

Memorandum



Date: December 10, 2008

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

From: George M. Burgess
County Manager

Subject: Supplemental Information on the Resolution Authorizing the Memorandum of Understanding
between Miami-Dade County and US HUD

EDHS
Supplement to
Agenda Item No. 4(A)

Attached please find a copy of the Amendment to the Settlement Agreement and Work Plan (Amendment) between Miami-Dade County and the US Department of Housing and Urban Development (US HUD). As stated in the item, the Board of County Commissioners (BCC) approved this Amendment on July 17, 2008 through Resolution R-868-08.

In summary, the Amendment included language that "[US] 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," otherwise known as the Transition Period. During the Transition Period, US HUD will continue to oversee and manage the daily operations of MDHA; however, the County and US HUD are to develop a Memorandum of Understanding (MOU) that will include, but is not limited to:

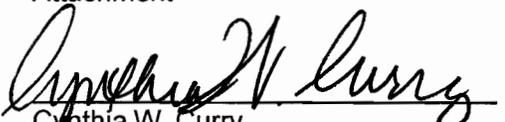
- Identify various action items for MDHA once possession is returned to the County;
- Describe the actions and timetable necessary to correct each identified deficiency; and
- Complete any items contained in Paragraph 1 of the Amendment.

In summary, Paragraph 1 of the Amendment includes the following two actions to be undertaken by the US HUD Oversight Administrator and the County:

- Outsourcing of the Section 8 Housing Choice Voucher (HCV) program in its entirety to a qualified contract administrator having expertise in the administration of a Section 8 program, upon approval by the BCC. If good faith efforts to procure a qualified contract administrator do not result in any responsive bids, US HUD will include the administration of the Section 8 HCV program as an item in the MOU to be accomplished by the County.
- Select a development partner and negotiate a contract to for the remainder of the HOPE VI development, and submit the contract along with any request for a bid waiver(s) to the BCC for approval. If good faith efforts to procure a developer are not successful, US HUD will include this as an item in the MOU to be accomplished by the County.

In addition to the MOU, US HUD and the County have worked to place the other two actions required under the Amendment before the BCC for consideration. On this same agenda is the contract award for the outsourcing of management and oversight services for 14,609 Housing Choice vouchers, 75 Mainstream vouchers, 50 Project Based Voucher units, and one Disaster Housing Assistance Program voucher. The contract award to obtain a master developer for the remainder of the HOPE VI project is also on this same agenda; however, a two-thirds vote of the BCC members present is needed to waive requirements of Sections 2-8.3 and 2-8.4 of the County Code, which pertains to competitive bidding, because the County's procurement policies were not included in the original bid by the US HUD Oversight Administrator at the time.

Attachment


Cynthia W. Curry
Senior Advisor to the County Manager

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 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT ("HUD") ("Amendment") is entered into as of this 25 day of August, 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.

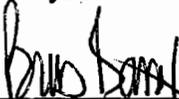
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EXECUTED:

R. A. CUEVAS, JR.
Miami-Dade County Attorney



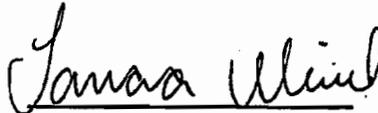
Cynthia A. Johnson-Stacks
Fla. Bar. No. 372234
Terrence A. Smith
Fla. Bar. No. 847471
Craig E. Leen
Fla. Bar. No. 701696
David Stephen Hope
Fla. Bar. No. 87718
Miami-Dade County Attorney's Office
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128-1993
Tel: (305) 375-5151
Fax: (305) 375-5611
CJS2@miamidade.gov
CEL1@miamidade.gov
DHOPE@miamidade.gov
ASMITH2@miamidade.gov
Tel: (202) 305-1432
Attorneys for Miami-Dade County


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

GREGORY G. KATSAS
Assistant Attorney General

R. ALEXANDER ACOSTA
U.S. Attorney

MICHAEL SITCOV
Assistant Director, Federal Programs Branch



Tamara Ulrich (NY Bar)
tamara.ulrich@usdoj.gov
James Schwartz (DC Bar)
james.schwartz@usdoj.gov
U.S. Department of Justice
Civil Division, Federal Programs Branch
20 Massachusetts Ave., N.W. Room 7202
Washington, D.C. 20530
Telephone: (202) 616-8267
Fax: (202) 616-8470

Attorneys for Defendants

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