Memorandum

MIAMI-DADE COUNTY

Date: July 17, 2008

To: Honorable Chairman Bruno A. Barreiro
and Members, Board of County Commissioners

Agenda Item No. 12(A)(2)

From: George M. Burgess
County Manager

R. A. Cuevas, Jr.
County Attorney

Subject: Amendment to Settlement Agreement and Work Plan Between Miami Dade County and the U.S. Department of Housing and Urban Development

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RECOMMENDATION

It is recommended that the Board of County Commissioners (BCC) authorize the execution of the attached amendment to the Settlement Agreement and the Work Plan with the United States Department of Housing and Urban Development (US HUD) relating to the possession and control of the Miami Dade Housing Agency (MDHA), subject to the approval of the U.S. Department of Justice and ratification by the Federal District Court.

BACKGROUND

Since the original agreement, executed on October 2, 2007, a copy of which is attached to this memorandum, and implemented on October 26, 2007, the County and US HUD have been working in good faith in order to return MDHA to the County. Significant progress has been made at MDHA and the parties now recognize that modifications to the original Agreement are desirable in order to expedite the return of possession of MDHA by US HUD to the County. The amendment to the Settlement Agreement serves to formalize additional, agreed upon items necessary prior to the US HUD departure. The amendment is included in its entirety as an attachment to this memorandum; however, the amended items are summarized below for the Board's convenience:

Prior to US HUD returning the Agency to the County, the following activities must be completed:

1. US HUD has determined, and the County staff concurs, the outsourcing of the management of the Section 8 program, subject to the Board's approval, is required to ensure the proper management of the program. Numerous housing authorities throughout the United States have privatized this part of their business enterprise. As an example, Chicago has outsourced its 35,000 vouchers for the last 10 years and plans to continue the process. It has recently contracted with a private entity to continue the management and administration of the housing choice voucher program (HCV). Other examples include, The Boston Housing Agency; Newark Housing Authority of New Jersey; Memphis Housing Authority, Columbus Metropolitan Housing Authority; Gary Indiana, Riviera Beach, and Middleton, OH. Should the process fail to yield a responsive proposal, US HUD agrees that it will not use this as a basis to refuse to return possession of MDHA's projects and programs to the County on or before December 1, 2008.

   In the event that the OA and County agree that good faith efforts to procure a qualified entity to outsource the administration of the HCV program do not result in any responsive bids, US HUD agrees that it will not use this as a basis to refuse to return possession of MDHA's projects and programs to the County on or before December 1, 2008. Instead, US HUD shall include this as an item in the Memorandum of Understanding ("MOU"), which is described in greater detail below.

The outsourcing of the County's Section 8 program will more than likely have an impact on the 117 MDHA employees who are presently working in the Private Rental Division. Although assurance cannot be given that accommodations will be made for all of these employees, the County and US HUD will endeavor to ensure that the affected employees are given all due consideration for employment by the contractor selected through this process.

2. US HUD has agreed to proceed with the contracting of the HOPE VI project. Once a development partner is selected and a contract is negotiated, the contract will be submitted along with any request for a bid waiver(s) to the BCC for its approval. Thereafter, the MDHA Oversight Administrator and the County will ensure appropriate agreement(s) are executed. Again, in the event good faith efforts to procure a developer are not successful, US HUD agrees that it will not use this as a basis to refuse to return possession of MDHA's projects and programs to the County on or before December 1, 2008. Instead, HUD shall include this as an item in the MOU that must be accomplished by the County.

3. US HUD will continue to oversee the financial services contract support to ensure the objectives and tasks of that contract are being achieved. The goal is to ensure that MDHA's books and records for fiscal year 2008 are capable of presentation in conformity with Generally Accepted Accounting Principles ("GAAP") and US HUD requirements.

4. US HUD and the County agree that the 12 month timeframe of the original temporary possession, which was slated to end Oct 26, 2008, will be extended until December 1, 2008.

5. During the Transition Period, US HUD and the County will mutually agree upon an MOU for MDHA, which will (1) identify various action items for MDHA once possession is returned to the County, including any performance and/or compliance deficiencies that were identified prior to, or as a result of US HUD's temporary possession of MDHA's projects and programs; (2) describe the actions that will be necessary to correct each deficiency; (3) provide a timetable for the correction of each deficiency; (4) require completion of any outstanding items contained in Paragraph I of the Amendment; and (5) include any intervention identified in 24 C.F.R. § 902.83, for failing to comply with the terms of the MOU.

6. Finally, the original Work Plan that was made a part of the originally Agreement, has been deleted in its entirety. Instead of accomplishing all of the tasks in the Work Plan, the County and US HUD will discuss those items that will be included in the MOU for completion by the County after the Transition Period has ended.

The County staff and US HUD have been working in a supportive manner to achieve the desired outcome of returning the Agency back to the County control as expeditiously as possible. This Amendment is intended to facilitate the completion of that objective.

Attachment

For

Cynthia W. Curry
Senior Advisor to the County Manager

This AGREEMENT (the "Agreement") is entered into by MIAMI-DADE COUNTY ("County") and UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ("HUD").

The parties hereby agree as follows:

1. The County agrees to the temporary possession of the projects and programs of the Miami-Dade Housing Agency ("MDHA") by the United States Department of Housing and Urban Development ("HUD") until all items identified in the work plan agreed upon by the parties ("Work Plan"), which is attached hereto and incorporated herein by reference, are accomplished, or, in HUD's discretion, performance thereof is waived. During the period of HUD's temporary possession, decisions that would otherwise have been made by the County, including the Mayor and the Board of Commissioners, with respect to MDHA will be made by a HUD-designated Oversight Administrator ("OA"). Upon completion of all identified items in the Work Plan, HUD agrees that it will return MDHA's projects and programs to the County.

2. The County will designate the County representatives with whom the OA will consult and maintain regular communications related to the Work Plan activities. The agreement between HUD and the County will become effective five business days after the County and HUD execute this agreement. ("Effective Date"). Commencing on the Effective Date and until such time as all items in the Work Plan have been accomplished, the OA and the County's designees will consult at three-month intervals regarding the status of each of the items in the Work Plan. During these consultations the OA will provide the County with an assessment of the status of each of the items in the Work Plan and the remaining actions that would be required to complete the Work Plan. The parties agree that nothing communicated by HUD or HUD representatives at these meetings constitutes final agency action as that term is used in 5 U.S.C. § 704.

3. Nine months after the Effective Date, if the County believes that all items in the Work Plan have been met, it may request that HUD return MDHA's projects and programs. HUD will have 10 business days from the date of the County's request to determine whether all the items in the Work Plan have been accomplished. If HUD agrees that all items in the Work Plan have been accomplished, HUD will return MDHA's projects and programs to the County within 10 business days of HUD's determination. If HUD determines that one or more of the items on the Work Plan have not been accomplished, HUD shall not be required to grant the County's request. In this event, HUD shall notify the County in writing of items which are incomplete within 10 business days of the County's request. If the County disagrees with HUD's determination, it may appeal the decision to the Secretary of HUD, whose decision shall be final and unreviewable by any court.

4. Twelve months after the effective date of the Agreement, if the County believes that all items in the Work Plan have been met, it may request that HUD return MDHA's projects and programs to the County. HUD will have 10 business days from the date of the County's request to determine whether all the items in the Work Plan have been

accomplished. If HUD agrees that all items in the Work Plan have been accomplished, HUD will return MDHA's projects and programs to the County within 10 business days of HUD's determination. If HUD determines that one or more of the items in the Work Plan have not been accomplished, HUD shall not be required to grant the County's request. In this event, HUD shall notify the County in writing of items which are incomplete within 10 business days of the County's request. If the County disagrees with HUD's determination that all of the Work Plan items have not been accomplished or the performance of those items excused by HUD, it may appeal the decision to the Secretary of HUD. Nothing herein prevents the County from challenging, in court, HUD's decision not to terminate its temporary possession after 12 months from the Effective Date.

5. To the extent that the County is required by state law to adopt a budget that includes the operations of MDHA, the County shall be obliged to approve the budget proposed by the OA insofar as it pertains to federal revenues and other income generated by MDHA (e.g., tenant and commercial rent), and expenditures for MDHA.

6. The OA will consult with County Manager and Mayor on any proposed significant actions relating to contracting, closing of any public housing projects, or termination of MDHA's projects and programs.

7. HUD agrees that it will not demolish or dispose of County property designated for use by MDHA for the administration of HUD's federally funded programs, including but not limited to administrative offices and public housing developments, without the approval of the County. The parties recognize that such approval may only be given by the County in accordance with applicable provisions of Florida law.

8. HUD will review in good faith a revised revitalization plan for the Scott-Carver Hope VI Project that may increase the density on the Scott-Carver site to up to 850 units, 450 of which may be comprised of public housing and Section 8 project-based housing units.

9. HUD, in its discretion, may provide available technical assistance to MDHA to facilitate accomplishment of the items on the Work Plan. Compliance with the Work Plan, however, shall not be contingent on the provision of any technical assistance or other discretionary assistance being provided by HUD.

10. The parties understand and acknowledge that local or state revenues appropriated to the County for affordable housing projects and programs or other programs which are not committed or budgeted by the County to support federally-funded Public Housing and Section 8 programs, cannot be expended, loaned, pledged or otherwise utilized by HUD without approval of the County Commission.

11. Each party expresses its intent that it will carry out the provisions of this settlement Agreement in a spirit of cooperation and good faith.

12. While in control of MDHA, HUD will work diligently to complete those items in the Work Plan that are the responsibility of MDHA, but prioritization of work will be within the discretion of the OA, and HUD will not be required to assign a lower priority to performing the day-to-day tasks of operating the MDHA. The County may offer, and HUD may in its discretion accept, additional County assistance to expedite completion of Work Plan items.

13. The County agrees to continue providing all services to MDHA that it provided prior to the Effective Date, including baseline services (e.g., fire, police, trash collection) as well as administrative services (e.g., procurement, IT support), subject to the execution or continuation of cooperative agreements and reasonable payment by MDHA for these services.

14. To the extent that the County is required by state or local law in the opinion of the County Attorney's Office, or a court, to carry out specific functions of the MDHA, the County shall take all steps determined by the OA to be necessary to operate the MDHA or to facilitate completion of the Work Plan, subject to paragraph 13 of this Agreement.

15. The County agrees to take all necessary steps to remove any liability owed by MDHA to the County for the County's loan of Documentary Stamp Surtax. This transaction must be reported in accordance with accounting principles generally accepted in the United States.

16. The County represents that it has transferred the Documentary Stamp Surtax, State Housing Initiative Partnership (SHIP), and Infill Housing Initiative programs from MDHA to other County departments. Such transfers included all assets, liabilities, revenues and expenditures related to these programs, including but not limited to any receivables owed by the MDHA Development Corporation to the Surtax program. To the extent the County has or intends to undertake the transfer of any other state or local programs from MDHA to another County department(s), the County will complete those transfers. These transactions must be reported in accordance with accounting principles generally accepted in the United States.

17. Except as to the following items, which the County agrees to pay, no Work Plan item will be contingent on the provision of funds by the County:

    A. Payment for the re-audit of MDHA's financial statements for fiscal year 2006, to be performed by MDHA's newly-engaged auditor, Berman Hopkins.

    B. Payment of costs, if any, associated with investigations or audits by state or federal agencies, excluding HUD or any HUD commissioned investigations or audits, regarding MDHA activities occurring prior to the Effective Date.

    C. Costs, if any, associated with the transfer of state and local programs out of MDHA.

18. HUD acknowledges and commends the County's efforts and reforms in connection with recent service improvements in MDHA and its outreach efforts to residents over the last year and a half.

19. The parties do not waive their rights to seek judicial enforcement of this Agreement.

20. The County will dismiss *Miami-Dade County v. United States Department of Housing and Urban Development and Alphonso Jackson*, Secretary, United States Department of Housing and Urban Development, C.A. No. 07-21259 with prejudice within five days of the Effective Date of this Agreement.

21. This Agreement constitutes the entire, integrated agreement made by and among the parties. This Agreement fully supersedes any and all prior or contemporaneous understandings, representations, warranties, and agreements, pertaining to the subject matter hereof.

22. Each party will bear its own attorneys fees and costs.

23. In the event of any conflict between the terms set forth in the Work Plan and the terms of the Settlement Agreement, the terms of this Work Plan shall control.

24. Each party has participated in the drafting and preparation of this Agreement and this Agreement shall be construed as a whole according to its fair meaning and not for or against any party.

25. Each of the parties hereto represents and warrants that it has full and complete authority to enter into and execute this Agreement under the terms set forth above.

26. This Agreement may be executed and delivered in separate counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts together shall constitute but one and the same instrument and agreement.

IN WITNESS HEREOF, the parties have entered into this Agreement as of the Effective Date.

MIAMI-DADE COUNTY

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Bruno A. Barreiro, Chairman
Miami-Dade Board of County Commissioners

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ATTACHMENT 1

WORK PLAN

A. Tasks for Miami-Dade County

1. Commissioners on the Miami-Dade County Board of Commissioners ("County Commissioners") shall attend a workshop, provided either by U.S. Department of Housing and Urban Development ("HUD") or using federal funds provided to Miami-Dade Housing Agency ("MDHA") using federal funding, regarding best practices as a board and their role and responsibility in the oversight of MDHA. The County Commissioners shall also establish a protocol to be followed upon completion of the Work Plan, for their oversight role toward MDHA that shall include procedures and activities that a board of directors of a public housing authority undertakes in the ordinary course of business.

2. Miami-Dade County, through the County Commissioners and/or the Office of the Mayor ("County"), shall coordinate with MDHA and any other County departments administering relevant programs to ensure that the PHA plan is complete, current and in compliance with Section 5A(b)(1) of the U.S. Housing Act of 1937 and 24 CFR 903.4(a) which coordination, shall include:
   a. Revise the PHA plan adopted by the Commission on July 2007, to ensure the PHA plan addresses all activities of the PHA. Information regarding the activities of the MDHA shall be provided to the County Commissioners by the HUD Oversight Administrator ("HUD-OA") for inclusion in the PHA plan.
   b. Ensure that the PHA plan complies with all federal requirements and any additional requirements under Florida state law and local law. The County Attorney's Office shall provide an opinion to the County regarding the plan's compliance with state and local law.
   c. Obtain HUD approval for any revisions to the PHA plan.

3. To the extent that the County is required by state law to adopt a budget that includes the operations of MDHA, the County shall be obliged to approve the budget proposed by the HUD-OA insofar as it pertains to federal revenues and other income generated by MDHA (e.g., tenant and commercial rent), and expenditures for MDHA. In addition, the County shall consider any additional budget recommendations or requests for funds made by the HUD-OA for the expenditure of any other funds by MDHA.

4. The County shall maintain a current executed Conflict of Interest Statement for each County Commissioner. The County shall ensure that each Commissioner is advised of federal regulations and requirements pertaining to conflicts of interest.

5. The County shall disclose in writing any open findings from HUD reviews and/or audits, and pending litigation and outstanding judgments against MDHA, prior to the commencement of the period covered by the Work Plan.

6. The County shall provide to HUD copies of audits or documentation showing the sources and uses of federal dollars utilized by the MDHA Development Corporation ("Development Corporation") as

required by federal law or HUD requirements, including any grant agreements, for each of the past five (5) reporting periods.

7. The County shall execute Cooperative Agreements (e.g. HUD form 52481) between MDHA and the County, or other such County departments as necessary to cover:
   a. Baseline services (e.g. police services, water, sewer, trash collection, fire protection, ambulance/emergency services, etc.);
   b. Payment in Lieu of Taxes ("PILOT"), if applicable; and
   c. Additional administrative services required by MDHA during period covered by the Work Plan (e.g. procurement, legal services, technical support, etc.).

8. The County shall provide funds for the performance of the FY 2006 financial statement re-audit in accordance with C(4)(a)(2) below.

9. The County represents and will confirm that it has transferred the Documentary Stamp Surtax, State Housing Initiative Partnership (SHIP), and Infill Housing Initiative programs from MDHA to other County departments. Such transfers included all assets, liabilities, revenues and expenditures related to these programs, including but not limited to any receivables owed by the MDHA Development Corporation to the Surtax program. To the extent the County has or intends to undertake the transfer of any other federal, state or local programs, including SRO Moderate Rehabilitation, Moderate Rehabilitation, Section 8 New Construction, Shelter Plus Care, Substantial Rehabilitation from MDHA to another County department(s), the County will complete those transfers. These transactions must be reported in accordance with Generally Accepted Accounting Principles ("GAAP") and all other federal requirements. The County must pay any costs associated with the transfer of any program from MDHA.

10. The County agrees to take all necessary steps to remove any liability owed by MDHA to the County for the County's loan of Documentary Stamp Surtax. This transaction must be reported in accordance with GAAP and all other federal requirements.

11. If MDHA is subject to or implicated in any investigations or audits by state or federal agencies, excluding HUD or any HUD commissioned investigations or audits, regarding MDHA activities occurring prior to period covered by the Work Plan, including the use of Surtax funds, the County shall provide funds necessary to respond to the investigation or audit. This includes but is not limited to, any funds necessary to engage attorneys, experts or consultants, to repay improperly used funds, or to perform any remedial actions required as a result of the investigation or audit.

12. Upon the request of the County, the County Attorney's Office will provide legal opinions to the County regarding whether under state or local laws the County is required to carry out specific functions of the MDHA. The County shall be afforded a reasonable time to issue any opinion before the HUD-OA takes any action related to the opinion.

B. Tasks for HUD

1. Review in good faith any submissions from the County or the HUD-OA required to be made pursuant to

this Work Plan.

2. Review and verify completion of items required by this Work Plan, upon their completion.

C. Tasks for HUD-OA

1. HUD-OA'S OVERSIGHT OF MDHA. The HUD OA shall:

   a. Review, modify, as necessary, and approve the existing activities of MDHA that relate to Miami-Dade County, its departments, affiliates, or the Development Corporation as described in the PHA plan.

   b. To the extent that MDHA provides funds to subgrantees, including the Development Corporation, ensure MDHA's oversight of the subgrantee complies with all federal requirements, including those for reviewing the use of any federal funds granted to or expended by any subgrantee.

   c. Budget
      1. Prepare balanced operating budgets for each Federal awards program prepared at the program and project level.
      2. Provide the operating budget covering federal funds (e.g. public housing, Section 8 Housing Choice Vouchers, HOPE VI, and Capital Fund) administered by MDHA to the County Commissioners for adoption. Recommend a budget for any additional local funds that MDHA requests from the County.
      3. Ensure MDHA does not incur any operating expenditures except pursuant to approved budgets, except in the case of emergency where necessary to eliminate serious hazards to life, health and safety.
      4. In the event that unbudgeted expenditures are incurred in emergencies to eliminate serious hazards to life, health and safety, where required by County procedures, amend the operating budget and present to the County for approval in accordance with C(1)(c)(2) above.
      5. Monitor budgeted expenses in relation to actual expenses on a monthly basis:
         i. compare budgeted expenses to actual expenses for the month;
         ii. compare cumulative budget to actual expenditures for the fiscal year; and
         iii. document any approved changes to the budget.

   d. Outstanding findings and judgments.
      1. Develop a plan, subject to the approval of County if beyond the oversight period, for resolution of any open findings and outstanding judgments identified by the County in A(5) above.
      2. Develop a plan for resolution of any findings from any HUD Reviews and/or audits that are made or discovered, or judgments that are incurred, during the period covered by

the Work Plan.

3. Develop and implement procedures to track general liability claims and ensure such claims are submitted to HUD for approval.

e. Execute the Interagency Cooperative Agreements referenced in A(7) above.

f. Conduct Resident Satisfaction Surveys.

2. ORGANIZATION AND STAFFING

a. HUD-OA shall review and revise as necessary the overall organizational structure of MDHA for consistency with Asset Based Management implementation and development of decentralized cost centers.
   1. Provide a staffing plan for managing its public housing and Section 8 Housing Choice Voucher programs. The plan must include comparable staffing levels to PHAs of similar size and address the necessary skills to perform the functions of MDHA.
   2. Develop and implement a plan for transitioning the decentralized functions into individual cost centers consistent with Asset Based Management.
   3. Provide staff with training for Asset Based Management.

b. HUD-OA shall ensure positions are staffed appropriately.
   1. Retain, recruit and hire qualified staff, within budgetary limitations.

c. HUD-OA shall ensure training/technical assistance is provided to all staff, within budgetary limitations.
   1. Complete training needs assessment.
   2. Establish training requirements for MDHA employees. Training areas may include, but not be limited to the following:
      i. general administrative
      ii. computer training
      iii. ethics
      iv. SEMAP
      v. PHAS
      vi. Asset Based Management
      vii. procurement
      viii. contract administration
      ix. cost principles
      x. uniform grant administration requirements,
      xi. business skills, and
      xii. other HUD program specific trainings, as applicable.
   3. Develop a training plan.
   4. Develop and maintain a current reference library, which includes applicable statutes, regulations, HUD Handbooks and Notices, and any additional training materials.

d. HUD-OA shall ensure adequate management and supervision of staff.
   1. Develop and implement a plan for conversion to asset based management, including operational policies and procedures for all agency departments.
   2. If feasible, consolidate Section 8 program operations, Private Rental Housing service administrative offices, the HQS inspections office and the Applicant Leasing Center, subject to site availability and budget limitations, or if the County approves additional funds for this purpose.

e. HUD-OA shall review, and revise as necessary, existing plans to improve the technology used by MDHA.
   1. Conduct, either in-house or through a consultant, a comprehensive, MDHA-wide assessment of MDHA's technology needs and determine what improvements are needed, if any, to the current system.
   2. Project needs for the next five (5) years, and prepare a five (5) year MIS plan as necessary.
   3. Update computer systems pursuant to MIS plan, within budget limitations or if the County approves additional funds for this purpose.

3. PROCUREMENT
   a. HUD-OA will evaluate procurement policies and practices applicable to MDHA and revise in order to ensure compliance with the requirements of 24 C.F.R. part 85, the *Procurement Handbook for Public and Indian Housing Authorities 7460.8 Rev 1*, as well as other applicable Federal, Florida State, local procurement laws and administrative orders.
   b. HUD-OA will have final approval over all procurement actions.
   c. Monitor MDHA's procurement practices during the period covered by the Work Plan.

4. FINANCIAL RECORDS AND CONTROLS
   a. Financial Statements
      1. HUD-OA will ensure all financial information is presented in conformity with GAAP, and all other federal requirements. In addition, HUD-OA will:
         i. Engage a contractor to research and perform a valuation of fixed assets, for fiscal years 2006 and 2007.
         ii. Ensure Tenant Receivables Outstanding are maintained on an aging basis.
         iii. Ensure any and all existing errors in the HOPE VI and Capital Fund Program ("CFP") Capital Assets general ledger accounts are corrected.
         iv. Ensure that any and all accounting errors in the Housing Choice Voucher program are identified and corrected.

      2. HUD-OA will utilize Berman Hopkins, an independent public accountant ("IPA") engaged by the County and approved by HUD, to perform a re-audit of MDHA's fiscal year 2006 financial statement, which re-audit shall be paid for by the County using non-federal funds. In addition, HUD-OA will:
         i. Submit restated financial statements, including audit reports, supplemental schedules and FASS certifications to HUD.

ii. HUD-OA must obtain all re-audited financial statements from IPA no later than nine months after the County approves funding for the re-audit.

b. Internal/Financial Controls.

1. HUD-OA will review, and revise as necessary, existing systems of financial internal controls to ensure that MDHA's financial statements are presented in accordance with GAAP and all other federal requirements.

2. HUD-OA will review, and revise as necessary, existing systems of Internal Controls over payments and/or disbursements made to subgrantees, including the Development Corporation, to provide reasonable assurance that disbursements are accurate and in conformance with HUD requirements, as well as any applicable state or local law.

3. HUD-OA will review existing systems of allocation of costs, to conform to OMB Circular A-87, Allocable Costs/Cost Principles, and will revise as necessary. HUD-OA will develop a plan for transitioning from cost allocation plan to fee-for-service under Asset Management.

4. HUD-OA will review, and revise as necessary, existing systems of Internal Control over payments made in the Section 8 Housing Choice Voucher Program to provide reasonable assurance that disbursements are for the approved Contract amount. In addition, HUD-OA will:
   i. Ensure that data reported in the Voucher Management System ("VMS") reconciles with financial statements restated under C(4)(a)(2) above.
   ii. Establish proper controls to ensure accurate data is entered in VMS.

5. HUD-OA will review, and revise as necessary, existing controls to ensure that withdrawals are not made for specific federal award programs in excess of the funds available on deposit for that program during the period of HUD's possession.

c. Provide copies of existing General Depository Agreements for all financial institutions to HUD, and execute as necessary new Depository Agreements.

5. PROGRAM MANAGEMENT

a. HUD-OA will review and modify, if necessary, policies and procedures for evictions, occupancy, unit turnaround, expense management/utilities, quality control, and all other related MDHA activities.

b. HUD-OA will review the current Admissions and Continuing Occupancy ("ACOP") and Administrative Plan to ensure conformity to current HUD guidance, and revise as necessary.

c. HUD-OA will ensure that the tenant and project-based waiting lists accounts for all relevant factors (e.g., income tier, preferences, date and time of application), if applicable, when placing applicants on the lists, so that the list accurately reflects MDHA's policies and is in compliance with the Adkler Consent Decree.

d. HUD-OA will review, and revise as necessary, existing MDHA procedures for ensuring that all tenants' income and assets are properly verified and files are properly documented.

e. HUD-OA will review, and revise as necessary, existing utility consumption data in accordance with 24 C.F.R. 965, Subpart E.

f. HUD-OA will review and adjust the MDHA comprehensive Maintenance Plan, as necessary.

g. HUD-OA will ensure that MDHA property inspections conform to HUD requirements, and are conducted and recorded in accordance with HQS, UPCS and local building code requirements.

h. HUD-OA will procure services for a capital needs assessment of all MDHA properties, within budgeted federal resources.

i. HUD-OA will ensure compliance with five (5) year energy audit requirements and will incorporate results of any Energy Audit in five (5) year plan.

j. HUD-OA will ensure MDHA complies with environmental requirements.

k. Scott Carver HOPE VI Revitalization Plan ("RP")

    1. If so requested by the County, HUD-OA will submit to HUD for review and approval, a revised RP that would include a change to increase the number of onsite units, to include additional public housing and Section 8 project-based units to HUD for review and approval.

    2. HUD-OA will conduct appropriate solicitation for any RP approved by HUD. HUD-OA will then select development partner in consultation with the County and its community partners. HUD-OA will negotiate with selected vendor and have appropriate agreements executed.

l. HUD-OA will develop a plan to update and record all deeds of trust in conformity with HUD requirements. Any conflicts of title shall be identified. Current copies of all deeds of trust will be provided to HUD.

MEMORANDUM

(Revised)

TO: Honorable Chairman Bruno A. Barreiro and Members, Board of County Commissioners

DATE: July 17, 2008

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

SUBJECT: Agenda Item No. 12(A)(2)

Please note any items checked.

_____ **"4-Day Rule" ("3-Day Rule" for committees) applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Bid waiver requiring County Manager's written recommendation**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

_____ **Housekeeping item (no policy decision required)**

✓ **No committee review**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 12(A)(2)
07-17-08

RESOLUTION NO. _____

RESOLUTION APPROVING AND AUTHORIZING EXECUTION OF AMENDMENT TO SETTLEMENT AGREEMENT AND WORK PLAN BETWEEN MIAMI-DADE COUNTY AND THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, SUBJECT TO THE APPROVAL OF THE U.S. DEPARTMENT OF JUSTICE AND RATIFICATION BY THE FEDERAL DISTRICT COURT

.

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board hereby approves the execution of an amendment to the Settlement Agreement and the Work Plan between the County and the United States Department of Housing and Urban Development relating to the temporary possession of the Miami-Dade Housing Agency, in substantially the form attached hereto and made a part hereto, subject to the approval of the U.S. Department of Justice and ratification by the Federal District Court; and authorizes the Chair of the Board of County Commissioners, the Mayor, and County Attorney to execute same for and on behalf of Miami-Dade County.

The foregoing resolution was offered by Commissioner , who moved its adoption. The motion was seconded by Commissioner and upon being put to a vote, the vote was as follows:

Bruno A. Barreiro, Chairman
Barbara J. Jordan, Vice-Chairwoman

Jose "Pepe" Diaz
Carlos A. Gimenez
Joe A. Martinez
Dorrin D. Rolle
Katy Sorenson
Sen. Javier D. Souto
Audrey M. Edmonson
Sally A. Heyman
Dennis C. Moss
Natacha Seijas
Rebeca Sosa

The Chairman thereupon declared the resolution duly passed and adopted this 17th day of July, 2008. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Terrence A. Smith

AMENDMENT TO AGREEMENT AND WORK PLAN BETWEEN MIAMI-DADE COUNTY AND U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

This AMENDMENT to the Agreement entered between MIAMI-DADE COUNTY (the "County") and the UNITED STATES DEPARMENT OF HOUSING AND URBAN DEVELOPMENT ("HUD") ("Amendment") is entered into as of this ___ day of _____, 2008.

RECITALS

WHEREAS, under the United States Housing Act of 1937, as amended, ("Act"), 42 U.S.C. § 1437 *et seq.*, the United States Department of Housing and Urban Development ("HUD") is responsible for administering low income housing programs, including but not limited to the Section 8 housing choice voucher program, and pursuant to the Act, HUD has entered into Annual Contributions Contracts ("ACCs") with the County to provide funding for the Section 8 and public housing programs administered by the Miami-Dade Housing Agency ("MDHA"); and

WHEREAS, the parties entered into an Agreement and Work Plan dated October 26, 2007 (collectively referred to as "Agreement"), whereby HUD assumed temporary possession of the projects and programs of MDHA; and

WHEREAS, the United States District Court for the Southern District of Florida has ratified the Agreement and retained jurisdiction to enforce the Agreement in Case No. 07-21259-CIV-GRAHAM; and

WHEREAS, HUD has commenced necessary improvements to the management and functioning of MDHA in accordance with the Agreement; and

WHEREAS, although the parties acknowledge that significant progress has been made at MDHA the parties have now recognized that modifications to the original Agreement are desirable in order to expedite the return of possession of MDHA by HUD to the County;

NOW THEREFORE, HUD and the County agree as follows:

I. Paragraph 1 of the Agreement is hereby superseded as follows:

HUD will temporarily possess the projects and programs of the MDHA until the completion of a transition period, which shall commence on October 1, 2008 and terminate with the return of all projects and programs of MDHA to the County ("Transition Period"), as set forth below. During the period of temporary possession, HUD will continue to oversee the daily operations of MDHA and the parties will work toward the completion of the items set forth herein. During the period of temporary possession, decisions that would otherwise have been made by the County, including the Mayor and the Board of County Commissioners ("BCC") with respect to MDHA will continue to be made by a HUD-designated Oversight Administrator ("OA").

During the period of temporary possession, HUD, through its OA, where appropriate, and the County will undertake the following items:

a. Financial Reporting and Controls: HUD will continue to oversee the financial services contract support being provided to MDHA by HUD to ensure the objectives and tasks of that contract are being achieved so that MDHA's books and records for fiscal year 2008 are capable of presentation in conformity with Generally Accepted Accounting Principles ("GAAP") and HUD requirements.

b. Section 8 Housing Choice Voucher Program ("HCV"): HUD will continue to oversee the HCV contract support being provided to MDHA by HUD to ensure continued progress towards the objectives and tasks of the contract. Furthermore, HUD and the County will ensure the following tasks are performed:
    1. The Section 8 Housing Choice Voucher program is outsourced in its entirety to a qualified entity having expertise in the administration of a Section 8 program. The OA and the County shall procure and enter into an agreement with a qualified contract administrator in compliance with 24 C.F.R. part 85 and state and local procurement laws and administrative orders. Prior to the award of a contract, the OA and the County shall seek the approval of said contract from the BCC. Once said contract is approved by the BCC, the County and the OA will ensure appropriate agreement(s) are executed.
    2. The outsourcing of the administration of the HCV program is to be completed by December 1, 2008. The outsourcing of the administration of the HCV program shall be for a period of two (2) years. The County, in its sole discretion, in consultation with HUD, shall have the option to extend the outsourcing of the HCV program in one (1) year increments.
    3. In the event that the OA and County agree that good faith efforts to procure a qualified entity to outsource the administration of the HCV program do not result in any responsive bids, HUD agrees that it will not use this as a basis to refuse to return possession of MDHA's projects and programs to the County on or before December 1, 2008. Instead, HUD shall include this as an item in the Memorandum of Understanding ("MOU") that must be accomplished by the County, in accordance with Paragraph III of the Amendment below.

c. HOPE VI: HUD will continue to oversee and work towards continued progress through the HOPE VI redevelopment process. Specifically:
    1. HUD and the County will consult with local stakeholders, including the former residents of Scott-Carver Homes, throughout the remainder of the HOPE VI development process.
    2. Once a development partner is selected and a contract is negotiated, the contract shall be submitted along with any request for a bid waiver(s) to the BCC for their approval. Thereafter, the OA and the County will ensure appropriate agreement(s) are executed.

3. In the event good faith efforts to procure a developer are not successful, HUD agrees that it will not use this as a basis to refuse to return possession of MDHA's projects and programs to the County on or before December 1, 2008. Instead, HUD shall include this as an item in the MOU that must be accomplished by the County, in accordance with Paragraph III of the Amendment below.

II. Paragraph 2 of the Agreement is hereby superseded as follows:

The County will designate the County representatives with whom the OA will continue to consult related to the items in Paragraph I of the Amendment and the MOU to be executed in accordance with Paragraph III of the Amendment. Until such time as all items in Paragraph I of the Amendment have been accomplished and an MOU has been executed in accordance with Paragraph III of the Amendment, the OA and the County's designees will consult regarding the status of each of these items. During these consultations the OA will provide the County with an assessment of the status of each of the items described in Paragraph I of the Amendment. The parties agree that nothing communicated by HUD or HUD representatives during these consultations constitutes final agency action as that term is used in 5 U.S.C. § 704.

III. Paragraph 3 of the Agreement is hereby superseded as follows:

The OA and the County will work together during the Transition Period to ensure that the County management and oversight of MDHA is in place and ready to resume operation of MDHA as of December 1, 2008. In addition:

a. During the Transition Period, HUD and the County will mutually agree upon an MOU for MDHA, which will:
    1. Identify various action items for MDHA once possession is returned to the County, including any performance and/or compliance deficiencies that were identified prior to, or as a result of HUD's temporary possession of MDHA's projects and programs;
    2. describe the actions that will be necessary to correct each deficiency;
    3. provide a timetable for the correction of each deficiency;
    4. require completion of any outstanding items contained in Paragraph I of the Amendment; and
    5. include any intervention identified in 24 C.F.R. § 902.83, for failing to comply with the terms of the MOU.

b. Notwithstanding any other provision of this Agreement, as amended, the MOU must be approved by the BCC and executed by the County and HUD, prior to the transfer of possession of the projects and programs of MDHA to the County.

c. During the Transition Period, HUD shall provide information related to the changes made by HUD during the temporary possession of MDHA, including but not limited to changes related to MDHA's programs and projects, policies and

procedures, operations, budget, and staff. HUD and the County will endeavor to ensure that there is a seamless transfer of MDHA's projects and programs to the County at the end of the Transition Period.

IV. Paragraph 4 of the Agreement is hereby superseded as follows:

Return of Possession

a. Upon performance of the items in Paragraph I of the Amendment and the execution of the MOU, in accordance with Paragraph III of the Amendment, which it is anticipated will occur on or before December 1, 2008, HUD shall return possession of the projects and programs of MDHA to the County. Upon the transfer of possession of the projects and programs of MDHA from HUD to the County, the County directly or through its contractors will be responsible for carrying out all operations of MDHA, including completion of any action items set forth in the MOU for MDHA. HUD will retain its oversight authority with respect to MDHA, as provided by federal laws, regulations and the ACCs.

b. If at any point during the Transition Period the County believes that all items in Paragraph I of the Amendment have been met and a MOU has been executed in accordance with Paragraph III of the Amendment, the County may request that HUD return MDHA's projects and programs. HUD will have ten (10) business days from the date of the County's request to determine whether all the items in Paragraph I of the Amendment have been accomplished and an MOU executed in accordance with Paragraph III of the Amendment. If HUD agrees that these items have been accomplished, HUD will return MDHA's projects and programs to the County within ten (10) business days of HUD's determination. If HUD determines that one or more of the items in Paragraph I of the Amendment have not been accomplished or an MOU has not been executed in accordance with Paragraph III of the Amendment, HUD shall notify the County in writing of items which are incomplete within ten (10) business days. If the County disagrees with HUD's determination that all of the items in Paragraph I of the Amendment have not been accomplished and an MOU executed or the performance of those items excused by HUD, it may appeal the decision to the Secretary of HUD. Nothing herein prevents the County from challenging, in court, HUD's decision not to terminate its temporary possession during the Transition Period.

V. Paragraph 9 of the Agreement is hereby superseded as follows:

HUD, in its discretion, may provide available technical assistance, including training and contract support, to MDHA to facilitate accomplishment of the items in Paragraphs I and III of this Amendment. Compliance with this Agreement, as amended, however, shall not be contingent on the provision of any technical assistance or other discretionary assistance being provided by HUD.

VI. Paragraph 12 of the Agreement is hereby superseded as follows:

While in control of MDHA, HUD will work diligently to complete the items identified in Paragraph I of this Amendment that are the responsibility of MDHA, but prioritization of work will be within the discretion of the OA, and HUD will not be required to assign a lower priority to performing the day-to-day tasks of operating the MDHA. The County may offer, and HUD may in its discretion accept, additional County assistance to facilitate completion of identified items.

VII. Paragraph 14 of the Agreement is hereby superseded as follows:

To the extent that the County is required by state or local law in the opinion of the County Attorney's Office or a court to carry out specific functions of the MDHA, the County shall take all steps determined by the OA to be necessary to operate the MDHA or to facilitate completion of the items identified in Paragraph I of the Amendment and the execution of the MOU in accordance with Paragraph III of the Amendment, subject to Paragraph 13 of the Agreement.

VIII. Paragraph 15 of the Agreement is hereby superseded as follows:

The County agrees to take all necessary steps to remove any liability owed by MDHA to the County for the County's loan of Documentary Stamp Surtax and to ensure any such liability is not collected from MDHA in the future. This transaction must be reported in accordance with accounting principles generally accepted in the United States.

IX. Paragraph 17 of the Agreement is hereby superseded as follows:

Except as set forth in this Agreement, as amended, or otherwise agreed upon in writing by the parties, no additional funds shall be required by HUD from the County during the period of temporary possession of the operation of MDHA, its projects, or programs. In addition to the items listed above, the County agrees to:

a. Administer the contract with MDHA's auditor, Berman Hopkins for the prior year re-audit work, as required, and ensure that any payments are made from non-federal funds.
b. Pay costs, if any, associated with investigations or audits by state or federal agencies, excluding HUD or any HUD commissioned investigations or audits, regarding MDHA activities occurring prior to October 26, 2007.
c. Pay costs, if any, associated with the transfer of any programs out of MDHA.

X. Paragraph 20 of the Agreement is hereby superseded as follows:

Within ten (10) business days of the completion of the transfer of the projects and programs of MDHA by HUD to the County, the County will seek the termination of continuing jurisdiction of the United States District Court over the Agreement, as amended.

XI. Paragraph 21 of the Agreement is hereby superseded as follows:

This Agreement and any written amendments thereto, constitute the entire integrated agreement made by and among the parties. This Agreement, as amended, fully supersedes any and all prior or contemporaneous understandings, representations, warranties, and agreements, pertaining to the subject matter hereof.

XII. Paragraph 23 of the Agreement is hereby superseded as follows:

The Agreement between HUD and the County became effective on October 26, 2007, five (5) business days after the County and HUD executed the Agreement. ("Effective Date"). The Agreement may be amended by written agreement of the parties and any amendments to the Agreement shall become effective upon ratification by the Court or upon a finding by the Court that such ratification is unnecessary. ("Ratification Date").

XIII. The Work Plan attached to the Agreement is hereby superseded in its entirety.

XIV. Except for the aforementioned modifications, and in all other respects, the Agreement shall remain in full force and effect in accordance with the terms and conditions specified therein.

XV. This Amendment may be executed and delivered in separate counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts together shall constitute but one and the same instrument and agreement.

XVI. Following execution of this Amendment by all parties, the County shall promptly seek ratification of the Amendment by Judge Graham of the United States District Court for the Southern District of Florida in Case No. 07-21259-CIV-GRAHAM. HUD shall not oppose the County's request.

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EXECUTED:

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