



EXECUTIVE SUMMARY

HOUSING COMMISSION EXECUTIVE SUMMARY SHEET

MEETING DATE: May 1, 2020

REPORT NO: HCR20-045

COUNCIL DISTRICT: Citywide

ORIGINATING DEPT: Strategic Operations and Policy

SUBJECT: Approval of Amendment to Attachment C of the Standard Moving to Work Agreement

CONTACT/PHONE NUMBER: Suket Dayal (619) 578-7608

REQUESTED ACTION:

Approve the Amendment to Attachment C of the Standard Moving to Work (MTW) Agreement.

EXECUTIVE SUMMARY OF KEY FACTORS:

- In February 2020, HUD distributed an Amendment to Attachment C of the MTW Agreement to all MTW agencies that contained additional regulatory and Housing Act of 1937 waivers to the authorizations.
- Attachment C of the MTW Agreement contains a standard list of authorizations that any MTW agency can reference when proposing any activity in their annual plan.
- The regulations and sections of the Housing Act of 1937 added in the amendment would allow for MTW agencies to waive the independent entity requirement for inspections and rent reasonableness.
- The San Diego Housing Commission (Housing Commission) had the ability to waive the independent entity requirement included as an agency specific authorization in Attachment D of the 2008 MTW Agreement.
- When the Housing Commission proposed MTW activity 2010-2, “Authorize SDHC to Inspect and Determine Rent Reasonableness for SDHC-Owned Properties,” it referenced the authorizations currently being amended in Attachment C, as well as the agency-specific authorization in Attachment D of the MTW Agreement to waive the independent entity requirements.
- The additional language added to the authorizations in Attachment C include waivers that are already present in SDHC’s Attachment D, but also include additional regulations or sections of the Housing Act of 1937 that would further strengthen the authorizations that are currently utilized by Activity 2010-2.
- The proposed action provides clarification regarding the Housing Commission’s ability to waive the requirement of an independent-entity inspection on properties owned by the Housing Commission and/or its nonprofit affiliate.



REPORT

DATE ISSUED: April 23, 2020

REPORT NO: HCR20-045

ATTENTION: Chair and Members of the San Diego Housing Commission
For the Agenda of May 1, 2020

SUBJECT: Approval of Amendment to Attachment C of the Standard Moving to Work Agreement

COUNCIL DISTRICT: Citywide

REQUESTED ACTION

Approve the Amendment to Attachment C of the Standard Moving to Work Agreement

STAFF RECOMMENDATION

That the San Diego Housing Commission (Housing Commission) take the following actions:

- 1) Approve the Amendment to Attachment C of the Standard Moving to Work (MTW) Agreement; and
- 2) Authorize the President & Chief Executive Officer, or designee, to execute all documents and instruments necessary and/or appropriate to implement these approvals, in a form approved by General Counsel, and to take such actions as are necessary and/or appropriate to implement these approvals.

SUMMARY

The Housing Commission is one of only 39 public housing authorities (PHAs) nationwide (out of 3,400) to obtain an MTW designation from the U.S. Department of Housing and Urban Development (HUD). The MTW designation provides PHAs the flexibility to design innovative, cost-effective ways of providing federal housing assistance to low-income families. On June 17, 2016, the Housing Commission authorized the extension of the Housing Commission's MTW Agreement with the U.S. Department of HUD, under existing terms and conditions (Report No. HCR16-060). The proposed action provides clarification regarding the Housing Commission's ability to waive the requirement of an independent-entity inspection on properties owned by the Housing Commission and/or its nonprofit affiliate. The Housing Commission was authorized to waive independent-entity inspections and rent reasonableness determinations in Attachment D of the MTW Agreement that was reactivated in 2008. As a result, the Housing Commission implemented MTW activity 2010-2 titled, "Authorize SDHC to Inspect and Determine Rent Reasonableness for SDHC Owned Properties." The proposed amendment to Attachment C of the Standard MTW Agreement includes all of these waivers and several additional waivers that strengthen the Housing Commission's MTW initiatives.

From 2017 to 2018, HUD's Office of Inspector General (OIG) performed a review of an early Rental Assistance Demonstration (RAD) conversion at an MTW agency. The OIG found that the Office of Public and Indian Housing (PIH) had approved the MTW agency's Annual MTW Plan, which included an

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activity to waive independent-entity inspections for PHA-owned or managed Project-Based Voucher (PBV) and Section 8 Housing Choice Voucher (HCV) properties. According to the OIG's September 28, 2018, report, the Standard MTW Agreement does not provide the authorizing citations to waive an independent-entity inspection since Section 8(o)(11) of the 1937 Housing Act was not included. Therefore, the OIG asserted that the approval was not legally valid.

To provide clarity and to address the OIG finding, on February 14, 2020, PIH offered an amendment of the Standard MTW Agreement to all 39 MTW agencies to clarify that the exemption from the independent-entity inspection requirements is allowable. The amendment adds express language authorizing exemption from the independent-entity inspection requirements and citations to Section 8(o)(11) of the 1937 Housing Act, as well as additional citations to the corresponding regulations to provide clearer waiver authority for agencies engaged in this activity and for those that may choose to implement this activity in the future. Furthermore, the waiver authority makes clear that this authority is provided to all other independent-entity requirements for PHA-owned and managed properties, determining rent reasonableness and assisting the family to negotiate the rent to the owner (in this case, the PHA), subject to subsidy layering requirements.

With Board of Commissioners approval, the amended language will be accepted by the Housing Commission.

AFFORDABLE HOUSING IMPACT

The Housing Commission has implemented a variety of MTW initiatives to provide cost-effective housing assistance for households with low income and/or experiencing homelessness in the City of San Diego. Approval of the amendment to Attachment C of the Standard MTW Agreement would not impact the Housing Commission's active initiatives.

FISCAL CONSIDERATIONS

The proposed funding sources and uses of MTW funds are included in SDHC's proposed Fiscal Year 2021 Budget.

PREVIOUS COUNCIL and/or COMMITTEE ACTION

On June 17, 2016, the Housing Commission authorized the extension of the Housing Commission MTW Agreement with HUD, under existing terms and conditions (Report No. HCR16-060).

On March 19, 2010, the Housing Commission authorized the submission of the Housing Commission 2011 MTW Annual Plan and first Amendment to the MTW Agreement Attachment D for Broader Uses of Funds to HUD (Report No. HCR10-007).

On December 2, 2008, and November 21, 2008, the Housing Authority of the City of San Diego and the Housing Commission, respectively, authorized the Housing Commission to submit an application for reactivation of the Housing Commission's status as an MTW site through signing the MTW Agreement, including Attachment D allowing for the Determination of Inspection Protocols and Rent Reasonableness for SDHC-Owned Properties and non SDHC-Owned Properties, and to submit the Housing Commission 2010 MTW Annual Plan to HUD (Report Nos. HCR08-123 and HAR08-044, respectively).

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KEY STAKEHOLDERS and PROJECTED IMPACTS

The MTW program affects current and future Section 8 Housing Choice Voucher and Public Housing participants and property owners. The amendment would not impact any of the Housing Commission’s active MTW initiatives.

ENVIRONMENTAL REVIEW

The activity is not a project as defined by the California Environmental Quality Act Section 21065 and State CEQA Guidelines Section 15378(b) (4) as a government fiscal activity that does not involve commitment of funds to a specific project and Section 15378(b) (5) as an administrative activity of government that will not result in direct or indirect physical changes in the environment. The determination that this activity is not subject to CEQA, pursuant to Section 15060(c) (3), is not appealable and a Notice of Right to Appeal the Environmental Determination (NORA) is not required. This activity is exempt from the National Environmental Policy Act pursuant to Section 58.34(a) (2) and Section 58.34(a) (3) Title 24 of the Code of Federal Regulations.

Respectfully submitted,

Suket Dayal

Suket Dayal
Senior Vice President of Strategic Operations & Policy
San Diego Housing Commission

Approved by,

Jeff Davis

Jeff Davis
Executive Vice President and Chief of Staff
San Diego Housing Commission

Attachments: Amendment to Attachment C of the Standard MTW Agreement

Docket materials are available online in the “Governance & Legislative Affairs” section of www.sdhc.org

THIRD AMENDMENT
TO
AMENDED AND RESTATED MOVING TO WORK AGREEMENT
BETWEEN
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
AND
SAN DIEGO HOUSING COMMISSION

This Third Amendment to the Moving to Work (“MTW”) Agreement (“Agreement”) is entered into by and between the United States of America through the U.S. Department of Housing and Urban Development (“HUD”) and San Diego Housing Commission (“Agency”) and is effective on the date of execution by HUD following execution by the PHA. Unless otherwise defined herein, all capitalized terms used herein shall have the same meanings ascribed to them in the Agreement.

This Amendment replaces the language in authorizations D.1.f., D.5., D.7.a. and D.7.d of Attachment C as follows:

1. Section D.1.f. of Attachment C is replaced with the following language:

f. The Agency is authorized to determine property eligibility criteria, including types of units currently prohibited by Section 8 regulations and shared living facilities, subject to HUD’s subsidy layering requirements. The Agency may also waive the independent entity requirements for PHA-owned units. If the Agency chooses to use this authorization, it will need to provide a transition plan to both the affected residents and HUD prior to the end of the demonstration. *This authorization waives certain provisions of Sections (8)(o)(11) and 8(p) of the 1937 Act and 24 C.F.R. 983.53-54, and 982 Subparts H and M as necessary to implement the Agency's Annual MTW Plan.*

2. Section D.5. of Attachment C is replaced with the following language:

5. Ability to Certify Housing Quality Standards

The Agency is authorized to certify that housing assisted under MTW will meet housing quality standards established or approved by HUD. The certification form will be approved or provided by HUD. The agency is also authorized to perform HQS inspections on PHA-owned HCV and PBV units in lieu of the independent inspection requirements. *This authorization waives certain provisions of Section 8(o)(8) and 8(o)(11) of the 1937 Act, 24 C.F.R. 982.352(b), and 24 C.F.R. 982, Subpart I as necessary to implement the Agency's Annual MTW Plan.*

3. Section D.7.a of Attachment C is replaced with the following language:

a. The Agency is authorized to project-base Section 8 assistance at properties owned directly or indirectly by the Agency that are not public housing, subject to HUD's requirements regarding subsidy layering. If the Agency chooses to project-base Section 8 assistance at such properties, the Agency recognizes and accepts that such units would no longer be eligible for operating subsidy provided under Section 9(e) of the 1937 Housing Act or for future capital funds provided under section 9(d) for those units if it chooses to use this authorization. Project-based assistance for such owned units does not need to be competitively bid, nor are the owned units subject to any required assessments for voluntary conversion. The Agency may also waive the independent entity requirements for PHA-owned units. *This authorization waives certain provisions of Sections 8(o)(11) and 8(o)(13)(B and D) of the 1937 Act and 24 C.F.R. 982.1, 982.102 and 24 C.F.R. Part 983, as necessary to implement the Agency's Annual MTW Plan.*

4. Section D.7.d. of Attachment C is replaced with the following language:

d. All units that receive project-based Section 8 assistance must meet either (i) existing HQS standards established by the Secretary or (ii) a local standard for communities receiving project-based Section 8 assistance developed by the Agency and approved by the Secretary pursuant to this MTW Agreement, as applicable. The agency is authorized to perform HQS inspections on PHA-owned HCV and PBV units in lieu of the independent inspection requirements. *This authorization waives certain provisions of Sections 8(o)(8) and 8(o)(11) of the 1937 Act, and 24 C.F.R. 983.103(f) and 24 C.F.R. 982 Subpart I as necessary to implement the Agency's Annual MTW Plan.*

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

SAN DIEGO HOUSING COMMISSION

By: _____

Name: Richard Gentry

Its: President and CEO

Date:

UNITED STATES DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT

By: _____

Name: R. Hunter Kurtz

Its: Assistant Secretary, Public and Indian Housing

Date: