in accordance with program requirements. If such owners are not income-eligible, timely and appropriate collection action should be initiated.
LACK OF IDIS TO ABS RECONCILIATION

Pursuant to Title 24, Part 85, Section 85.20(b) of the United States Code of Federal Regulations (CFR) the financial management systems of grantees must meet certain standards including that financial reporting must comprise “accurate, current, and complete disclosure of the financial results of financially assisted activities”; “grantees must maintain records which adequately identify the source and application of funds provided”; and “effective control [internal control] and accountability must be maintained for all grant and sub grant cash…and other assets.”

Developers that have been approved by the City Commission or the Housing and Commercial Loan Committee (HCLC) for project financing may request and receive project cost reimbursements from the Community Development department (CD) only after:

- All loan documents are prepared and publicly recorded.
- Projects are set up in the U.S. Housing and Urban Development (HUD) Integrated Disbursement and Information System (IDIS) by the City’s Community Development department (CD) Assistant Director of Policy and Program Development.
- CD reviews, and approves all supporting documents associated with the developer’s reimbursement request.

The approved reimbursement request and the supporting documents are forwarded to the City’s Finance Department (FD) for the disbursement of payment to the developer. All reimbursements/payments to developers are made from the City’s General Fund account, which is then replenished monthly via “draw downs” from the City’s U.S. Treasury IDIS account.

IDIS is a HUD disbursement system used to track all projects that receive federal funding. Within IDIS, projects are tracked based on their status (i.e. BUDGETED, UNDERWAY, COMPLETE) and the amount of money funded, drawn down, and
remaining. The “Funded Amount” refers to the total loan amount awarded to the project while the “Net Drawn Amount” refers to the total amount disbursed to date.

ABS is the City’s internal loan servicing system used to track individual loan accounts. New loans are added to the system as program agreements are executed and recorded and funds are disbursed. The system also tracks principal and interest payments made by developers. The loan balances tracked within ABS are reported in the City’s loan portfolio in the financial statements.

**IDIS TO ABS RECONCILIATIONS NOT PERFORMED**

Due to timing differences at month-end, payments may have been made to developers for which the related draw down from IDIS has not been received. As such the City’s General Fund must be replenished the following month by draw downs from the U.S. Treasury IDIS account. CD prepares month-end accrual journal entries (JE) to account for the amounts that are required to be drawn down from IDIS to replenish the General Fund account. Similar timing differences occur at year-end. Therefore, there is need to reconcile all “Net Drawn Amounts” in IDIS to respective loan balances in the City’s ABS system. This reconciliation would provide for “accurate, current, and complete disclosure”, as well as accountability and effective internal control as stated in 24 CFR 85.20(b). Specifically, it would provide readers of the City’s financial statements with a more accurate picture of the City’s loan portfolio.

However, our audit disclosed that such reconciliations are not performed monthly or annually. We attempted to reconcile the Net Drawn Amounts within IDIS to the loan amounts as indicated on a September 2005 Lender Statement of Accounts generated from ABS and noted that four 4 (or 23.5%) of the 17 accounts balances tested did not agree with the IDIS account balance. The total loan amount of the 4 accounts was $3,638,061.80 (or 19.17%) of the $18,976,402.51 tested. In a written response to this observation (see pages 203 through 209), the auditee stated that it identified and accounted for all the reconciling differences related to the 4 accounts.
We obtained and reviewed IDIS reports from 2002 to 2006. Based on our review of said reports we noted that there were no financial data and/or project numbers evident for some of the IDIS accounts listed on the report. Also, some of the IDIS numbers were out of sequence. We were informed by CD staff that IDIS accounts without financial data and/or project numbers represent projects that were cancelled. However, due to the fact that IDIS numbers were not evident from the report reviewed, we were unable to verify whether any amounts were disbursed or whether there were any existing balances relative to these accounts. Per discussion with CD staff, IDIS numbers are assigned sequentially as opposed to randomly. Therefore, a report of all projects should include a complete sequential listing of all IDIS numbers. Such a report would be necessary to facilitate the reconciliation of IDIS to the City’s total loan portfolio.

Per audit inquiry, CD staff acknowledged that no IDIS to ABS loan account balance reconciliations were being performed; however, going forward, such a reconciliation procedure will be implemented for federally funded multi-family projects.

**Recommendation**

IDIS to ABS reconciliation should be performed periodically to ensure the accuracy of the City’s loan portfolio. In addition, to facilitate “separation of duties” the department that generates the loan (CD) should not be responsible for accounting for the individual and aggregate loan portfolio balances. As such, loan balance accountability should rest with the City Treasurer.

**Auditee’s Response and Action Plan**

Please refer to CD response on pages 203 through 209.

**Rebuttal to Auditee’s Response**

**OIAG Rebuttal to – First paragraph**

The above response does not address the issue: There was no evidence that IDIS to ABS Reconciliations were performed by CD staff. The fact that the federally funded receivables (ESG, CDBG, HOME, HOPWA loans) are fully reserved does not absolve
CD from its duty to be fully accountable to City stakeholders (citizens as well as bond underwriters/investors and federal funding agencies) for the accuracy of the receivable balances upon which the reserves should be based. If the receivable balances are overstated or understated, the reserves will be inaccurate. As such, there should be no dependency on the reserves to reduce potentially inaccurate net receivable balances to “zero”.

Regarding the reporting of federally assisted loan balances, a timely IDIS to ABS reconciliations would provide evidence of management’s assertion of:

**Completeness** – The reconciliations, along with other documentation, would provide supporting evidence for year end (YE) journal entries that record reimbursement to the City’s general fund and determine YE loan balances.

**Rights and Obligations** – The reconciliations would illustrate “agreement” between IDIS and ABS and validate the City’s right to commence collection activities on respective loan balances (as reflected in the City’s financial statements) in case of loan defaults.

**Valuation** – The reconciliations would illustrate “agreement” between IDIS and ABS and confirm the accurate valuation of the loan balances in the City’s financial statements.

**Existence** - The reconciliation would illustrate “agreement” between IDIS and ABS and confirm that the loan balances reported in the financial statements actually exist.

**Reporting and Disclosure** – The reconciliations would illustrate “agreement” between IDIS and ABS and provide the basis upon which reserves could be recorded and disclosed in the notes to the financial statements.

**OIAG Rebuttal to – Second paragraph**

The above response does not address the issue: There was no evidence that IDIS to ABS Reconciliations were performed by CD staff. Even though OIAG noted monthly revenue and expenditure reconciliations, there still was no evidence of reconciliations performed in order to ascertain the accuracy of loan balances indicated in ABS. Such reconciliations
or “roll forwards” are required “Control Activities”. Therefore, reconciling revenue/expenditures to GEMS is insufficient and simply ensures that the City’s general fund is replenished. It does not ensure the accurate reporting of loan balances.

**OIAG Rebuttal to – Third paragraph**

In the preface to the observation, OIAG noted that “IDIS is a HUD disbursement system used to track all projects that receive federal funding….” As such, it is reasonable to assume that if IDIS to ABS reconciliations are not performed and if federally-assisted loans are inaccurately reported, then, by extension, the loan portfolio as a whole will be inaccurately reported. Therefore, even though the other loans are not included in IDIS, CD is not absolved or excused from ensuring the accuracy of the entire City loan portfolio.

**OIAG Rebuttal to – Fourth and Fifth paragraphs**

Ensuring that loan agreements are executed, collateralized, and enforceable does not ensure that loan balances are accurately reported. The ABS system is a tool utilized by CD to track loan balances/project statuses and is reconciled to GEMS in order to facilitate financial reporting of the loan portfolio. As such, CD is responsible for ensuring the accuracy and validity of the information reported in ABS.

City stakeholders need assurance that loan portfolios (whether fully reserved or not) are accurately reported. Again, it is the duty of CD to be fully accountable for the accuracy of these balances. Ensuring that IDIS is reconciled to the federally-assisted loans in ABS facilitates this accuracy.

**OIAG Rebuttal to – Sixth and Seventh paragraphs**

Regardless of any set of circumstances surrounding a successful or unsuccessful/de-obligated project or a project which pre-dates IDIS, CD is responsible for the accuracy of the federally-assisted loan portfolios. If these balances are inaccurate, the entire loan portfolio will be inaccurately reported in the financial statements.

**OIAG Rebuttal to – Eighth paragraph**
A timely performed reconciliation would have detected the error mentioned in the response at or before fiscal year end (FYE) not subsequent to FYE.

**OIAG Rebuttal to – Tenth paragraph**
The response does offer a reasonable explanation of the loan balance reflected in the September 2005 statement of accounts. If IDIS to ABS Reconciliations were performed by CD, and such reconciliation had been provided to OIAG for review, the above mentioned explanation would have been apparent in the reconciliation. See OIAG response to sixth and seventh paragraphs.

**OIAG Rebuttal to – Thirteenth paragraph**
The above response does not address the issue: There was no evidence that IDIS to ABS Reconciliations were performed by CD staff. Had OIAG been given a fiscal year ended IDIS to ABS reconciliation, supplemented with an IDIS report listing all projects (cancelled or otherwise), no observations would have been made. In addition, OIAG only made “observations” – not accusations – concerning the missing IDIS numbers. Such actions are under the purview of other agencies not OIAG. Furthermore, the memorandum of understanding (MOU) describing our observations is a tool used to clarify issues as such, at the end of the MOU, OIAG requested CD to “provide any additional records and/or information that would clarify the observations noted…” The MOU is an audit inquiry tool used to confirm initial observations. They are intended to facilitate greater understanding of the audited department so that this understanding can be adequately conveyed in the audit report for the benefit of City stakeholders.
RECORD RETENTION AND LACK OF ACCESS TO RECORDS

The City of Miami Department of Community Development (CD) is charged with administering programs and projects supported by Federal funds such as Home Investment Partnership Program (HOME) and Community Development Block Grant (CDBG) funds. The City uses these funds to provide grants/loans to developers and individuals for such things as acquisition, rehabilitation, and new construction of housing and tenant-based rental assistance. In addition to procuring the services of developers, selecting individual recipients for homebuyer assistance based on income eligibility and other criteria, and servicing the loans, CD is responsible for maintaining the related records in accordance with the various Federal program requirements.

24 CFR Part 85, Section 85.42 of the United States Code of Federal Regulations (CFR) discusses the “Retention and access requirements for records” and “applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees.” According to the CFR, “except as otherwise provided, records must be retained for three years from [various] starting date[s].” According to 24 CFR 92.508 as it relates to the HOME program, “all records pertaining to each fiscal year of HOME funds must be retained for the most recent five year period.” In addition, each CFR provides certain exceptions that provide for longer time periods of record retention depending on the use of funds (e.g. rental vs. homeownership housing projects).

24 CFR 85.42(e) also discusses access to records stating that “the awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any … records of the grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts.” In addition, HOME program 24 CFR 92.508(d) states that “the participating jurisdiction must provide citizens, public agencies, and other interested parties with reasonable access to records.”
The Office of Auditor General (OIAG) made several requests to CD for the following files which were not provided:

<table>
<thead>
<tr>
<th>Agency</th>
<th>Project Name</th>
<th>Amount Awarded by HCLC *</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Coral East Corporation</td>
<td>Keystone Square</td>
<td>$ 750,000</td>
</tr>
<tr>
<td>2 Downtown Place, LLC.</td>
<td>Downtown Place</td>
<td>$ 250,000</td>
</tr>
<tr>
<td>3 Rivers Development Group</td>
<td>Grove Point</td>
<td>$ 750,000</td>
</tr>
<tr>
<td>4 Riverside Place, Ltd.</td>
<td>Riverside Place</td>
<td>$ 250,000</td>
</tr>
<tr>
<td>5 RJM LeJeune</td>
<td>LeJeune Apartments</td>
<td>$ 750,000</td>
</tr>
<tr>
<td>6 Hidden Harbor Apts.</td>
<td></td>
<td>$ 325,635 (5/31/02) &amp; $ 250,000 (3/14/03)</td>
</tr>
<tr>
<td>7 Rio Vista</td>
<td></td>
<td>$ 281,455</td>
</tr>
</tbody>
</table>

* Housing & Commercial Loan Committee (HCLC). Please note that all awards are not necessarily funded.

<table>
<thead>
<tr>
<th>Recipient</th>
<th>Loan Account #</th>
<th>Loan Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>8 JOANNE ROLLE</td>
<td>000382CP</td>
<td>23,340</td>
</tr>
<tr>
<td>9 DANIEL SEYMOUR</td>
<td>000500CP</td>
<td>20,160</td>
</tr>
</tbody>
</table>

CD’s inability to provide the above files to OIAG prevented us from verifying CD’s compliance with Federal program requirements and from executing any tests related to the audit of CD’s Housing Programs as it relates to these files.

Recommendation

In order to facilitate greater accountability and public scrutiny, all files, including those for proposals that were awarded but never funded, should be retained in accordance with federal and state requirements as described above.

As it regards the two HOME first time-home buyer files that CD is unable to locate (numbers 8 & 9 above) we recommend that CD consult with HUD as to the appropriate action to take and act accordingly.
CD asserts that it is excused from retaining the numbers 1 through 7 subject files listed above since “funds were never disbursed” to the project sponsors. However, at a minimum, CD should have retained the Grove Point file since it was merged or substituted for the Las Rosas project which received $530,000 of HOME funding. (See Rivers Development Group – Las Rosas Apartments finding on pages 27 through 37 above). The Grove Point project was approved by the HCLC on October 24, 2003. OIAG requested the Grove Point file on August 31, 2006.

Notwithstanding whether or not projects receive funding, “Florida Department of State General Schedule for Local Governments GS1-L” mandates a 5 year retention period for unsuccessful bids for capital improvement projects. Even though CD is not procuring services directly from a contractor for a “capital project”, CD is indirectly procuring affordable housing development services through project sponsorships that will benefit the citizens of Miami. This was implied via City Resolution 05-0099, which requires "selections based on rankings and merits of the application”. Accordingly, records and files which document the project sponsor selection process should be retained in order to:

- Demonstrate the fairness and transparency of the project sponsor selection process.
- Allow concerned citizens and/or competing developers who are not awarded funding to ascertain “how” and “why” their proposals were not selected over winning proposals.

With regards to CD’s response pertaining to 24 CFR 92.508 Recordkeeping, the provision lists certain records that each participating jurisdiction must maintain…”At a
minimum…” Therefore, the provision is not rigid in its listing of records/files required for retention. CD, however, as alluded to above, is accountable to the citizens of Miami for the transparency in the developer selection process. As such, CD must ensure that records/files are available for public scrutiny pursuant to the State of Florida guidelines mentioned above.
EXHIBITS

EXHIBIT I. Email Correspondence Re: Access to CD Personnel.


EXHIBIT III. Photograph of BAME New Hope Overtown site.

EXHIBIT IV. Photograph of ELHCDC Brickell View site.

EXHIBIT V. Latin Q Tower, LLC - Reimbursement Request with hand-written note.

EXHIBIT VI. Latin Q Tower, LLC - Expenditure Report prepared by CD.

EXHIBIT VII. Photograph of Latin Q Tower site.
EXHIBIT I

Igwe, Victor

From: Gomez, Barbara
Sent: Thursday, February 22, 2007 12:16 PM
To: Igwe, Victor
Cc: Mironos, Pedro; Duran, Alfredo; Garcia, Sergio; Gasca, Hilda; Blake, Lewis
Subject: RE: Defaulted Loan Report

We are answering all of your MOU by Friday. Barbara

From: Igwe, Victor
Sent: Thursday, February 22, 2007 12:15 PM
To: Gomez, Barbara
Cc: Mironos, Pedro; Duran, Alfredo; Garcia, Sergio; Gasca, Hilda; Blake, Lewis
Subject: RE: Defaulted Loan Report

It is NOT true that all files have been provided. See the attached email. Additional inquiries will be issued in the form of an MOU. Thanks.

Victor Igwe
Auditor General

From: Gomez, Barbara
Sent: Thursday, February 22, 2007 12:07 PM
To: Igwe, Victor
Cc: Mironos, Pedro; Duran, Alfredo; Garcia, Sergio; Gasca, Hilda; Blake, Lewis
Subject: FW: Defaulted Loan Report

Victor,

My staff advised me of the following:

Subsequently to this e-mail, Sergio and Pedro met with you and all files were provided. Do you have additional questions?

Barbara Gomez

From: Igwe, Victor
Sent: Monday, January 29, 2007 8:59 AM
To: Rodriguez, G. Ballard
Cc: Mironos, Pedro; Duran, Alfredo; Garcia, Sergio; Blake, Lewis
Subject: RE: Defaulted Loan Report

Barbara, my staff and I are doing everything possible to expedite this audit that was directed by the City Commission. You are probably not aware that your staff refers audit inquiries to Pedro and you. A case in point is my verbal request for a listing of all defaulted loans from Mr. Garcia, which eventually I received from you via email. Since he is the one responsible this activity, said record should have come directly from him to me so that I can ask follow-up questions and request additional records/files. By sending to you and you forwarding it to me via email, complicates, delays and does not expedite the audit process. Please

5/31/2007
instruct your staff to respond directly to audit inquires.

I hope that you are aware that the scope of this audit encompasses housing programs funded by HOME, CDBG, HOPWA, Affordable Housing Trust Fund, and others for the period 2000 through 2006. This is a major task and therefore we need your staff to respond directly to audit inquires.

Thanks.

Victor Igwe
Auditor General

From: Rodriguez, G. Barbara
Sent: Friday, January 26, 2007 5:40 PM
To: Igwe, Victor
Cc: Mirones, Pedro; Duran, Alfredo; Garcia, Sergio; Blake, Lewis
Subject: RE: Defaulted Loan Report

Victor,

Sergio Garcia is the employee responsible for all of our defaulted loans at this time. Mr. Garcia has been working with these loans since September 2006. Prior to Mr. Garcia the employee responsible for these loans was Elizabeth Valera who resigned from the City in September of 2006 after 3 years.

It is our intent to assist you and your staff with all resources needed to complete this audit as soon as possible. We have made staff available to you at all times. The only request we have made is that all requests from your office be made through one person in order to avoid duplication of time and resources, not knowledge.

Once again I want to offer you my personal assistance in order to conclude this audit in the most expeditious manner. Thanks,

Barbara Gomez

From: Igwe, Victor
Sent: Friday, January 26, 2007 4:16 PM
To: Rodriguez, G. Barbara
Cc: Mirones, Pedro; Duran, Alfredo; Garcia, Sergio; Blake, Lewis
Subject: RE: Defaulted Loan Report

Thanks for clarifying the difference between the two spreadsheets. However, I don't understand why your employees who actually process these financial transactions refer auditors to you or to Pedro for answers to basic audit inquiries. It is important that your staff answer specific questions relating to their individual daily routine job rather than you or Pedro obtaining said information/and or spreadsheet from them and then relaying them to us.

As I inquired in my last email, please inform your staff is responsible for tracking all loans as part of their daily routine job, so that I can sit down with him/her and review all issues relating to defaulted loans. Also, I need access to all defaulted loan files.

Thanks.

Victor Igwe
Auditor General

From: Rodriguez, G. Barbara
Sent: Friday, January 26, 2007 3:10 PM
To: Igwe, Victor
Cc: Mirones, Pedro; Duran, Alfredo; Garcia, Sergio; Blake, Lewis

5/31/2007
Subject: RE: Defaulted Loan Report

Victor,

On January 23, 2007 we provided you with the list of defaulted loans (past due 90 days and above) as per the Loan aging report of January 23, 2007. In the January 23, 2007 report we included the date the loan was referred to the City Attorney's office for litigation and the Assistant City Attorney assigned to the case, if applicable.

The report you have attached to this e-mail was the Law Department log requested by Mr. Blake. These two reports are very different: one report accounts only for those loans forwarded to the law department for possible litigation; the January 23 report is a comprehensive report of all defaulted loans (past due 90 days and above) in our portfolio.

By your e-mail dated January 26th you are requesting the following additional information:

When each loan was disbursed:
- When the City received the last principal and interest payment from each of the borrower

As you are aware, prior to 2000 the information was under custodianship of the City's Finance Department. Some of the loans you are analyzing were disbursed prior to 2000. Information prior to 2000 may require extensive research. We can provide you information dated after 2000.

If you have additional questions or if you would like to meet, please let me know. Thanks,

Barbara Gomez

From: Igwe, Victor
Sent: Thursday, January 25, 2007 7:34 PM
To: Rodriguez, G. Barbara
Cc: Memnes, Pedro; Duran, Alfredo; Garcia, Sergio; Blake, Lewis
Subject: RE: Defaulted Loan Report

Which of the two attached documents that you provided is the correct official list of defaulted loans? Please whom in your staff is the most familiar with this subject matter? I need to ascertain:

When each loan was disbursed:
- When the City received the last principal and interest payment from each of the borrower
- When each loan was referred to the City Attorney’s Office and the Attorney responsible

We need to look at the loan files to verify all the information being provided to us.

Thanks

Victor Igwe
Auditor General

From: Rodriguez, G. Barbara
Sent: Tuesday, January 23, 2007 5:17 PM
To: Igwe, Victor
Cc: Memnes, Pedro; Duran, Alfredo; Garcia, Sergio; Blake, Lewis
Subject: FW: Defaulted Loan Report

Victor,

Attach you will find the defaulted loan status report as per the Loan aging report of January 23, 2007. If you need additional information please let me know. Barbara

5/31/2007
July 6, 2004

William Maazey, Executive Director
BAME Development Corporation of South Florida, Inc.
245 NW 8th Street
Miami, Florida 33136

Dear Mr. Maaze:

The Department of Community Development requests a written update regarding plans to start up construction of the New Hope Overtown project. On several occasions Staff was informed that the project’s construction start-up was delayed due to availability of financing and that BAME was taking necessary measures to address the matter.

In June 2004 you reported that Local Initiative Support Corporation (LISC) advanced $400,000 in funds to replace the Miami-Dade County Surplus funding since the loan closing was taking longer than anticipated. In addition, Staff was informed that as a condition to the advance funding, LISC required BAME to enter into an Engineering Advisor Agreement with Zimmer Construction Consultants P.A. to provide (1) a project Hard Cost Analysis and Plan Review for the four model types included in the development and (2) periodic visits with written progress reports.

Staff was also informed that the Department of Public Works (DPW) estimated that the repaving and sidewalk repair work for the Overtown project would be $505,000 and that the DPW was not able to provide funding. Although the DPW expects that it plans to request funding from the Department of Community Development, it is still BAME’s overall responsibility to address/report any funding shortfalls.

Please provide a written update confirming plans for (1) project construction start up inclusive of any reports that have been provided by Zimmer Construction Consultants and (2) funding shortfall. If the project does not commence construction within 30 days from the date of this letter, the project funding will be considered for de-obligation at the next Housing and Commercial Loan Committee meeting.

If you have any questions, please do not hesitate to contact Ms. Annette Bolanos, Contract Compliance Analyst, at (305) 416-1971 or Ms. Lydia Beirán, Housing Program Manager, at (305) 416-2098.

Sincerely,

Barbara Gomez-Rodriguez

Director
EXHIBIT III
EXHIBIT IV

FOR SALE
119 UNITS
APPROX. 1.3 ACRES NET
305-519-9917
arit@bellsouth.net
www.elhdcf.com
EXHIBIT V

REIMBURSEMENT REQUEST

Date: January 24, 2005
Agency Name: Latin Q Tower LLC
Program Funding Source: CDBG
IDIS #: _______________
Contract Amount: $1,800,000.00

Attention: City of Miami Finance Unit:

We request reimbursement in the amount of $397,237 for funds expended for the month of February 2005.

We certify that all HUD funds received are used in accordance with applicable HUD Programs requirements. Additionally, all expenditures charged to the project fall within the contractual scope of services under contract are necessary, reasonable in light of the services or products delivered and eligible expenditures for the services delivery of the project.

We further certify that all disallowed expenditures will be reimbursed to the City of Miami.

Yours truly,

Salomon Yakken
Managing Member

As per annotation, B&K approved the disbursement to be processed without back-up documentation as of 3/1/05.
## EXHIBIT VI

**CITY OF MIAMI**  
**DEPARTMENT OF COMMUNITY DEVELOPMENT**  
**EXPENDITURE REPORT**

<table>
<thead>
<tr>
<th>DESCRIPTION (use line items approved for this program)</th>
<th>APPROVED BUDGET FOR FISCAL PERIOD</th>
<th>ACTUAL EXPENDITURES BEGINNING OF FISCAL PERIOD TO DATE</th>
<th>ACTUAL EXPENDITURES FOR PERIOD</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Arch. Design, Civil Eng.</td>
<td>240,000</td>
<td>240,000</td>
<td>145,000</td>
</tr>
<tr>
<td>2. Impacts &amp; School Fees</td>
<td>135,000</td>
<td>135,000</td>
<td>135,000</td>
</tr>
<tr>
<td>3. Permits/Fees</td>
<td>30,000</td>
<td>30,000</td>
<td>27,237</td>
</tr>
<tr>
<td>4. Legal</td>
<td>50,000</td>
<td>50,000</td>
<td></td>
</tr>
<tr>
<td>5. Environmental/Util. Fees</td>
<td>89,000</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6. Appraisal/Surveys</td>
<td>7,500</td>
<td>5,000</td>
<td></td>
</tr>
<tr>
<td>7. Insurance</td>
<td>95,000</td>
<td>90,931</td>
<td>90,000</td>
</tr>
<tr>
<td>8. Loan Closing/Fin. Fees (Bank Loan)</td>
<td>85,000</td>
<td>19,785</td>
<td></td>
</tr>
<tr>
<td>9. Interest</td>
<td>50,000</td>
<td>50,000</td>
<td></td>
</tr>
<tr>
<td>10. Title Insurance/Rec. Fees</td>
<td>35,712</td>
<td>35,712</td>
<td></td>
</tr>
<tr>
<td>11. Taxes</td>
<td>15,000</td>
<td>11,777</td>
<td></td>
</tr>
<tr>
<td>12. Construction</td>
<td>942,788</td>
<td></td>
<td></td>
</tr>
<tr>
<td>13. R.E. Commission</td>
<td>10,000</td>
<td>10,000</td>
<td></td>
</tr>
<tr>
<td>14. City of Miami</td>
<td>15,000</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL BUDGET**  

| $1,800,000 | $658,205 | $397,237 |

**PREPARED BY:** S. YUKEN  
**APPROVED BY:**
AUDITEE’S WRITTEN RESPONSES
TO: Lewis Blake,
Senior Staff Auditor

FROM: Barbara Gomez, Director
Community Development

DATE: March 30, 2007

SUBJECT: Response to MOU12907

ATTACHED PLEASE FIND CD'S RESPONSE TO YOUR MEMORANDUM OF UNDERSTANDING (MOU) DATED 1/29/2007 AND THE SUPPORTING DOCUMENTATION.

IF YOU HAVE ADDITIONAL QUESTIONS, PLEASE DO NOT HESITATE TO CONTACT ME.

CC: Larry Spring, CFO
Victor Igwe, Auditor General
Pedro Mirones, Assistant Director
EVALUATION OF PROJECT SPONSORS

Observation #1
There was evidence that requests for proposals (RFP's) were publicly advertised and RFP application packets were made readily available to the public during the period under audit (January 2000 to August 2006). In addition, there was also evidence that prospective projects were given a "rating" and that the minimum qualifying rating for projects had been established (75 points) as indicated on an excel spreadsheet that had been prepared by CD listing HOME Investment Partnership (HOME) and Community Development Block Grant (CDBG) loans that were awarded during Fiscal Year (FY) 2003 (See Attached). There was also evidence that most of the project sponsors were reputable affordable housing developers. However, the following exceptions were observed:

- There was no evidence of how the listed ratings were derived on the said FY 2003 spreadsheet (e.g. specific points given for the control, project feasibility, project sponsor's capacity, etc., which are combined in order to derive the rating pursuant to the FY 2003 proposal packet provided to prospective sponsors).
- Except for the projects listed on the said FY 2003 spreadsheet, there was no evidence of ratings given to the other projects selected for testing or how they were ranked against other competing proposals (See attached list of projects tested).

Per the CD Contract Manager, once proposals are rated, presented to the loan committee, and approved, the submitted proposals, as well as the methodology for rating them, are discarded in order to conserve file space.

CD Response to Observation #1

Bullet point #1
This is an administrative decision and as long as you rate all proposals the same, it is a moot issue. Specific points may vary depending on what the administration feels the City wants to prioritize that particular year.

Bullet point #2
CD has been able to locate evidence of proposal ratings from 2003 through 2006.
Exhibit 1

Bullet point #3
We are unable to find the spreadsheets prior to 2003 in keeping with the four year retention regulation.

Last paragraph
Funded proposals are divided according to the contract check list and placed in the proper place in the files. Not funded proposals are kept in storage and are now in our office for your review.
INSUFFICIENT LOAN DOCUMENTATION

Observation #2
The CD's ABS system indicated that $2,300,000 (or 12.6% of the loans selected) was disbursed for the Miami River Park project. The initial statement of accounts provided indicated that the project was divided into HOME and CDBG loans of equal amounts ($1,150,000 each). Later we were informed by CD that there is only one (1) loan for $2,300,000. Requests have been made for supporting documentation for the said amount, however, as of this date, no documentation has been received.

CD Response to Observation #2
On multiple occasions we have explained that the ABS System, which originated in the year 2000, was not complete when CD took over the loan portfolio from Finance.

Initially, the ABS System was used mainly to track single family loans and those loans that were known to be in default for the purpose of initiating aggressive collection procedures. Some multi-family projects, especially those that were deferred, were not entered in the system at the beginning. As collection progressed, and CD became more familiar with the loan portfolio, additional loans were added.

The Miami River Park Project was a HOPWA deferred loan entered erroneously as CDBG and HOME in equal amounts. In October 2006, staff found the error and corrected it.

In February 2007, we provided your office with all the information requested, however, the information is hereby attached again. Exhibit 2
LOAN SERVICING NOT PERFORMED TIMELY

Observation #3

Loan collection actions were not performed in a timely manner. According to a 8/7/06 letter from CD, the Alappattah Gardens loan ($400,000) was in default as of 8/19/05, and the date of the letter is evidence that collection efforts commenced 8/7/06 (more than 12 months subsequent to the default date). However, there was also evidence that the project sponsor complied with terms of the agreement on 8/17/06. A letter from CD pertaining to the Santa Clara Apartments loan ($750,000) indicated default as of 9/20/04, and the date of the letter is evidence that collection efforts commenced 8/7/06 (more than two (2) years subsequent to the default date). However, there was also evidence that the project sponsor complied with terms of the agreement on 8/18/06. The Model Housing Cooperative loan ($1,083,320.01) was in default as of 6/30/06 according to an 8/10/06 e-mail from CD staff. The date of the e-mail is evidence that collection efforts commenced more than 1 month subsequent to the default date.

CD Response to Observation #3

None of these projects were in default.

Alappattah Gardens

Please refer to the clause in the contract which stipulates that if the project has no cash flow, no payment will be required. CD would review the project’s financial information to ascertain that no cash flow was available. As of July 2, 2006, the new policy was to send a default letter to the developer so that they had to confirm the non-availability of cash flow. A letter from the City will follow accepting the deferral.

Santa Clara

Please refer to the clause in the contract which stipulates that if the project has no cash flow, no payment will be required. CD would review the project’s financial information to ascertain that no cash flow was available. As of July 2, 2006, the new policy was to send a default letter to the developer so that they had to confirm the non-availability of cash flow. A letter from the City will follow accepting the deferral.

Model Housing

Model Housing is still under construction and it is currently 98% complete. There have been several problems and we are watching the project very closely with the County. When project was 80% completed, there was a problem with WASA. We were conscious that the County and the architect needed to make a presentation to the HCLC for extension. HCLC granted the extension.
Observation #4

Defaulted loans were not referred to the City Attorney's Office in a timely manner. According to a spreadsheet prepared by CD listing the status of defaulted loans, there is evidence indicating that the Abe Investments loan (with a current balance of $1,771,560 as of 9/30/05) was referred to the City Attorney's office on 8/21/06, and Devecorp, Inc. (with a current balance of $296,943.13 as of 9/30/05) was referred to the City Attorney's office on 10/5/06. The Abe Investment property was sold in 1996 as evidenced by a "Certificate of Sale" issued by the Clerk of the Courts. The loan was referred to the City Attorney's Office 10 years after the sale. CD staff has made inquiries of the law department as to the validity of the loan agreement. The Devecorp, Inc. property was purchased by the City in 2000 in order to prevent its purchase by a tax deed investor after the borrower failed to maintain the property and pay the property taxes. The City Attorney's Office received the case for handling six (6) years subsequent to purchase of the property by the City.

CD Response to Observation #4

You are partially correct. Again, as I mentioned before, when the City's Finance Department transferred the loan portfolio, CD had to re-create the files and send them to Law for collection, if applicable. CD had to purchase a mortgage servicing system (ABS), enter the information on each project, and, in some cases, contact the City and County clerks to retrieve recorded information to re-create the files. Even today, we send some of the old project files to Law with insufficient information. However, CD has been successful in collecting in excess of $25 Million Dollars, as reflected in HUD's system, with two staff persons, incomplete files and missing information. Exhibit 3, IDIS Report.

<table>
<thead>
<tr>
<th>Year</th>
<th>Collections/ Program Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>$</td>
</tr>
<tr>
<td>1999</td>
<td>$</td>
</tr>
<tr>
<td>2000</td>
<td>$ 300,000.00</td>
</tr>
<tr>
<td>2001</td>
<td>$ 2,900,000.00</td>
</tr>
<tr>
<td>2002</td>
<td>$ 9,628,616.29</td>
</tr>
<tr>
<td>2003</td>
<td>$ 2,265,730.46</td>
</tr>
<tr>
<td>2004</td>
<td>$ 3,961,112.62</td>
</tr>
<tr>
<td>2005</td>
<td>$ 3,337,803.07</td>
</tr>
<tr>
<td>2006</td>
<td>$ 3,152,217.25</td>
</tr>
<tr>
<td>Totals:</td>
<td>$ 25,545,479.69</td>
</tr>
</tbody>
</table>
CD is still not current and still has old files we have not reviewed. However, we do not agree with your comments regarding Devecorp.

**Devecorp**

The City Attorney's Office has been working with this project for a number of years. On January 27, 1998, CD received a Memo from the City Attorney's Office in reference to a Quiet Title Action, Investments, Inc. vs. Devecorp, Inc. The City bought these properties through a Settlement Agreement, statement dated 10/18/2000. Therefore, the statement made by your office that "the file was referred to the City Attorney's Office on 10/05/2006" implying that the file was sent to Law for the first time is totally inaccurate. The 10/05/2006 date was CD's latest inquiry to the City Attorney's regarding Devecorp.

**Exhibit 4**

**QUESTIONABLE HARD COSTS**

**Observation #5**

Upon an on-site visit to the BAME New Hope Overtown parcels, there was no evidence of adequate support for the expenditure of $600,790.80 of "hard" construction costs as described in a September 26, 2005 letter from CD to the project's contractor. Every parcel appeared vacant except for fencing surrounding them. In addition, according to a "Special Warranty Deed" recorded June 6, 2005, the parcels were reverted to the City's possession by the project sponsor - BAME Development Corporation. The total amount of HOME funds disbursed for the project totaled $1,318,391.17.

**CD Response to Observation #5**

The second statement in your Observation #5 is correct: "every parcel appeared vacant except for fencing surrounding them."

The BAME New Hope Overtown project had 9 homes partially completed. The project was funded in November 8, 1998 and the City, together with the County, the Knight Foundation and LISC tried to keep this project alive.

When BAME could not finish the project, the City took back the property. The community protested because the project was abandoned; furthermore, it was a quality of life issue, which included drugs, prostitution, and nuisance.

Subsequently, an assessment was done to ascertain whether the project should be completed as planned or changed. The City Manager, the District Commissioner and CD were involved.

After numerous meetings with developers it was agreed that it would not be feasible to complete nine units when Tuscan was almost completed and something similar could be done with 130 to 150 units. The Overtown characteristics changed in the late 90s when
projects were going for homeownership. At the time, of the BAME New Hope Overtown demise, rental projects with a high number of units were more appealing.

Through the Building Department Unsafe Structures, the structures were demolished as per order from the City Manager and the District Commissioner.

Due to the number of complaints from the community in reference to the Crosswind project, gentrification and the need for affordable rentals, the City Manager, the District Commissioner and CD met with the four largest tax credit developers. A tax credit deal is necessary for an affordable rental project to be feasible. The houses were demolished and the land was earmarked for mix use high density rental projects.

Gatehouse is applying for two tax credit deals for the Madison, and Madison II, both mix use projects. The City Commission agreed to a Sale and Purchase Agreement between Madison and the City so that they can apply for a tax credit deal. If approved, Gatehouse, Madison's parent company, is to pay back the City the amount of $1,650,500 Million and get the property. CD continues to monitor the process and should know by August when Florida Housing awards the 2007 tax credit deals.

Gatehouse has the credentials and expertise to make this project a reality. Gatehouse is the parent company for completed projects such as Tuscan I and II, and Miami River Park. Gatehouse also has the Lafayette I and II projects under construction.

City met with BAME and advised that the organization is de-barred from applying to the City for funding for a period of five years, and that collection procedures will continue if Gatehouse is not successful in obtaining tax credits. The City feels very strongly that this project will become a success story.
## INADEQUATE DISBURSEMENT DOCUMENTATION

### Observation #8

Out of 439 invoices examined, there were 39 invoices that were not supported by copies of cancelled checks in the files (8.9% of the invoices examined). The total amount of invoices for which there was no evidence of a cancelled check was $3,925,758.38 out of a total HOME funds population tested of $16,189,628.77 (or 24.25% of the population selected). These invoices were as follows:

<table>
<thead>
<tr>
<th>Number</th>
<th>Project Sponsor &amp; Vendor</th>
<th>Invoice/Chk #</th>
<th>Invoice Date</th>
<th>Invoice Amount</th>
<th>Acquisition/Hard Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>ALLAPATTAH BUSINESS</td>
<td>CD12710</td>
<td>2/10/00</td>
<td>37,237.00</td>
<td>Hard</td>
</tr>
<tr>
<td>2</td>
<td>ALLAPATTAH Business</td>
<td>CD12893</td>
<td>9/2/05</td>
<td>26,804.75</td>
<td>Hard</td>
</tr>
<tr>
<td>3</td>
<td>Allapattah Business</td>
<td>CD121812</td>
<td>3/8/05</td>
<td>64,006.00</td>
<td>Hard</td>
</tr>
<tr>
<td>4</td>
<td>Allapattah Business</td>
<td>CD121211</td>
<td>12/9/04</td>
<td>60,304.00</td>
<td>Hard</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>217,511.75</strong></td>
<td></td>
</tr>
<tr>
<td></td>
<td>BAME Development Corp. (New Hope Overtown)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>CAZO Construction Corp.</td>
<td>900800</td>
<td>8/28/00</td>
<td>9,664.53</td>
<td>Hard</td>
</tr>
<tr>
<td>6</td>
<td>CAZO Construction Corp.</td>
<td>900900</td>
<td>9/5/00</td>
<td>11,842.13</td>
<td>Hard</td>
</tr>
<tr>
<td>7</td>
<td>CAZO Construction Corp.</td>
<td>9/28/00</td>
<td>9/5/00</td>
<td>5,476.71</td>
<td>Hard</td>
</tr>
<tr>
<td>8</td>
<td>CAZO Construction Corp.</td>
<td>9/28/00</td>
<td>9/5/00</td>
<td>54,778.76</td>
<td>Hard</td>
</tr>
<tr>
<td>9</td>
<td>Holland &amp; Knight, LLP</td>
<td>1/9/01</td>
<td>1/3491</td>
<td>8,313.83</td>
<td>Soft</td>
</tr>
<tr>
<td>10</td>
<td>Judson and partners</td>
<td>3/20/01</td>
<td>329/13-32</td>
<td>1,525.95</td>
<td>Soft</td>
</tr>
<tr>
<td>11</td>
<td>Judson and partners</td>
<td>3/20/01</td>
<td>9/5/013-29</td>
<td>1,000.00</td>
<td>Soft</td>
</tr>
<tr>
<td>12</td>
<td>Judson and partners</td>
<td>4/9/01</td>
<td>031/1001</td>
<td>5,762.15</td>
<td>Soft</td>
</tr>
<tr>
<td>13</td>
<td>Judson and partners</td>
<td>4/2/05</td>
<td>32613-30</td>
<td>500.00</td>
<td>Soft</td>
</tr>
<tr>
<td>14</td>
<td>Judson and partners</td>
<td>7/5/01</td>
<td>1193</td>
<td>1,200.00</td>
<td>Soft</td>
</tr>
<tr>
<td>15</td>
<td>Judson and partners</td>
<td>2/2/02</td>
<td>93/013 #35</td>
<td>750.00</td>
<td>Soft</td>
</tr>
<tr>
<td>16</td>
<td>CAZO Construction Corp.</td>
<td>6/17/03</td>
<td>1019</td>
<td>74,425.56</td>
<td>Hard</td>
</tr>
<tr>
<td>17</td>
<td>CAZO Construction Corp.</td>
<td>6/23/03</td>
<td>1020</td>
<td>79,563.97</td>
<td>Hard</td>
</tr>
<tr>
<td>18</td>
<td>CAZO Construction Corp.</td>
<td>2/19/03</td>
<td>APP 7</td>
<td>78,057.65</td>
<td>Hard</td>
</tr>
<tr>
<td>19</td>
<td>BAME DEV CORP OF SOUTH FL INC</td>
<td>12/22/03</td>
<td>369902</td>
<td>248,012.13</td>
<td>Hard</td>
</tr>
<tr>
<td>20</td>
<td>BAME DEV CORP OF SOUTH FL INC</td>
<td>12/23/03</td>
<td>369902</td>
<td>12,521.01</td>
<td>Soft</td>
</tr>
<tr>
<td>21</td>
<td>CAZO Construction Corp.</td>
<td>12/28/03</td>
<td>94,887.33</td>
<td>94,887.33</td>
<td>Hard</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>548,691.85</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Barcelona Condominiums**

<table>
<thead>
<tr>
<th>Number</th>
<th>Project Sponsor &amp; Vendor</th>
<th>Invoice/Chk #</th>
<th>Invoice Date</th>
<th>Invoice Amount</th>
<th>Acquisition/Soft Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>22</td>
<td>DynaTech</td>
<td>5/12/05</td>
<td>1036</td>
<td>2,475.00</td>
<td>Soft</td>
</tr>
<tr>
<td></td>
<td>Description</td>
<td>Date</td>
<td>Code</td>
<td>Amount</td>
<td>Type</td>
</tr>
<tr>
<td>---</td>
<td>------------------------------------------</td>
<td>------------</td>
<td>------</td>
<td>----------</td>
<td>--------</td>
</tr>
<tr>
<td>23</td>
<td>GVP Consulting</td>
<td>6/30/05</td>
<td>1041</td>
<td>8,500.00</td>
<td>Soft</td>
</tr>
<tr>
<td>24</td>
<td>Manuel Tapia-Muñoz</td>
<td>2/14/05</td>
<td>7033</td>
<td>11,000.00</td>
<td>Soft</td>
</tr>
<tr>
<td></td>
<td><strong>East Little Havana CDC - Brickell View</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Perez &amp; Perez Architects</td>
<td>12/13/04</td>
<td>1110</td>
<td>220,000.00</td>
<td>Soft Cost</td>
</tr>
<tr>
<td>26</td>
<td>Re:Presentation inc.</td>
<td>12/13/04</td>
<td>1116</td>
<td>30,000.00</td>
<td>Soft Cost</td>
</tr>
<tr>
<td>27</td>
<td>Q' Printing House Corp</td>
<td>12/13/04</td>
<td>1113</td>
<td>5,080.00</td>
<td>Soft Cost</td>
</tr>
<tr>
<td>28</td>
<td>the Miami Herald</td>
<td>12/13/04</td>
<td>1112</td>
<td>0,534.00</td>
<td>Soft Cost</td>
</tr>
<tr>
<td>29</td>
<td>Camilo Office Furniture Inc.</td>
<td>12/13/04</td>
<td>1109</td>
<td>22,200.86</td>
<td>Soft Cost</td>
</tr>
<tr>
<td>30</td>
<td>Marai Waldo Biondo</td>
<td>12/13/04</td>
<td>1100</td>
<td>1,151.50</td>
<td>Soft Cost</td>
</tr>
<tr>
<td>31</td>
<td>Pacific National bank</td>
<td>12/13/04</td>
<td>1119</td>
<td>10,000.00</td>
<td>Soft Cost</td>
</tr>
<tr>
<td>32</td>
<td>Miami Dade County Tax Collector</td>
<td>5/27/03</td>
<td>1005</td>
<td>12,438.62</td>
<td>Soft Cost</td>
</tr>
<tr>
<td>33</td>
<td>Fannie Mae</td>
<td>11/15/04</td>
<td>1102</td>
<td>16,000.00</td>
<td>Soft Cost</td>
</tr>
<tr>
<td>34</td>
<td>Marai Waldo Biondo</td>
<td>10/22/03</td>
<td>1020</td>
<td>172.00</td>
<td>Soft Cost</td>
</tr>
<tr>
<td>35</td>
<td>General Sign Company</td>
<td>12/13/04</td>
<td>1117</td>
<td>305.00</td>
<td>Soft Cost</td>
</tr>
<tr>
<td>36</td>
<td>Perez &amp; Perez Architects</td>
<td>10/14/04</td>
<td>1042</td>
<td>22,000.00</td>
<td>Soft Cost</td>
</tr>
<tr>
<td></td>
<td><strong>BAME Development - Miami River Park</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>37</td>
<td>Unknown vendor</td>
<td>Unknown date</td>
<td>Unknown check #</td>
<td>1,800,000.00</td>
<td>Unknown</td>
</tr>
<tr>
<td>38</td>
<td>Unknown vendor</td>
<td>Unknown date</td>
<td>Unknown check #</td>
<td>500,000.00</td>
<td>Unknown</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>BAME Development - Miami River Park</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Santa Clara Apts., Ltd.</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>39</td>
<td>RICK Construction</td>
<td>2/12/04</td>
<td>1115</td>
<td>362,548.00</td>
<td>Firm</td>
</tr>
<tr>
<td></td>
<td><strong>Total Exceptions</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>3,025,768.38</strong></td>
<td></td>
<td></td>
<td></td>
<td>24.25%</td>
</tr>
<tr>
<td></td>
<td>of population</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**INADEQUATE DISBURSEMENT DOCUMENTATION**

**CD Response to Observation #6**

**Attachments in binder and noted with your item number**

"Out of 439 invoices examined, there were 39 invoices that were not supported by copies of cancelled checks in the files (8.9% of the invoices examined). The total amount of invoices for which there was no evidence of a cancelled check
was $3,925,758.38 out of a total HOME funds population tested of $16,189,828
77 (or 24.25% of the population selected). These invoices were as follows:

**Allapattah Business Development Authority, Inc.**

The auditor observation that there are no copies of the cancelled checks, refers
not to the copies of the City's cancelled check as required under 24 CFR 85.20
but of the copies of the cancelled check submitted by the sub grantee, if
necessary. The Department procedures provides for verification of cancelled
checks for soft costs. The hard costs are supported by a Form AIA, an inspection
performed by an inspector of the department and photographs of the
construction. All the observations in the following files are properly documented
in accordance with 24 CFR 85.20 and Departmental procedures for hard costs
expenditures.

1 Allapattah Business Development Authority, Inc. $57,257.45
Find attached required documentation for a hard cost payment,
specifically AIA form and city inspector approval.

2 Allapattah Business Development Authority, Inc. $26,854.75
Find attached required documentation for a hard cost payment,
specifically, AIA form and city inspector approval.

3 Allapattah Business Development Authority, Inc. $54,405.10
Find attached required documentation for a hard cost payment,
specifically, AIA form and city inspector approval.

4 Allapattah Business Development Authority, Inc. $58,984.90
Find attached required documentation for a hard cost payment,
specifically, AIA form.

**BAME New Hope Overtown – Hard Costs**

The auditor observation that there are no copies of the cancelled checks refers
not to the copies of the City's cancelled check, but of the copies of the cancelled
check submitted by the sub grantee, if necessary. The Department procedures
provides for verification of cancelled checks for soft costs. The hard costs are
supported by a Form AIA, an inspection performed by an inspector of the
department. All the observations in the following files are properly documented in
accordance with 24 CFR 85.20 and Departmental procedures for hard costs
expenditures.

5 Cazo Construction Corp $9,964.53
Find attached required documentation for a hard cost payment,
specifically, AIA form.

6 Cazo Construction Corp $11,842.13
Find attached required documentation for a hard cost payment,
specifically, AIA form.

7 Cazo Construction Corp $5,476.71
Find attached required documentation for a hard cost payment, specifically, AIA form.

8 Cazo Construction Corp $54,378.29
  Find attached required documentation for a hard cost payment, specifically, AIA form.

16 CAZO Construction Corp $74,429.56
  This check was issued by the sub grantee to the contractor this check was sent to the Department, but the department did pay based on the support of the AIA form and inspector verification. See attached documentation. This request from the sub grantee was paid by the City as indicated in 19 below. The check for $248,012.13 is the cancelled check from the City to the Sub grantee. Cancelled checks issued by the City are kept by the Finance Department.

17 CAZO Construction Corp $79,563.97
  This check was issued by the sub grantee to the contractor this check was sent to the Department, but the department did pay based on the support of the AIA form and inspector verification. See attached documentation. This request from the sub grantee was paid by the City as indicated in 19 below. The check for $248,012.13 is the cancelled check from the City to the Sub grantee. Cancelled checks issued by the City are kept by the Finance Department.

18 CAZO Construction Corp $78,067.66
  This check was issued by the sub grantee to the contractor this check was sent to the Department, but the department did pay based on the support of the AIA form and inspector verification. See attached documentation. This request from the sub grantee was paid by the City as indicated in 19 below. The check for $248,012.13 is the cancelled check from the City to the Sub grantee. Cancelled checks issued by the City are kept by the Finance Department.

19 BAME Dev Corp of South FL Inc $248,012.13
  Find attached required documentation for a hard cost payment, specifically, AIA form and city inspector approval listed in #16, #17, and #18. Check #366002 is the check paid by the City of Miami to BAME Dev Corp of South FL, Inc. for the amounts of $74,429.56, $79,563.97, $78,067.66, $15,590.94 totaling $248,012.13 already improperly classified in the observation as a payment to the Sub grantee. Cancelled copies of checks are also included for reference.

21 CAZO Construction Corp $94,883.33
  Find attached required documentation for a hard cost payment, specifically, AIA form.
BAME New Hope Overtown – Soft Costs

The auditor observation that there are no supported copies of the cancelled checks refers not to the copies of the City's cancelled check as required under 24 CFR 85.20 but of the copies of the cancelled check submitted by the sub grantee, if necessary. The Department procedures provides for verification of cancelled checks for soft costs. These checks date back to the year 2000. Storage boxes containing those files could be located in the storage archives after substantial research; however, given that the fiscal files were sent to storage more than six years ago we will request assistance from the sub grantee to locate copies of the checks. Even if the copies of the sub grantee checks were not to be obtained, the amount of expenditures for which there would be no supporting documentation in accordance with the Departments procedures would be only $1,250.00. Compared to a HOME, HOPWA and CDBG selection of approximately $16,000,000 instead of $16,109,828 (to compensate for erroneous duplications by the auditors, refer to 16, 17, 18 and 19 above) appears not to be significant to merit additional effort in locating such a small amount.

9 Holland & Knight $8,313.83
Find attached required documentation for a soft cost payment, specifically, copy of the invoice and copy of the front of the check. Cancelled copies of checks at that time were kept by employee, Yogesh Shah, under a separate file. Copy of cancelled check from the client enclosed.

10 Judson and Partners Architects $1,525.95
Find attached required documentation for soft cost payment, specifically, copy of invoice # 93j013-28, cancelled copies of checks at that time were kept by employee, Yogesh Shah, under separate file. Copy of cancelled check from the client enclosed.

11 Judson and Partners Architects $1,800.00
Find attached required documentation for soft cost payment, specifically, copy of invoice #93j013-29, cancelled copies of checks at that time were kept by employee, Yogesh Shah, under separate file. Copy of cancelled check from the client enclosed.

12 Holland & Knight, LLP $5,762.15
Find attached required documentation for soft cost payment, specifically, copies of invoice 1054634, 1066853, 1066854, 1077421, totaling $5,707.08. Cancelled copies of checks at that time were kept by employee, Yogesh Shah, under separate file. Copy of cancelled check from the client enclosed.

13 Judson and Partners Architects $500.00
Find attached required documentation for soft cost payment, specifically, copy of invoice 93j013-30, cancelled copies of checks at that time were kept by employee, Yogesh Shah, enclosed under separate file.

14 Judson and Partners Architects $1,200.00
Find attached required documentation for a soft cost payment, specifically, copy of the invoice and copy of check. Canceled copies of checks at that time were kept by employee, Yogesh Shah, enclosed under separate file.

15 Judson and Partners Architects $750.00
Find attached required documentation for a soft cost payment, specifically, copy of the invoice and copy of check. Canceled copies of checks at that time were kept by employee, Demetrio Constantino, enclosed under separate file.

20 BAME Dev Corp of South FL Inc $12,151.71
Find attached required documentation for a soft cost payment, specifically, copies of the invoices and a variety of copies of original and canceled checks enclosed.

Barcelona Condominiums

The auditor observation that there are no supported copies of the canceled checks refers not to the copies of the City's canceled check as required under 24 CFR 85.20 but of the copies of the canceled check submitted by the subgrantee, if necessary. The Department procedures provides for verification of canceled checks for soft costs.

22 Dynatech $2,475.00
Find attached required documentation for a soft cost payment, specifically, copy of canceled checks enclosed.

23 GVP Consulting $8,500.00
Find attached required documentation for a soft cost payment, specifically, copy of canceled checks enclosed.

24 Manuel Tapia-Ruano $11,250.00
Find attached required documentation for a soft cost payment, specifically, copy of canceled checks enclosed.

Brickell View

The auditor observation that there are no supported copies of the canceled checks refers not to the copies of the City's canceled check as required under 24 CFR 85.20 but of the copies of the canceled check submitted by the subgrantee, if necessary. The Department procedures provides for verification of canceled checks for soft costs.

25 Perez & Perez Architects $220,000.00
Find attached required documentation for a soft cost payment, specifically, copy of canceled check from the client enclosed.

30 Mural Waldo Biondo $1,151.20
Find attached required documentation for a soft cost payment, specifically, copy of cancelled checks are requested from the Developer. Copy of cancelled check from the client **enclosed**.

32 Miami Dade County Tax Collector
$12,438.82
Find attached required documentation for a soft cost payment, specifically, copy of cancelled checks are requested from the Developer. Copy of cancelled check from the client **enclosed**.

34 Murei Waldo Biondo
$172.00
Find attached required documentation for a soft cost payment, specifically, copy of cancelled checks are requested from the Developer. Copy of cancelled check from the client **enclosed**.

36 Perez & Perez Architects
$22,000.00
Find attached required documentation for a soft cost payment, specifically, copy of cancelled checks are requested from the Developer. Copy of cancelled check from the client **enclosed**.

The following checks were requested by the sub grantee in anticipation of receiving the reimbursement and issuing the checks. The City prepared the check to the sub grantee, however, the City held the check to request clarification on some legal issues. The City agreed before issuing the checks that the scope of work would be changed and a sales office was not need at the time. The City releases the funds after a budget modification was agreed upon with the sub grantee. Refer to our reply dated 3/6/07 to your 2/21/07 Memorandum of Understanding.

26 Re. Presentation Inc
Check replaced by other checks. Void.
$30,000.00

27 D'Printing House Corp
Check replaced by other checks. Void.
$5,090.00

28 The Miami Herald
Check replaced by other checks. Void.
$6,534.00

29 Camilo Office Furniture Inc
Check replaced by other checks. Void.
$22,290.86

31 Pacific National Bank
Check replaced by other checks. Void.
$10,000.00

33 Fannie Mae
Check replaced by other checks. Void.
$15,000.00

35 General sign Company
Check replaced by other checks. Void.
$305.00

All the above checks were cancelled and replaced with other checks as explained in the attached documentation support. **See Exhibit A**
Miami River Park

37 and 38 Miami River Park $2,300,000.00
Find enclosed the following documents: Complete documentation, previously provide to the Office of Internal Auditor General

Santa Clara

39 BJ&K Construction $352,348.00
Find enclosed the following documents: City of Miami check #400799 in the amount of $732,370.23, City of Miami spreadsheet supporting the payment of $732,370.23 which includes $352,348.00 which applies to the construction portion paid by the City.
DATE

TO: ATT: Lewis R. Blake, Senior Staff Auditor

FROM: Subject: Audit of Department of Community Development Housing Programs –
Rivers Development HOME Loan

This DRAFT MEMO, for discussion purposes only, is issued in response to your above
referenced DRAFT (FOR DISCUSSION PURPOSES ONLY).

Background (pages 1-3)
According to the Annual Plan for FY 2004-2005, which was one of the periods covered by this audit, $1,204,528 of
"Brick & Mortar" (new construction) Home Investment Partnerships Program (HOME) funds were awarded for multi-
family rental projects. Of this amount, $550,000 (or 45.7% of $1,204,528) was awarded to Rivers Development Group
(RDG) to construct 54 rental units (Las Rosas Apartments) at 2300 N.W. 7th Street, Miami, Florida. RDG actually
received $580,000 (or 44% of $1,204,528) of the award pursuant to its "contractor payment request" dated January
27, 2005. Vacant land for the Las Rosas project was purchased by RDG on April 1, 2004 for $1,150,000, and
$1,427,000 of outside funding was obtained by HUD during February 2004.

Pursuant to 24 CFR 92.1, the U.S. Department of Housing and Urban Development (HUD) allocates HOME funding
by formula among eligible State and local governments to strengthen public-private partnerships and to expand the
supply of decent, safe, sanitary, and affordable housing, with primary attention to rental housing, for very low-income
(generally incomes ≤50% of median income for the area) and low-income (generally incomes ≤80% of median
income for the area) families. The City of Miami’s (City) Department of Community Development (CD) may reimburse
award recipients for newly constructed multifamily rental housing for the following allowable costs (per 24 CFR
92.206):

- Development hard cost: actual construction costs
- Refinancing costs: cost to refinance existing debt secured by housing that is being rehabilitated using
  HOME funds.
- Acquisition costs
- Related soft costs: architectural, engineering or related professional services; permitting, financing,
  appraisal, impact fees; operating deficit reserve funding.
- Relocation costs
- Costs relating to payment of loans: pay off of construction/bridge financing loan or guarantee loan only if:
  the loans were used for allowable costs; and, the HOME assistance is part of the original financing for the
  project.

In order to receive awards for HOME funding, prospective developers (project sponsors) must complete and submit:

- Project Summary Form and Pro-Forma Income/Expense Statements
- Evidence of Availability of Other Project Financing Form
- Estimate of City/County Impact Fees
- Authorized Representative Statement
- Certification of Sound Fiscal Management Form
- Certification of All Funds Received Form

Once the above items are received, they are evaluated by CD staff. This evaluation is summarized via completion of
an “Evaluation/Rating Criteria” sheet which consists of various categories upon which prospective sponsors are
scored or given "points" for.
• **Site Control** — Demonstrates that the project sponsor has purchased or is in the process of purchasing property for the proposed development. A maximum of 15 points can be earned (which includes 10 points for an executed sales/purchase contract or 15 points for a warranty deed).

• **Economic Factors** — Demonstrates financial feasibility of the project; the ability to fulfill HOME eligibility requirements; the existence and adequacy of outside funding. A maximum of 40 points can be earned (which includes 5 points for identified sources and uses of funds; 10 points for firm commitments from non-City funding sources; 15 points for demonstrated project feasibility and ability to proceed).

• **Organizational Capacity/Demonstrated Effectiveness** — Demonstrates prior experience in developing similar projects and/or compliance with on-going funding/development contracts. A maximum of 20 points can be earned (which includes City and Non-City project experience with a project completed within two years of, in progress and in compliance with contract terms).

• **Community Acceptance** — Demonstrates that public/area residents were adequately informed and there is no material amount of opposition to the project. A maximum of 10 points can be earned.

• **Other City Qualifications** — Demonstrates that there will be amenities provided by the project that will serve special groups (e.g. units for the elderly near elevators; 3 bedroom units for large households). A maximum of 15 points can be earned.

After CD staff selects the highest scoring projects, the projects are presented to the Housing & Commercial Loan Committee (HCLC) for review and approval.

**CD Response:**

Before responding to the specific items noted with regard to the process by which the Las Rosas loan was recommended and approved, please be advised that the loan for the Las Rosas project has been repaid in full. On August 16, 2006, the City received a check in the amount of $585,213.35 in full payment of the outstanding principal and interest on the loan.

This money will be repaid to HUD and the project will be cancelled from the HUD IDIS system. For your information, once a project is repaid in full to HUD, the project is completely removed from the IDIS system and all HUD requirements relating to that project are thereby terminated.

With regard to the "Evaluation/Rating Criteria" sheet referred to, that form is only used when the developer is responding to a Request For Proposals (RFP). The allocation for Las Rosas was not awarded pursuant to an RFP.

The evaluation criteria required by the U.S. Department of Housing and Urban Development (HUD) before a Participating Jurisdiction (PJ) invests funds in a project can be found in Notice CPD 98-1. The purpose of such Notice is to provide guidance to PJs in their development of local guidelines to evaluate projects using HOME funds in combination with other governmental assistance. HUD allows the PJ to develop its own local guidelines. Until 2004, the City’s guidelines allowed for funding allocations by both an RFP process and outside an RFP process.

Historically, the RFP process was utilized only at the time that the yearly entitlement funds were received from the various funding sources. An RFP is one of the methods permissible under the regulations for the PJ to recommend the allocation of funds, but is not the only method. The documents listed above by the auditor are used only in the Request For Proposals (RFP) process.
Subsequent to October 1, 2004, the Department of Community Development revised its policy and procedures. Although other methods for the allocation of funds are permissible, all funding for affordable housing projects since October 1, 2004 is allocated through an RFP process. The RFP restriction does not apply to projects submitted and approved by the Little Havana Advisory Board, the Model City Trust or for affordable housing on City land.

**Observation #1 (pages 3-6)**

At an October 24, 2003 meeting of the HCLC, the CD department recommended approval of a $750,000 award of HOME program funding to RDG for acquiring a parcel of land located in Coconut Grove. The land was to be used for developing a homeownership project called Grove Pointe. The recommendation was approved as recommended. Subsequently however, the owner(s) of the proposed Grove Pointe site were unwilling to sell the land to RDG. As a result, at the May 25, 2004 HCLC meeting, the CD department, at the request of RDG, made a recommendation to substitute the Grove Pointe project with another project, called Las Rosas Apartments, which involved developing 54 rental units for the elderly on a 37 acre site located in West Little Havana. The recommendation included reducing the initial award for Grove Pointe ($750,000) to $550,000 for land acquisition, preconstruction costs, and soft costs for the Las Rosas project. This second recommendation/request was approved by the HCLC unanimously. Accordingly, on January 24, 2005 RDG executed loan and disbursement agreements for $550,000, including $10,000 for City administrative fees.

However, our review of the Las Rosas project file did not disclose any evidence of an “Evaluation/Rating Criteria” sheet, which would have provided required documentation of CD’s recommendation to the HCLC regarding the project sponsors: site control; sources of funds (Economic Factors); and, competence in developing similar projects (Organizational Capacity/Demonstrated Effectiveness). The scoring and/or completion of an “Evaluation/Rating Criteria” sheet for this project would have demonstrated that:

- Outside sources of funding were procured and title/site control to the property had already been established; therefore, instead of funding being awarded for land acquisition costs, awarded funding could have been designated for other relevant costs.
- Compliance (or Non-compliance) with Miami-Dade Housing Authority (MDHA) and Interamerican Bank funding/loan agreements and/or that sufficient progress had/had not been made in developing the project.
- Competence (or lack thereof) in developing projects similar to the one for which funds were being requested.

The Chronology of Events as documented by project files is as follows:

**9/30/03 and 10/13/03** – RDG made an offer on 9/30/03 for the Las Rosas site. The offer was accepted by Call Ocho, LLC, the seller, on 10/13/03.

**10/24/03** – HCLC approved the Grove Pointe project; however, as noted above, RDG was in possession of an executed sales/purchase contract for the Las Rosas site as of 10/13/03. RDG subsequently claimed, on 4/9/04 (see below), that the owners of the Grove Pointe parcel were unwilling to sell the property.

**2/19/04 and 2/23/04** – RDG received a $747,500 one-year loan from Interamerican Bank on 2/19/04, and a $1,000,000 SHIP funding commitment from Miami-Dade Housing Authority (MDHA) on 2/23/04 for the Las Rosas site acquisition.

**3/24/04** – Pre-application/MAP (Multifamily Accelerated Processing) 221(d)(4) report was submitted by Entrekon Associates, Inc. to Greystone Servicing Corporation, one of the outside funding sources used by RDG for the Las Rosas project. The report was a feasibility study, which included an income and expense analysis for developing a 54-unit elderly rental apartment community on the Las Rosas site.

**4/1/04 and 4/13/04** – RDG closed on the Las Rosas site on 4/1/04, and a Warranty Deed was recorded on 4/13/04.

**4/9/04** – RDG made a request of CD to substitute the Las Rosas project for the Grove Pointe project claiming that the owners of the Grove Pointe project were "unwilling to sell and attempts to acquire other like properties in the surrounding areas were fruitless."
4/19/04 – CD received the above-mentioned request, dated 4/9/04, from RDG to substitute the Las Rosas project for the Grove Point project.

4/20/04 – CD requested updated documents/forms from RDG in order to assess feasibility of Las Rosas project.

5/26/04 – CD Director presented the Las Rosas project to the HCLC and reported that "Rivers Development Group was originally funded $750,000 in HOME funding for Grove Point, a new construction homeownership project in Coconut Grove and that the owner of the proposed project site was no longer willing to sell the property. She added that Rivers Development Group was requesting approval for a project substitution from Grove Point to Las Rosas Apartments, a new construction rental facility for the elderly in the West Little Havana area. She also stated that Staff was recommending a reduced amount of $300,000 to be used for land acquisition, pre-development and construction costs and that the $300,000 reduction was due to the need to comply with a funding subsidy cap requirement. The meeting minutes do not indicate whether or not the committee was informed that the Las Rosas parcel had already been purchased or that the funds were to be used to reimburse Rivers Development Group (RDG) or its president, Oscar Rivero, for a land acquisition that had already occurred.

9/20/04 to 10/15/04 – Environmental clearance was obtained and Request for Release of Funds (RRDF) was submitted and approved by HUD pursuant to environmental site assessments (ESA), dated 2/2/04 and 3/8/04, performed by Eric Consulting and Alpha Engineers Corp, respectively on behalf of Greystone Servicing Corporation and Interamerican Bank respectively, which were two of the outside funding sources used by RDG for the Las Rosas project.

1/24/05 to 1/27/05 – A loan and disbursement agreement was signed by RDG on 1/24/05; RDG made a reimbursement request on 1/27/05; the draw request does not indicate that the request is for land acquisition reimbursement. A CD department "Contractor Payment Request" form signed by Oscar Rivero on behalf of RDG stated that "We hereby agree that the work stated by the contractor has been completed and payment approved to the contractor in accordance with Agreement and contingent upon inspection and concurrence by the Rehabilitation Inspector. It is understood that the actual amount disbursed will be based on the findings of that inspection". However, the documentation RDG provided requesting payment were all related to the site purchase (i.e. copies of the settlement statement and related documentation) as opposed to construction or rehabilitation as the format of the form suggested.

2/4/05 – "Request/Justification for Reimbursement" form is prepared by CD staff for submittal to the Finance Department in order to prepare a check that is to be made payable to RDG. "Soft Costs" are indicated as one of the "Allocation of Expenditures" line items, however, "DRAW #1 Land Acquisition" is indicated in the space on the form for "Check Stub Description". The form was approved by a fiscal assistant, the contract analyst, and the Assistant Director for Housing programs.

Had the "Evaluation/Rating Criteria" sheet been completed, appropriately evaluated by management, and conveyed to the loan committee, RDG would have received 15 points for site control. This score would have documented that funds were not required for land acquisition, and therefore the use of the funds could have been restricted to other allowable activities.

In addition, there was no documentation evidencing demonstrated effectiveness or prior experience in developing similar projects. As such, had the "Evaluation/Rating Criteria" sheet been completed, appropriately evaluated by management, and conveyed to the loan committee, RDG would have received 0 points for completing a similar project. In two (2) years from the date of a loan agreement, such a score would and should have been a "red flag" to management and communicated to the loan committee. As a result, the use of the funds could have been more restrictive or other project sponsors/developers with prior experience in developing similar multi-family projects could have been considered for funding.

Therefore, not completing and not having an "Evaluation/Rating Criteria" sheet on file prevented proper management and loan committee oversight of the project evaluation process. Since best practices dictate that all competing project sponsors be ranked and tied all ratings should be justified with supporting documentation, the absence of this documentation increased the likelihood that an infeasible project and/or inexperienced project sponsor would obtain loan committee approval and that funding would be spent on activities that may have been allowable, but were unnecessary given the fact that other undisclosed funds might have been used for the activity.
CD Response:

Prior to October 1, 2004, due to the urgent need for affordable housing and the low production rate, the Department of Community Development adopted a policy of entertaining all housing projects submitted for consideration whether or not they were in response to an RFP. All projects were fully and properly evaluated regardless whether the funds were allocated through or outside an RFP process. The absence of an “Evaluation/Rating Criteria” sheet does not mean that an evaluation was not performed.

As noted above, CD revised its policy and, as of October 1, 2004, initial funding for affordable housing projects is allocated only through an RFP process. The exceptions to this policy are projects submitted and approved by the Little Havana Advisory Board and the Model City Trust (both entities were created by the City Commission for that purpose), and funding for the development of City property.

The Las Rosas project file

As noted previously, the “Evaluation/Rating Criteria” sheet, as referred to in the Background section, is only used when the developer is responding to an RFP. The allocation for Las Rosas Project was not awarded pursuant to an RFP. The failure to use that rating sheet did not prevent proper evaluation of this project by City staff.

The Las Rosas project was properly evaluated by City Staff, reviewed and recommended to the Housing and Commercial Loan Committee (HCLC/Loan Committee) on May 25, 2004. Please refer to Exhibit #1.

The evaluation presented to the Housing and Commercial Loan Committee is complete and in accordance with HUD and the Department of Community Development guidelines.

The Memo to the HCLC included:

- Evaluation of the project
- Department Recommendation to the HCLC
  - Eligible project costs
  - Effective date, original allocation of funds by the Loan Committee to Rivers Development for the Grove Pointe project
    - There is no regulation precluding CD from taking this action
  - Affordability Period
  - Environmental policy/Removal of Grant Condition
  - Budget
  - Retainage
- Project Summary
- Project Analysis
- Pro-Forma
We do not agree with the conclusion that funds were not needed for land acquisition and the funds should have been restricted for other allowable costs. The cost of acquisition of property for the purpose of building affordable housing is an allowable cost and eligible under the applicable federal regulations. There is no need to restrict the use of funds to other allowable costs.

Land acquisition is not only an eligible activity under the applicable regulation, but gap financing is consistent with the City’s Action Plan. It was a CD business decision to recommend approval of this use of funds.

Subsequent to this transaction, the Department of Community Development discontinued providing funds for land acquisition. However, the approval of funding for Las Rosas land acquisition costs was appropriate and consistent with all applicable requirements, based in part upon Community Development’s analysis of the project budget as a whole to maximize project funding.

Competence is a requirement for the RFP process in the evaluation of projects for presentation to the Loan Committee. Competence is also evaluated in relation to the partners and/or other lenders that are willing to participate in the project.

CD Response to Comments under 1/24/05 to 1/27/05, on page 5

We concur that the “Contractor Payment Request” form CD used for reimbursement purposes was not the best. CD revised the form subsequent to the date noted.

However, disbursement of funds for land acquisition was proper. The original approved budget listed “Land Acquisition” as a line item. The final budget, Exhibit C of the Loan Agreement, also showed "Land Acquisition" as a line item. Both the Staff recommendation and the 5/25/04 Loan Committee action approved the use of funds for land acquisition, pre-development and construction costs.

CD Response to Comments under 2/4/05 on page 6

The recommendation to fund project land acquisition cost was a business decision and rests with the administration. This recommendation was based upon an evaluation of the project and disclosed to the Loan Committee in the Loan Committee Memo, as reflected in the Minutes of the 5/25/04 Loan Committee meeting.

There is not inconsistency in the use of the term “Soft Costs” in the Allocation of Expenditures line item and the use of the term “Land Acquisition” in the Check Stub Description. The CD Finance Unit used to set up two sections for this type of project, one for “soft costs” and one called “construction. Land acquisition costs were included under the “soft costs” category. However, the information provided in the check stub mentioned land acquisition. The sales agreement for the land acquisition was attached to the request for payment. This form has been revised.
We again concur that the request for payment form used by RDG was not the best, but that form has been corrected.

Our response to the comments to the "Evaluation/Rating Criteria" sheet is provided above. Therefore, CD must disagree with the second paragraph on page 6.

Please note that:
1. Reimbursement of the land acquisition cost is an eligible expense;
2. The Disbursement Agreement between the City and the developer provides for reimbursement of eligible expenses; and
3. Land acquisition was a necessary expense. CD looks at the project budget as a whole to maximize project funding.

Since the Disbursement Agreement between the developer and the City provides only for the reimbursement of eligible costs, CD could pay for the land acquisition cost as a reimbursement for allowable paid expenses. Refer to Disbursement Agreement, Exhibit #2, Pre-Construction Meeting Agenda, Exhibit #3, and Checklist for Disbursement of Funds, Exhibit #4.

Our response to the comments to the "Evaluation/Rating Criteria" sheet is provided above. And, again we must note that land acquisition is an eligible and reasonable expense which can be repaid to the developer under HUD regulations.

Observation #2 (pages 6-8)
The "Certification of All Funds Received" form is used by CD staff to document a project sponsor's existing financial resources and to evaluate how these resources can be used to facilitate project completion. With this certification and sufficient source documentation, a maximum of 5 points can be earned by developers in the "Sources and Uses of Funds Identified" category on the "Evaluation/Rating Criteria" sheet described in Observation #1. All available resources which can be used to complete the project should have been presented to the HCLC for evaluation.

On the "Certification of All Funds Received" form, sponsors must certify the accuracy of and list all federal and non-federal awards received per unaudited financial records as of the date of funding application. In addition, sponsors must state the contract period, purpose of the funding, and the amount of the funding. Such certification also requires sponsors to notify CD should the information change.

However, there was no evidence that the "Certification of All Funds Received" form on file was completed to sufficiently disclose all available funding as of the date of funding and project substitution was requested (i.e., there was no evidence of unaudited financial records as of April 26, 2004 that indicated outside funding provided by MDHA and Interamerican Bank); there was no evidence that the loan committee was made aware of the acquisition of the Las Rosas project site.

Our audit disclosed that RDG received a SHIP funding commitment of $1 million from MDHA on 2/23/04 and also received $747,500 loan from Interamerican Bank on 2/19/04. However, we noted that the funding commitment and loan were not listed on the "Certification of All Funds Received" form, which was signed and dated by the President of RDG on April 26, 2004. In addition, evidence of a settlement statement dated April 1, 2004 indicated that the bank loan proceeds, as well as other funding which may have included funding provided by MDHA, were used to purchase the parcel of land to be used for the Las Rosas project. All of this funding should have been disclosed on the form. As a result, since there was evidence that the site had already been purchased with outside funding before application for the Las Rosas HOME funding was made, the HOME funds could still have been awarded for the Las Rosas site but appropriately restricted for other eligible activities.
In addition, the “Certification of All Funds Received” form was completed “as of December 31, 2003” which corresponded with the loan committee’s initial approval of the Cross Pointe project, dated October 24, 2003. There was no evidence in the May 25, 2004 HCLC meeting minutes indicating that the committee was informed of the Las Rosas site purchase closing of April 1, 2004 and the award of Inter-American Bank and MDHA SHIP funding during February 2004.

Therefore, the lack of a properly completed “Certification of All Funds Received” form and the incomplete information provided to the loan committee prevented proper management and loan committee oversight of the project evaluation process. The absence of documentation and the presentation of information to the HCLC increased the likelihood that an inflexible project and/or an unethical project sponsor would obtain loan committee approval and that funding would be spent on activities that may have been allowable, but were unnecessary given the fact that other undiscovered funds might have been used for the activity.

**CD Response**

Beginning with the housing related RFP for year 2005-2006, Exhibit #5, including the year 2006-2007, Exhibit #6, the Department of Community Development has not required the “Certification of All Funds Received”. This form is not required. In accordance with HUD Notice CPD 98-1, Exhibit #7, Community Development requires “sources and uses of funds” to be included for any particular project. Refer to Exhibit #5 and Exhibit #6. The 2006-07 RFP can also be found in the Department of Community Development Web Page.

At the time of funding approval of the Las Rosas Project, the “Certification of All Funds Received” form was an element of the RFP process only. This form was not used for the Las Rosas Project. The information usually contained in such form was then taken into consideration in the Project Analysis presented to the Housing and Commercial Loan Committee meeting of 5/25/2004. The project was approved for land acquisition, pre-development and construction costs. Land acquisition is an eligible expense and nothing precluded the City from funding land acquisition costs for this project.

Again, the “Evaluation/Rating Criteria” sheet, as referred to, is only used when the developer is responding to an RFP. The allocation for Las Rosas Project was not awarded pursuant to an RFP.

The last sentence on Page 6, states that “All available resources which can be used to complete the project should have been presented to the HCLC for evaluation”. They were. All resources to be used in the project were presented to the HCLC at the 5/25/04 meeting.

**Observation #3 (pages 8-9)**

Pursuant to 24 CFR 92.250(b), HOME-assisted units for new multi-family construction must meet the 20 year affordability requirement, beginning after project completion. As such, deed restrictions must be imposed via covenants running with the land. The “Declaration of Restrictive Covenants”, relative to the Las Rosas as stipulated on the loan agreement dated January 24, 2005 signed by Oscar Rivera on behalf of RDG stated: “This Covenant shall remain in full force and effect and shall be binding...for a period of twenty (20) years commencing on the date of issuance of all certificates of occupancy required for the project...”

According to CD staff, in addition to RDG paying back the HOME funds in full with interest, the City acquires the benefit of the deed restriction pursuant to the language in the “Declaration of Restrictive Covenants”, which restricts the use of the land for affordable housing. However, there is no clear-cut language in the “Declaration of Restrictive Covenants” to suggest that the deed restriction is valid and is still in effect in spite of:
• The HOME loan agreement default by RDG.
• The fact that the project was never completed in accordance with the loan agreement.
• A CO (Certificate of Occupancy) was never issued.

Therefore, it is not clear from the wording used in the covenant that the Las Rosas site would still be restricted for affordable housing in the event that the project is not completed and no Certificate of Occupancy (CO) is issued. In fact, the Term of Covenant clause in the declaration states that its terms commence "on the date of issuance of all certificates of occupancy required for the Project", which is rooted specifically to be the Las Rosas Apartments (as opposed to "projects" in general).

Although we recommend that a legal opinion be sought in this matter, it appears that the document is null and void since the project was never completed and the CO never issued.

Please verify our understandings as stated above through a written response. Also, include supporting documents/records where applicable to relate or correct any of the facts and/or observations stated above. Please respond by September 22, 2008.

Per your recommendation, this observation was provided to the City Attorney for response.
INTER-OFFICE MEMORANDUM

TO: Lewis Blake,  
   Senior Staff Auditor

FROM: Barbara Gonzalez, Director  
   Community Development

DATE: May 9, 2007
SUBJECT: Response to MOU02122007-  
   BAME: Santa Clara
REFERENCES: 
ENCLOSURES: 

Attached please find CD's response to your Memorandum of Understanding (MOU) dated February 12, 2007 in reference to BAME.

If you have additional questions, please do not hesitate to contact me.

Cc: Larry Spring, CFO  
   Victor Igwe, Auditor General  
   Pedro Mirones, Assistant Director
ASCERTAINING DEVELOPER OUTSIDE FUNDING

Observation #1

The BAME Development Corp. (BAME) New Hope Overtown (New Hope) project was for the development of 40 single family homes of which 21 were to be affordable and sold to low income individuals. According to a July 8, 2004 letter (See attached) to BAME from CD, "...staff was informed that the project's construction start-up was delayed due to the availability of financing ...." In addition, in a chronology of the project (See attached), CD staff notes that "Since the Loan Closing in July 2003, the City of Miami has disbursed a total of $1,295,880 ... Construction of the first nine homes has ceased since 2003 .... The City needs to have firm commitments from the conventional lender and verification from LISC to ...complete the nine (9) homes as listed in their revised budget." According to the CD Director, BAME has since been debarred from doing business with the City for five (5) years and that a reputable developer is considering the New Hope site for affordable housing development. However, the following observations were noted:

- According to the chronology mentioned above, as of July 2003 CD disbursed $1,295,880 of the $1,462,456 loan amount (or 88.6% of the loan amount) to BAME when only 9 of the 40 units (or 22.5% of the project) were partially constructed. Total disbursements for the project were $1,318,391.17 (or 90.1% of the loan amount). The 9 unfinished units were demolished by the City in 2006. There was no evidence of a reasonable explanation justifying the said demolition or the disbursement of 90% of the loan amount for only 9 of the 40 units.

CD Response to Observation #1-Bullet #1

The funds reimbursed by CD included the infrastructure, permits, architectural fees, impact fees, etc. for the whole project encompassing 40 houses.

BAME is a CHDO and CHDOs are entitled to Pre-development Assistance. As quoted from the HUD web page,

"Loans for pre-development costs are available to certified CHDOs to ensure that they have access to funds for upfront, eligible project expenditures. Such "lines of credit" are often difficult for non-profits to receive from private lenders, so the HOME Program provides this opportunity as part of its commitment to affordable housing development."

HUD encourages funding this type of activities for CHDOs because it is the most difficult to obtain financing from a financial institution.

At the time, BAME had a commitment for the project from the Miami-Dade County Commission in the amount of $500,000; LISC and the Knight Foundation had pledged their monetary involvement and SunTrust had committed $2.8 towards the project. However, SunTrust's funds could not be accessed until the project had reached a certain level of completion. The total cost for the project was projected to be in excess of $4,000,000.

"The BAME New Hope Overtown project had 9 homes partially completed. The project was funded in November 8, 1998 and the City, together with the County, the Knight Foundation and LISC tried to keep this project alive."
When BAME could not finish the project, the City took back the property. The community protested because the project was abandoned; furthermore, it was a quality of life issue, which included drugs, prostitution, and nuisance.

Subsequently, an assessment was done to ascertain whether the project should be completed as planned or changed. The City Manager, the District Commissioner and CD were involved.

After numerous meetings with developers it was agreed that it would not be feasible to complete nine units when Tuscan was almost completed and something similar could be done with 120 to 150 units. The Overtown characteristics changed in the late '90s when projects were going for homeownership. At the time, the BAME New Hope Overtown demise, rental projects with a high number of units were more appealing.

Through the Building Department Unsafe Structures, the structures were demolished as per order from the City Manager and the District Commissioner.

Due to the number of complaints from the community in reference to the Crosswind project, gentrification and the need for affordable rentals, the City Manager, the District Commissioner and CD met with the four largest tax credit developers. A tax credit deal is necessary for an affordable rental project to be feasible. The houses were demolished and the land was earmarked for mixed use high density rental projects.

Gatehouse is applying for two tax credit deals for the Madison, and Madison II, both mixed use projects. The City Commission agreed to a Sale and Purchase Agreement between Madison and the City so that they can apply for a tax credit deal. If approved, Gatehouse, Madison's parent company, is to pay back the City the amount of $1,650,500 Million and get the property. CD continues to monitor the process and should know by August when Florida Housing awards the 2007 tax credit deals.

Gatehouse has the credentials and expertise to make this project a reality. Gatehouse is the parent company for completed projects such as Tuscan I and II, and Miami River Park. Gatehouse also has the Lafayette I and II projects under construction.

City met with BAME and advised that the organization is debarred from applying to the City for funding for a period of five years, and that collection procedures will continue if Gatehouse is not successful in obtaining tax credits. The City feels very strongly that this project will become a success story.

- The original construction budget was for $4,070,660 according to an August 10, 2004 letter from CD (See attached). However, as stated above and evidenced via a November 29, 2004 letter from CD (See attached), not all of the outside funding for the project had been secured by BAME and confirmed by CD staff. There was no evidence of a "Certificate of All Funds Received" form or other such documentation ensuring that BAME had procured funding other than that which was provided by the City.

**CD Response to Observation #2-Bullet #2**
The original funding by CD in the case of a CHDO is not conditioned to outside funding. It is the intent of the HOME program to permit the use of CHDO funds for pre-development and capacity building activities to ensure that a CHDO can move the project.
"Loans for pre-development costs are available to certified CHDOs to ensure that they have access to funds for upfront, eligible project expenditures. Such "lines of credit" are often difficult for non-profits to receive from private lenders, so the HOME Program provides this opportunity as part of its commitment to affordable housing development." HUD encourages funding this type of activities for CHDOs because it is the most difficult to obtain financing from a financial institution.

- There is no evidence in a defaulted loan status report provided by CD that the said BAME loan is in default and has been referred to the City Attorney's Office for collection.

**CD Response to Observation #1-Bullet #3**
The City has called a default on the loan; however, CD will not pursue collection until the results of the tax credit application submitted by the Gatehouse Group are known. **Exhibit 1**

**DRAW REQUESTS AND SUPPORTING DOCUMENTATION**

**Observation #2**
A copy of a check returned as "uncollected" for $75,000 was provided as support for a $74,429.56 reimbursement request (See attached - Check #1619).

**CD Response**

Attached please find bank statements confirming that check #1619 was paid. **Exhibit #2**

**Observation #3**
For a BAME Development Corp-New Hope reimbursement request amount of $248,012.13 (See attached "Expenditure Report") for hard construction costs (26.8% of the HOME funds reimbursed for project hard costs in the amount of $960,797 per the attached September 26, 2005 letter from CD) there was no evidence of an AIA form and a City inspector report supporting the request. There also was no evidence of an approved modification of the $568,040 budget for hard costs (See attached "Revised Cost Allocation Schedule").

Four (4) cancelled checks (See schedule below - Checks 1222, 1320, 1340, 1375) submitted by the Santa Clara Apartments project sponsor as support for a $732,370.23 reimbursement request were also submitted a second time in order to support a $17,375.67 DP request. We were informed by the CD Assistant Director that the reimbursement was made pursuant to a budget modification, and not pursuant to submission of cancelled checks. Upon inspecting the file with the CD Assistant Director, there appeared to be no evidence of an approved budget modification supporting the reimbursement. In addition, there were no amounts in the "Budget Modification" column of a version of the budget spreadsheet printed 1/4/07 (See attached).
<table>
<thead>
<tr>
<th>Item/Draw</th>
<th>Seller/Vendor</th>
<th>Invoice/Chk Date</th>
<th>Invoice #/Chk#</th>
<th>Invoice Amount</th>
<th>Acquisition/Hard/Soft Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Alvarez Wolfberg</td>
<td>5/9/03</td>
<td>1259</td>
<td>4,081.93</td>
<td>Soft</td>
</tr>
<tr>
<td>1</td>
<td>Alvarez Wolfberg</td>
<td>6/6/03</td>
<td>1283</td>
<td>4,888.34</td>
<td>Soft</td>
</tr>
<tr>
<td>1</td>
<td>Alvarez Wolfberg</td>
<td>7/16/03</td>
<td>1292</td>
<td>5,914.01</td>
<td>Soft</td>
</tr>
<tr>
<td>1</td>
<td>Alvarez Wolfberg</td>
<td>7/28/03</td>
<td>1303</td>
<td>2,971.39</td>
<td>Soft</td>
</tr>
<tr>
<td>1</td>
<td>Alvarez Miami-Dade</td>
<td>8/27/03</td>
<td>1320</td>
<td>2,862.87</td>
<td>Soft</td>
</tr>
<tr>
<td>1</td>
<td>WASA Wolfberg</td>
<td>9/29/03</td>
<td>61744</td>
<td>200,784.00</td>
<td>Soft</td>
</tr>
<tr>
<td>1</td>
<td>Alvarez Wolfberg</td>
<td>10/10/03</td>
<td>1340</td>
<td>2,901.13</td>
<td>Soft</td>
</tr>
<tr>
<td>1</td>
<td>Alvarez Wolfberg</td>
<td>11/21/03</td>
<td>1375</td>
<td>5,696.86</td>
<td>Soft</td>
</tr>
<tr>
<td>1</td>
<td>Alvarez BJ&amp;K</td>
<td>1/9/04</td>
<td>1409</td>
<td>44.37</td>
<td>Soft</td>
</tr>
<tr>
<td>1</td>
<td>Construction Florida Housing</td>
<td>2/12/04</td>
<td>1416</td>
<td>352,348.00</td>
<td>Hard</td>
</tr>
<tr>
<td>1</td>
<td>Finance Santa Clara</td>
<td>4/27/04</td>
<td>1436</td>
<td>59,877.00</td>
<td>Soft</td>
</tr>
<tr>
<td>1</td>
<td>Apte, Ltd.</td>
<td>1/3/05</td>
<td>Schedule</td>
<td>(0.47)</td>
<td>Soft</td>
</tr>
</tbody>
</table>

732,370.23

<table>
<thead>
<tr>
<th>Item/Draw</th>
<th>Seller/Vendor</th>
<th>Invoice/Chk Date</th>
<th>Invoice #/Chk#</th>
<th>Invoice Amount</th>
<th>Acquisition/Hard/Soft Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Alvarez Wolfberg</td>
<td>7/16/03</td>
<td>1292</td>
<td>5,914.81</td>
<td>Soft</td>
</tr>
<tr>
<td>2</td>
<td>Alvarez Wolfberg</td>
<td>8/27/03</td>
<td>1320</td>
<td>2,862.87</td>
<td>Soft</td>
</tr>
<tr>
<td>2</td>
<td>Alvarez Wolfberg</td>
<td>10/10/03</td>
<td>1340</td>
<td>2,901.13</td>
<td>Soft</td>
</tr>
<tr>
<td>2</td>
<td>Alvarez Wolfberg</td>
<td>11/21/03</td>
<td>1375</td>
<td>5,696.86</td>
<td>Soft</td>
</tr>
</tbody>
</table>

Unexplained difference 254.10

Difference (Clerk of Circuit Court) (3,017.00)

14,612.77
CD Response to Observation #3 a
Refer to CD Response to Observation #1

CD Response to Observation #3 b
The above schedule related to Santa Clara was prepared by the internal auditors “assuming” that the all cancelled checks provided by the developer with the last payment meant that they were using the same checks for reimbursement purposes. The payment was approved by the Contract Manager and the Assistant Director who are both authorized to approve budget modifications.

Enclosed please find:

- “Justification for reimbursement” signed as approved by Nanotte Shakir, Budget and Finance Advisor; Sergio Garcia, Senior Budget and Support Advisor; Lidia Beltran, Contract Manager, Housing; Penny White, Fiscal Administrator; and Daniel Rosemond, Assistant Director. Exhibit #3

- A reimbursement request from Santa Clara in the amount of $17,629.77. Such amount is the unpaid remainder from their previous reimbursement. Exhibit #4

- A copy of cancelled checks aggregating $835,609.47 which greatly exceeds the total amount paid of $750,000. Exhibit #5
Date: March 6, 2007

To: Lewis R. Blake, Senior Staff Auditor
Office of the Independent Auditor General

From: Barbara Gomez, Director
Community Development

Subject: Audit of Department of Community Development Housing Programs
CD Response to MOU dated 2/21/07
RE: East Little Havana Community Development Corporation, Inc.
(ELHCDC) observation

ASCERTAINING DEVELOPER OUTSIDE FUNDING

Observation

On March 11, 2004, the City of Miami (City) and East Little Havana Community Development Corporation, Inc. (ELHCDC) entered into an agreement for the City to lend $1,164,000 to
ELHCDC for the development of a 119 unit condominium (condo) project known as Brickell View Terrace. The purpose of the agreement was to increase the supply of affordable homeownership
housing units by providing eleven (11) HOME assisted units to low income individuals/families. However, there is evidence that ELHCDC received over $860,000 of financing from both Miami-
Dade County (County) ($429,924) and the City ($372,601) over a six (6) year period and has not
commenced construction of the project. In an April 6, 2005 amendment (see attached) to the
HOME agreement, the construction activity commencement date was extended to June 30, 2005,
however the agreement was executed before $22 million of outside funding was confirmed by
CD staff.
According to an April 20, 2005 e-mail to the City Department of Community Development (CD) staff (see attached) from County staff, the following funds were disbursed to ELHDC for the project since fiscal year (FY) 2000:

- $278,524 in HOME, CHDO, and CDBG funding.
- $150,000 in HOME funding.

In addition to the $428,524 in County funding ($278,524 + $150,000 = $428,524), there is evidence that $372,901.37 of HOME funds were disbursed for the project from the City. As such, $801,425.37 has been disbursed to ELHDC for the $23.5 million project over a six (6) year period; however, despite receiving this funding, there is no evidence of:

- Construction activity or
- Confirmation (as part of prudent due diligence activities with regards to the loan amendment) of outside financing for the balance of $22 million of required funding.

On a listing of "Projects Recommended for Full or Partial De-Obligation: From January 2000 to Present (Housing & Commercial Loan Committee (HCLC))" we noted that on 1/20/06 the ELHC DC Brickell View Terrace project was recommended for a $791,096 (remaining loan balance) de-obligation. Per review of the HCLC 1/20/06 meeting minutes we noted that ELHC DC was given the opportunity to proceed with project plans and to provide an update at the June 16, 2006 HCLC meeting, however, this meeting was cancelled and we were unable to find evidence that the matter has been further discussed. We were recently informed by CD staff that the project will be de-obligated in February 2007.

**CD Response**

**Page 2, First paragraph**

The City is neither responsible nor accountable for the Miami Dade County funds you mention, $278,524 and $150,000 according to an April 20, 2005 e-mail. It is our understanding that those funds were provided as Project Delivery Support to ELHDC.

The $372,901.37 disbursed from the City is reimbursed eligible predevelopment cost that a CHDO is entitled to.

**Page 2, Second paragraph**

Again, let us remind you that ELHDC is a CHDO and that CHDOs are entitled to Pre-development Assistance. As quoted from the HUD web page, "Loans for pre-development costs are available to certified CHDOs to ensure that they have access to funds for upfront, eligible project expenditures. Such "lines of credit" are often difficult for non-profits to receive from private lenders, so the HOME Program provides this opportunity as part of its commitment to affordable housing development."

HUD encourages funding this type of activities for CHDOs because it is the most difficult to obtain financing from a financial institution.

Please let us also remind you that projects are awarded funding at different stages and different time periods. ELHDC owned the land which is an asset; and the land was worth more than the
investment. All of the funds disbursed by the City were for pre-development costs. The City’s funds gave ELHCDC the muscle to obtain additional financing.

We were aware that ELHCDC was going through the long City’s Major Use Special Permit, MUSP, process which usually takes one year. The MUSP process includes five or six public hearings, appearances by architects, and review of cost, surveys, reports, legal issues, etc. to determine the feasibility of the project. ELHCDC obtained the MUSP on July 2006. A $372,000 documented disbursement is definitely not unreasonable for a 23 million dollar MUSP approved project.

Page 2, Third paragraph
De-Obligation

Funding for a project cannot be de-obligated when monies have already been paid out. ELHCDC was granted a 6 month extension to complete the project at the November 17, 2006 HCLC meeting. The HCLC resolution further stated that if ELHCDC needs an extension at the end of the 6 month period, it can be addressed again. Copy attached.

The City negotiated de-obligating the balance of the allocated funds for the project for the time being, because the ELHCDC project is going to take a long time to develop and the City could fund another ready-to-start-construction project. The City committed to having the funds available when the project is ready for development.

The last sentence in the paragraph states that you were recently informed by CD staff that the project will be de-obligated in February 2007. I do not know who provided the erroneous information to you. but, please refer to the HCLC verbatim minutes of November.

Enclosures: Minutes of the HCLC Memo from CD to HCLC

Cc: Victor Igwe, Auditor General
TO:       Lewis Blake,  
          Senior Staff Auditor                    DATE:       May 9, 2007

FROM:      Barbara Gonzalez, Director  
            Community Development

SUBJECT:   Response to MOU 03222007-Latin Q

ATTACHED please find CD’s response to your Memorandum of Understanding (MOU) dated March 22, 2007.

If you have additional questions, please do not hesitate to contact me.

Cc:       Larry Spring, CFO  
            Victor Igwe, Auditor General  
            Pedro Mirones, Assistant Director
In connection with the above ongoing audit for the period January 2000 through August 2006, please confirm our understanding of observations described below by March 27, 2007.

City Commission Resolution No. 00-867 granted authority to the City Manager, through the Housing and Commercial Loan Committee (HCLC), to approve/disapprove specific housing loans, including Community Development Block Grant (CDBG) loans. Accordingly, at its September 17, 2004 meeting, the HCLC approved the award of $1.8 million of CDBG funds to Latin Q Tower LLC (Latin Q Tower) for construction costs associated with the development of seventy-two (72) residential condo units of which sixty (60) units were to be set-aside as CDBG-assisted homeownership units. At the November 5, 2004 HCLC meeting, Community Development department (CD) staff recommended that the use of the $1.8 million of CDBG funds be modified to include acquisition and soft costs in addition to construction costs; however, the use of the funds for soft costs was limited to 5% (or $90,000) of the $1.8 million loan amount.

**QUESTIONABLE COSTS**

**Observation #1**

Total soft cost disbursements for the Latin Q Tower project exceeded the $90,000 limit imposed at the 11/5/04 HCLC meeting. Based on our review of the Latin Q Tower disbursement requests $507,709 (See Schedule Below) was disbursed for soft costs. However, this amount exceeded the $90,000 limit by $417,709 (or 464% of the $90,000 limit).
<table>
<thead>
<tr>
<th>Item/Draw #</th>
<th>Seller/Vendor</th>
<th>Invoice/Chk Date</th>
<th>Invoice #/Chk #</th>
<th>Disbursed Amount</th>
<th>Acquisition/Hard/Sol Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Manual Tapia-Ruano</td>
<td>1/6/05</td>
<td>1017</td>
<td>25,000.00</td>
<td>soft</td>
</tr>
<tr>
<td>1</td>
<td>Manual Tapia-Ruano</td>
<td>2/15/05</td>
<td>103</td>
<td>35,000.00</td>
<td>soft</td>
</tr>
<tr>
<td>1</td>
<td>Western World</td>
<td>10/20/04</td>
<td>2905</td>
<td>931.46</td>
<td>soft</td>
</tr>
<tr>
<td>1</td>
<td>Miami-Dade County</td>
<td>2/15/05</td>
<td>101</td>
<td>11,777.45</td>
<td>soft</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>72,708.91</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Manual Tapia-Ruano</td>
<td>2/25/05</td>
<td>104</td>
<td>35,000.00</td>
<td>soft</td>
</tr>
<tr>
<td>2</td>
<td>City of Miami</td>
<td>2/7/05</td>
<td>0091</td>
<td>2,763.00</td>
<td>soft</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>37,763.00</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Arch. Design, Civil Eng</td>
<td>3/1/05</td>
<td>Undocumented</td>
<td>145,000.00</td>
<td>soft</td>
</tr>
<tr>
<td>3</td>
<td>Impacts &amp; School Fees</td>
<td>3/1/05</td>
<td>Undocumented</td>
<td>135,000.00</td>
<td>soft</td>
</tr>
<tr>
<td>3</td>
<td>Permits/Fees</td>
<td>3/1/05</td>
<td>Undocumented</td>
<td>27,237.00</td>
<td>soft</td>
</tr>
<tr>
<td>3</td>
<td>Insurance</td>
<td>3/1/05</td>
<td>Undocumented</td>
<td>90,000.00</td>
<td>soft</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>397,237.00</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td><strong>507,708.91</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Observation #2**

Pursuant to CD Finance Unit policy, reimbursement requests for soft costs must be initially supported by copies of checks and/or invoices; however, copies of cancelled checks must be submitted within 60 days of submitting the reimbursement request.

There was no evidence that four (4) of the invoices relating to Draw #3, totaling $397,237 (or 78.2%) of the total soft cost disbursements of $507,709 were supported by the required documentation and cancelled checks. See the Schedule Above. According to a handwritten notation on the "Reimbursement Request" for Draw #3 dated 1/24/05 (See Attached), "BGR [the CD Director] approved the disbursement to be processed without back-up documentation as of 3/1/05."

**Observation #3**
According to Latin Q Tower's project proposal as presented by CD staff to the HCLC at its 9/17/04 meeting, the entire $1.8 million of CDBG funds were to be used for "construction costs." Later, at the 11/5/04 HCLC meeting, the use of the $1.8 million of CDBG funds was modified to include acquisition and soft costs in addition to construction costs; with a 5% (or $90,000) limit on the use of the funds for soft costs.

In concurrence with the original use of the funds for construction costs, the initial Cost Allocation Report (budget) for the project listed the entire $1.8 million of CDBG funds under the "Hard Costs - Construction" line item of the report (See Attached "Cost Allocation Report"). In addition to the $1.8 million of CDBG funds provided by the City, the same budget listed another $1.8 million, to be funded by a private lender ("Bank"), for "Land Acquisition." According to the closing statement and Warranty Deed for the project site, Latin Q Tower purchased the land and recorded title to the property on 9/29/04 (See Attached "Warranty Deed").

As indicated on spreadsheets prepared by CD to monitor the drawdown of funds in accordance with the project budget, the original budget listing the entire $1.8 million for Hard Costs was modified to include an allocation of $775,500 for Soft Costs (See Observation #1 above). Our review of the 3/1/05 draw spreadsheet, prepared by CD, (See Attached) covering Draw #1, Draw #2, and Draw #3 disclosed the following:

- Draw #1 was dated 2/16/05, Draw #2 was dated 2/28/05, and Draw #3 was dated 2/28/05 as well.
- Budget modifications were performed to allocate an additional $81,712 from Hard Costs to Soft Costs thus creating an adjusted budget of $942,788 for Hard Costs and $857,212 for Soft Costs.
- All 3 Draws were for expenditures related to soft costs totaling $658,205. As a result, $199,007 remained for Soft Costs and the entire $942,788 remained available for Hard Costs.

Our review of the 9/27/05 draw spreadsheet, prepared by CD, (See Attached) covering Draw #4 disclosed the following:

- A budget modification was performed to allocate $832,212 from soft costs back to hard costs thereby resulting in an adjusted budget of $1,775,000 for Hard Costs and $15,000 for Soft Costs. We noted that this budget modification was performed despite the fact that the 3/1/05 draw spreadsheet indicated that $658,205 of soft costs had already been expended and only $199,007 remained. Therefore the budget modification could only have allocated the remaining $199,007 of unexpended funds from soft costs to hard costs.
- There is a discrepancy between the categorization of expenses on the 3/1/05 spreadsheet and the 9/27/05 spreadsheet. The $658,205 previously listed as soft costs expenditures on the 3/1/05 spreadsheet were aggregated and listed as hard costs on the 9/27/05 spreadsheet.
- $1,116,795 listed as "Hard Costs - Construction" was disbursed for Draw #4 on 9/27/05. Upon further review of the support for Draw #4 we noted the following:
• The Reimbursement Request, dated 9/26/05 and signed by Salomon Yuken for Latin Q Tower, LLC, was for "$1,122,507 for funds expended for the months of January 05 - September 05" (See Attached); however, there is no evidence to support that the $1.12 million was expended during said time period. In fact, the support attached to the $1.12 million request included a closing statement for the purchase of the project site that had already occurred one (1) year earlier on 9/29/04 (See Attached "Warranty Deed"). Furthermore, as mentioned above, the original budget indicated that the site purchase was already funded with $1.8 million from private sources. Lastly, there was no evidence to support that the funds, which were disbursed in September 2005, were used to pay downpay off any existing debt related to the purchase of the site, which occurred in November 2004, including the $1.8 million of private financing described above.

• The HCLC approval of the use of funds to include acquisition and soft costs, in addition to construction costs, did not occur until 11/5/04 subsequent to the site purchase date of 9/29/04. As such, the disbursement of funds for this site acquisition was not authorized by the HCLC due to the fact that the site was actually purchased prior to HCLC approval of such expenditures.

• A CD "Line Item Change Request" form signed by Salomon Yuken on 9/26/05 and approved by Barbara Rodriguez, Director of CD, requested a change in the budget line items to reduce Construction and Soft Costs by $1,785,000 and increase the Land Acquisition line item by $1,765,000. However, as previously mentioned above, $658,205 had already been drawn down for soft costs, as such the budget could not have been adjusted to fund land acquisition for that amount.

Observation #4

According to the IDIS report for Latin Q Tower, $1.78 million (or 99%) of the $1.8 million loan amount has been disbursed. The original budget for the project indicated that the funds were to be used for construction costs. Even when the HCLC approved the use of funds to include acquisition and soft costs, the committee placed a 5% (or 90,000) limit on the use of funds for soft costs. However, upon a visit to the project site, there is no evidence indicating that the project has been substantially (or at least 50%) completed (See attached photograph). As such, less than 50% of the project construction has been completed even though approximately 100% of the CDBG funding was disbursed.

Please provide any additional records and/or information that would clarify the observations noted above by March 27, 2007.
**CD Response**
The Auditor addresses a hand written comment made by the Department's Contract Compliance Manager at the time, on the City's Reimbursement Request form for Draw #3 dated March 1, 2005. Exhibit 1

A similar note was made by the same writer on the same day in the City approved budget modification for the same draw which was overlooked or excluded in the Auditor’s memorandum. Exhibit 2

In both notes the writer states that the disbursement be made at the request of the Department Director without documentation. The documentation referenced in these written notes had to do with the recording of the closing documents associated with the loan being made to the Developer. The City at the time had an executed loan agreement with the Developer dated February 3rd 2005. The only thing pending was the recording of the City’s Mortgage. The Department Director acting on her managerial discretion knowing that the loan documents were being finalized for recording, instructed staff to proceed with the payment, further instructing staff that the loan documents be provided within 60 days. The payment for draws 2 and 3 were made on March 4th, 2005, six days later, the City’s mortgage was recorded on March 10th, 2005. Exhibit 3

During August of 2005, the Developer informed the City that the commencement of the projects construction would be delayed due to an FPL easement located on the west side of the site containing FPL aerial lines that were powering the surrounding neighbors. It was estimated that the relocation of these aerial lines would require re-engineering by FPL to find suitable relocation. The estimated time for the relocation of the aerial lines would take from 6 to 8 months. This unexpected delay would dramatically increase the overhead cost of the project with respect to the additional $11,000 per month of interest cost in connection with the land loan as well as other cost associated with the delay. Attached Exhibit 4 is the relocation agreement, as well as the invoices related to additional cost incurred by the developer as a result of the FPL aerial line relocation.

The Developer purchased the subject site on September of 2004 for $2.4 million with assistance of a $1.8 million dollar land loan from Colonial Bank. The Developer invested $600,000, Exhibit 5, in cash towards the purchase of the land, leaving him with little cash flow to absorb the unexpected costs as a result of the FPL delays. The City agreed that in the best interest of the project and the City, it would allow a budget modification that would transfer the entire City’s funding towards the land, as originally anticipated and approved by the HCLC at its November 5th, 2004 meeting in order to reduce the projects overhead costs.
The transfer of the City's funding to land acquisition was supported by the fact that the City's loan in the amount of $1.8 million dollars represents 75% of the $2.4 million dollar land cost while the City was getting 60 affordable units from the 72 unit project, which equates to 83% of the units. In addition, the City's land loan investment of $1.8 million dollars equates to a conservative 13% of loan versus the total project cost of $14 million.

On 9/25/05, the City approved a line item change re-classifying all project funding from the hard cost and soft cost line items to the land acquisition line item.

As of the date of this response, the CDBG funds provided to Latin Q. Tower, LLC has been drawn down by the amount of $1,781,288, or 98.1% of the total of $1.8 million. The Auditors observation that upon their visit to the site, (time and date undisclosed) there was no evidence that the project's construction was substantially completed or at least 50% completed, although approximately 100% of the City's CDBG funding was disbursed is irrelevant.

The City's CDBG funding was provided to the Latin Q. Tower development for land acquisition, it is clear that the City has disbursed the CDBG funds in accordance to the amended approved contract budget. The statement made by the Auditor regarding the progress of construction observed in his/her site visit in connection percentage of construction completed is immaterial due to the fact that when providing financing for land the loan to cost/value ratios in relations with the projects development would initially be high but steadily decrease as the projects development moves forward.

It is respectfully suggests that Auditor re-visit the site so that he/she can witness the projects current construction progress. Exhibit 6. The Auditors observation of the projects commencement during his/her visit failed to consider the over 12 month of delays encountered by the Developer as a result of the FPL issues as well as delays caused in obtaining a building permit.
To: Lewis R. Blake, Senior Staff Auditor  
Office of the Independent Auditor General

From: Lisa S. Mazique, Director  
Department of Economic Development

RE: Audit of Affordable Housing Trust Fund

Our office is in receipt of your communication dated March 13, 2007 detailing audit observations of the Affordable Housing Trust Fund (AHTF) and therein request:

1. Additional public records and/or written justifications as to how said observations comply with the City's Five Year Consolidated Plan, Article 9, Section 914 of the City’s Zoning Ordinance and the City Commission Ordinance No. 12436;
2. Discussion of the methodology, if any, used to advertise the sale of the 102 affordable units to qualify the purchasers;
3. Determination as to whether the affordable units were to be the primary homes of the purchasers including those with mailing addresses located outside Miami-Dade County.

Upon thorough review of the observations submitted, we respectfully submit the following:

1. Our office is pleased to have reaffirmed that all 102 of the residential condominium units designated as affordable were sold at or below 90% of the August 2003 median sales price for Miami. Such verification demonstrates that resources committed to the development were properly disbursed and fulfilled ordinance 12436 put forth by the Miami Commission;

2. With respect to Article 9, Section 914 of the City’s Zoning Ordinance (CZO), the subject development (234 Tower I.C. Condominium Project) is simply a beneficiary of the CZO. The Article sets forth the calculation of costs to be paid by developers desirous of additional density in qualifying areas, payable to and for the AHTF. Hence, the subject project award of $1,000,000 is derived from payments to the AHTF and bears no reciprocal relationship;

3. Compliance with the City of Miami’s Five Year Consolidated Plan, in our opinion has been achieved. Beyond federal dollars committed to the City of Miami for affordable housing, utilization of its non-federal and unrestricted dollars allowed for a significant number of residential units be offered at or below the 90% of median sales prices for a minimal investment.
Calculations:

Total number of units developed: 196
Total number of units affordable: 102
Percentage affordable: 52%

Total amount invested by city: $1,000,000
Total number of units subsidized: 102
Total subsidy per unit: $9,803

Total number of reported City employees participating in affordable units: 7
Percentage of total City employees participating in affordable units: .068%

4. Methodology to advertise unit sales were neither legislated or contractual requirements;
5. Residency/occupancy/eligibility requirements were neither legislated or contractual requirements;

Opportunities

Significant attention paid to the residency, resale and number of City employee-purchasers noted with in the audit clearly represent a tremendous opportunity for strengthened policy recommendations for the Affordable Housing Trust Fund:

1. Higher inclusion goal for municipal employees in AHTF subsidized developments to serve as an attraction and retention tool;
2. First-time homebuyer or resale home provisions required and monitored for AHTF subsidized developments;
3. Second Mortgages/Security instruments to be recorded and recapture sales proceeds occurring prior to an established period of affordability;
4. Community Land Trusts to create a “forever affordable” environment and only allow for incremental equity to be obtainable over time for improvements only;
5. The subject development represents new construction activity. However current market dynamics suggest providing subsidy assistance to completed or near completed housing could best address immediate need to match qualified vacancies and buyers.

6. Eligibility guidelines should remain flexible to allow for workforce housing.

"Escalating housing prices and the affects of natural disasters and market forces have unveiled a new and emerging problem in Florida - lack of Workforce Housing. Defined as housing that is attainable by those professionals who earn 80-140% of the area median income - typically teachers, police officers, nurses and other low-paid professionals - providing more workforce housing has become one of the top economic development issue facing the State of Florida. Local governments throughout Florida are facing alarming shortages of affordably priced housing, impacting retention of essential personnel and adversely affecting healthy, balanced and sustainable economic development." US Dept of Housing and Urban Development, Jan 22, 2007

7. Leveraging the AHT with an Employer Assisted Housing Program would allow our local employers (hospitals, universities, retailers, hotels, academic and financial institutions et. al.) to offer matching funds to retain and recruit employees/working families in the urban core and enhance community economic stability.
The Affordable Housing Trust Fund has enjoyed notable modifications and its uses have evolved since the inception of the subject development in 2003:

1. The Miami Commission has authorized the creation of “The Employees’ Workforce Housing Downpayment Assistance Program”, See Resolution R-06-0213;

2. The Miami Commission has authorized relocation and/or housing repair assistance for City of Miami residents whose housing was impacted by hurricane Wilma; See Resolution R-05-0700;

3. The Community Development Department is currently administering the Fund and developing detailed guidelines for eligibility and implementation to best protect against market pressures and unforeseen loopholes in the award process.

Cc: Larry Spring, Chief Financial Officer  
Victor Igwe, Auditor General  
Lori Billberry, Director-Public Facilities  
Barbara Gomez, Director-Community Development  
Pedro Mirones, Asst. Director-Community Development
TO: Lewis Blake, Senior Staff Auditor
FROM: Barbara Gomez, Director, Community Development

DATE: April 3, 2007
SUBJECT: Response to MOU03222007-AHTF - Miami Recovers
REFERENCES: 
ENCLOSURES:

Attached please find CD’s response to your Memorandum of Understanding (MOU) dated March 22, 2007.

If you have additional questions, please do not hesitate to contact me.

Cc: Larry Spring, CFO  
    Victor Igwe, Auditor General  
    Pedro Mirones, Assistant Director
In connection with the above ongoing audit for the fiscal years 2000 through 2006 and selected transactions prior and subsequent to this period, please confirm our understanding of the observations described below by March 27, 2007.

The Affordable Housing Trust (AHTF) is primarily funded by revenue generated from development bonuses. Article 9, Section 914 of the City’s Zoning Ordinance provides that up to twenty-five (25) percent in square footage may be approved for parcels located within certain zoning districts. For every additional square foot of buildable space and/or every additional square foot of additional dwelling units, approved as a development bonus, the user shall make a nonrefundable developer contribution of $12.40 to the City’s Affordable Housing Trust Fund. For every additional square foot of parking space approved as a development bonus, the user shall make a nonrefundable developer contribution of $3.92 to the City’s Affordable Housing Trust Fund. The fund balance in the AHTF as of September 30, 2006 totaled approximately $7 million.

City Commission Resolution No. 05-0700 authorized the transfer of $2 million from the AHTF to a special revenue fund for the purpose of providing housing repair assistance for City residents whose primary residence were impacted by 2005 hurricanes. Said Resolution as amended by Resolution No. 06-0519, provided the “Miami Recovers Program Guidelines” whereby qualifying residents will be eligible to receive financial assistance in the form of a forgivable loan (after an affordability period of 10 years) pursuant to the following terms:

- The maximum amount of assistance for homeowners will be $35,000 per unit.
- The scope of work for homeowners assistance will include damages to their homes (roof, windows, drywall, etc.).
- The assessed value of the unit/property will not exceed $300,000 per unit.
- The assistance will also be provided to multi-family buildings/duplexes that rent to low to moderate income tenants.
- The property owners are required to provide proof of insurance (if the property is insured) or if the property is not insured, owner’s signed affidavit of no insurance. For property owners with insurance the following requirements apply:
  - A written document from the insurer stating how much the insurance will cover toward the work and how much of a deductible the property owner will need to pay is required to be submitted.
  - Insurance coverage must first be utilized towards the cost of repairs; subsequently City assistance will be utilized to cover the deductible.
- The homeowners that receive insurance payment or FEMA reimbursement for items covered under Miami Recovers repairs will be required to repay the City of Miami the portion of the payment that pertain to those items.
- All applicants must prove that they own/reside in the said property and also provide evidence of homestead exemption.

The City of Miami Department of Community Development (CD), which implements the hurricane damages repair program, issued a written policy which supplemented “Exhibit A” of Resolution No. 06-0519. The CD policy was written under the title “Miami Recovers Disaster Assistance Program”. As of October 23, 2006, the
outstanding loan balance under the Miami Recovers program was approximately $1.35 million relative to 38 accounts. Our review of all 38 accounts disclosed the following:

MISSING INSURANCE REPORTS FOR OWNERS WITH INSURANCE

Pursuant to City Resolution No. 06-05 19, "Homeowners that receive insurance payment or FEMA reimbursement for items covered under Miami Recovers Program will be required to repay the City the portion of the payment that pertains to those items." Exhibit A of the resolution, which lists the required procedures for implementing the program states that "a written document from the insurer stating how much the insurance will cover toward work and how much of a deductible the homeowner will need to pay is required to be submitted.... if the applicant's home is insured, insurance coverage must be first utilized towards the cost of the repairs; subsequently, City assistance will be utilized to cover the deductible or any repairs not covered by the insurance."

Our audit disclosed that 25 (or 65.78%) of the 38 property owners indicated on their Miami Recovers application that their properties were insured. In accordance with Resolution No. 06-0519, assistance from the City should have been limited only to the insurance deductible or any repairs not covered by the insurance. However, there was no evidence in the file stating how much the insurance would cover towards the work and how much deductible the homeowner would need to pay. Meanwhile, a total of $962,394.23 was disbursed to the 25 property owners. See attached "Insurance Analysis".

The remaining 13 owners indicated on their Miami Recovers application that they had no homeowner's insurance policy; however, there is evidence of a current mortgage on at least 4 of the 13 properties. Financial institutions that underwrite home mortgages require homeowner's insurance policies as a means of protecting their financial investment. According to the Miami-Dade County property records, the total market value of the 13 properties is $2,333,379. It is improbable that such a substantial investment would not be covered against potential losses for hurricane, fire, flooding and other catastrophes. A total of $389,413 of Miami Recovers funds was disbursed to these 13 property owners.

LOANS OVER $35,000 PER UNIT LIMIT

Pursuant to City Resolution 06-0519, "the maximum amount of assistance will be $35,000 per unit." In addition, the Miami Recovers program guidelines, as described in Exhibit "A" states that: "Assistance is extended one time per address." However, our audit disclosed that 8 (or 21%) of the 38 property owners received assistance in excess of $35,000 per unit/property. (See "Loan Overage Analysis" attached). The total overage was $282,248.59 (or 20.08% of the $1,351,807 total loan amount for the entire population) and the average overage was $35,281.07 per property. The percentage
overage difference ranged from 0.57% to 457.87% with the average overage percentage per property being 108.09%.

**QUESTIONABLE COSTS**

Pursuant to City Resolution No. 06-0519, the scope of work covered under the Miami Recovers program included "damages to ... homes (roof, windows, drywall, etc.)" caused by hurricanes; however, our review of the 38 owner accounts disclosed that twenty-six (26) owners received assistance for items that appear to be unrelated to hurricane damages. (See "Questionable Cost Analysis" attached). There was no evidence of photographs supporting that the items were damaged by hurricane in order to effect hurricane-related repairs. The total amount of the questionable costs was $225,025 (or 16.64% of the $1,351,807 total loan amount) and the average amount of questionable costs per recipient was $8,655.

**LACK OF EVIDENCE OF HOMESTEAD EXEMPTION**

Pursuant to Exhibit "A" of City Commission Resolution No. 06-0519, applicants must prove that they own/reside in the said property and also provide evidence of homestead exemption. However, our search of the Miami-Dade County property records disclosed that 1 (or 2.63%) of the 38 recipients tested did not have the required homestead exemption. The amount of the Miami Recovers loan disbursed to said recipient was $30,426.25. We noted that the name of the property owner that did not have the required homestead exemption appears to match the name of another property owner located in Miami-Dade County that did receive the homestead exemption. A $25,000 homestead exemption is allowed for the primary residence of each tax payer while any other residences owned by the tax payer will not receive the homestead exemption.

**PROJECTS WITH LESS THAN THREE (3) REQUIRED BIDS**

Pursuant to the CD "Miami Recovers Disaster Assistance Program" policy procedures, "three (3) bids will be required and the homeowner will be required to select one (1) bid. In an emergency, only 1 bid will be required. However, the City Inspector will ensure that the bid is reasonable and within 5% of the office estimate"; however, our testing of all 38 accounts disclosed that fourteen (14) properties examined (or 35.9%) had less than the 3 required bids (See attached "Three Bids Analysis"). Of this number, there were 3 properties with only 1 bid and there was no evidence of an emergency situation as required by the resolution. The remaining eleven (11) properties had two (2) bids.
Observation

Missing Insurance Reports for Owners with Insurance

"Our audit disclosed that 25 (or 65.78%) of the 38 property owners indicated on their Miami Recovers application that their properties were insured. In accordance with Resolution No. 06-0519, assistance from the City should have been limited only to the insurance deductible or any repairs not covered by the insurance. However, there was no evidence in the file stating how much the insurance would cover towards the work and how much deductible the homeowner would need to pay." "See attached "Insurance Analysis".""

CD Response

The Miami Recovers program was designed to assist City of Miami residents on an emergency basis, who had sustained damages as a result of Hurricane Wilma. The Miami Recovers Guidelines adopted through Resolution No. 06-0519 do not require the assisted homeowner/renter or owners of multifamily building to have property insurance. The guidelines state that "Homeowners that receive insurance payments or FEMA reimbursements for items covered under Miami Recovers repairs will be required to repay the City of Miami the portion of the payment that pertains to those items" (See page 3 of the Miami Recovers Guidelines, "Type of Assistance"). Exhibit 1. A homeowner is required to disclose to the City if and when he or she does obtain any information from an insurance company in connection with an approved insurance claim. The guidelines do not require that a claim be placed or requested.

All of the property owners receiving assistance through the Miami Recovers Program have executed a Mortgage that has been recorded in the public records of Miami-Dade County. In the event that any property owner is to receive an insurance claim, the City, by virtue of this mortgage would be joined as a payee on the insurance claim check. At which point the City would retain any funds that would partially or fully repay the debt, in compliance with the program guidelines.

Observation

Loans over $35,000 per Unit Limit

"Pursuant to City Resolution 06-0519, "the maximum amount of assistance will be $35,000 per unit." In addition, the Miami Recovers program guidelines, as described in Exhibit "A" states that: "Assistance is extended one time per address." However, our audit disclosed that 8 (or 21%) of the 38 property owners received assistance in excess of $35,000 per unit/property. (See "Loan Overage Analysis" attached)."
CD Response

The “Loan Overage Analysis” prepared by the auditor takes into review 8 properties assisted. Although in each of the cases the amount of assistance exceeds $35,000, the auditor failed to take into consideration that the program guidelines state only that “Homeowner's assistance provides the homeowner with financial assistance of up to $35,000/unit” (See Pg. 3 of Miami Recovers Guidelines, “Type of Assistance”). The description included by the auditor above that states that the Guidelines provide for assistance that does not exceed $35,000/unit is a misstatement on the auditor’s part. Furthermore, the auditor failed to take into consideration that 7 of the 8 properties tested were multiple unit structures, resulting in the amount per unit to be below the maximum permissible by the program. In only 1 of the 8 properties tested the property owner received a loan for a 1 unit property in the amount of $35,200.50, resulting in a $200.50 overage. The minimal amount approved, benefited the City, as the additional funds were utilized by the borrower to provide the City with a Title Insurance Policy assuring the City of good and sound title to the property. The chart below demonstrates the type of properties which were included in the auditors “Loan Overage Analysis”. Furthermore, a description of each property obtained from the Miami-Dade County Property Appraisers Office is herein provided as Exhibit 2.

<table>
<thead>
<tr>
<th>RECIPIENT</th>
<th>ADDRESS</th>
<th>UNITS</th>
<th>LOAN AMOUNT</th>
<th>PROGRAM LIMIT</th>
<th>MAXIMUM ALLOWABLE</th>
<th>OVERAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alvarez, Norma</td>
<td>967 SW 10 ST</td>
<td>2</td>
<td>$52,432.00</td>
<td>$35,000/UNIT</td>
<td>$70,000.00</td>
<td>NO</td>
</tr>
<tr>
<td>Rivero, Irela</td>
<td>631 SW 33 AVE</td>
<td>2</td>
<td>$54,845.84</td>
<td>$35,000/UNIT</td>
<td>$70,000.00</td>
<td>NO</td>
</tr>
<tr>
<td>Cesar, Armando &amp; Aidae</td>
<td>831 SW 9 CT</td>
<td>2</td>
<td>$52,288.70</td>
<td>$35,000/UNIT</td>
<td>$70,000.00</td>
<td>NO</td>
</tr>
<tr>
<td>Perene, Maria</td>
<td>1401 SW 18</td>
<td>2</td>
<td>$60,626.83</td>
<td>$35,000/UNIT</td>
<td>$70,000.00</td>
<td>NO</td>
</tr>
<tr>
<td>Torres, Humberto</td>
<td>481 NW 25 AVE</td>
<td>2</td>
<td>$59,652.75</td>
<td>$35,000/UNIT</td>
<td>$70,000.00</td>
<td>NO</td>
</tr>
<tr>
<td>Tinianov, Robert</td>
<td>780 NE 69 St, 1201</td>
<td>1</td>
<td>$35,200.50</td>
<td>$35,000/UNIT</td>
<td>$35,000.00</td>
<td>$200.50</td>
</tr>
<tr>
<td>Rizo Almirola, Maria</td>
<td>1424 SW 21 ST</td>
<td>2</td>
<td>$51,946.97</td>
<td>$35,000/UNIT</td>
<td>$70,000.00</td>
<td>NO</td>
</tr>
<tr>
<td>Carmenchu Investments</td>
<td>1911NW</td>
<td>8</td>
<td>$195,255.00</td>
<td>$35,000/UNIT</td>
<td>$280,000.00</td>
<td>NO</td>
</tr>
</tbody>
</table>
Observation

Questionable Costs

"Pursuant to City Resolution No. 06-0519, the scope of work covered under the Miami Recoveries program included "damages to homes (roof, windows, drywall, etc.)" caused by hurricanes; however, our review of the 38 owner accounts disclosed that twenty-six (26) owners received assistance for items that appear to be unrelated to hurricane damages. (See "Questionable Cost Analysis" attached). There was no evidence of photographs supporting that the items were damaged by hurricane in order to affect hurricane-related repairs."

CD Response

The Miami Recoveries Program provides assistance to homeowners that sustained damages to their homes in connection with Hurricane Wilma. The program guidelines state: "Scope of work for homeowners' assistance will include any damages caused by the Hurricane (roof, ceilings, windows, drywall, etc.). It would be rather lengthy to address in the guidelines all of the possible eligible items that could be affected by the hurricane, which is why the examples are followed by "etc".

Each of the 26 files sampled by the auditor contained support for all of the items replaced and paid. These costs were supported by: 1. Contractor bid proposals, 2. Approval and inspection by the City of Miami Inspector and 3. Inspection print-out from the City of Miami Building Department. The auditor's comment that there are no pictures in the files is in contradiction to the program guidelines which does not require pictures.

Although the program guidelines do not require pictures, CD is herein providing Exhibit 3, which contains pictures taken by CD's inspectors of the damage caused by the hurricane to the units questioned by the auditor. Furthermore, a copy of the City's Building Department printout which demonstrates that the questioned work/cost were in fact completed. The auditor, in many of the tested units, questions the need for the installation of storm shutters. Shutters were installed as per building code. When windows are replaced, building codes require that either impact window are installed or non-impact windows with hurricane shutters.
Observation

Lack of Evidence of Homestead Exemption

"Pursuant to Exhibit "A" of City Commission Resolution No. 06-0519, applicants must prove that they own/reside in the said property and also provide evidence of homestead exemption. However, our search of the Miami-Dade County property records disclosed that 1 (or 2.63%) of the 38 recipients tested did not have the required homestead exemption. The amount of the Miami Recovers loan disbursed to said recipient was $30,426.25. We noted that the name of the property owner that did not have the required homestead exemption appears to match the name of another property owner located in Miami-Dade County that did receive the homestead exemption. A $25,000 homestead exemption is allowed for the primary residence of each tax payer while any other residences owned by the tax payer will not receive the homestead exemption."

CD Response

CD does not disagree that the 1 case mentioned above had not applied for homestead exemption, furthermore CD will not argue that there might be another person of equal name who has applied for homestead exemption and lives in a property located in Miami-Dade County, however, in evaluating the eligibility of the property in question the City was provided with sufficient information that supported this family's ownership, and occupancy of the property. If the auditor had reviewed the file closer he/she would have found the families' income tax returns, bank statements, driver's license and other required documentation that all indicate residency and occupancy in the subject property. Exhibit 4

Observation

Projects with Less than Three (3) Required

"Pursuant to the CD "Miami Recovers Disaster Assistance Program" policy procedures, three (3) bids will be required and the homeowner will be required to select one (1) bid. In an emergency, only 1 bid will be required. However, the City Inspector will ensure that the bid is reasonable and within 5% of the office estimate; however, our testing of all 38 accounts disclosed that fourteen (14) properties examined (or 35.9%) had less than the 3 required bids (See attached "Three Bids Analysis"). Of this number, there were 3 properties with only 1 bid and there was no evidence of an emergency situation as required by the resolution. The remaining eleven (11) properties had two (2) bids."
CD Response

The Miami Recovers Guidelines do not require that the property owner obtain three bids. CD is not aware of where the Miami Recovers guidelines make reference to the statement made by the auditor above.

Although the Miami Recovers Guidelines do not require three (3) bids as stated by the auditor, CD does support an open and competitive bidding process. This practice extends opportunity to contractors as well as provides the owner with a better understanding of the cost to be incurred.

The Miami Recovers Program was designed to help victims of Hurricane Wilma. All participants suffered damages that created unsafe and unstable living conditions resulting in an emergency situation. Damaged roofs and broken windows for example create water penetration. This situation can and will result in rapid mold growth creating health issues as well as create a fire hazard as a result of electrical issues.

The City considers that 2 bids do provide a competitive and informative environment for the owners. Only 2 of the 11 cases mentioned by the auditors received less than two bids, which was due to unresponsiveness by contractors. During this time there was not an abundance of contractors willing or able to meet the demand of the program; however, of the 38 program participants only 2 homeowners received less than 2 bids. Furthermore, these two homeowners did have the benefit of the City's in-house estimate which provided an additional measure of the cost of repairs.
TO: Lewis Blake,  
Senior Staff Auditor

DATE: May 9, 2007

SUBJECT: Response to MOU4062007-FEMAMiaReco

FROM: Barbara Gavney, Deputy Director  
Community Development

Attached please find CD’s response to your Memorandum of Understanding (MOU) dated April 06, 2007.

If you have additional questions, please do not hesitate to contact me.

Cc: Larry Spring, CFO  
    Victor Igwe, Auditor General  
    Pedro Mirones, Assistant Director
In connection with the above ongoing audit for the fiscal years 2000 through 2006 and selected transactions prior and subsequent to this period, please confirm our understanding of the observations described below by April 11, 2007.

Pursuant to City Resolution No. 06-0519, "Homeowners that receive insurance payment or FEMA reimbursement for items covered under the Miami Recovers Program will be required to repay the City the portion of the payment that pertains to those items." Exhibit A of the resolution, which lists the required procedures for implementing the program states that "A written document from the insurer stating how much the insurance will cover toward work and how much of a deductible the homeowner will need to pay is required to be submitted. If the applicant's home is insured, insurance coverage must be first utilized towards the cost of the repairs; subsequently, City assistance will be utilized to cover the deductible or any repairs not covered by the insurance."

The Community Development department (CD) administers the Miami Recovers hurricane damage repair program. As of October 23, 2006, the outstanding loan balance under the Miami Recovers program was approximately $1.35 million relative to 38 accounts. Our audit of all 38 accounts disclosed the following:

**QUESTIONABLE DISBURSEMENTS OF MIAMI RECOVERS PROGRAM FUNDS**

**Observation #1**

Our testing disclosed that two months after Hurricane Wilma hit South Florida in October 2005, the owner of 5271 SW 3rd Street (Jose Rivas, et al) made an insurance claim for hurricane damages and received an estimate of $3,052.30. There is also evidence that the owner subsequently received three insurance claim checks dated 12/15/05 totaling $2,052.30 from the insurance provider. Under Miami Recovers Program guidelines "City assistance will be utilized to cover the deductible or any repairs not covered by the insurance." As such, based on the damages estimate and subsequent insurance payments received by the property owner, said owner was only eligible to receive $1,000 ($3,052 damages estimate - $2,052 insurance payment = $1,000 deductible/amount not covered by insurance) of Miami Recovers funding. However, between July 3 and August 22, 2006 (approximately 6 months after receiving the insurance claim checks) the owner received $25,850 (or $20,850 in excess of the eligible amount) of Miami Recovers funding. It should also be noted that the Miami Recovers payments received were for items which were unrelated to damages sustained during the hurricane:

- Storm Shutters for $3,600
- Windows for $7,530
- Door and frame for $600
- Stucco & concrete structure for $5,200
- Replace drywall & insulation in family room for $3,200
- Retro-fit Security Bars for $2,200
- Electric for family room ceiling for $750
• Contractor's fee for $5,770

Observation #2

Our testing disclosed that 5 months after Hurricane Wilma hit South Florida in October 2005, the owner of 1424 SW 21st Street (Maria Rizo) made an insurance claim for hurricane damages and received a letter dated February 3, 2006 from the insurance provider stating that "the amount of covered damages do not exceed your Hurricane Deductible of $4,294.00. Therefore, we are unable to make payment to you for this loss? Under-Miami Recovers Program guidelines "City-assistance will be utilized to cover the deductible or any repairs not covered by the insurance." As such based on the fact that the property owner's damages did not exceed $4,294, said property owner was only eligible to receive the amount of damages. However, between August 31 and October 9, 2006 (approximately 7 months after receiving said letter) the owner received $50,005 (or $45,766 in excess of the maximum eligible amount) of Miami Recovers funding. It should also be noted that the Miami Recovers payments received were for items which were unrelated to damages sustained during the hurricane:

• Storm Shutters for $6,500
• Window to allow egress for $3,000
• Roof repairs/replacements for $6,300
• Remove existing gutters for $800
• Windows for $9,100
• Siding repairs for $5,750
• Prep & painting for $5,200
• Stucco & concrete structure for $4,800
• Replace 2 doors for $1,100
• Remove and dispose security bars for $1,200
• New custom front door for $1,300
• Contractor's fee for $10,012

CD Response

In responding to this memo seeking clarification, it is important that you understand the difference between the City of Miami, a municipal corporation, and an insurance company. As a for-profit company, an insurance company exists solely for the profit maximization of its shareholders whereas the government of the City of Miami exists to serve the residents of the City. It is in this context that questioning of the expenses of these two city residents who received funding under the Miami Recovers program using an adjuster’s estimate of the damage done and stressing the number of months after hurricane Wilma is surprising.

Our understanding of the phrase “City assistance will be utilized to cover the deductible or any repairs not covered by insurance” means that if all the repairs required in the property is covered by insurance, then the funds will be used to cover the deductible.
On the other hand, if the funds from the insurance company was not enough to cover all the repairs, then Miami Rooovoro fundo will be used to cover the repairs not paid for by the insurance company. There was nothing in the guidelines that said that the adjusters estimate or the homeowners estimate will be used as the barometer to gauge what repairs was needed. An inspector from Community Development identified those repairs as meeting the hurricane related definition. In addition, it will be irresponsible for the City to make hurricane related repairs to a property and leave the property with code violations or leave the property in the same situation to be damaged by another hurricane. All the items noted except for the contractor's fee fits the definition of hurricane related or code issues. Storm shutters, whereas not caused by Wilma, is to prevent another damage from a hurricane. A ceiling could have been weakened by water intrusion. Drywalls could have been damaged by water intrusion and mold, and when you remove or repair a ceiling damaged from water, you have to replace the electric lights. The contractor profit and overhead is an item we require to be separated from the contractor bids. By separating the contractor fee as an item not eligible for funding by Miami Recovers, I hope you are not insinuating that all Miami Recovers work should done free by contractors. If that is the case, then there will be no program because no contractor will work for the City pro-bono.

What your memo failed to capture is the responsibility of government to its citizens.

Attached, please find media advertising for the Miami Recovers Program and other information on the Program as per your request through e-mail dated April 13, 2007. CD was not involved in the selection of the clients. All clients were referred and processed by the NET.
TO: Lewis Blake,  
Senior Staff Auditor

FROM: Barbara Gomez, Director  
Community Development

DATE: May 9, 2007
SUBJECT: Response to MOU03222007-Fin c

FILE:  
REFERENCEs:
ENCLOSURES:

Attached please find CD’s response to your Memorandum of Understanding (MOU) dated March 22, 2007.

If you have additional questions, please do not hesitate to contact me.

Cc: Larry Spring, CFO  
Victor Igwe, Auditor General  
Pedro Mirones, Assistant Director
In connection with the above ongoing audit for the period January 2000 through August 2006, please confirm our understanding of the processes and observations described below by March 27, 2007.

Pursuant to the Community Development (CD) department’s Finance Unit Policy, reimbursement requests for hard costs must be supported by, among other items, a notarized release of liens which evidences that the costs have been paid to the project sponsor’s contractor. For soft costs, reimbursement requests must be initially supported by copies of checks and/or invoices; however, copies of cancelled checks must be submitted within 60 days of submitting the reimbursement request.

**INADEQUATE DISBURSEMENT DOCUMENTATION**

There were no documents to evidence that 56 (or 17.4%) of the 322 invoices tested were supported by copies of cancelled checks (for soft costs) or notarized releases of liens (for hard costs) in accordance with CD Finance Unit Policy. The total amount of invoices for which there was no evidence of cancelled checks or notarized releases of lien was $1,373,159.12 (or 18.81%) of the total population of $7,300,315.35 tested. (See Attached Testing Summary). Copies of cancelled checks and notarized releases of liens provide further proof of the actual expenditures and the purpose for said expenditures.

**CD Response**

1. **ARDA (Ralph Plaza II)**
   - Amount: $117,159.93
   - Find attached required documentation for a hard cost payment, specifically AIA form and city inspector approval.

2. **ABDA (Ralph Plaza II)**
   - Amount: $146,630.47
   - Find attached required documentation for a hard cost payment, specifically AIA form and city inspector approval.

3. **ABDA (Ralph Plaza II)**
   - Amount: $132,317.16
   - Find attached required documentation for a hard cost payment, specifically AIA form and city inspector approval.
4. **ABDA (Ralph Plaza II)**
   - $68,490.89
   - Find attached required documentation for a hard cost payment, specifically AIA form and city inspector approval.

5. **ABDA (Ralph Plaza II)**
   - $244,471.05
   - Find attached required documentation for a hard cost payment, specifically AIA form.

6. **Rodriguez and Quiroga**
   - $1,494.98
   - Find attached required documentation for a soft cost payment, specifically copy of the invoice(s) and copy of the cancelled check.

7. **Ardamand & Associates, Inc.**
   - $195.00
   - Find attached required documentation for a soft cost payment, specifically copy of the invoice(s) and copy of the cancelled check.

8. **De Los Reyes Engineering, Inc.**
   - $625.00
   - Find attached required documentation for a soft cost payment, specifically copy of the invoice(s) and copy of the cancelled check.

9. **Ardamand & Associates, Inc.**
   - $195.00
   - Find attached required documentation for a soft cost payment, specifically copy of the invoice(s) and copy of the cancelled check.

10. **Ardamand & Associates, Inc.**
    - $121.25
    - Find attached required documentation for a soft cost payment, specifically copy of the invoice(s) and copy of the cancelled check.
Find attached required documentation for a soft cost payment, specifically copy of the invoice(s) and copy of the cancelled check.

38. Filer Insurance

   $4,192.00

Find attached required documentation for a soft cost payment, specifically copy of the invoice(s) and copy of the cancelled check.

39. Dade County Tax Collector

   $776.88

Find attached required documentation for a soft cost payment, specifically copy of the invoice(s) and copy of the cancelled check.

40. Dade County Tax Collector

   $627.14

Find attached required documentation for a soft cost payment, specifically copy of the invoice(s) and copy of the cancelled check.

41. Dade County Tax Collector

   $813.06

Find attached required documentation for a soft cost payment, specifically copy of the invoice(s) and copy of the cancelled check.

42. Permit and Permit processing fees

   $3,380.83

Find attached required documentation for a soft cost payment, specifically copy of the invoice(s) and copy of the cancelled check.

43. Filer Insurance

   $301.00

Find attached required documentation for a soft cost payment, specifically copy of the invoice(s) and copy of the cancelled check.

44. Devon Construction, Inc.

   $46,164.12

171
Find attached required documentation for a hard cost payment, specifically AIA form and city inspector approval.

45. Devon Construction, Inc. $\cancel{\$47,837.21}

This amount is a request from the developer which the City adjusted by the City to a reimbursement of $30,301.00. Attached AIA form, copy of City of Miami check, and Developer check payment to the contractor.

46. Miami Dade DERM $\cancel{\$939.50}

Find attached required documentation for a soft cost payment, specifically copy of the invoice(s) and copy of the cancelled check.

47. Devon Construction, Inc. $\cancel{\$8,841.94}

Refer to 45 above. Complement of the request in 45. Attached AIA form, copy of City of Miami check, and Developer check payment to the contractor.

48. Devon Construction, Inc. $\cancel{\$20,199.91}

Find attached required documentation for a hard cost payment, specifically AIA form and city inspector approval.

49. WASD $\cancel{\$5,046.50}

Find attached required documentation for a soft cost payment, specifically copy of the invoice(s) and copy of the cancelled check.

50. Airport Instance Sign $\cancel{\$1,123.50}

Find attached required documentation for a soft cost payment, specifically copy of the invoice(s) and copy of the cancelled check.
TO: Lewis Blake,  
   Senior Staff Auditor  

FROM: Barbara Gomez, Director  
       Community Development  

DATE: April 3, 2007  

SUBJECT: Response to MOU03142007-SHIP  

REFERENCES: MOU5  

ENCLOSURES:  

Attached please find CD’s response to your Memorandum of Understanding (MOU) dated March 14, 2007.

If you have additional questions, please do not hesitate to contact me.

CC: Larry Spring, CFO  
    Victor Igwe, Auditor General  
    Pedro Mirones, Assistant Director
Pursuant to our ongoing audit of the Community Development (CD) Housing Program for the period of January 1, 2000 through August 2006 and selected transactions prior and subsequent to this period, please confirm our understanding of the following and provide a written response by March 20, 2007.

Section 420.9075, 5 (g), Florida Statutes, states that loans or grants for eligible owner occupied housing, constructed, rehabilitated, or otherwise assisted from proceeds provided from the local housing assistance trust fund shall be subject to recapture requirements as provided by the county or eligible municipality in its local housing assistance plan. Strategy 3 of the City's State Housing Initiatives Partnership Program (SHIP) Local Housing Assistance Plan for the fiscal years 1998 through 2001 stipulates that rehabilitation assistance will be provided to very low, low and moderate income individuals in the form of a zero percent deferred payment loan, secured by the property, forgiven on a pro-rata basis of ten percent per year, as long as the unit remains owned and occupied by the initial applicant.

During the audit period, as part of CD's procedures, recapture requirements were incorporated into a Promissory note signed by each property owner that received SHIP assistance. As of September 30, 2005, the outstanding loan balance under the SHIP homeownership and rehabilitation programs was approximately $6.8 million relative to 368 accounts. Our review of 28 of the said accounts disclosed the following:

- Pursuant to Section XI11 of the SHIP Housing Assistance Plan for the Fiscal Years 1998 through 2001 these SHIP loans may be amortized and written-off ("forgiven") over the period of affordability, thereby reducing the amount to be recaptured on a prorata basis for the time the borrower has owned and occupied the SHIP-assisted housing. If the housing does not continue to be the principal residence of the borrower for the duration of the period of affordability, the City may recoup all or a portion of the SHIP assistance received by the borrower. However, there are no documents evidencing the periodic verification of borrowers' compliance with stipulated loan requirements before individual loans were amortized and written-off annually. For example, our review of property records maintained by Miami-Dade County disclosed that 1 of 28 (or 3.5%) property owners tested ceased to own and occupy property located at 1245 NW 38 Street since June 2002. However, there was no evidence that the loan balance totaling approximately $30,802 (as of June 2002) was repaid to the City as required.

**CD Response**

The SHIP LHAP (fiscal year 1998-2001) in question did state that the loan provided will be self-amortizing over the term of the loan with a percentage of the loan balance reduced on annual basis. The note evidencing the loan indicated that when maker ceases to own or occupy the property, the full outstanding balance of funds disbursed under this promissory note, together with interest at the rate provided, shall be immediately due and payable upon default.

174
Please note that the department was not in violation of any regulation or any policy when it did not perform annual verification of residency. Neither the LHAP in question nor the SHIP statute requires an annual monitoring for homeownership projects. However, the department recognizes that it is a wise business decision to safeguard our investments. For this reason, in July 2006, the department started an annual monitoring program that included a review of the homestead exemption of all homeownership and rehabilitation properties, as well as a signed affidavit from borrowers that they continue to reside in the property.

In addition, you should also note that, until the department issues a satisfaction of mortgage, that note is due whether the property has been transferred or not. Therefore the loan on one out of the twenty-eight files showing that the property has been transferred is still due to the City. We therefore anticipate that a request for a satisfaction will be requested sooner or later whenever title insurance is required for the transfer of the property.

- Our testing further disclosed that SHIP funds totaling $375,543.95 were disbursed to 8 property owners for rehabilitation. We noted that promissory notes with recapture requirements were executed for only $297,304 or (80%) of the total amount disbursed. However, there were no promissory notes and/or other documentation to evidence that the remaining funds totaling $78,239.95 ($375,543.95 minus $297,304) were subject to recapture requirements.

**CD Response**

Any amount provided by the department over and above the maximum allowable amount existing under the program was approved. You erroneously assumed that all the supplemental loans with amounts over the maximum were originated using the SHIP LHAP for 1998 -2001. Please note that some of the loans, especially the supplemental loans, were made under the LHAP for 2001 – 2004. The 2001 – 2004 LHAP, Exhibit 1, had a provision that allowed the City Manager to approve all loans above the maximum LHAP amounts. In addition, resolution number 03-606, Exhibit 2, provided the City Manager the authority to approve loans above the maximum limits. Therefore all assistances provided to homeowners were proper and in the spirit of the program, to provide assistance to residents who otherwise will be living in an unsafe and/or unstable house.

- Strategy 3 of the SHIP Local Housing Assistance Plan for the Fiscal Years 1998 through 2001 provides that the maximum amount of assistance for rehabilitation program is $40,000. However, our audit disclosed that the amount of assistance provided to homeowners exceeded the maximum amount allowed under the said Plan for 7 of 8 of the individuals discussed above as shown in Exhibit 1. The excess between the total spent for the said individuals and the maximum amount allowed ranged from $1,631 to $14,522.50. Upon audit inquiry, we were informed that the additional and/or excess funds ($78,239.95) were disbursed in the form
of grants to cover deficiencies in homes rehabilitated through the SHIP program pursuant to Resolution 02-237. However, Section 420.9075, 5 (g), Florida Statutes requires loans or grants be subject to recapture requirements.

**CD Response**

Section 420.9075, Florida Statutes governed the establishment of Local Housing Assistance Plans and the contents of such plans. The section the department is purported to have violated, section 420.9075(5)g states as follows:

"Loans or grants for eligible owner-occupied housing constructed, rehabilitated, or otherwise assisted from proceeds provided from the local housing assistance trust fund shall be subject to recapture requirements as provided by the county or eligible municipality in its local housing assistance plan."

The local housing assistance plan for the city did provide such recapture language and all assistance provided by the department was in accordance with the LHAP and the statute cited above.

The background information provided in your memo did not indicate whether the loans in question were made as a single loan or were made as supplemental loans. **Your memo spoke of an Exhibit 1 which was not attached** so there is no way we can examine the files in question to determine how best to answer this inquiry.

For the record, every homeowner that received assistance from the department signed a mortgage which was recorded and a promissory note that included language relating to recapture. All supplemental loans were made as a result of commission action to correct certain deficiencies in the single family rehabilitation program during that period, as you correctly pointed out in your memo. These deficiencies were not caused by the homeowners so the commission felt that it was not fair to these homeowners to require a repayment of those loans. Hence the assistance were made as grants. The SHIP LHAP for fiscal years 2001-2004, Exhibit 1, included a clause (page 9) allowing the City Manager to approve loans above the maximum limits and also making them as grants. The grants made were therefore in accordance with the recapture requirements in the LHAP as required by Section 420.9075(5)g, and therefore proper.
- Additionally, we were not provided with loan files for the individuals listed in the following table.

<table>
<thead>
<tr>
<th>Name</th>
<th>Loan#</th>
<th>Loan Amount</th>
<th>Date</th>
<th>Purpose</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jose Manuel Marrero</td>
<td>041059HP</td>
<td>30,000.00</td>
<td>1/4/2005</td>
<td>Down Payment Assistance</td>
</tr>
<tr>
<td>Viola Allen</td>
<td>000271CR</td>
<td>39,829.00</td>
<td>5/11/2001</td>
<td>Rehabilitation</td>
</tr>
</tbody>
</table>

**CD Response**

CD has just located the files. Both are in storage and we will place a request to be retrieved. As soon as we receive the files from storage we will make them available for your review. Both accounts are paid in full, thus the reason the files went to storage.

- **Exhibit 3**, includes storage information, CD Statement of Account, copy of checks
- **Exhibit 4**, includes storage information, CD Statement of Account, copy of checks
May 8, 2007
Response to MOU03222007-
ABDA Conflict

Lewis Blake,
Senior Staff Auditor

Barbara Gounez, Director
Community Development

Attached please find CD’s response to your Memorandum of Understanding (MOU) dated March 22, 2007 regarding ABDA.

If you have additional questions, please do not hesitate to contact me.

Cc: Larry Spring, CFO
    Victor Igwe, Auditor General
    Pedro Mirones, Assistant Director
Pursuant to our ongoing audit of the Department of Community Development (CD) Housing Programs for the period January 1, 2000 through August 2006, and selected transactions prior and subsequent to this period, please confirm or clarify our understanding of the following by March 27, 2007.

On April 15, 1998 the City of Miami (City) and Allapattah Business Development Authority, Inc. (ABDA) entered into a $500,000 HOME Investment Partnership (HOME) loan agreement for the development of the Ralph Plaza Townhomes Phase I (Ralph Plaza 11) Project. On June 26, 2001 the City’s Housing and Commercial Loan Committee (HCLC) awarded the project an additional $730,000 of HOME funds (of which it later de-obligated $388,480) and on July 16, 2004 awarded the project $815,000 of Community Development Block Grant (CDBG) funds. In total, Ralph Pla-11 was awarded $1,656,511 in HOME and CDBG funds.

In a letter dated February 12, 2001 to the Director of CD (See Attached), ABDA requested permission to award the Ralph Plaza I and Ralph Plaza II construction contract to a for profit, wholly owned subsidiary of ABDA - Allapattah (Construction, Inc. The letter also stated that the permission requested would be “understood to be a blank permission that permits the construction subsidiary to proceed to obtain all necessary bids, request for proposals, and any other action necessary to complete Ralph Plaza I and Ralph Plaza II.” This letter was signed as approved by “Barbara Rodriguez for Gwen Warren”, Director of CD.

**OCCURRENCE OF A CONFLICTING INTEREST**

Allapattah (Construction, Inc.’s service as the General (Contractor for ABDA in the development of Ralph Plaza I and Ralph Plaza 11 is a conflicting interest. Title 24 Part 85, Section 85.30(b)(3) of the United States Code of Federal Regulations (CFR) states that “No employee, officer, or agent of the grantee or subgrantee shall participate in selection, or in the award or administration of a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.” In addition, it describes that “such a conflict would arise when the employee, officer, or agent...is about to employ, any of the parties indicated, has a financial or other interest in the firm selected for award.”

As it relates to HOME funds, Title 24 Part 92, Section 92.358 states that no “employee, agent, consultant, or officer of the participating jurisdiction...or sub recipient which are receiving HOME funds” and “who exercise or have exercised any functions or responsibilities with respect to activities assisted with HOME funds or who are in a position to participate in a decision making process or gain inside information with regard to those activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds there under.”

Due to the fact that Allapattah Construction, Inc. is a wholly owned subsidiary of ABDA, with all of the same Officers and Directors, ABDA had a direct financial interest in the contract awarded to Allapattah Construction, Inc. and benefited accordingly.

Section 3.1.9 of the $500,000 HOME loan agreement, as well as Sections 3.1.8 of the $730,000 HOME loan agreement and the $815,000 CDBG loan agreement stipulate that as a condition of disbursement, ABDA was required to provide the City with a list of all its subcontractors and copies of all contracts in excess of $10,000 for the performance of services or the supply of materials in connection with the Project. However, there is no evidence of a contract for the services of the general contractor, Allapattah Construction, Inc., indicating the contractor’s fee and a timeline for project completion.

Section 3.1.5 of each Loan Agreement specified certain insurance Policies required by the City prior to disbursement of HOME or CDBG fund to ABDA. One such requirement was that ABDA submit to the City
"A bid, payment and/or performance bond." However, in a letter dated October 9, 2002 to CII (See Attached), ABDA stated that "Alapattah Construction, Inc. is a wholly owned subsidiary of ABDA and as such has been unable to obtain a construction Bond for the project due to lack of an arms length transaction." Alapattah Construction Inc.'s inability to obtain the necessary bond should have precluded disbursement of the HOME and CDBG funds, in accordance with the contract terms, and also provides further evidence of a conflicting interest.

Based on our review of the Ralph Plaza II project files we were able to ascertain that Alapattah Construction, Inc. received $319,395.81 of HOME funds (See AIA forms Attached: $181,965.81 + $137,429.00 = $319,395.81). In addition, we noted a Contractor Payment Request and Application and Certification for Payment (AIA Document G702) form for $104,265 in the $500,000 HOME loan file (See Attached); however these documents were not attached as support for a draw request and we could not determine which draw the request related to. Therefore, Alapattah Construction, Inc. potentially received an additional $104,265 of HOME funds. The AIA forms submitted by Alapattah Construction, Inc. were signed by Carlos Martell, as Contractor for Alapattah Construction, Inc. Based on a listing of expenses related to the $815,000 of CDBG holds (See Attached) we noted that $52,095.13 was paid to "C Martell" with descriptions such as "GC" and "general contractor" suggesting that the payments were actually related to Alapattah Construction, Inc. Based on the IDIS activity reports for Ralph Plaza II we were able to determine that $1,616,298 (98%) of the total $1,656,911 funded was drawn down and paid to ABDA. However, of that amount we were unable to determine conclusively the total amount of HOME and CDBG funds paid to Alapattah Construction, Inc. due to inadequate disbursement support for the funds to ABDA. Each Loan Agreement includes a related disbursement Agreement detailing the disbursement procedures for ABDA to receive the funds from the City. Such procedures included submitting draw requests accompanied by lien waivers for hard costs; however, we noted no evidence of valid requests or waivers for the $815,000 of CDBG funds, and incomplete support for the HOME funds disbursements.

Lastly, Title 24 Part 85, Section 85.36(c)(i) of the United States Code of Federal Regulations (CFR) states that "... all procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of §§56.36", and cites "any arbitrary action in the procurement process" as a situation which is "restrictive to competition". The selection of Alapattah Construction, Inc. as the General Contractor for ABDA precluded competitive bidding in the award of the construction contract.

CD Response.

1. Conflict of Interest: Attached is an opinion from the City Attorney's office showing that there is no conflict of interest under the HOME regulations. Exhibit 1

2. No Contract between ABDA and Alapattah Construction, Inc.

   Alapattah Construction, Inc. is a wholly-owned subsidiary of ABDA. Alapattah Construction, Inc. conducted pre-development activities including starting the permitting process and the installation of a fence around the property. Any work done by the construction company was therefore construed as if it was done by ABDA. No contract between the entities was therefore demanded nor is it required.

3. No Bid, payment and/or performance bond as per contract.

   No bid

   The use of Alapattah Construction, Inc. was a temporary solution to speed the pre-development process prior to the bidding of the project. No bid was required.
No performance bond

Allapattah Construction, Inc. did not need a performance bond. The total cost that Allapattah Construction would incur in the installation of the fence would be less than $100,000. Therefore, according to City's Risk Management Department, there was no need for a performance bond. Allapattah Construction, Inc. pulled permits and installed the fence, there was no hard cost or construction involved.

When ABDA bid out the construction of the project, the winner, Delant Construction was required to produce a performance bond to comply with City policy. Delant construction complied. Exhibit 2

The City is required under 24 CFR 92.300(b) to encourage and assist community development organizations (CHDO) in capacity building. We see this action as furthering this requirement in ensuring that a CHDO is able to move a project.

Potential payment of $104,265 in HOME funds to ABDA

All our records indicate that the $104,265 request being alluded to was never paid by the City. Attached is a spreadsheet that shows what was paid and from which account. The presence of the AIA document for $104,265 is purely a staff error in not noting that the request was not processed. Exhibit 3

Payment of $52,095.13 to C Martell as GC or General Contractor.

Mr. C. Martell was a consultant engaged by Allapattah Construction, Inc. to assist them with pre-development of the project. Mr. Martell was the individual that qualified Allapattah Construction, Inc as a general contractor. Community Development determined those expenses as legitimate expenses necessary to enable the project break ground.

Cannot determine how much of the amount disbursed was CDBG or HOME.

Attached is a spreadsheet showing the breakdown of all funds to Ralph Plaza II. Exhibit 3

Inadequate support for the disbursement of the $815,000. No lien release as required by disbursement agreement.

The attached spreadsheet showed that the $815,000 was disbursed for predevelopment activities. Those expenses were made by the developer and its subsidiary, Allapattah Construction, Inc. Pre-development expenses do not require a release of lien. Therefore no lien release was required. Exhibit 3

No procurement

Allapattah Construction, Inc was a wholly owned subsidiary of ABDA. It was therefore the position of Community Development at that time that no
procurement was necessary since only pre-development activities were involved. ABDA went through a procurement process to select the contractor for Ralph Plaza II, Delant Construction.
<table>
<thead>
<tr>
<th>ID</th>
<th>CHECK#</th>
<th>DATE</th>
<th>INVOICE</th>
<th>AMOUNT</th>
<th>CDBG</th>
<th>SHIP</th>
<th>CDBG</th>
<th>HOME</th>
<th>AFTER TRANSFER</th>
</tr>
</thead>
<tbody>
<tr>
<td>771</td>
<td>105412</td>
<td>6/5/1996</td>
<td>N</td>
<td>240,000.00</td>
<td>240,000.00</td>
<td></td>
<td></td>
<td></td>
<td>240,000.00</td>
</tr>
<tr>
<td>771</td>
<td>209441</td>
<td>6/19/1996</td>
<td>Y</td>
<td>69,375.00</td>
<td>69,375.00</td>
<td></td>
<td></td>
<td></td>
<td>69,375.00</td>
</tr>
<tr>
<td>771</td>
<td>255057</td>
<td>10/23/1996</td>
<td>Y</td>
<td>54,236.00</td>
<td>54,236.00</td>
<td></td>
<td></td>
<td></td>
<td>54,236.00</td>
</tr>
<tr>
<td>771</td>
<td>161101</td>
<td>3/2/2001</td>
<td>N</td>
<td>52,500.77</td>
<td>52,500.77</td>
<td></td>
<td></td>
<td></td>
<td>52,500.77</td>
</tr>
<tr>
<td>771</td>
<td>337740</td>
<td>10/18/2001</td>
<td>Y</td>
<td>1,659.69</td>
<td>1,659.69</td>
<td></td>
<td></td>
<td></td>
<td>1,659.69</td>
</tr>
<tr>
<td>771</td>
<td>462787</td>
<td>2/27/2003</td>
<td>Y</td>
<td>137,430.00</td>
<td>137,430.00</td>
<td></td>
<td></td>
<td></td>
<td>137,430.00</td>
</tr>
<tr>
<td>771</td>
<td>527777</td>
<td>5/16/2003</td>
<td>Y</td>
<td>177,070.00</td>
<td>177,070.00</td>
<td></td>
<td></td>
<td></td>
<td>177,070.00</td>
</tr>
<tr>
<td>771</td>
<td>559798</td>
<td>1/27/2003</td>
<td>Y</td>
<td>2,652.59</td>
<td>2,652.59</td>
<td></td>
<td></td>
<td></td>
<td>2,652.59</td>
</tr>
<tr>
<td>771</td>
<td>581558</td>
<td>5/14/2004</td>
<td>Y</td>
<td>110,152.53</td>
<td>110,152.53</td>
<td></td>
<td></td>
<td></td>
<td>110,152.53</td>
</tr>
<tr>
<td>771</td>
<td>75054</td>
<td>4/16/2004</td>
<td>Y</td>
<td>110,152.53</td>
<td>110,152.53</td>
<td></td>
<td></td>
<td></td>
<td>110,152.53</td>
</tr>
<tr>
<td>771</td>
<td>50625</td>
<td>6/30/2005</td>
<td>Y</td>
<td>13,653.50</td>
<td>13,653.50</td>
<td></td>
<td></td>
<td></td>
<td>13,653.50</td>
</tr>
</tbody>
</table>

| NA  | 367703 | 3/19/2000 | Y       | 20,000.00  | 20,000.00 |      |      |      | 20,000.00     |
| NA  | 275682 | 6/30/2000 | Y       | 1,234.07   | 1,234.07 |      |      |      | 1,234.07      |
| NA  | 275683 | 6/30/2000 | Y       | 220.10     | 220.10 |      |      |      | 220.10        |
| NA  | 275684 | 6/30/2000 | Y       | 220.10     | 220.10 |      |      |      | 220.10        |
| NA  | 275685 | 6/30/2000 | Y       | 220.10     | 220.10 |      |      |      | 220.10        |
| NA  | 275686 | 6/30/2000 | Y       | 220.10     | 220.10 |      |      |      | 220.10        |
| NA  | 275687 | 6/30/2000 | Y       | 220.10     | 220.10 |      |      |      | 220.10        |
| NA  | 275688 | 6/30/2000 | Y       | 220.10     | 220.10 |      |      |      | 220.10        |
| NA  | 275689 | 6/30/2000 | Y       | 220.10     | 220.10 |      |      |      | 220.10        |
| NA  | 275690 | 6/30/2000 | Y       | 220.10     | 220.10 |      |      |      | 220.10        |
| NA  | 275691 | 6/30/2000 | Y       | 220.10     | 220.10 |      |      |      | 220.10        |
| NA  | 275692 | 6/30/2000 | Y       | 220.10     | 220.10 |      |      |      | 220.10        |
| NA  | 275693 | 6/30/2000 | Y       | 220.10     | 220.10 |      |      |      | 220.10        |
| NA  | 275694 | 6/30/2000 | Y       | 220.10     | 220.10 |      |      |      | 220.10        |
| NA  | 275695 | 6/30/2000 | Y       | 220.10     | 220.10 |      |      |      | 220.10        |
| NA  | 275696 | 6/30/2000 | Y       | 220.10     | 220.10 |      |      |      | 220.10        |
| NA  | 275697 | 6/30/2000 | Y       | 220.10     | 220.10 |      |      |      | 220.10        |

2,110,394.23 1,310,236.77 774,157.80 25,600.00 415,000.00 1,269,700.57 25,600.00 2,110,394.23
In response to the memorandum of understanding regarding the Audit of the Affordable Housing Trust Fund, below you will find management's response to each observation.

Observation #1

Management does not agree with the determination of the Independent Auditor General regarding the conflict of interest of City Employees purchasing units in the 234 Tower Condominium Project. The Auditor attempts to apply Federal Housing program guidelines to a non-federal funding source, specifically the City of Miami's Affordable Housing Trust Fund. Further, the City's ordinance which approved the funding and the corresponding agreement between the City of Miami and the 234 Tower Condominium developer, outlined the legal and operational requirements of the developer all of which were complied with. Thus on this basis the Independent Auditors General's finding is in fact incorrect.

Observation #2 and #3

Management has reviewed the observations. Based on the fact that the Auditor's accretions contain a legal conclusion we sought the legal guidance of the City Attorney's office. Based on the information obtain management feels it would inappropriate to confirm or clarify our understanding until further research and information has been provided by the Auditor General and/or the appropriate State or local agency. Please see the attached legal opinion.

c: Pedro G. Hernandez P.E., City Manager
    Victor I. Igwe, Auditor General
You have asked the following questions:

1. **WHETHER THE AUDITING FUNCTIONS OF THE AUDITOR GENERAL AUTHORIZED BY MIAMI CHARTER SECTION 48 INCLUDE CONDUCTING LEGAL ANALYSIS OR ISSUING LEGAL OPINIONS?**

   The answer to your question is in the negative.

2. **WHETHER THE DUTIES OF THE AUDITOR GENERAL SPECIFIED BY MIAMI CHARTER SECTION 48, INCLUDE CONDUCTING INVESTIGATIONS OF BUSINESS TRANSACTIONS ENTERED INTO BY CITY EMPLOYEES OR CITY BOARD MEMBERS AND ISSUING OPINIONS OR CONCLUSIONS AS TO WHETHER SUCH EMPLOYEE OR BOARD MEMBER VIOLATED THE CODE OF ETHICS GOVERNING PUBLIC OFFICERS AND EMPLOYEES?**

   The answer to your question is in the negative.

**BACKGROUND INFORMATION**

We are in receipt of a Legal Services Request wherein on behalf of the administration you are asking this office to issue a Legal Opinion in response to a request made to your office by the Office of the Independent Auditor General (Audit Memo). The Audit Memo, dated May 8, 2007, contains observation #1, and observation #2, pertaining to an ongoing audit of the City’s housing program. Specifically, the observations briefly describe several financial transactions involving City funding of affordable housing developments and expressly raises the issue of a potential conflict of interest or the appearance of conflict of interest with respect to the
conduct of individual City employees and City board members who participated in those particular transactions.

**DISCUSSION**

1. **Under the provisions of the Miami City Charter the duties, responsibility and powers of the Independent Auditor General (IAG) do not include conducting legal analysis or rendering legal opinions because the City Attorney is empowered by the Charter to serve as the legal advisor, attorney and counsel for the City and for all officers and departments.**

   The power and authority of the City of Miami and its elected and appointed officers is expressly provided for in the Charter of the City of Miami. As to the City of Miami, the City Commission constitutes the legislative body, with the power to adopt laws and to regulate. The Commission has broad home rule powers under Article VIII, Section 2(b) of the Florida Constitution, and Section 166.021(4), Florida Statutes (2006).

   Specifically, Miami Charter Section 3 states that the City of Miami shall have the governmental, corporate, and proprietary powers to enable it to conduct municipal government, perform municipal functions and render municipal services and may exercise any power for municipal purposes, except when expressly prohibited by law. On the other hand, the powers of a municipal office or office are restricted to those expressly established by in the charter. The Office of Independent Auditor General (IAG) is established in Sec. 48 of the Miami Charter. See also Sections 2-526, and 2-531 of the Miami Code. The express purpose of the IAG is to provide the City Commission with independent oversight of audit and analytical functions of the City. In order to fulfill these responsibilities the IAG is granted the power and authority to:

   1. **Examine city audit functions and accounting systems, provide budget and legislative analysis, conduct financial, operational, compliance, single act and performance audits of city government, officials, and independent agencies, with reports submitted to the city commission as deemed necessary by the IAG or as may be required by the city commission, from time to time, and copied to the administration.**

   2. **Have free and unrestricted access to city government employees, officials, records and reports and where appropriate, require all branches, departments, agencies and officials of city government to provide oral and written reports and to produce documents, files and other records.**

   3. **Render assistance to external auditors retained by the city commission. Such assistance shall be limited to special audits or limited examinations ordered by the city commission.**

   The responsibility of the IAG is *expressly limited* to providing oversight of the audit and analytical functions of the City. The powers that are granted to the IAG are *expressly limited* to examining City audit functions and accounting systems, providing budget and legislative analysis, conducting single acts and performance audits of City government, officials and
independent agencies concerning financial, operational, and compliance. The responsibility of
the IAG to provide oversight of audit and analytical functions of the City does not include the
power to issue legal opinions. That authority is reserved elsewhere in the Charter.

Under the City, Charter the City Attorney serves as the legal advisor of and attorney and
counsel for the City, and for all officers and departments thereof in matters relating to their
official duties. Additionally, the Charter recognizes that as the legal advisor for the City, the
Mayor, City Commission, the City Manager, the director of any department, or any officer or
board not included within a department, may require the opinion of the City Attorney upon any
question of law involving their respective powers and duties. Accordingly, in performing
oversight of audit and analytical functions of the City, the IAG must defer to the City Attorney as
it concerns legal review or legal interpretation of ordinances, regulations, laws or contracts.

2. The duties of the IAG specified by the Miami Charter do not include
conducting investigations of business transactions entered into by City employees or City
board members for purposes of issuing opinions or conclusions as to whether City
employees or City board members violated the code of ethics governing public officers and
employees. The State of Florida has created a Commission on Ethics whose duties it is to
investigate violations of the code of ethics and to recommend appropriate action to the
agency or official having the power to impose any penalties provided by state law.
Likewise, as authorized by state law and mandated by the Miami-Dade County Charter,
the County has established an independent Commission on Ethics and Public Trust which
has the authority to review, interpret, render advisory opinions and enforce county and
municipal code of ethics.

It is not within the IAG scope of authority to be conducting investigations and issuing
opinions or expressing conclusions regarding the conduct of individual City employees and City
board members with respect to violations of the code of ethics. The authority to conduct such
investigations, make findings and recommend or impose penalties is vested in the two entities
discussed below.

The Florida legislature recognizes that it is essential to the proper conduct and operation
of government that public officials be independent and impartial and that public office or
employment not be used for private gain other than the remuneration provided by law. In
furtherance of this goal, the legislature adopted a comprehensive regulatory scheme that
establishes standards for the conduct of public officials and employees and protects against
situations where conflicts may exist. Code Of Ethics For Public Officers and Employees
Florida Statutes Sections 112.311-112.326 (the State Code of Ethics). The Florida legislature
has created a Commission on Ethics whose duties it is to investigate violations of the State Code
of Ethics and to recommend appropriate action to the agency or official having the power to
impose any penalties provided by state law.

Additionally, state law authorizes the governing body of any political subdivision in
Florida to impose upon its own officers and employees additional or more stringent standards of
class and disclosure requirements than those specified in the State Code of Ethics. Indeed,
Miami-Dade County has adopted the “Miami Dade County Conflict of Interest and Code of
Larry Spring, Chief Financial Officer
May 29, 2007
Page 4 of 5

Re: Legal Opinion 07-012

Ethics Ordinance” that is applicable to all county personnel, as defined therein and constitutes a minimum standard of ethical conduct and behavior for all municipal officials and officers, autonomous personnel, quasi-judicial personnel, advisory personnel, departmental personnel and employees of municipalities in the county insofar as their individual relationships with their own municipal governments are concerned. Miami-Dade County Sec. 2-11.1 Conflict of Interest and Code of Ethics Ordinance.

The Miami Dade County Charter provides for the establishment of an independent Commission on Ethics and Public Trust (the “Ethics Commission”) with the authority to review, interpret, render advisory opinions and enforce county and municipal code of ethics. Miami-Dade County Code Sec. 2-1072. The jurisdiction of the Ethics Commission extends to any person required to comply with county or municipal Code of Ethics Ordinance, and Conflict of Interest Ordinances. Miami-Dade County Code Sec. 2-1068.

CONCLUSION

The Audit Memo addressed to the Chief Financial Officer is expressly asking the Chief Financial Officer to confirm or clarify the auditors statement that:

1. “There is an appearance of conflicting interests” with respect to conduct of city employees in connection with their purchases of condo units for investment purposes rather than for use as their primary residences;

2. “There is an appearance of conflicting interests” with respect to members of the Downtown Development Authority in connection with funds obtained from the City for housing projects by such members.

In other words, the auditor has in fact made a preliminary finding of a potential violation of the Code of Ethics and seek confirmation or clarification from the Chief Financial Officer. Based on the analysis provided above as to the scope of the IAG’s authority and the fact that such investigation is properly and exclusively within the jurisdiction of either the State Commission on Ethics or the Miami-Dade County Ethics Commission, it would be inappropriate for the Chief Financial Officer to confirm or clarify anything.

Also, where a complaint or request for an advisory opinion requires the interpretation of a particular ordinance within the jurisdiction of the Ethics Commission, the City Attorney may provide the Ethics Commission with a nonbinding legal opinion. Miami-Dade County Code Sec. 2-1074. However, it would not be proper for the City Attorney to issue a legal opinion finding that the conduct of a City employee or City board member constituted a conflict of interest or potential conflict of interest because that function is within the authority of the Ethics Commission.

Thus, based on the foregoing, it is recommended that your response to the Audit Memo should be limited to confirmation or clarification of “facts” pertaining to the business transaction(s) and avoid expressing any opinion as to the conduct of any individual City
employee or City board member. If the IAG, while performing an audit of a City program, detects a potential issue regarding the conduct of a City employee or City board member, he or she should notify the appropriate law enforcement agency or refer the matter to the State Commission on Ethics or the Miami-Dade County Ethics Commission.

PREPARED AND REVIEWED BY:

Julie O. Bru
Deputy City Attorney

c: Honorable Mayor and Members of the City Commission
Pedro G. Hernandez, City Manager
Victor I. Igwe, Auditor General
Attached please find CD’s response to your Memorandum of Understanding (MOU) dated March 13, 2007.

If you have additional questions, please do not hesitate to contact me.

Cc: Larry Spring, CFO
    Victor Igwe, Auditor General
    Pedro Mirones, Assistant Director
Title 24 Part 570, Section 570.500(a) and Part 92, Section 92.2 of United States (US) Code of Federal Regulations (CFR) defines Program Income as gross income received by the recipient directly generated from CDBG or HOME funds. Sections 570.500(a)(1) and 92.2 of the CFR provides that Program Income includes, but is not limited to payments of principal and interest on loans made using CDBG or HOME funds. In accordance with Section 570.504(b)(5) of the CFR, such income earned from CDHG funds shall be used for activities that meet one of the national objectives, including but not limited to, activities benefiting low and moderate income persons or prevention/elimination of slums or blight. In accordance with Section 92.503 of the CFR, program income must be deposited in the HOME Investment Trust Fund or retained for additional HOME projects.

A note to the Comprehensive Annual Financial Report, for the fiscal year ended September 30, 2005, titled "Note 4 - Receivables", states: "As part of its Community Development Block Grant (CDBG) program, the City issues single and multi-family housing rehabilitation loans to qualified residents. All repayments of the loans, which carry low interest rates, remain in the loan program. As collection of the loans is not assured the loans are fully reserved." As of September 30, 2005, said outstanding loans totaled approximately $160 million.

A Loan Aging Report prepared by the Community Development Department disclosed that approximately $18 million of outstanding loans are in default as of January 23, 2007. Our review of the defaulted loan files indicated that collection efforts included correspondence with borrowers demanding payments, late payment notices, and referrals to the Office of the City Attorney for collection/litigation. However, the efforts to collect the outstanding loans were not made consistently, effectively, nor timely as noted below:

Observation - Bullet 1
- The defaulted loans were not referred to the Office of the City Attorney (OCA) for collection and/or litigation in a timely manner. Our analysis of 47 defaulted loans that were referred to the OCA, totaling approximately $6.9 million, disclosed that the period between the last principal and interest payment from the borrower and the referral to the OCA ranged from 4 months to 16 years. In some cases, these untimely referrals contributed to the loss of the City’s ability to collect on the defaulted loans. For example, for 5 of the defaulted loans, totaling approximately $1.9 million, the statute of limitation expired and/or legal actions filed by other parties negated the City’s financial interest. Please see attached exhibit 1.

CD Response to Observation - Bullet #1
CD is unable to respond about actions or inactions prior to year 2000. The City’s Finance Department began transferring the loan portfolio in the year 2000, ending in 2003. CD had to re-create the files and send them to Law for collection, when applicable. CD had to purchase a mortgage servicing system (ABS), and enter the information on each project. In some cases, CD had to contact the City and County clerks to retrieve recorded information to re-create the files.

The ABS System, which originated in the year 2000, was not in existence when CD took over the project files from Finance. Initially, the ABS System was mainly utilized to track single family projects and projects that were known to be in default for the purpose of initiating aggressive collection procedures. Some multi-family projects, especially those that were deferred, were not entered in the system at the beginning. As collection progressed, and CD became more familiar with the project portfolio, additional projects were added. Even today, we forward some of the old project files to the Office of the City Attorney (OCA) with insufficient information. However, CD has been successful in
collecting in excess of $25 Million Dollars, as reflected in HUD's system, with two staff
persons, incomplete files and missing information. Exhibit I, IDIS Report.

<table>
<thead>
<tr>
<th>Year</th>
<th>Collections/ Program Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>1998</td>
<td>$ -</td>
</tr>
<tr>
<td>1999</td>
<td>$ -</td>
</tr>
<tr>
<td>2000</td>
<td>$ 300,000.00</td>
</tr>
<tr>
<td>2001</td>
<td>$ 2,900,000.00</td>
</tr>
<tr>
<td>2002</td>
<td>$ 9,628,616.29</td>
</tr>
<tr>
<td>2003</td>
<td>$ 2,265,730.46</td>
</tr>
<tr>
<td>2004</td>
<td>$ 3,961,112.62</td>
</tr>
<tr>
<td>2005</td>
<td>$ 3,337,803.07</td>
</tr>
<tr>
<td>2006</td>
<td>$ 3,152,217.25</td>
</tr>
<tr>
<td>Totals:</td>
<td>$ 25,545,479.69</td>
</tr>
</tbody>
</table>

Of the 47 defaulted projects that were referred to the OCA, 46 were funded prior to the
year 2000. These projects contained incomplete files that took a significant amount of
time to process. The approach of the Department was to commence collection
procedures based on dollar amount of project, and probability of collection.

Observation - Bullet 2
- On the January 23, 2007 loan aging report, provided by the Community Development
department, approximately $9.75 million of the $18 million defaulted loans were listed as being
"under review" and approximately $744,000 were listed as "being sent to law". For example, the
first payment received from a borrower relative to a $2.1 million outstanding HOME deferred loan
was on July 08, 2005. However, as of January 23, 2007 said loan was still in the process of
"being sent to the OCA" for collection/litigation and/or resolution. Please see attached exhibit II.
CD Response – Bullet 2

The projects under review, which aggregated to $9.75 million dollars, and characterized in the report as defaulted loans, include $9.14 million dollars not in default. Exhibit II

The primary reason why projects are not past due is because those projects have received extensions from the Housing and Commercial Loan Committee (HCLC) or have fulfilled their contractual requirement, i.e., passing an affordability monitoring or creating jobs. This represents a 4% default rather than the 50% indicated by the auditor.

The Loan Aging Report dated January 23, 2007 will capture any loan that is one day passed the next review or next due date fields. The report also does not take into account those loans that have been granted a payment arrangement that is less than that of the payment illustrated in the Promissory Note. These items can cause the report to overstate the amount of loans that are past due for payment as well as the overall dollar amount past due. Of the $9.14 million that are not in default, $8.95 million
1. Have been given an extension by the Housing and Commercial Loan Committee
2. Have met the requirements of the loan
   • By either passing an Affordability Monitoring
   • By creating the jobs

This information must be updated in ABS. The remaining $187,000 is comprised of approximately $20,000 in loans that have been approved or recommended to be written off, and $166,000 of which have made payment arrangements.

The Office of the Independent Auditor General also stated that one of the loans with an outstanding balance $2.1 million was still in the process of being sent to the OCA. Furthermore it was also stated that the last payment received from the borrower related to $2.1 million loan was on July 8, 2005. This is incorrect. The transaction that took place was an adjustment of a payment on the loan. This project is not at the OCA because it is not in default: the HCLC approved an extension of terms. The project is substantially complete and will go for a Certificate of Occupancy (CO) within the next three months. This is the Barcelona Project. Exhibit III

<table>
<thead>
<tr>
<th>Project</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>a. Extension approved</td>
<td>$6,239,127.99</td>
</tr>
<tr>
<td>b. ABS correction</td>
<td>1,497,760.25</td>
</tr>
<tr>
<td>c. Affordability met</td>
<td>500,000.00</td>
</tr>
<tr>
<td>d. Jobs created</td>
<td>90,000.00</td>
</tr>
<tr>
<td>e. City foreclosed</td>
<td>555,201.00</td>
</tr>
<tr>
<td>f. Pending HCLC approval</td>
<td>70,725.00</td>
</tr>
</tbody>
</table>
g. Payment arrangement have been made 166,315.60
h. Write off 20,841.12

Total Not in default 9,139,970.95
Total in default 610,029.05

Observation – Bullet #3

- Approximately $761,000 of the $18 million defaulted loans were listed as "Forgiven Loans." Pursuant to Title 24 Part 92, Section 92.254 of the CFR, these HOME loans may be amortized and written-off (Forgiven) over the period of affordability, thereby reducing the amount to be recaptured on a pro rata basis for the time the borrower has owned and occupied the HOME assisted housing. If the housing does not continue to be the principal residence of the borrower for the duration of the period of affordability, the City may recoup all or a portion of the HOME assistance received by the borrower. However, there are no documents evidencing the periodic verification of borrowers' compliance with stipulated loan requirements before individual loans were amortized and written-off annually. Upon audit inquiry, we were informed that affidavits were mailed to all borrowers in January 2007. Said affidavit inquired whether borrowers still lived in the HOME-assisted housing.

CD Response – Bullet #3

"Forgiven loans", as referred to in the audit report, apply to projects in which there is a provision that the project amount will be amortized in a pro-rata basis during the time that the project is in compliance with the covenants. In the case of single family loans, there is a mortgage that will be satisfied and there will be a satisfaction of lien issued if the project is in compliance during the affordability period. Yearly or monthly verification is not required by the regulations nor cost effective or necessary since the mortgage and the release of lien is sufficient to enforce compliance. Exhibit IV
<table>
<thead>
<tr>
<th>Account</th>
<th>Borrower Name</th>
<th>PrinBal</th>
<th>Being Sert to Law</th>
<th>Under Review</th>
<th>Other Comments</th>
</tr>
</thead>
<tbody>
<tr>
<td>102049</td>
<td>Wilson, Harriette</td>
<td>$2,620.23</td>
<td>X</td>
<td>X</td>
<td>WORK-OUT</td>
</tr>
<tr>
<td>200732</td>
<td>Frazer, Elizabeth</td>
<td>$3,521.40</td>
<td>X</td>
<td>X</td>
<td>RECOMMEND TO WRITE-OFF</td>
</tr>
<tr>
<td>201711</td>
<td>Roberts, Viola</td>
<td>$2,398.99</td>
<td>X</td>
<td>X</td>
<td>APPROVED TO WRITE-OFF</td>
</tr>
<tr>
<td>201820</td>
<td>Hall, Lilieth</td>
<td>$5,461.77</td>
<td>X</td>
<td>X</td>
<td>WORK-OUT</td>
</tr>
<tr>
<td>201846</td>
<td>Wilson, Katherine</td>
<td>$4,305.64</td>
<td>X</td>
<td>X</td>
<td>WORK-OUT</td>
</tr>
<tr>
<td>202154</td>
<td>Baptiste, Leary</td>
<td>$10,196.55</td>
<td>X</td>
<td>X</td>
<td>RECOMMEND TO WRITE-OFF</td>
</tr>
<tr>
<td>202192</td>
<td>Ross, Troy A.</td>
<td>$1,635.33</td>
<td>X</td>
<td>X</td>
<td>WORK-OUT</td>
</tr>
<tr>
<td>202270</td>
<td>Roberts, Viola</td>
<td>$4,725.08</td>
<td>X</td>
<td>X</td>
<td>APPROVED TO WRITE-OFF</td>
</tr>
<tr>
<td>202308</td>
<td>Sturgs, Hansell</td>
<td>$4,984.71</td>
<td>X</td>
<td>X</td>
<td>WORK-OUT</td>
</tr>
<tr>
<td>202348</td>
<td>Smith, Erma</td>
<td>$10,402.56</td>
<td>X</td>
<td>X</td>
<td>WORK-OUT</td>
</tr>
<tr>
<td>302071</td>
<td>Grant, Constance M.</td>
<td>$1,776.69</td>
<td>X</td>
<td>X</td>
<td>WORK-OUT</td>
</tr>
<tr>
<td>302268</td>
<td>Bell, Jackie L.</td>
<td>$1,650.00</td>
<td>X</td>
<td>X</td>
<td>WORK-OUT</td>
</tr>
<tr>
<td>630074</td>
<td>Ovettown Development Group Inc.</td>
<td>$96,600.00</td>
<td>X</td>
<td>X</td>
<td>HCLC approved modification 1/12</td>
</tr>
<tr>
<td>650010</td>
<td>East Little Havana CDC</td>
<td>$1,840,743.44</td>
<td>X</td>
<td>X</td>
<td>HCLC approved extension until 5/12</td>
</tr>
<tr>
<td>650014</td>
<td>East Little Havana CDC</td>
<td>$933,932.98</td>
<td>X</td>
<td>X</td>
<td>HCLC approved extension until 5/12</td>
</tr>
<tr>
<td>650017</td>
<td>Barcelona Condominium LLC</td>
<td>$2,105,593.62</td>
<td>X</td>
<td>X</td>
<td>HCLC approved extension until 1/12</td>
</tr>
<tr>
<td>650018</td>
<td>Ovettown Condominium LLC</td>
<td>$330,291.53</td>
<td>X</td>
<td>X</td>
<td>HCLC approved extension until 1/12</td>
</tr>
<tr>
<td>650022</td>
<td>Palmetto Homes of Miami, Inc.</td>
<td>$70,725.00</td>
<td>X</td>
<td>X</td>
<td>To be presented to HCLC Feb 2008</td>
</tr>
<tr>
<td>650028</td>
<td>East Little Havana CDC</td>
<td>$2,823,439.64</td>
<td>X</td>
<td>X</td>
<td>HCLC approved extension until 3/12</td>
</tr>
<tr>
<td>650044</td>
<td>Tuscan Place II, LLC</td>
<td>$1,497,780.25</td>
<td>X</td>
<td>X</td>
<td>Needs to be corrected ABS Loan</td>
</tr>
<tr>
<td>650051</td>
<td>M &amp; M Mansion II, LTD</td>
<td>$772,100.00</td>
<td>X</td>
<td>X</td>
<td>HCLC approved modification on 5/12</td>
</tr>
<tr>
<td>650052</td>
<td>Tender Loving Christian Day Care Ctr.</td>
<td>$89,869.00</td>
<td>X</td>
<td>X</td>
<td>Loan not in default - Extension-grant 3/12</td>
</tr>
<tr>
<td>650051</td>
<td>Midwood Tower Apts, LTD</td>
<td>$650,000.00</td>
<td>X</td>
<td>X</td>
<td>Affordability monitoring passed on 5/12</td>
</tr>
<tr>
<td>690001</td>
<td>Weetman's Traditional Foods</td>
<td>$60,000.00</td>
<td>X</td>
<td>X</td>
<td>Loan not in default - Obtain proof of 5/12</td>
</tr>
<tr>
<td>752017</td>
<td>Sales, Mary A.</td>
<td>$14,834.08</td>
<td>X</td>
<td>X</td>
<td>WORK-OUT</td>
</tr>
<tr>
<td>0507070370</td>
<td>StatCleaners, Inc.</td>
<td>$73,885.92</td>
<td>X</td>
<td>X</td>
<td>WORK-OUT</td>
</tr>
<tr>
<td>051010412</td>
<td>1836 Enterprise, Inc.</td>
<td>$655,251.00</td>
<td>X</td>
<td>X</td>
<td>Not in default - City owned property 1/12</td>
</tr>
<tr>
<td>177-702003</td>
<td>Parker, Leroy</td>
<td>$25,437.80</td>
<td>X</td>
<td>X</td>
<td>HCLC approved settlement: Accrual of 5/12</td>
</tr>
<tr>
<td>177-702021</td>
<td>Timpson, Veronica B.</td>
<td>$30,607.05</td>
<td>X</td>
<td>X</td>
<td>WORK-OUT</td>
</tr>
</tbody>
</table>

\(X = \text{Not on list from OCB}\)

\[\text{Total} = \$9,139,970.96\]
TO: Lewis Blake,  
Senior Staff Auditor

DATE: April 3, 2007

SUBJECT: Response to MOU03222007-Fin

FROM: Barbara Gomez, Director  
Community Development

REFERENCES:  

ENCLOSED:

Attached please find CD’s response to your Memorandum of Understanding (MOU) dated March 22, 2007.

If you have additional questions, please do not hesitate to contact me.

Cc: Larry Spring, CFO  
Victor Igwe, Auditor General  
Pedro Mirones, Assistant Director
In connection with the above ongoing audit for the fiscal years 2000 through 2006 and selected transactions prior and subsequent to this period, please confirm our understanding of the following observations by March 27, 2007.

Pursuant to Title 24, Part 85, Section 85.20(b) of the United States Code of Federal Regulations (CFR) the financial management systems of grantees must meet certain standards including that financial reporting must comprise "accurate, current, and complete disclosure of the financial results of financially assisted activities"; "grantees must maintain records which adequately identify the source and application of funds provided"; and "effective control [internal control] and accountability must be maintained for all grant and sub grant cash...and other assets."

Developers that have been approved by the City Commission or the Housing and Commercial Loan Committee (HCLC) for project financing may request and receive project cost reimbursements from the Community Development department (CD) only after:

- All loan documents are prepared and publicly recorded.
- Projects are set up in the U.S. Housing and Urban Development (HUD) Integrated Disbursement and Information System (IDIS) by the City's Community Development department (CD) Assistant Director of Policy and Program Development.
- CD reviews, and approves all supporting documents associated with the developer's reimbursement request.

The approved reimbursement request and the supporting documents are forwarded to the City's Finance Department (FD) for the disbursement of payment to the developer. All reimbursements/payments to developers are made from the City's General Fund account, which is then replenished monthly via "draw downs" from the City's U.S. Treasury IDIS account.

IDIS is a HUD disbursement system used to track all projects that receive federal funding. Within IDIS, projects are tracked based on their status (i.e. BUDGETED, UNDERWAY, COMPLETE) and the amount of money funded, drawn down, and remaining. The "Funded Amount" refers to the total loan amount awarded to the developer while the "Net Drawn Amount" refers to the total amount disbursed to date.

ABS is the City's internal loan servicing system used to track individual loan accounts. New loans are added to the system as program agreements are executed and recorded and funds are disbursed. The system also tracks principal and interest payments made by developers. The loan balances tracked within ABS are reported in the City's loan portfolio in the financial statements.
IDIS TO ABS RECONCILIATIONS NOT PERFORMED

Due to timing differences at month-end, payments may have been made to developers for which the related draw down from IDIS has not been received. As such the City’s General Fund must be replenished the following month by draw downs from the U.S. Treasury IDIS account. CD prepares month-end accrual journal entries (JE) to account for the amounts that are required to be drawn down from IDIS to replenish the General Fund account. Similar timing differences occur at year-end (YE). Therefore, there is need to reconcile all "Net Drawn Amounts" in IDIS to respective loan balances in the City's ABS system. This reconciliation would provide for "accurate, current, and complete disclosure", as well as accountability and effective internal control as stated in 24 CFR 85.20(b).

Specifically, it would provide readers of the City’s financial statements with a more accurate picture of the City’s loan portfolio.

However, our audit disclosed that such reconciliations are not performed monthly or annually. We attempted to reconcile the Net Drawn Amounts within IDIS to the loan amounts as indicated on a September 2005 Lender Statement of Accounts generated from ABS (See attached Statements of Accounts) and noted that four 4 (or 23.5%) of the 17 accounts balances tested did not agree with the IDIS account balance. The total amount of the 4 accounts was $3,638,061.80 (or 19.17%) of the $18,976,402.51 tested (See attached schedule).

We obtained and reviewed IDIS reports from 2002 to 2006. Based on our review of said reports we noted that there was no data evident for some of the IDIS accounts listed and that some of the IDIS numbers were out of sequence and appeared to be missing or hidden within the report (See Attached). We were informed by CD staff that the missing IDIS numbers represent projects that were cancelled. However, due to the fact that IDIS numbers are missing from the report we were unable to verify whether any amounts were disbursed or whether there were any existing balances relative to these accounts. Per discussion with CD staff, IDIS numbers are assigned sequentially as opposed to randomly. Therefore, a report of all projects should include a complete sequential listing of all IDIS numbers. Such a report would be necessary to facilitate the reconciliation of IDIS to the City’s total loan portfolio.

Per audit inquiry, CD staff acknowledged that no IDIS to ABS loan account balance reconciliations were being performed; however, going forward, such a reconciliation procedure will be implemented.
CD Response

1. The conclusion from this finding is that the disclosure made in the financial statements is misleading because there may be timing differences not reflected as the gross amounts of receivables. The real disclosure made in the financial statement is that the net amount of the receivables is zero. All receivables are fully reserved.

2. 24 CFR 85.20 (b) is fully complied with by the Department of Community Development as it provides accurate, current and complete disclosure of the financial results of financially assisted activities. The Department maintains effective control and accountability for all and each project. As the auditor well observed the Department even provides a monthly reconciliation of its revenues and expenditures (IDIS versus GEMS) which require a matching of each IDIS project.

3. The auditor argument that a reconciliation of IDIS vs. ABS will provide for “accurate, current and complete disclosure” is inaccurate. IDIS will only include entitlement grants namely Emergency Shelter Grants, Community Development Block Grants, HOME and HOPWA. It would not account for EDI, BEDI, Section 108, SHIP, Miami Unleaded assistance program, My Safe House Florida or any other funds such as Affordable Housing loans for Hurricane recovery.

4. ABS is a servicing tracking tool. It was obtained by the department to help track loan and, for that matter, project status. It is not a substitute in the financial systems and control procedures already in effect, but an additional to the control procedures.

5. The strongest internal control procedures in the area of construction projects are predicated on the agreement signed between the City and subgrantee. Each project between the City and any subgrantee has the potential to become a “receivable”. If a project is not fulfilled and the National Objective or the mandatory affordability is not met, the project becomes subject to “recapture” or “resale restrictions” to enforce the National Objective or the Affordability covenant, the Department has been progressively enforcing the “recapture or resale” provision. In a nut shell, if the subgrantee does not perform, there is in effect a covenant or a mortgage that kicks in and whatever is the collateral, most usually land can not be transferred or conveyed without the City Department’s approval.

6. The auditor proclaims “We attempted to reconcile the Not Drawn Amounts within IDIS to the loan amounts as indicated on a September 2005 Lender Statement of Accounts generated from ABS (See attached Statements of Accounts) and noted that four 4 (or 23.5%) of the 17 accounts balances tested did not agree with the IDIS account balance. The total loan amount of the 4 accounts was $3,638,061.80 (or 19.17%) of the $18,976,402.51 tested (See attached schedule).”

BAME New Hope project was repossessed by the City. The last payments were incurred by The City to obtain security protection to avoid incidences of drugs, prostitution or nuisance to the neighborhood.
BAME Development (Miami River Park) There is in GEMS an account for $2,300,000 of expenditure. There is also another GEMS account that accounts for the revenue of an aggregate amount of $2,300,000. IDIS reflects an account for a total drawdown in the amount of $2,300,000. There is a project file that documents all expenditures and all drawdowns in the aggregate amount of $2,300,000. As of September 30, 2005, there were 2 accounts in ABS: one for HOME and one for CDBG that totaled $2,300,000. Subsequent to such date, the error in characterization was identified by CD and corrected on October 2006. Exhibit 1

Devecorp, Inc. is a file received by the Department of Community Development in the year 2000 from the City’s Finance Department. The information submitted to the DCD by Finance is attached. What happened between July 2, 1992 and September 11, 2000 is a matter of conjecture. The amounts recorded in ABS reflect the information provided by the prior keeper of the books. Exhibit 2

Downtown Realty Investments There is in GEMS an account for $1,090,870 of expenditure. There is also another GEMS account that accounts for the revenue of an aggregate amount of $1,090,870. IDIS reflects an account for a total drawdown in the amount of $1,090,870. There is a project file that documents all expenditures and all drawdowns in the aggregate amount of $1,090,870. ABS reflects the total amount expended in the HOME project was $1,090,870. Additionally there are two amortizations of $109,087 each, which accounts for the differences between the amount of the IDIS drawdown and the ABS balance. Exhibit 3

In conclusion, instead of having a difference of 23.5% of the amounts tested, I would say that the error rate of the auditor test is zero.

The following paragraph seems to reflect a misunderstanding.

"We obtained and reviewed IDIS reports from 2002 to 2006. Based on our review of said reports we noted that there was no data evidnet of the IDIS accounts listed and that some of the IDIS numbers were out of sequence and appeared to be missing or hidden within the report (see Attached). We were informed by CD staff that the missing IDIS numbers represent projects that were cancelled. However, due to the fact that IDIS numbers are missing from the report we were unable to verify whether any amounts were disbursed or whether there are any existing balances relative to those accounts. Per discussion with CD staff, IDIS numbers are assigned sequentially as opposed to randomly. Therefore a report of all projects should include a complete sequential listing of all IDIS numbers. Such a report would be necessary to facilitate the reconciliation of IDIS to the City's total portfolio."
The report referred above is a standard HUD report. It is accessed by the City from HUD database and is the most common HUD report. The auditors have been auditing CD since July 2006 and should have become more familiar with the information provided by the diverse IDIS reports available prior to making the above unfavorable assertion implying intentional concealing on the part of the department. The fact that the auditors did not know what they were requesting or obtained and reviewed explains the flawed observation expressed in the report. Please refer to Exhibit 4, which explains the “hidden items” in your previous paragraph.

Notwithstanding all the above, Pedro Mirones, Assistant Director, indicated to both, Lewis Blake, CPA and Munirah Daniel, CPA, that in the case of Multifamily projects, a reconciliation with the specific IDIS project and the ABS may be a worthwhile exercise since some construction projects may last several years until completion. As a matter of fact, the Department will implement in Oracle that each project will have a one to one relationship to an IDIS project as a result of this observation.
There are a number of inconsistencies as explained below:

Bullet #2 states, “Projects are set up in the U.S. Housing and Urban Development (HUD) Integrated Disbursement and Information System (IDIS) by the City’s Community Development department (CD) Assistant Director of Policy and Program Development.”

This is not necessarily a required step in this process. Entering information in the IDIS system is only required when funding projects/activities that receive CDBG, ESG, HOME, HOPWA, or ADDI funding. All other sources of funding such as SHIP or the Affordable Housing Trust among others, do not require this set up, and therefore, such statement is inaccurate.

Quote #1: “We obtained and reviewed IDIS reports from 2002 to 2006. Based on our review of said reports, we noted that there was no data evident for some of the IDIS accounts listed and that some of the IDIS numbers were out of sequence and appeared to be missing or hidden within the report (See Attached)...”

Quote #2: “...Per discussion with CD staff, IDIS numbers are assigned sequentially as opposed to randomly. Therefore, a report of all projects should include a complete sequential list of all IDIS numbers.”

One of the most important things to do when reading reports is to fully understand the data contained in the report and the format in which this data is presented. The next most important thing to do is know exactly what you are trying to extrapolate from the data displayed. The quotes above are not in line with these basic principles.

Quote #2 refers to the understanding that IDIS numbers are sequentially organized (from low to high). Quote #1 refers to IDIS numbers found in the activity report with no data evident (as shown in the attachment); however, if we refer to this attachment and look at the IDIS numbers in question, we can infer that these IDIS numbers belong to a period between FY1994 – 1996 based sequentially arranged IDIS numbers. Unless you are going back to fiscal year 1994, this data should be irrelevant to you.

These IDIS numbers with no data evident are a product of the original IDIS data conversion process. These IDIS #s were created by the U.S. Department of Housing and Urban Development under “Converted CDBG activities” and placed in a project from 1994.

For the IDIS numbers that were not found in the report, I understand you had a conversation with staff who indicated to you that such numbers were “Cancelled” IDIS numbers, and therefore, irrelevant. In any case, for your convenience, CD has prepared a report with those numbers starting in FY2003 to present so that you can see that in fact these are “Cancelled” activities. IDIS screen print outs are also provided to confirm the transparency of the report.
TO: Lewis Blake,  
Senior Staff Auditor

FROM: Barbara Gomez, Director  
Community Development

DATE: April 4, 2007

SUBJECT: Response to MOU03262007-  
Retention/access for records

REFERENCES:  
ENCLOSURES:

Attached please find CD’s response to your Memorandum of Understanding (MOU) dated March 26, 2007.

If you have additional questions, please do not hesitate to contact me.

Cc: Larry Spring, CFO  
Victor Igwe, Auditor General  
Pedro Mirones, Assistant Director
Pursuant to our ongoing audit of the Department of Community Development (CD) Housing Programs for the period January 1, 2000 through August 2006, and selected transactions prior and subsequent to this period, please confirm or clarify our understanding of the following by March 29, 2007.

The City of Miami Department of Community Development (CD) is charged with administering programs and projects supported by Federal funds such as Home Investment Partnership Program (HOME) and Community Development Block Grant (CDBG) funds. The City uses these funds to provide grants/loans to developers and individuals for such things as acquisition, rehabilitation, and new construction of housing and tenant-based rental assistance. In addition to procuring the services of developers, selecting individual recipients for homebuyer assistance based on income eligibility and other criteria, and servicing the loans, CD is responsible for maintaining the related records in accordance with the various Federal program requirements.

24 CFR Part 85, Section 85.42 of the United States Code of Federal Regulations (CFR) discusses the "Retention and access requirements for records" and "applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees." According to the CFR, "except as otherwise provided, records must be retained for three years from [various] starting date[s]." According to 24 CFR 92.500 as it relates to the HOME program, "all records pertaining to each fiscal year of HOME funds must be retained for the most recent five year period." In addition, each CFR provides certain exceptions that provide for longer time periods of record retention depending on the use of funds (e.g., rental vs. homeownership housing projects).

24 CFR 85.42(e) also discusses access to records stating that "the awarding agency and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any . . . records of the grantees and subgrantees which are pertinent to the grant, in order to make audits, examinations, excerpts, and transcripts." In addition, HOME program 24 CFR 92.508(d) states that "the participating jurisdiction must provide citizens, public agencies, and other interested parties with reasonable access to records."

The Office of Auditor General (OAG) has made several requests to CD for the following files which have not been provided to date:
<table>
<thead>
<tr>
<th></th>
<th>Agency</th>
<th>Project Name</th>
<th>Amount Awarded by HCLC</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Coral East Corporation</td>
<td>Keystone Square</td>
<td>$750,000.00</td>
</tr>
<tr>
<td>2</td>
<td>Downtown Place, LLC</td>
<td>Downtown Place</td>
<td>$250,000.00</td>
</tr>
<tr>
<td>3</td>
<td>Rivers Development Group</td>
<td>Grove Point</td>
<td>$150,000.00</td>
</tr>
<tr>
<td>4</td>
<td>Riverside Place, Ltd.</td>
<td>Riverside Place</td>
<td>$250,000.00</td>
</tr>
<tr>
<td>5</td>
<td>R&amp; M LeJeune</td>
<td>LeJeune Apartments</td>
<td>$750,000.00</td>
</tr>
<tr>
<td>6</td>
<td></td>
<td>Hidden Harbor Apts.</td>
<td>$325,635 (05/31/02)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>$230,000 (03/14/03)</td>
</tr>
<tr>
<td>7</td>
<td></td>
<td>Rio Vista</td>
<td>$281,455.00</td>
</tr>
</tbody>
</table>

* Housing & Commercial Loan Committee (HCLC). We were unable to review the project files and therefore unable to determine the amounts disbursed.

<table>
<thead>
<tr>
<th></th>
<th>Recipient</th>
<th>Loan Account #</th>
<th>Loan Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>JOANNE ROLLE</td>
<td>000382CP</td>
<td>23,340</td>
</tr>
<tr>
<td>9</td>
<td>DANIEL SEYMOUR</td>
<td>000500CP</td>
<td>20,160</td>
</tr>
</tbody>
</table>

CD’s inability to provide the above files to OIA prevented us from verifying CD’s compliance with Federal program requirements and from executing any tests related to the audit of CD’s Housing Programs as it relates to these files. Please provide all records for the individuals/projects listed above and/or an explanation of why OIA has not been provided with said files by March 29, 2007.

**Observation**

24 CFR Part 85, Section 85.42 of the United States Code of Federal Regulations (CFR) discusses the "Retention and access requirements for records" and "applies to all financial and programmatic records, supporting documents, statistical records, and other records of grantees or subgrantees." According to the CFR, "except as otherwise provided, records must be retained for three years from [various] starting date[s]."

**CD Response**

While we agree with the aforementioned quotes from the regulations, CD fails to see how they relate to the OIA’s list of files for production or the cases listed in the OIA observation.

Please refer back to the part of 24 CFR Part 85.42 (b) Length of retention period that you failed to mention in your observation. "(1) except as otherwise provided, records must be retained for three years from the starting date specified in paragraph (c) of this section." Section 85.42
(c) states "Starting date of retention period—(1).....the retention period for the records of each funding period starts on the day the grantee or subgrantee submits to the awarding agency its single or last expenditure report..."

CD has explained to the OIG on many occasions that none of the projects listed below, as taken from the observation, were funded. Therefore, funds were never disbursed.

<table>
<thead>
<tr>
<th>Agency</th>
<th>Project Name</th>
<th>Amount Awarded by HCLC *</th>
<th>Exhibit</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Coral East Corporation</td>
<td>Keystone Square</td>
<td>$750,000.00</td>
<td>1</td>
</tr>
<tr>
<td>2 Downtown Place, LLC.</td>
<td>Downtown Place</td>
<td>$250,000.00</td>
<td>2</td>
</tr>
<tr>
<td>3 Rivers Development Group</td>
<td>Grove Point</td>
<td>$750,000.00</td>
<td>3</td>
</tr>
<tr>
<td>4 Riverside Place, Ltd.</td>
<td>Riverside Place</td>
<td>$250,000.00</td>
<td>4</td>
</tr>
<tr>
<td>5 RJM LeJeune</td>
<td>LeJeune Apartments</td>
<td>$750,000.00</td>
<td>5</td>
</tr>
<tr>
<td>6</td>
<td>Hidden Harbor Apts.</td>
<td>$325,635 (05/31/02) &amp; $250,000 (3/14/03)</td>
<td>6</td>
</tr>
<tr>
<td>7</td>
<td>Rio Vista</td>
<td>$281,455.00</td>
<td>7</td>
</tr>
</tbody>
</table>

**Observation**

According to 24 CFR 92.508 as it relates to the HOME program, "all records pertaining to each fiscal year of HOME funds must be retained for the most recent five year period." In addition, each CFR provides certain exceptions that provide for longer time periods of record retention depending on the use of funds (e.g., rental vs. homeownership housing projects).

**CD Response**

Once again, CD must, again, clarify to the OIG that there was no contract; therefore there was no disbursement of funds for any of the aforementioned projects; therefore there is no retention period required. The OIG should have read and included in the observation the whole 92.508 Recordkeeping sections which is self explanatory.
Observation

<table>
<thead>
<tr>
<th>Recipient</th>
<th>Loan Account #</th>
<th>Loan Balance</th>
<th>Exhibit</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>JOANNE ROLLE</td>
<td>000362CP</td>
<td>23.340</td>
</tr>
<tr>
<td>9</td>
<td>DANIEL SEYMOUR</td>
<td>000500CP</td>
<td>20.160</td>
</tr>
</tbody>
</table>

CD Response

Since the first day you requested the two aforementioned files, we told you we have been unable to locate them. However, we provided you a copy of the recorded notes and mortgages which implies that, at least, our disbursed funds are protected. We are again providing you with copies, Exhibits 8 and 9. Please remember that we have had so many requests for files from your office, the State Attorney’s Office, and the Miami Herald that it is a miracle that only two files are misplaced. Both projects belong to the First Time Home Buyer Program. We will continue to look for the files, and/or to gather information to re-create those files.