# Memorandum

MIAMI-DADE COUNTY

**Date:** July 21, 2009

Agenda Item No. 8(G)(1)(A)

**To:** Honorable Chairman Dennis C. Moss
and Members, Board of County Commissioners

**From:** George M. Burgess
County Manager

**Subject:** Amendment to Professional Services Agreement Between Miami-Dade County and Housing Opportunities Projects for Excellence, Inc.

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**Recommendation**

It is recommended that the Board of County Commissioners (Board) approve amending the Professional Services Agreement between Miami-Dade County ("County") and Housing Opportunities Projects for Excellence, Inc. ("HOPE, Inc.") to extend the contract for Adker v. HUD Housing Counseling and Other Services until December 31, 2009.

**Scope**

The contract is associated with housing counseling services provided to federally subsidized housing participants and applicants throughout Miami-Dade County.

**Fiscal Impact**

The time extension through the end of the calendar year will not increase the value of the contract with HOPE, Inc.

However, any expenses for work already performed under the contract will be covered by Section 8 Housing Choice Voucher Program administrative fees and the interest earned on funding set-aside to be used only for the Adker case as required by the Decree.

**Track Record/Monitoring**

This item does extend the existing contract with HOPE, Inc so that the agency can continue to provide housing counseling services to the class members and applicants, who were eligible for those services and who were, or will be, referred to the housing center ("HC") prior to the expiration of the Decree.

**Background**

A class action lawsuit was filed by past, present and future black public housing residents against the County and the US Department of Housing and Urban Development ("HUD") in the case of Ann-Marie Adker, et al., v. United States Department of Housing and Urban Development and Miami-Dade County. The Plaintiffs sought to racially desegregate the Section 8, public housing, and other housing programs administered by the County. On July 22, 1997, the Board adopted Resolution R-950-97, which authorized the County to execute a settlement agreement and consent decree. Thereafter, on June 6, 1998, the federal district court entered a consent decree ("Decree") ordering the County and HUD to achieve desegregation in the County's housing programs in compliance with the terms and conditions of the Decree.

One of the requirements set forth in the Decree was the establishment of a HC, which would be operated by a non-profit organization, to act as a mobility counselor and serve as an information clearinghouse for class members and applicants for public housing, Moderate Rehabilitation, and tenant-based assistance seeking desegregative housing opportunities. In accordance with the Decree, HOPE, Inc. was selected to operate the HC, which is named Dewey W. Knight, Jr. and Ann-Marie Adker Fair Housing Center. The term of the Decree is ten years from the date the HC opened. The HC did not open until August 2, 1999; therefore the Decree will expire on August 1, 2009.

Prior to the HC opening, the County entered into a contract with HOPE, Inc. on May 3, 1999. The term of the contract was one year with the option to renew for a total of ten years. The last ten year period expired on May 2, 2009. Because the Decree requires that the HC operate until the expiration of the Decree, HOPE, Inc.'s contract must be extended. Additionally, HOPE, Inc. has requested that the County extend the contract until December 31, 2009 (at no additional cost to the County) since they are, and will still be, assisting the class members and applicants who are eligible for services until the expiration of the Decree. HOPE, Inc. will take no new clients after August 1, 2009.

Additionally, there is still an unpaid balance of $704,448.38 remaining to be paid on HOPE, Inc.'s contract, which cannot be paid until the contract is extended.

It is therefore recommended that the Board approve the extension of HOPE, Inc.'s contract in order to remain in compliance with the Decree. It is further recommended that the Board authorize the extension of the Contract until December 31, 2009 so that HOPE, Inc. can continue to provide housing counseling services to the class members and applicants, who were eligible for their services and who were or will be referred to HC prior to the expiration of the Decree.

Cynthia W. Curry
Senior Advisor to the County Manager

# MEMORANDUM

(Revised)

TO: Honorable Chairman Dennis C. Moss and Members, Board of County Commissioners

DATE: July 21, 2009

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

SUBJECT: Agenda Item No. 8(G)(1)(A)

Please note any items checked.

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|---|---|
| _____ | "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 Mayor'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. 8(G)(1)(A)
7-21-09

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE MAYOR OR THE MAYOR'S DESIGNEE TO EXECUTE AN AMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT BETWEEN THE COUNTY AND HOUSING OPPORTUNITIES PROJECT FOR EXCELLENCE, INC. FOR ADKER RELATED HOUSING MOBILITY COUNSELING AND OTHER SERVICES

**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 directs the Mayor or the Mayor's designee to execute the Amendment to Professional Services Agreement between Miami-Dade County and Housing Opportunities Project for Excellence, Inc., substantially in the form attached hereto and made part hereof as Exhibit B, and authorizes the Mayor or Mayor's designee to exercise any cancellation and renewal provisions therein.

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

Dennis C. Moss, Chairman
Jose "Pepe" Diaz, Vice-Chairman

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| Bruno A. Barreiro | Audrey M. Edmonson |
| Carlos A. Gimenez | Sally A. Heyman |
| Barbara J. Jordan | Joe A. Martinez |
| Dorrin D. Rolle | Natacha Seijas |
| Katy Sorenson | Rebeca Sosa |
| Sen. Javier D. Souto | |

The Chairperson thereupon declared the resolution duly passed and adopted this 21st day of July, 2009. 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

Approved by County Attorney as
to form and legal sufficiency.

By:_____
Deputy Clerk

Terrence A. Smith

EXHIBIT A

# PROFESSIONAL SERVICES CONTRACT
# BETWEEN
# MIAMI-DADE COUNTY
# AND
# HOUSING OPPORTUNITIES PROJECT FOR EXCELLENCE, INC.

## FOR ADKER v. HUD:
## HOUSING MOBILITY COUNSELING AND OTHER SERVICES

This Contract made this 3rd day of May 1999 by and between Miami-Dade County ("County"), a political subdivision of the State of Florida, located at 111 N.W. First Street, Miami, Florida, 33128, and Housing Opportunities Project for Excellence, Inc. ("HOPE" or "Contractor"), a private nonprofit corporation, organized and existing in good standing under and by virtue of the laws of the State of Florida, located at 18441 N.W. Second Avenue, Suite 218, Miami, Florida, 33169, for housing mobility counseling and other services in conjunction with services provided by the Miami-Dade Housing Agency ("MDHA"), a department of Miami-Dade County, with its principal office at 1401 N.W. Seventh Street, Miami, Florida, 33125, pursuant to the Consent Decree entered on October 28, 1998 in the lawsuit entitled Adker v. HUD, No. 87-0874-CIV-PAINE, United States District Court for the Southern District of Florida.

WHEREAS, the County receives funding from the United States Treasury for the administration of the United States Department of Housing and Urban Development's ("HUD's") Section 8 tenant-based and public housing programs; and

WHEREAS, in administering such programs, the County may enter into contracts with qualified firms to provide professional services to the County; and

WHEREAS, the County desires to establish a Housing Center pursuant to the Consent Decree issued by the United States District Court in Adker v. HUD for housing mobility counseling and other services throughout Miami-Dade County; and

WHEREAS, the Contractor represents that it is qualified to provide the requested services, and the parties to the Consent Decree selected the Contractor to provide such services;

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter set forth, the sufficiency of which is acknowledged by the parties, the County and the Contractor agree as follows:

## ARTICLE I
## CONTRACT DOCUMENTS

I.1. The Contract of the County and the Contractor evidenced by this document shall be referred to herein as the "Contract". The Contract shall consist of: (1) this document (hereinafter referred to as the "Master Contract Document"); (2) the Adker Consent Decree (attached hereto as Appendix A); and (3) HOPE's Statement of Work (attached hereto as Appendix B), written to conform to the requirements of the Consent Decree and approved by the County and HUD; provided, however, that the Contract shall not include any terms or conditions contained in the Statement of Work which may be contradictory to any term or condition of the Consent Decree or the Master Contract Document.

I.2. The Consent Decree, attached hereto as Appendix A, and the Statement of Work, attached hereto as Appendix B, are hereby incorporated by reference as if fully set forth herein and made part of the Contract. Thus, the definitions set forth in the Consent Decree apply fully to this Contract.

I.3. The order of precedence of the Contract Documents shall be as follows: first, the Consent Decree (attached hereto as Appendix A); second, this Master Contract Document; and third, the Statement of Work (attached hereto as Appendix B). To the extent there is any ambiguity or conflict between or among any two or more of the Contract documents, the resolution of such ambiguity or conflict shall be that which best advances the purposes of the Consent Decree, after consultation between MDHA and the Contractor. If MDHA and the Contractor cannot resolve such ambiguity or conflict, they shall consult with counsel for the Adker plaintiffs and HUD.

## ARTICLE II
## ENGAGEMENT

II.1. The County engages the Contractor to establish and administer the Dewey W. Knight, Jr. and Ann-Marie Adker Fair Housing Center ("HC"), which will provide mobility housing counseling to encourage households offered project-based or tenant-based assistance (particularly mobility pool members offered tenant-based assistance and family public housing applicants offered desegregative units) to explore and accept desegregative housing throughout Miami-Dade County, and other related assistance, in accordance with the requirements of the Consent Decree and the attached Statement of Work. This engagement is made upon the terms and conditions and for the compensation set forth below, and the Contractor accepts the engagement upon such terms, conditions, and compensation.

II.2. This Contract has been made pursuant to the directives of the Consent Decree in Adker v. HUD, which establishes the requirements for the performance and administration of this Contract. The Contractor's performance shall be reviewed every six months by MDHA to identify areas of needed improvement for accomplishing the goals of this Contract based on the mobility counseling and other performance criteria described in Paragraph V.2 below and Appendix D. MDHA and HOPE will meet monthly to discuss the Contractor's performance, to

resolve minor issues, and to try to avoid major issues before they occur. HUD and the Adker plaintiffs are free to bring to MDHA's attention, on an informal basis, any matter that either would like raised at such monthly meetings between MDHA and the Contractor. Counsel for the Adker plaintiffs may attend any such monthly meeting if they provide reasonable advance notice to MDHA and HOPE, which notice raises a specific issue the Adker plaintiffs seek to have discussed at that meeting.

II.3. BREACH OF CONTRACT BY CONTRACTOR: A material breach by the Contractor shall have occurred under this Contract, and the termination procedures in Paragraph II.5 shall apply, if any of the following occur, after notice by the County and the Contractor's failure to cure such breach within thirty (30) days of said notice unless otherwise provided: (1) the Contractor fails to provide the services outlined in the Statement of Work within the effective term of this Contract; (2) the Contractor improperly uses the funds allocated under this Contract; (3) the Contractor does not furnish the Certificates of Insurance required by this Contract or as determined by the County's Risk Management Division (cure period is two (2) business days); (4) the Contractor fails to submit proof of expenditures to support disbursement requests or advance funding disbursements or fails to submit detailed reports of expenditures or other required reports; (5) the Contractor refuses to allow the County access to records or refuses to allow the County to monitor, evaluate, or review the Contractor's program (cure period is two (2) business days); (6) the Contractor discriminates under any of the laws outlined in Paragraph VI.7 of this Contract; (7) the Contractor falsifies or violates the provisions of the County's Affidavits (attached hereto as Appendix C); (8) the Contractor attempts to meet its obligations under this Contract through fraud, misrepresentation, or material misstatement (no cure period); (9) the Contractor fails to correct deficiencies found during a monitoring, evaluation, or review within the specified time; (10) the Contractor fails to submit the Certificate of Corporate Status, Board of Directors' requirements, or proof of tax status; (11) the Contractor fails to fulfill in a timely and proper manner any and all of its obligations, covenants, agreements, and stipulations in this Contract; or (12) the Contractor fails to perform the functions of the HC required in the Consent Decree. Waiver of breach of any provision of this Contract shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Contract.

II.4. BREACH OF CONTRACT BY COUNTY: A material breach by the County shall have occurred under this Contract if any of the following occur, after notice by the Contractor and the County's failure to cure such breach within thirty (30) days of said notice: (1) the County fails to provide essential materials, information, or files requested by HOPE and required by the Consent Decree, which inhibit the Contractor's ability to perform; (2) the County fails to disburse funds in accordance with this Contract, except as otherwise permitted in this Contract including, but not limited to, Article IV below; or (3) the County fails to cooperate, to the maximum extent possible, with the functioning of the HC. However, the County shall not be liable for any breach that occurs due to circumstances beyond the control of the County, including, but not limited to, actions or omissions by HUD or counsel for the Adker plaintiffs.

II.5. If any party to the Adker lawsuit believes that the Contractor's performance is inadequate and the matter could not be resolved successfully through the process set forth above in Paragraph II.2, the following procedures shall apply so that such concerns can be reasonably

considered and resolved: That party must provide written notification to HOPE and to the other Adker parties describing the problem, and set up a convenient time for a conference call with HOPE and all the Adker parties within ten (10) days. The problem will be discussed during the conference call, and HOPE will receive either thirty (30) days to correct the problem, or fourteen (14) days to send a written response stating how the problem will be corrected, along with a clearly defined time frame for doing so. If necessary, additional telephone conferences and/or a meeting may take place to assist in resolution of such concerns. If HUD, or MDHA after consultation with HUD, concludes that the Contractor cannot make sufficient changes to resolve such concerns, the following additional procedures shall apply for termination of the Contract: MDHA will give HOPE and counsel for the Adker plaintiffs a minimum of thirty (30) days notice that the Contract will be terminated, prior to advertising for a new contractor via a Request for Proposals. The formal termination of this Contract shall not occur, however, until a final contract is fully executed between MDHA and the replacement private nonprofit organization so as to avoid any gap in the operation of the HC. During the period of time between MDHA's notice that the Contract will be terminated and a new final Contract is executed, the Contractor will receive payment only for actual services provided and performance goals completed.

## ARTICLE III
## TERM OF CONTRACT

III.1. The initial term of this Contract shall be one (1) year. The Contract may be renewed in successive one-year increments by the County for a total of ten (10) years, provided all terms and conditions, including performance measures set forth in the Statement of Work, are met. Additionally, the Contractor must submit a revised Statement of Work to the County for the subsequent year not less than forty-five (45) days before expiration of this Contract. Unless the County notifies the Contractor not less than thirty (30) days before expiration of this Contract, the Contract will automatically be renewed.

## ARTICLE IV
## CONTRACT PRICE AND COMPENSATION

IV.1. CONTRACT PRICE: The Contractor shall furnish the necessary personnel, materials, services, equipment, facilities, and otherwise provide all things necessary for or incidental to the performance of the work set forth in this Contract for the price of Eight Hundred Eighty-Four Thousand and Seven Hundred Dollars ($884,700) for the first year of this Contract, which amount includes the following components: (1) Five Hundred and Sixty Thousand Dollars ($560,000), originally from the United States Treasury, in accordance with Paragraph 8 of the Consent Decree; (2) Three Hundred and Twelve Thousand Dollars ($312,000) from the County, which is the amount designated by the Adker plaintiffs for the Contractor's expenses for the first year of this Contract in accordance with Paragraph 6 of the Consent Decree; and (3) Twelve Thousand and Seven Hundred Dollars ($12,700), MDHA's estimate of the portion of Section 8 administrative fees (which fees the County receives from the federal government in the County's capacity as a Public Housing Agency) due to the HC from the County for the first year of this Contract (based on MDHA's estimate of 21 turnovers of tenant-based subsidies going to the mobility pool each month starting in the fifth month of this Contract) in accordance with

Paragraph 7 of the Consent Decree, which together shall be the maximum amount payable to the Contractor for all services rendered by the Contractor hereunder, including services rendered prior to the execution of this Contract; provided, however, that the amount set forth above in clause (3) of this Paragraph IV.1 shall be adjusted approximately six (6) months after the Contract is executed and then again approximately six (6) months later to reflect the actual number of tenant-based subsidies leased up by mobility pool members (as compared to the estimate of 21 per month) and thirty (30) percent of the actual amount of administrative fees the County received from the federal government for these subsidies. Neither MDHA nor HUD shall be liable to the Contractor for any costs above the maximum price incurred by the Contractor in completing all the work required by the Contract. If this Contract is renewed, any balance remaining of the funds reserved for the first year of this Contract shall be available for the next year.

IV.2. ADVANCE: Using only the funding provided by the County pursuant to Paragraph 6 of the Consent Decree, an initial payment of Eighty-Seven Thousand and Eleven Dollars ($87,011) of the Contract price shall be made to the Contractor within fifteen (15) days of the execution of this Contract to cover start-up costs, including approved expenses already incurred and anticipated expenses as set forth in the budget included in the Statement of Work. This amount shall be deposited in the Contractor's Adker account. Any such funds advanced but not used for start-up costs shall be returned to the County by the Contractor for deposit in the County's Adker account. Using only the funding provided by the County pursuant to Paragraph 6 of the Consent Decree, an additional initial payment of One Hundred Nine Thousand and Eighty-Nine Dollars ($109,089) of the Contract price shall be made to the Contractor within fifteen (15) days of the execution of this Contract, which will constitute an advance of HOPE's estimate of its operating expenses other than start-up costs for two months only. This amount shall be deposited in the Contractor's Adker operating account.

IV.3. CONTRACTOR REQUEST FOR REPLENISHMENT OF ACCOUNT: The remaining balance of the Contract price, Six Hundred Eighty-Seven Thousand and Nine Hundred Ninety-Six Dollars ($687,996) shall be payable as follows: The Contractor, at its discretion, shall submit a request to the County to replenish the Contractor's Adker operating account to ensure that One Hundred Nine Thousand and Eighty-Nine Dollars ($109,089) (two months of operating expenses) is available to the Contractor. This amount may be adjusted at the joint agreement of MDHA and HOPE to reflect HOPE's actual operating expenses for a two-month period. Such requests for replenishment shall include proof of expenditures incurred since the initial advance or any prior request for replenishment, including, but not limited to, copies of transfer of fund checks from the Contractor's Adker account, invoices, copies of checks, and payroll records. If the expenditure is not fully chargeable to the Adker account, the request for replenishment will include a description of how the expenditure is being prorated to the different funding sources or programs, including the Adker funds. The Contractor agrees to include its Federal Tax Identification number in all requests submitted to MDHA and any other information required by MDHA. The Contractor hereby agrees that HUD, as a grantor of funds to MDHA used to finance in part this Contract, may require its approval of such request related to expenses utilizing the federal funding, prior to any payment thereunder. MDHA may withhold payment for the Contractor's material failure to comply with any of the provisions of these Paragraphs

after providing five (5) days advance written notice to HOPE, and a reasonable opportunity for the Contractor to cure such deficiency. If MDHA and the Contractor cannot resolve the matter, they shall consult with counsel for the Adker plaintiffs and HUD. Requests for replenishment and all supporting documentation shall be submitted to:

MDHA
Attn: Raul Fernandez
1401 NW 7th Street
Miami, Florida 33125

IV.4. RESERVE FUND: Within fifteen (15) days of the execution of this Contract, Two Hundred and Forty Eight Thousand Dollars ($248,000) of the Five Hundred and Sixty Thousand Dollars ($560,000) committed by the County under Paragraph 6 of the Consent Decree shall be placed into a separately identified County fund ("reserve fund") within the County's Adker account. The amounts in this reserve fund shall be invested by the County in such a way to earn additional income, in the form of interest or otherwise, for this reserve fund, but without risk to the principal in the fund. In accordance with the Adker plaintiffs' allocation of the County's funding under Paragraph 6 of the Consent Decree, the amounts in this reserve fund -- both principal and additional income -- are intended to be reserved for use by the HC after May 3rd, 2004 (i.e., after the first five (5) years of contracts for the HC), unless needed earlier by the HC and approved by plaintiffs' counsel, as provided below. In order for the HC to utilize any portion of this reserve fund prior to May 3rd, 2004, the following procedures shall apply: (1) The Contractor must submit a written request to plaintiffs' counsel, with copies to MDHA and HUD, setting forth the specific amount sought from the reserve fund, the intended use, and an explanation of why the Contractor believes that amount is needed by the HC to perform adequately and fully the Contractor's functions set forth in this Contract, including the Consent Decree (Appendix A) and the Statement of Work (Appendix B). (2) Plaintiffs' counsel shall consult with MDHA and HUD regarding the request. (3) Plaintiffs' counsel's approval shall be presumed provided unless denied in writing by plaintiffs' counsel within ten (10) days of receiving the request from the Contractor, and plaintiffs' counsel shall not unreasonably withhold or deny approval of any such request. If the request is approved or presumed approved by plaintiffs' counsel, all provisions of this Contract shall apply to the reserve funds so provided to the Contractor.

IV.5. METHOD OF PAYMENT: Payments by MDHA shall be made to the Contractor within thirty (30) calendar days after receipt of a request from the Contractor pursuant to Paragraph IV.3, provided that MDHA determines that the Contractor has met all performance requirements, to date, of this Contract. If performance requirements have not been met, payment will be withheld or reduced until the activities are performed, provided, however, that MDHA shall provide written notice to HOPE within ten (10) business days of receiving such a request if MDHA deems the request or performance to be noncompliant; such notice shall include the nature of the noncompliance and the actions necessary, if any, to correct the noncompliance. If the noncompliance cannot be resolved by MDHA and HOPE, MDHA shall provide notice to counsel for the Adker plaintiffs that payment is being withheld or reduced.

IV.6. RETURN OF UNSPENT FUNDS: If this Contract is either terminated or not renewed, the Contractor must return to the County any unspent funds provided pursuant to this Contract, including any interest earned on such funds, which the County will then make available to the replacement Contractor.

IV.7. EXPENSES: All Contractor expenses related to the performance of this Contract, including any and all expenses not specifically itemized in the Statement of Work, are included in the maximum contract price set forth in Paragraph IV.1. The Contractor may incur such expenses without MDHA authorization, provided, however, that MDHA shall not be liable to the Contractor for any such expense, including travel, out-of-pocket, per diem, etc., incurred by the Contractor in connection with the rendering of services hereunder which would result in an increase of the maximum contract price or decrease in contract services. All travel-related costs and other expenses must be related to the performance of this Contract. Expenses for activities which the Contractor may fund from other sources shall be pro-rated.

IV.8. ACCOUNTING: The Contractor shall maintain a separate record of the Contractor's expenses and payments pertaining to this Contract using generally accepted accounting principles. The County and MDHA or their authorized representatives, HUD and the Comptroller General of the United States or their authorized representatives, and counsel for the Adker plaintiffs, shall have full and free access to such records during normal business hours, including the right to audit, and to make copies and transcripts from such records at their own expense, provided that such access rights shall not be abused by any party.

IV.9. DISALLOWANCE OF COSTS: MDHA reserves the right to disallow charges for expenses which are unrelated to the Contractor's obligations under the Consent Decree or which are duplicative. Any dispute between the parties to this Contract over such disallowed charges shall be resolved in accordance with the Statement of Work. The County shall inform counsel for the Adker plaintiffs in writing before disallowing any Contractor expense, and plaintiffs may seek to resolve any such disputes in accordance with the provisions of the Consent Decree.

IV.10 PROHIBITED USE OF FUNDS:

IV.10.1. Adverse Actions or Proceedings: The Contractor shall not utilize Contract funds to retain legal counsel for any action or proceeding against the County or any of its agents, instrumentalities, employees, or officials. The Contractor shall not utilize Contract funds to provide legal representation, advice, or counsel to any client in any action or proceeding against the County or any of its agents, instrumentalities, employees, or officials.

IV.10.2. Religious Purposes: No funds shall be used for religious purposes.

IV.10.3. Commingling Funds: The Contractor shall not commingle funds provided under this Contract with funds received from any other funding sources. The Contractor shall maintain a separate bank account and books of accounting for this Contract.

IV.11. RECORDS, REPORTS, AUDITS, MONITORING, AND REVIEW:

IV.11.1. Certificate of Corporate Status: Within thirty (30) days from the date of execution of this Contract, the Contractor must submit to the County, a certificate of status in the name of the Contractor, which certifies the following: that the Contractor is organized under the laws of the State of Florida; that all fees and penalities have been paid; that the Contractor's most recent annual report has been filed; that its status is active; and that the Contractor has not filed an Article of Dissolution.

IV.11.2. Board of Directors' Requirements: The Contractor shall insure that its Board of Directors is apprised of the fiscal, administrative and agreement obligations of this Contract by passage of a formal resolution authorizing execution of the Contract with the County. A copy of the resolution must be forwarded with the Contract.

IV.11.3. Proof of Tax Status: The Contractor is required to submit to the County the following documentation: (1) the I.R.S. tax exempt status determination letter; (2) the most recent I.R.S. Form 990; (3) future I.R.S. Forms 990 within six (6) months after the Contractor's fiscal year end; and (4) future I.R.S. Forms 941 (Quarterly Federal Tax Return Reports) within thirty-five (35) days after the quarter ends, and if the Form 941 reflects a tax liability, proof of payment must be submitted within sixty (60) days after the quarter ends.

IV.11.4. Accounting Records: The Contractor shall keep accounting records which conform with generally accepted accounting principles. All such records will be retained by the Contractor for not less than three (3) years beyond the term of this Contract.

IV.11.5. Financial Audit: The Contractor shall produce to the County an annual certified public accountant's opinion and related financial statement no later than one hundred eighty (180) calendar days following the end of the Contractor's fiscal year, for each year during which this Contract remains in force. Additionally, the Contractor shall comply with the reporting requirements as specified under OMB Circular A-133 (Audits of States, Local Government and Non-Profit Organizations).

IV.11.6. Access to Records for Audit: The County reserves the right to require the Contractor to submit to an audit by an auditor of the County's choosing. Furthermore, the Contractor understands it may be subject to an audit, random or otherwise, by the Office of Miami-Dade County Inspector General or an independent private sector inspector general retained by the Office of the Inspector General. The Contractor shall provide access to all of its records which relate to this Contract within a reasonable period of time at its place of business during regular business hours. The Contractor agrees to provide such assistance as may be necessary to facilitate their review or audit by the County to insure compliance with applicable accounting and financial standards.

IV.11.7. Progress Reports: The Contractor shall furnish the County with written quarterly progress reports on the achievement of its goals as outlined in the Statement of Work, using a Form to be developed jointly by MDHA and HOPE. The reports shall explain the Contractor's progress for that quarter , in accordance with the information required by Paragraph 41 of the

Consent Decree. The data should be quantified when appropriate. These reports are due twenty-five (25) days following the end of the quarter. The final progress report shall be due forty-five (45) days after the expiration or termination of this Contract.

IV.11.8. County Reports: Beginning every six (6) months after the HC begins operation, the County shall furnish the Contractor with written biannual reports containing the information required by Paragraph 40 of the Consent Decree.

IV.11.9. Household Records: The Contractor shall maintain a separate individual case file for each household served. This case file shall include all pertinent information regarding case activity. At a minimum, the case file will contain intake and referral information, counseling plan, and case notes documenting the dates services were provided and the nature of the services provided. These files shall be subject to the audit and inspection requirements under this Contract.

IV.11.10. The County shall provide the Contractor, upon request, with reasonable access to information contained in the County's own records that is necessary for the Contractor to perform the functions set forth in this Contract and the Consent Decree, unless otherwise prohibited by law. The County shall provide the Contractor direct access to tenant and applicant records as well as waiting and transfer request lists, unless otherwise prohibited by law, and shall ensure that the information contained within those lists is up to date. The County shall provide, if the Contractor chooses, real-time computer access, at cost, to all such records, lists, and information. The County shall include in all communications with mobility pool members the following information, as provided by the Contractor: a description of the Contractor, the services it offers applicants and/or mobility pool members, and the address and telephone number of the Contractor.

## ARTICLE V
## STATEMENT OF WORK

V.1. STATEMENT OF WORK: Appendix B, as approved by HUD, is hereby incorporated by reference as if fully set forth herein and made a part of this Contract, without further action.

V.2. PERFORMANCE CRITERIA: The Contractor shall: (1) furnish all labor, counseling, outreach, planning, and other services set forth in the Statement of Work; (2) pay for all incentives and subcontractor services, if any; and (3) perform and complete all work required under this Contract as specified in, and in strict accordance with the Contract and Contract documents, directives of the Consent Decree, all applicable HUD regulations and directives, and the performance criteria set forth in Appendix D, unless the failure to meet the stated objectives, goals, or performance criteria is due to factors beyond the reasonable control of the Contractor, including failure on the part of MDHA or HUD to provide essential information, files, or materials required by the Consent Decree.

V.2.1. The Contractor shall be responsible for the professional quality, accuracy, and prompt delivery of all services herein required and all work to be performed.

V.2.2. The Contractor understands and agrees that the County expects the Contractor to meet all objectives and goals stated in the Consent Decree and activities stated in the Statement of Work, the Contract, and the performance criteria set forth in Appendix D, without limitation. Therefore, the Contractor agrees to perform the services in a manner to ensure that said objectives, goals, and performance criteria shall be met in accordance with acceptable industry standards, unless the failure to meet the stated objectives, goals, or performance criteria is due to factors beyond the reasonable control of the Contractor, including failure on the part of MDHA or HUD to provide essential information, files, or materials required by the Consent Decree.

V.2.3. The Contractor agrees to perform work in a manner that will not cause any damage, other than ordinary wear and tear, to any property or equipment owned, used, leased or otherwise acquired by the Contractor for purposes relating to this Contract, and agrees that it shall remain liable to the County for any and all damage, other than ordinary wear and tear, to such property caused by the Contractor, its subcontractors, employees, or agents. All equipment, including but not limited to, computer hardware and software, purchased by the Contractor shall be the property of the County. In the event that this Contract is terminated or not renewed, all such equipment shall be delivered to the new Contractor after it is chosen, or to the County, at the County's option, which shall store such equipment and deliver it to the new Contractor after it is chosen. In the event that such equipment is sold during the term of the Contract, the proceeds shall be used by the Contractor for purposes set forth in this Contract or in the Consent Decree. At the time that the Consent Decree terminates with respect to the County, any such equipment that remains shall either be used by the current Contractor for continued mobility counseling, or shall be sold. If any such equipment is sold, the proceeds shall be used as designated by plaintiffs to carry out the goals of the Consent Decree. Nothing stated in this Contract shall serve to increase the maximum cost for the Contract or the Statement of Work performed.

V.2.4. Computer equipment, software and systems owned, used, leased, purchased or otherwise acquired by the Contractor for purposes relating to this Contract must meet the following requirements: The software must perform fault-free in the processing of date and date related data (including, but not limited to calculating, comparing and sequencing) by all hardware and software products delivered under this Contract, individually, and in combination, upon installation. Fault-free performance includes the manipulation of data with dates prior to, through, and beyond January 1, 2000, and shall be transparent to the user. Hardware and software products, individually and in combination, shall successfully transition into the year 2000 with correct system date, without human intervention, including leap year calculations. Hardware and software products, individually and in combination, shall also provide correct results when moving forward or backward in time across the year 2000.

V.2.5. The County agrees to designate the MDHA Director of Audit and Compliance, or another official, to act as liason with the Contractor and to deal with issues related to this Contract and the Consent Decree.

V.2.6. If requested by the Contractor, the County shall provide space for the Contractor at cost in locations that, in the opinion of the County and the Contractor, will enable the Contractor to conduct effective outreach and counseling services.

## ARTICLE VI
## MISCELLANEOUS

VI.1. SUBCONTRACTING AND ASSIGNMENT: Subject to the provisions of the Appendices hereto, for all subcontracting opportunities that arise from this Contract, the Contractor shall, to the greatest extent feasible, award such contracts to qualified Section 3 businesses, and, subject to state and local law, to minority and women-owned businesses. The Contractor shall provide MDHA with written notice of any proposed subcontract or assignment. The parties agree that no subcontract or assignment will be made or let in connection with this Contract without the prior approval of MDHA, which approval shall be presumed unless denied by MDHA within ten (10) days after said notice of the proposed assignment or subcontract. All subcontractors or assignees shall be governed by the terms and conditions of this Contract. All subcontracts and assignments shall include a provision which voids the subcontract or assignment if the subcontractor or assignee is or becomes suspended or debarred by the County or the federal government. The Contractor agrees to use a competitive process when procuring goods and services.

VI.2. NOTICE: All notices required to be given by either party under the terms of this Contract or the Consent Decree shall be in writing and shall be deposited in the U.S. mail, postage prepaid, or delivered by a recognized national express courier, addressed to the applicable entity or entities as set forth below.

| | |
|---|---|
| Address of Contractor: | Housing Opportunities Project for Excellence, Inc.<br>Attn: William Thompson, Jr.<br>18441 N.W. Second Avenue, Suite 218<br>Miami, Florida 33169 |
| Address of MDHA: | MDHA<br>Attn: Raul Fernandez<br>1401 N.W. Seventh Street<br>Miami, Florida 33125 |
| Address of HUD: | Director, Office of Fair Housing and Equal Opportunity<br>U.S. Department of Housing and Urban Development<br>Brickel Plaza Federal Building<br>909 S.E. First Avenue, Room 500<br>Miami, Florida 33131 |
| Address of Adker Plaintiffs: | Jenner & Block<br>Attn: Bruce Spiva<br>601 Thirteenth Street, N.W.<br>Washington, D.C. 20005 |

VI.3. LIMITATION OF LIABILITY; INDEMNIFICATION: Pursuant to Paragraph 4 of the Consent Decree, the County is not the guarantor of the performance of the Contractor. The County does not assume and shall not be held liable for any costs, debts, or liabilities incurred by the Contractor, or its officers, agents, or employees and the Contractor agrees to hold the County harmless from any such cost, debt or liability. The Contractor shall indemnify and hold harmless the County and its officers, employees, agents, and instrumentalities from any and all liability, losses or damages, including attorney's fees and costs of defense, which the County or its officers, employees, agents, or instrumentalities may incur as a result of claims, demands, suits, causes of actions, or proceedings of any kind or nature arising out of, relating to, or resulting from the actions of the Contractor or its employees, agents, servants, partners, principals, or subcontractors in the performance of this Contract. The Contractor shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. The Contractor expressly understands and agrees that any insurance protection required by this Contract or otherwise provided by the Contractor shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents, and instrumentalities as herein provided.

VI.4. INSURANCE:

VI.4.1. Minimum Insurance Requirements/Certificates of Insurance: The Contractor shall furnish to Miami-Dade County, c/o General Services Administration—Risk Management Division, 111 N.W. First Street, Suite 2340, Miami, Florida, 33128, Certificate(s) of Insurance indicating that insurance coverage has been obtained which meets the requirements as outlined below:

a. Worker's Compensation Insurance for all employees of the Contractor, as required by Florida Statute 440.

b. Public Liability Insurance on a comprehensive basis in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage. Miami-Dade County must be shown as an additional insured with respect to this coverage.

c. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than $300,000 combined single limit per occurrence for bodily injury and property damage. If the Contractor uses vans or mini-vans with seating capacities of fifteen (15) passengers or more, the limit of liability required for Automobile Liability Insurance is $500,000.

d. Professional Liability Insurance, when applicable, in the name of the Contractor, in an amount not less than $500,000.

VI.4.2. Modification and Changes: The Contractor shall notify the County of any intended changes in insurance coverage, including but not limited to, any renewals of existing insurance policies. Upon review of the Contractor's Statement of Work by the County's Risk Management Division, the County may increase, decrease, waive, or modify any of the following insurance requirements. Any request by a Contractor to decrease, waive, or modify any of the following insurance requirements must be approved in writing by the County's Risk Management Division.

VI.4.3. Classification and Ratings: The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the services or operations described in the Statement of Work. All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications: Either (a) the company must be rated no less than "B" as to management, and no less than "Class V" as to financial strength by the latest edition of Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County's Risk Management Division; or (b) the company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida", issued by the State of Florida Department of Insurance, and is a member of the Florida Guaranty Fund. Certificates of Insurance shall indicate that no modification or change in insurance shall be made without thirty (30) days written advance notice to the certificate holder.

VI.4.4. All required Certificates of Insurance must be furnished to the County within fifteen (15) days of the execution date of this Contract. The Contractor shall be responsible for assuring that the Certificates of Insurance required in conjunction with this Paragraph VI.4 remain in force for the duration of the Contract and any renewals thereof. If Certificates of Insurance are scheduled to expire during the term of the Contract or any renewal periods, the Contractor shall be responsible for submitting new or renewed Certificates of Insurance to the County at least thirty (30) days in advance of such expiration. If the Contractor fails to comply with the provisions in this Paragraph VI.4, the County shall have the right to terminate this Contract immediately, after two (2) business days notice to the Contractor.

VI.5. BACKGROUND SCREENING: The Contractor shall conduct a satisfactory background check through an appropriate screening agency of new employees who are funded by this Contract. The Contractor shall make reasonable efforts to conduct a satisfactory background check through an appropriate screening agency of existing employees who are funded by this Contract. If the Contractor fails to certify to the County that a background check was conducted of new employees, the County shall not disburse any funds relating to work performed by such employee(s) until compliance is provided. The Contractor shall notify the County each time a person is employed and funded by this Contract.

VI.6. CONFLICT OF INTEREST: The Contractor agrees to abide by and be governed by Miami-Dade County Ordinance No. 72-82 (Conflict of Interest Ordinance codified at Section 2-11.1 et al. of the Code of Miami-Dade County), as amended, which is incorporated herein by reference as if fully set forth herein, in connection with its contract obligations hereunder.

VI.7. CIVIL RIGHTS: The Contractor agrees to abide by Chapter 11A, as amended, which prohibits discrimination, of the Code of Miami-Dade County; Title VII of the Civil Rights Act of 1968, as amended, which prohibits discrimination in employment and public accommodation; the Age Discrimination Act of 1975, as amended, which prohibits discrimination in employment because of age; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, as amended, which prohibits discrimination on the basis of disability; the Americans with Disabilities Act, 42 U.S.C. § 12103 et seq., which prohibits discrimination in employment and accommodation because of disability; Title VI, the Civil Rights Act of 1964, 42 U.S.C.§ 2000d et seq., as amended; Title VIII, the Fair Housing Act, 42 U.S.C. § 3601 et seq., as amended; and all applicable federal regulations, policies, and Executive Orders.

VI.8. PRIVACY: The Contractor shall not disclose any information it learns about any person referred by MDHA for mandatory or voluntary mobility counseling if such disclosure would be inconsistent with federal or state law.

VI.9. AUTONOMY: Both parties agree that this Contract recognizes the autonomy of and stipulates or implies no affiliation between the contracting parties. It is expressly understood and intended that the Contractor is only a recipient of funding support and is not an agent or instrumentality of the County. Furthermore, the Contractor's agents and employees are not agents or employees of the County.

VI.10. PUBLICITY: It is understood and agreed between the parties hereto that this Contractor is funded in part by Miami-Dade County. Further, by the acceptance of these funds, the Contractor agrees that events funded by this Contract shall recognize the County as a funding source. The Contractor shall ensure that all publicity, public relations, advertisements, and signs recognize the County and MDHA for the support of all contracted activities. This is to include, but is not limited to, all posted signs, pamphlets, wall plaques, cornerstones, dedications, notices, flyers, brochures, news releases, media packages, promotions, and stationery. The use of the official County and MDHA logos is permissible. The Contractor shall ensure that all media representatives, when inquiring about the activities funded by this contract, are informed that the County is its funding source.

VI.11. GOVERNING LAW: This Contract is made in the State of Florida and shall be governed according to the laws of the State of Florida. Proper venue of this Contract shall be Miami-Dade County, Florida.

VI.12. MODIFICATIONS: Any alterations, variations, modifications, extensions, or waivers of provisions of this Contract, including but not limited to, amount payable and effective term, shall only be valid when they have been reduced to writing, duly approved and signed by both parties. If the alteration, variation, modification, extension or waiver is material, MDHA must provide thirty (30) days written notice to counsel for the Adker plaintiffs and HUD, and such proposed change to the Contract shall not become effective until approved by HUD. The County and the Contractor mutually agree that modifications of the Statement of Work, schedule of payments, billing and payment procedures, set forth herein and other such revisions may be negotiated as a

written amendment to this Contract between the parties. The County Manager is authorized to make modifications to this Contract as described herein on behalf of the County.

VI.13. MERGER: This writing embodies the entire Contract and understanding between the parties hereto, and there are no contracts or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

VI.14. HEADINGS, USE OF SINGULAR AND GENDER: Paragraph headings are for convenience only and are not intended to expand or restrict the scope or substance of the provisions of this Contract. Wherever used herein, the singular shall include the plural and plural shall include the singular, and pronouns shall be read as masculine, feminine, or neuter as the context requires.

VI.15. COMPLIANCE WITH LAW AND REGULATIONS: The Contractor agrees to conduct any and all activities under this Contract in accordance with the mandates of any and all applicable federal, state and local statutes, rules, regulations, laws, ordinances, and the Contractor's by-laws in effect or promulgated during the term of this Contract or any extensions thereof.

VI.16. TOTALITY OF CONTRACT/SEVERABILITY OF PROVISIONS: This sixteen (16) page Contract with its attachments as referenced below contains all the terms and conditions agreed upon by the parties. If any provision of this Contract is held invalid, the remainder of this Contract shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

| | |
|---|---|
| Appendix A: | Consent Decree |
| Appendix B: | Statement of Work (including Budget) |
| Appendix C: | Miami-Dade County Affidavits |
| Appendix D: | Performance Criteria |
| Appendix E: | State Public Entities Crime Affidavits |

VI.17. ENTIRE CONTRACT: The Contract shall be executed in five (5) duplicate original documents, and each shall constitute an original of the entire Contract between the County and the Contractor. The Contract shall not become effective until executed by the County and cannot be amended or modified unless such amendment or modification is signed by the County and the Contractor.

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed by their duly authorized officers as of this 3rd day of May, 1999.

[Seal]

HOUSING OPPORTUNITIES PROJECT FOR EXCELLENCE, INC.

BY: Madelyn Guerrero

By: William Thompson, Jr., President and CEO

Date: 4/30/99

Attest:

By: Deputy Clerk

MIAMI-DADE COUNTY

By: Merrett Stierheim, County Manager

Date: 5/3/99

CERTIFICATION

I, Donald Jones, hereby certify that I am the Chairperson of the Board of Directors of Housing Opportunities Project for Excellence, Inc. ("HOPE"), named as the Contractor herein, and duly authorized to make this Certification; and that William Thompson, Jr., who signed this Contract on behalf of HOPE, is the President and CEO of HOPE , and that said Contract was duly signed for and in behalf of HOPE by authority of its governing body and is within the scope of its organizational powers.

By: Donald Jones, Chairperson

Date: 5/3/99

EXHIBIT "B"

AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT
BETWEEN MIAMI-DADE COUNTY
AND
HOUSING OPPORTUNITIES PROJECT FOR EXCELLENCE, INC.

This Amendment is made this _____ day of _____, 2009 to the Professional Services Contract for *Adker v. HUD* Housing Mobility Counseling and Other Services (Agreement) between Miami-Dade County ("County") and Housing Opportunities Project for Excellence, Inc. ("Contractor.") .

**WHEREAS**, a class action lawsuit was filed by public housing residents against Miami-Dade County and the United States Department of Housing and Urban Development (HUD) in the case of *Ann-Marie Adker et al., v. United States Department of Housing and Urban Development and Miami-Dade County*; and

**WHEREAS**, on July 22, 1997, the Board adopted Resolution No. R-950-97, which authorized the County to execute the Settlement Contract and Consent Decree; and

**WHEREAS**, on June 6, 1998, the federal district court entered into a consent decree ("Decree") ordering the County and HUD to achieve desegregation in the County's housing programs in compliance with the terms and conditions of the Decree; and

**WHEREAS**, the Decree required the County to establish of a housing center ("HC"), to be named the Dewey W. Knight, Jr. and Ann-Marie Adker Fair Housing Center, to act as a mobility counselor and serve as an information clearinghouse for class members and applicants for public housing, Moderate Rehabilitation, and tenant-based assistance seeking desegregative housing opportunities; and

**WHEREAS**, the Contractor was selected pursuant to the terms of the Decree to establish and administer the HC; and

**WHEREAS**, on May 3, 1999, the Contract was executed between the parties; and

**WHEREAS**, the Contract expired on May 2, 2009; and

**WHEREAS**, the Decree is not scheduled to expire until August 1, 2009 and said Decree mandates that the HC provide the services described therein until its expiration; and

**WHEREAS**, the parties desire to extend the Contract until December 31, 2009 in order to ensure that the HC has sufficient time to complete all work described in the Agreement,

**NOW THEREFORE**, for and in consideration of the mutual covenants hereinafter set forth, the sufficiency of which is acknowledged by the parties, the parties to this Amendment agree as follows:

1. The Recitals set forth above are true and correct and incorporated herein.

2. Article III, sub-article III.1 entitled "TERM OF CONTRACT" is hereby amended as follows:

   The term of this Contract shall be from May 3, 2009 through December 31, 2009, provided all terms and conditions, including performance measures set forth in the Statement of Work, are met. Additionally, the Contractor must submit a revised Statement of Work and any updated affidavits to the County within thirty (30) days from the execution of this Contract. No further renewals of this Contract are permitted.

3. The Contract, along with this Amendment, constitutes the sole and only agreements of the parties and correctly set forth the rights, duties, and obligations of each to the other as of its date. Any prior agreements, promises, negotiations or representation not expressly set forth in the Contract, as amended, and this Amendment are of no force or effect.

4. All other terms and conditions not in conflict with this Amendment remain unchanged as agreed to in the original Contract.

In WITNESS WHEREOF, the parties hereto have caused this AMENDMENT and ( ) page attachment to be executed by their officials thereunto duly authorized.

**HOUSING OPPORTUNITES PROJECT FOR EXCELLENCE, INC**

By: Keenya Robertson

Name: Keenya J. Robertson

Title: President & CEO

Date: 6/23/09

Attest: Miladys Guerrero
Authorized Person OR
Notary Public

Print Name: Miladys Guerrero

Title: Administrative Assistant

Corporate Seal OR Notary Seal/Stamp

NOTARY PUBLIC-STATE OF FLORIDA
Miladys Guerrero
Commission #DD739114
Expires: DEC. 12, 2011
BONDED THRU ATLANTIC BONDING CO., INC.

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

By: _____

Name: _____

Title: _____

Date: _____

Attest: HARVEY RUVIN, Clerk
Board of County Commissioners

By: _____

Name: _____
Deputy Clerk

Approved as to form and legal sufficiency:

_____