

**FIRST AMENDMENT
TO THE
MOVING TO WORK AGREEMENT**

This First Amendment to the Moving to Work (“MTW”) Agreement dated March 14, 2008 (“Agreement”) is entered into by and between the United States of America through the U.S. Department of Housing and Urban Development (“HUD”) and the Housing Authority of the County of San Bernardino (“Agency”) and is effective as of May 21, 2009, 2009. Unless otherwise defined herein, all capitalized terms used herein shall have the same meanings ascribed to them in the Agreement.

1. **Termination.** Termination of the Agreement by HUD may only occur in accordance with the default and cure provisions of Section VIII of the Agreement, as modified by this First Amendment. The second sentence of Section VIII of the Agreement is deleted and replaced with the following: “HUD will give the Agency written notice of any default which shall identify with specificity the measures which the Agency must take to cure the default.”
2. **Remedies and Due Process.** HUD must follow all applicable statutory and regulatory requirements relating to any defaults and enforcement actions pertaining to the Agreement.
3. **Evaluation of MTW Demonstration.** If developed by HUD, HUD’s evaluation plan for the MTW Demonstration may be reviewed by the Agency in advance of implementation by HUD. The Agency has thirty (30) days to review the evaluation criteria and any objections to the evaluation will be forwarded to HUD for further consideration.
4. **Extension of Successful Demonstration Initiatives.** HUD will consider extending successful demonstration activities beyond the term of the MTW demonstration where legally permissible. To the extent that MTW activities will not continue past the term of the demonstration, the Agency shall fully cooperate with HUD in developing and implementing a transition plan for terminating the Agency’s MTW demonstration program and providing for the continued administration of the public housing and Section 8 programs, as applicable.
5. **Section I.E.** Section I.E. of the Agreement is deleted.
6. **Local Asset Management Program Within MTW.** Section II.F. of the Agreement is deleted and the following is substituted in lieu thereof:

“F. Local Asset Management Program.

1. The Agency may design and implement a local asset management program for its Public Housing Program and shall describe such program in its Annual MTW Plan (or in its Annual MTW Report, if the Agency deems it appropriate). For purposes of this

Agreement, the term “Public Housing Program” means the operation of properties owned or subsidized by the Agency that are required by the U.S. Housing Act of 1937

(42 U.S.C. 1437, et seq.) to be subject to a public housing declaration of trust in favor of HUD. The Agency's local asset management program shall include a description of how it is implementing property-based management, budgeting, accounting, and financial management and any deviations from HUD's asset management requirements, as described below. The Agency may use the Annual MTW Report to provide information on asset management fees, including documentation in support of fees, allocation methodologies, indirect cost rates, and related items in support of the Agency's local asset management program for its Public Housing Program. The Agency agrees that as part of its local asset management program it will adopt cost accounting and financial reporting methods that comply with OMB Circular A-87 (regarding cost allocation, and hereinafter, "A-87"), OMB Circular A-133 (regarding audit requirements), and generally accepted accounting practices ("GAAP")."

2. HUD and the Agency agree that the following principles and understandings apply to the Agency's local asset management program for its Public Housing Program:
 - a. Costs incurred by the Agency under this Agreement must be necessary and reasonable, meet the statutory objectives of the MTW program, and be consistent with the single-fund budget authority described in this Agreement.
 - b. Under A-87, there is no universal rule for classifying costs as either direct or indirect. A cost may be direct with respect to some specific service or function, but indirect with respect to the final cost objective.
 - c. Costs shall be accorded consistent treatment. A cost may not be assigned as a direct cost if any other cost incurred for the same purpose in like circumstances has been allocated as an indirect cost; each item of cost will be treated consistently in like circumstances as either a direct or indirect cost.
 - d. Costs shall be determined in accordance with GAAP.
 - e. Costs must be adequately documented, as agreed upon by HUD and the Agency.
 - f. Requirements under 24 CFR 990.280 (b) (5) and other HUD guidance pertaining to excess cash flow for purposes of fungibility among projects will not apply to the Agency. The Agency will retain full authority to move MTW funds and project cash flow among projects, without limitation, under its local asset management program.
 - g. The Agency agrees that in designing its local asset management program for its Public Housing Program, it will use HUD's asset management requirements (such as the chart of accounts, balance sheet, and direct/indirect cost determinations) as a starting point; provided, however, that the Agency may, in its discretion, deviate from such requirements if it describes such deviations and the reasons for such deviations in its local asset management program.
 - h. HUD shall modify the systems and reports described in Sections 7 and/or 8, to accommodate any differences between HUD asset management requirements and the Agency's local asset management program.

- i. If the Agency implements a fee-for-service approach, then HUD shall consider the Agency's fee income to be de-federalized.
3. **Period of Experimentation.** The Agency may use its local asset management program to test and develop accounting practices designed to support and complement the fungibility of public housing and voucher funds that may be combined under the MTW demonstration program ("MTW Funds") and the programmatic flexibility provided under the MTW program. This period of experimentation for its Public Housing Program shall be available to the Agency until the negotiated rule making authorized in 24 CFR 990 is completed and a rule adopted. At that time, HUD and the Agency shall mutually determine the effect of said rulemaking on such cost accounting system, and how such a system can be continued.
4. **Identification of Cost Approach Under A-87.** The local asset management program will describe the Agency's cost accounting system. Cost accounting options available to the Agency include:
 - a. **Fee-for-service methodology.** The Agency may establish a fee-for-service methodology that:
 - i. Is consistent with 24 CFR Part 990 (with respect to operating funds for the Public Housing Program), uses property level management, accounting, and budgeting, and establishes a Central Office Cost Center (COCC);
 - ii. With such justification as is required by A-87, allows for fees that exceed the levels set forth by HUD asset management requirements with respect to operating funds for the Public Housing Program;
 - iii. Allows the Agency to apply local determinations with respect to front line, prorated, and shared resources, fee costs, and other aspects of such requirements, to meet the objectives of the MTW program. Such determinations, when they differ from HUD's requirements, must be specifically noted in the Agency's local asset management program;
 - iv. In making local determinations with respect to front line and fees, the Agency acknowledges that cost must be treated in a consistent manner; and
 - v. When fees established by the Agency exceed HUD guidelines the Agency agrees to justify such fees and that the Agency's annual audit shall include a review and test of fee reasonableness.
 - b. **Indirect cost rate methodology.** In accordance with A-87, the Agency may elect to establish a cost allocation methodology, instead of a fee-for-service methodology, to allocate direct and indirect costs and establish an indirect cost rate.

The cost allocation plan along with the indirect cost rate shall be described in the local asset management program. The Agency agrees to justify the indirect cost rate established and that the Annual Audit shall include a review and test of the rate's reasonableness.

5. Establishment of Cost Objectives under MTW

- a. **Multiple cost objectives.** If the Agency establishes multiple cost objectives (such as separate cost objectives for public housing properties, vouchers, capital funds, and services) under its MTW agreement, it may elect to use a fee-for-service methodology for one objective and an indirect cost rate methodology for other objectives, provided that the same cost objective may not use both a fee-for-service and a cost allocation/indirect cost rate methodology.
- b. **Option for a Single Cost Objective.** In accordance with A-87, the Agency may propose in the Annual MTW Plan that its MTW program is a single cost objective and may establish a cost accounting plan that uses a single indirect cost rate for the entire MTW program, which may include operating funds provided for the Public Housing Program. In doing so, the Agency agrees to provide a description of the cost accounting plan as part of its local asset management program, including how the indirect cost rate is determined (such as the grouping of costs and distribution base), and how that rate is applied across major functions. Use of such a single cost objective is subject to the Annual MTW Plan or Report approval process.

7. Financial Reporting. The Agency agrees to describe how it has assigned costs as part of its local asset management program in its Annual MTW Plan. The Agency agrees that irrespective of the cost accounting method selected above, a project-level accounting system will be used to track costs at the asset management property level. Any differences between the local asset management program and HUD's asset management requirements will be described in its Annual MTW Plan and Report in order to facilitate recording of actual property costs and submission of such cost information to HUD.

The Agency agrees to submit information to HUD through the following reporting systems, provided that HUD, in cooperation with the Agency, shall modify such systems, as necessary, so that they are capable of accepting reports from the Agency, as to both form and content, in a manner that is consistent with the Agency's authorizations under this Agreement and with the implementation of MTW:

- (a) PIH Information Center (PIC);
- (b) Voucher Management System (VMS);
- (c) HUD Financial Data Schedule (FDS) on an annual basis; and
- (d) The Annual Audit, with necessary supplemental schedules.

All such reporting shall be to the extent necessary for the Agency to report MTW activities consistent with the MTW Agreement. Should a report not be modified for MTW the Agency will continue to submit information through the Annual MTW Plan and Report.

The Agency may, in satisfaction of the annual audit requirement, submit its independently audited financial statements, prepared consistent with its MTW financial structure and GAAP, and including supplemental un-audited balance sheets and income and expense statements for public housing properties.

All reporting under this section shall be subject to and shall not interfere with the Agency's right to combine and use public housing operating funds, public housing capital funds, and Section 8 voucher funds for the activities and in the manner described in the MTW Agreement.

HUD shall not limit through any asset management requirements or otherwise, including through any other provision of this Addendum or the MTW Agreement to the extent there is a conflict with this First Amendment, the Agency's ability (as provided in the MTW Agreement), to use a single fund budget as an authority-wide funding source for MTW activities.

8. Other Reporting.

Annual Plan and Report Under Attachment B. HUD affirms that it has obtained Office of Management and Budget ("OMB") approval for the information collection currently required by Attachment B to the Agency's Original MTW Agreement (HUD Form 50900, OMB Control Number 2577-0216; and hereafter, "Original Attachment B"). The Agency is not required to use the Attachment B to this Agreement (hereafter, "Revised Attachment B"), until such time as HUD has obtained approval from OMB of such Revised Attachment B.

Subject to the paragraph immediately above, the Agency agrees to submit information in accordance with Revised Attachment B for the fiscal year following such OMB approval; provided, however, that:

- i. if OMB does not approve a Revised Attachment B at least 120 days prior to the date for submission of the MTW Plan, then the Agency may defer compliance with Revised Attachment B until submission of the Annual MTW Plan and Report in the subsequent fiscal year;
- ii. the Annual MTW Report for a given fiscal year will use the same form of Attachment B as was used for that fiscal year's Annual MTW Plan; and
- iii. the Agency and HUD agree to use the first submission of Revised Attachment B to identify any problems and potential improvements in its use, as to both form and substance, and that HUD and the Agency will work together to modify Revised Attachment B, as necessary, in order to improve it as an information tool for subsequent fiscal years. The Agency and HUD further agree that Revised Attachment B may require modifications in subsequent years of the MTW Agreement and that HUD will facilitate a process to solicit comments from the Agency and modify Revised Attachment B as necessary.

CFDA Number. HUD affirms that it has received a Catalog of Federal Domestic Assistance ("CFDA") number from OMB for the MTW program. HUD will create a corresponding compliance supplement to assist auditors in performing the required audits of the Agency. HUD

will develop such compliance supplement in consultation with the Agency and shall direct, and hereby does direct, any auditor of the Agency to consider such supplement and other related supplements and OMB Circulars in determining the compliance requirements that could have a direct and material effect on the Agency's participation in the MTW program. The MTW compliance supplement issued by HUD shall have an effective date that provides the Agency with sufficient notice for implementation.

IN WITNESS WHEREOF, the parties have caused this First Amendment to be executed by their duly authorized representatives.

HOUSING AUTHORITY OF THE COUNTY OF
SAN BERNARDINO

By: Susan Benner

Name: Susan Benner

Its: Executive Director

Date: 4/13/09

UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

By: Paula O. Blunt

Name: Paula O. Blunt

Its: General Deputy Assistant Secretary
for Public and Indian Housing

Date: 5/21/09

ATTACHMENT D

COMMUNITY-SPECIFIC AUTHORIZATIONS

**TO
MOVING TO WORK AGREEMENT
BETWEEN
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND
HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO**

This Attachment D describes and authorizes activities which may be implemented by the Housing Authority of the County of San Bernardino (the "Agency") pursuant to the Moving to Work Agreement between the Agency and HUD dated March 14, 2008, which together with any and all attachments, exhibits, and appendices thereto is hereinafter referred to as the "Agreement." Notwithstanding any other provision of this Agreement the Agency is authorized as follows:

A. Administrative Issues

1. Suspension of Current Evaluation and Reporting Requirements

- a. The Agency is designated a high performing agency under the current Public Housing Assessment System (PHAS) regulation. The Agency will continue its designation as a high performing agency until such time as the Department adopts a new PHAS regulation and the Agency can be fully scored under that regulation. At that time the Agency will no longer be designated a high performer. Thereafter, should the Agency wish to obtain high performer status, it must elect to be scored under the new PHAS regulation. The Agency may propose an alternative evaluation methodology in lieu of the PHAS regulation for approval by the Department. Such a methodology shall at a minimum incorporate the indicators set forth in Section 6(j) of the 1937 Act, and shall utilize a third party to assess performance.
- b. The Agency may propose an alternative evaluation methodology in lieu of the SEMAP regulation for approval by the Department.

B. Authorizations Related to Section 8 Housing Choice Vouchers Only

1. Payment Standards

The Agency may implement local payment standards that accurately reflect the varying rental submarkets that exist across San Bernardino County. The Agency will conduct a local market study to determine the appropriate fair market rent for each such submarket and implement appropriate payment standard schedules.