



MIAMI-DADE COUNTY, FLORIDA

April 2, 2007

Mr. Robert M. Couch
Acting General Counsel
US Department of Housing and Urban Development
451 7 Street, SW, Room 10110
Washington, DC 20410-0500

Dear Mr. Couch:

This is in response to your letter dated March 26, 2007 where you ask the County to provide comments on the specific provisions of the proposed Cooperative Endeavor Agreement ("CEA"). As noted in our previous letter sent to you on March 20, 2007, we responded to your CEA; however, it was not a mark-up of the CEA. Our response was in the format of what was acceptable to the County, a letter that outlined our concerns and offered a solution which for us is a Memorandum of Understanding ("MOU"). As noted in our first letter, we would like to continue working with you in a constructive and cooperative manner.

Requiring the County to execute a CEA is not acceptable at this time. However, we have followed your request and red-lined the CEA.

As stated in our previous letter, the County is more than capable of, and committed to, addressing and resolving the deficiencies in Miami-Dade Housing Agency ("MDHA"), including but not limited to, providing the necessary resources, financial and otherwise, and working in a cooperative effort with HUD, the residents we serve and their advocates. To this end, for more than nine months the County has taken positive steps to address and resolve MDHA's deficiencies.

We recognize that more is needed to bring MDHA to a level that is acceptable to County officials and administration, HUD, and the public, but we cannot move forward without the full cooperation of HUD. In this spirit of cooperative teamwork, the County is prepared to discuss with HUD the possibilities of executing the proposed MOU. We believe that this MOU allows HUD to have the involvement it seeks to ensure that the County, acting through MDHA, continues to address the issues which led to the problems we mutually face today. This MOU provides a true "cooperative" arrangement and yet holds the County to time certain requirements for deliverables. While there are significant undeniable issues which need to be addressed, we have made substantial strides towards addressing and correcting those issues. The County has committed its full cadre of resources - technical, financial, and human - to correcting the problems and making its housing a model for the nation. As part of this effort, the Board of County Commissioners has approved the allocation of County funds to subsidize federal reductions and further support the community's housing needs. We only ask that we be allowed to move forward towards that end.

We look forward to discussing the option of an MOU and the on-going day-to-day issues with you at your earliest possible convenience.

Attachment



Honorable Carlos Alvarez
Mayor


Honorable Chairman Bruno A. Barreiro
Board of County Commissioners

c: Honorable Vice-Chair Barbara J. Jordan
and Members, Board of County Commissioners
George M. Burgess, County Manager
Murray Greenberg, County Attorney
Members, State and Federal Delegation

MEMORANDUM OF UNDERSTANDING BETWEEN
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND
MIAMI-DADE COUNTY

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This Memorandum of Understanding (MOU) is entered into this _____ day of _____ 2007, by and between Miami-Dade County ("County") and the United States Department of Housing and Urban Development ("HUD"). The signatories to this MOU are the Honorable Carlos Alvarez (Mayor), the Honorable Bruno Barreiro (Chairman of Miami-Dade Board of County Commissioners), and the Honorable Alphonso Jackson, Secretary of HUD (Secretary).

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RECITALS

WHEREAS, HUD has determined that the Miami-Dade Housing Agency ("MDHA"), a department of the County, among its various functions, manages the public and subsidized housing operations in the Miami-Dade County, has been under substantial scrutiny over the past year due to high levels of press activity which alluded to allegations of mismanagement; and

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WHEREAS, MDHA has been the focus of a series of external investigations at the request of the County, which have raised serious concerns regarding that department's operations and management of the housing programs in Miami-Dade County; and

WHEREAS, the County conducted several independent reviews and reports through the County Manager's MDHA Management Assistance Team and determined a high number of management issues; and

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WHEREAS, as a result of these investigations by the County, numerous measures have and are being taken to address and correct the deficiencies in the department including the dismissal of six high-level staff; and

WHEREAS, some of these corrective actions include the appointment of a new director and management team to operate the department, the restructuring of the departments database system; the development of a system to expedite the processing of applicants on MDHA's waiting lists; and the approval and allocation of additional non-federal funds to expedite the repair and maintenance of public housing units in order to reduce the vacancy rates; and

WHEREAS, on January 29, 2007, HUD released an audit conducted by Deloitte & Touche detailing its findings with respect to the financial management, accounting and record keeping by MDHA; and

WHEREAS, the County has demonstrated its commitment and ability to address and correct the financial and operational deficiencies mentioned by HUD's audit and the County's independent investigations by taking the actions detailed above; and

WHEREAS, the County remains committed to correcting these deficiencies through all available means, including working in concert with HUD, the residents of its federally assisted programs and their advocates and providing decent, safe and affordable housing is provided to the residents of Miami-Dade County in a fiscally sound manner,

NOW, THEREFORE, the County and HUD, in consideration of the premises and mutual covenants, agree to the following:

ARTICLE I
TERM OF THE MOU

- 1.1 The term of this MOU shall commence on the last date of execution by the parties and continue until _____, 2_____, unless terminated by either party pursuant to Article VII below.
- 1.2 The parties agree that time is of the essence in the performance of each and every obligation under this MOU.

ARTICLE II
RESPONSIBILITIES OF THE PARTIES

- 2.1 The County and HUD agree to facilitate the achievement of the objectives of this Agreement.
- 2.2 In order to implement this MOU, HUD will work with MDHA staff, as appropriate, to undertake and complete the following priorities:
- a. Within sixty (60) days of the execution of this MOU, MDHA staff shall create a document to be called the MDHA Improvement Plan (Improvement Plan). In this Improvement Plan, MDHA will address the identification, implementation steps, and schedule to address immediate, short-term, and long-term action items necessary to improve financial management, independent audits, property management, development,

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¶ **WHEREAS,** this mismanagement is further evidenced by processes and procedures that have negatively impacted MDHA's implementation of its federal grant funding, resulting in substantial delays in completing the Ward Towers and Scott Carver projects. Specifically, the Ward Towers project permanent closing is in jeopardy and the Scott Carver project is unacceptably delayed with no current development contract in place to complete the project; ¶

¶ **WHEREAS,** HUD has also determined that the MDHA has mismanaged its Housing Choice Voucher program (HCV), as evidenced by poorly defined and executed business practices and operational inefficiencies related to financial management. The HCV program, for both administrative fees and housing assistance payments, was operated at a significant deficit through 2005. In 2006, due to underutilization of vouchers, MDHA had a large Housing Assistance Payment (HAP) surplus. This surplus was erroneously used to offset the large deficits from prior years, which is disallowed;

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maintenance, modernization, general management processes, occupancy, resident services, and Section 8 management. The MDHA Improvement Plan is subject to HUD's prior written approval, which approval shall not be unreasonably withheld.

- b. The County shall use additional outside consultants with expertise in Public Housing Administration to provide assistance with reviews and recommendations for updating financial management practices and systems, process and procedures as well as training of HUD programs.
- c. MDHA staff review all other HUD operations and develop a plan to address the general management over the operations of the MDHA (Public Housing and Section 8).
- d. MDHA staff shall update existing management guidelines, policies and plans, personnel management systems, information technology systems, and procurement systems, methods, and procedures to effect procedures appropriate to carry out policies and programs consistent with current HUD regulations and sound management practices
- e. MDHA staff shall develop a comprehensive HOPE VI Plan that will address finances, plans, schedules, and implementation strategies for the completion of HOPE VI activities for which HUD grant monies have been awarded.
- f. MDHA staff shall develop a Resident Services Plan to address all related resident services issues.
- g. MDHA staff shall prepare and submit all reports required by HUD and prepare and submit applications for funding to HUD and other available sources.

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ARTICLE III
PROJECT MANAGEMENT AND NOTICE

3.1 The Project Manager for the HUD is the _____, telephone number (305) 961-9156. The Project Manager for the County is Kris Warren, Director, Miami-Dade Housing Agency, 1401 N.W. 7th Street, Miami, Florida 33125. The parties shall direct all matters arising in connection with the performance of this MOU, other than notices, to the attention of the Project Managers for attempted resolution or action. The Project Managers shall be responsible for overall coordination and oversight relating to the performance of this MOU.

3.2 All notices, demands, or other communications to the HUD under this MOU shall be in writing and shall be deemed received if sent by certified mail to:

United States Department of Housing and Urban Development

All notices, demands, or other communications to the Miami-Dade County under this MOU shall be in writing and shall be deemed received if sent by certified mail to:

Miami-Dade County
111 N.W. 1st Street, Suite 2900
Miami, Florida 33128
Attn: County Manager

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With a copy to:

Miami-Dade County Attorney's Office
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128
Attn: County Attorney

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The HUD and the County shall also provide a copy of all notices to the Project Managers. All notices required by this MOU shall be considered delivered upon receipt. Should any party change its address, written notice of such new address shall promptly be sent to the other parties.

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ARTICLE IV
INDEMNIFICATION

- 4.1 The HUD assumes any and all risks of personal injury, bodily injury and property damage attributable to the negligent acts or omissions of the HUD and the officers, employees, servants, and agents thereof. The HUD warrants and represents that it is self-funded for liability insurance, or has liability insurance, both public and property, with such protection being applicable to the HUD officers, employees, servants and agents while acting within the scope of their employment with the HUD.
- 4.2 The County assumes any and all risks of personal injury, bodily injury and property damage attributable to the negligent acts or omissions of the County and the officers, employees, servants, and agents thereof. The County warrants and represents that it is self-funded for liability insurance, or has liability insurance, both public and property, with such protection being applicable to the County officers, employees, servants and agents while acting within the scope of their employment with the County.

4.3 The HUD and the County further agree that nothing contained herein shall be construed to interpret as (1) denying to either party any remedy or defense available to such party under the laws of the State of Florida; (2) the consent of the United States or its agents and agencies to be sued; (3) the consent of the State of Florida or its agents and agencies to be sued; or (4) a waiver of sovereign immunity of the State of Florida beyond the waiver provided in Section 768.28, Florida Statutes.

ARTICLE V
INSURANCE

5.1 The parties hereto acknowledge that the County is a self-insured governmental entity subject to the limitations of Section 768.28, Florida Statutes. The County shall maintain a fiscally sound and prudent risk management program with regard to their obligations under this MOU in accordance with the provisions of Section 768.28, Florida Statutes. The County shall collect and keep on file documentation of insurance of any and all contractors contracted to provide the services or product used in conjunction with this MOU in any way. The County shall further require all contractors to include HUD as a named insured and shall provide the HUD with a copy of the insurance policy purchased by any contractor prior to commencement of the Services.

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5.2 The parties hereto acknowledge that the HUD is a self-insured governmental entity. HUD shall maintain a fiscally sound and prudent risk management program with regard to their obligations under this MOU

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ARTICLE VI
TERMINATION/REMEDIES

6.1 If any party fails to fulfill its obligations under this MOU in a timely and proper manner, the other parties shall have the right to terminate their participation under this MOU by giving written notice of any deficiency. The party in default shall then have thirty (30) calendar days from receipt of notice to correct the deficiency. If the defaulting party fails to correct the deficiency within this time, this MOU shall terminate at the expiration of the thirty (30) day time period.

6.2 Any party may terminate this MOU at any time for convenience upon ninety (90) calendar days prior written notice to the other party. Any such termination shall be effected by delivery to the other of a Notice of Termination specifying the extent to which performance of work under the MOU is terminated, and the date upon which such termination becomes effective.

6.3 In the event a dispute arises which the Project Managers cannot be resolve between themselves, the parties shall have the option to submit to nonbinding mediation. The mediator or mediators shall be impartial, shall be selected by

parties, and the cost of the mediation shall be borne equally by the parties. The mediation process shall be confidential to the extent permitted by law.

6.4 This MOU has no third-party beneficiaries (intended or incidental), who may enforce obligations of any party should the MOU be terminated.

ARTICLE VII
RECORDS RETENTION/OWNERSHIP

The HUD and the County shall maintain records and each party shall have inspection and audit rights as follows:

7.1. Maintenance of Records: All parties shall maintain all financial and non-financial records and reports directly or indirectly related to the negotiation or performance of this MOU including supporting documentation for any service rates, expenses, research or reports. Such records shall be maintained and made available for inspection for a period of five (5) years from the expiration or termination date of this MOU. Formatted: Indent: Left: 0"

7.2. Examination of Records: All parties or their designated agents shall have the right to examine in accordance with generally accepted governmental auditing standards all records directly or indirectly related to this MOU. Such examination may be only within five (5) years from the expiration or termination of this MOU and upon reasonable notice, time and place. Formatted: Indent: Left: 0"

7.3. Extended Availability of Records for Legal Disputes: In the event that any party should become involved in a legal dispute with a third party arising from performance under this MOU, the other parties shall extend the period of maintenance for all records relating to this MOU until the final disposition of the legal dispute, and all such records shall be made readily available. Formatted: Indent: Left: 0"

7.4. Exemption: Any and all information not subject to disclosure under federal law, including but not limited to any and all criminal intelligence any and all criminal investigative information, any and all law enforcement relation information obtained, retained or created by the HUD is exempt from the requirements of this Article and is outside the scope of this MOU. Formatted: Indent: Left: 0"

ARTICLE VIII
STANDARDS OF COMPLIANCE

8.1 The HUD and the County, their employees, subcontractors, partners or assigns, shall comply with all applicable federal, state, and local laws and regulations relating to the performance of this MOU to which their activities are subject.

8.2 The County shall allow public access to all project documents and materials it maintains in accordance with the provisions of Chapter 119, Florida Statutes. Should the County assert any exemptions to the requirements of Chapter 119 and related statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall be upon the County.

8.3 All parties assure that no person shall be excluded on the grounds of race, color, creed, national origin, handicap, age, sex, marital status, or sexual orientation, from participation in, denied the benefits of, or be otherwise subjected to discrimination in any activity under this MOU. All parties shall take all measures necessary to effectuate these assurances.

ARTICLE IX RELATIONSHIP BETWEEN THE PARTIES

9.1 The HUD and the County are independent contractors. No party is an employee or agent of any other party. Nothing in this MOU shall be interpreted to establish any relationship other than that of independent contractors, between HUD and the County, or between their respective employees, agents, subcontractors, partners, or assigns, during or after the performance of this MOU.

9.2 This MOU is between the Parties; no duty, responsibility, obligation, benefit or other interest provided for herein shall be assigned or assignable by either Party to any person or entity without the express written consent of the other Party.

ARTICLE X GENERAL PROVISIONS

10.1 Notwithstanding any provisions of this MOU to the contrary, the parties shall not be held liable for any failure or delay in the performance of this MOU that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of Government, riots, civil commotion, force majeure, acts of God, or for any other cause of same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but this MOU shall otherwise remain in effect.

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10.2 HUD retains all rights granted under applicable statutes, regulations and the ACC and will conduct audits, reviews, or assessments as appropriate or required by statute or program regulations.

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10.3 In the event any provisions of this MOU shall conflict, or appear to conflict, the MOU, including all exhibits, attachments and all other documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.

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