



Berkeley Housing Authority

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Item 7E
NEW BUSINESS
March 10, 2022

Office of the Executive Director

To: Honorable Chair and Members of the Berkeley Housing Authority Board
From: Rachel Gonzales-Levine, Acting Executive Director
Subject: Approval of Move To Work (MTW) Annual Contributions Contract (ACC) Amendment

Background

The first step BHA must take in order to officially become an MTW agency, is to complete and execute the MTW ACC Amendment. The ACC is signed each year and contractualizes BHA's relationship with HUD, including the funding for HAP expenditures. Designation as an MTW agency lasts for 20 years.

A draft Annual Contributions Contract MTW Amendment was provided for Board review in the February Board packet, utilizing HUD's template. The MTW ACC Amendment specifies that MTW agencies must: operate in accordance with MTW Operations Notice; cooperate with HUD and contractors for HUD-sponsored evaluation of cohort-specific study; and can only be exempted from provisions of the Housing Act of 1937 as specified in MTW Operations Notice.

Other sections of the ACC Amendment include:

- Requirements and covenants;
- Transition plan at Year 19;
- Terminations and defaults; and
- Placeholder for future laws that may impact the MTW program.

Attachments

1. Resolution
2. MTW Annual Contributions Contract Amendment

BOARD OF COMMISSIONERS, BERKELEY HOUSING AUTHORITY, STATE OF CALIFORNIA

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RESOLUTION 22-__

1) APPROVING THE HOUSING AUTHORITY'S SUBMISSION OF THE MTW ACC AMENDMENT TO THE HOUSING CHOICE VOUCHER ACC, AND 2) AUTHORIZING THE ACTING EXECUTIVE DIRECTOR OF THE HOUSING AUTHORITY TO EXECUTE ANY DOCUMENTS REQUIRED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD) TO EXECUTE THE MTW ACC AMENDMENT TO THE PHA ANNUAL PLAN

PHA Name: Berkeley Housing Authority (BHA)

PHA Number/Code: CA 058

The U.S. Department of Housing and Urban Development (HUD) has selected the Berkeley Housing Authority to participate in the Move to Work (MTW) Demonstration Expansion, to design and test new ways of providing housing assistance and services to low-income households;

To complete the Berkeley Housing Authority's entry into the MTW Demonstration Expansion program, BHA must fully execute the MTW ACC Amendment to the Housing Choice Voucher Annual Contributions Contract;

The draft MTW ACC Amendment was made available and shared with the Board of Commissioners on February 10, 2022, and the Board of Commissioners has examined and approved the same as to form and content.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Commissioners of the Berkeley Housing Authority as follows:

1. The Board of Commissioners approves the MTW ACC Amendment.
2. The Board of Commissioners authorizes the Authority's Acting Executive Director to sign and submit the MTW ACC Amendment to HUD.

ADOPTED by a majority of all members of the Board of Commissioners in open session and signed by me in authentication of its passage this 10th day of March, 2022.

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012.31, U.S.C. 3729 and 3802)

CERTIFIED BY:

Chris Schildt, Chair	Date
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Rachel Gonzales-Levine, Secretary	
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MOVING TO WORK AMENDMENT TO ANNUAL CONTRIBUTIONS CONTRACT(S)

Section 1. This Moving to Work (MTW) Amendment to the Annual Contributions Contract(s) (MTW ACC Amendment) is entered into between the United States Department of Housing and Urban Development (“HUD”) and the Berkeley Housing Authority (the “Public Housing Agency, “PHA”).

Section 2. This MTW ACC Amendment is an amendment to any Annual Contributions Contract(s) (“ACC”) or Annual Contributions Terms and Conditions (“ACC”) in effect between the PHA and HUD for the Public Housing and Housing Choice Voucher programs.

Section 3. The ACC is amended in connection with the PHA’s designation as a participant in the expansion of the MTW demonstration pursuant to Section 239 of the Consolidated Appropriations Act, 2016, P.L. 114-113; 129 Stat. 2897 (2016 MTW Expansion Statute) and Section 204 of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1996, P.L. 104-134; 110 Stat. 1321-281 (1996 MTW statute). The PHA’s participation in the expansion of the MTW demonstration shall be governed by the MTW Operations Notice for the Expansion of the Moving to Work Demonstration as it is issued as it and may be amended in the future, or any successor notice issued by HUD, (“the MTW Operations Notice”).

Section 4. The term of this amendment shall be for 20 years from the beginning of the PHA’s first full fiscal year following execution by the PHA and HUD; or, until termination of this amendment, whichever is sooner.

Section 5. Requirements and Covenants

(A) As a participant in the MTW demonstration, the PHA must operate in accordance with the express terms and conditions set forth in the MTW Operations Notice. The MTW Operations Notice may be superseded or amended by HUD at any time during the twenty-year MTW term.

(B) The PHA will cooperate fully with HUD and its contractors for the duration of the HUD-sponsored evaluation of the cohort of the MTW Expansion for which the PHA was selected and shall comply with all aspects of its Cohort Study as outlined in the selection notice under which the PHA was designated.

(C) The PHA is only exempted from specific provisions of the Housing Act of 1937 (“the Act”) and its implementing regulations as specified in the MTW Operations Notice. Each such exemption also extends to subregulatory guidance to the extent that the subregulatory guidance implements the provisions of the Act or its implementing regulations exempted pursuant to the MTW Operations Notice. The PHA remains

subject to all other applicable requirements including, but not limited to, those in Title 24 of the Code of Federal Regulations and Title 42 of the U.S. Code, Appropriations Acts, Annual Contributions Contracts, notices of funding availability under which the PHA has received funds, and the applicable requirements listed in the MTW Operations Notice (collectively, “the Requirements”), as they may be amended or implemented in the future. Accordingly, if any Requirement, other than the provisions of the Act and its implementing regulatory requirements or subregulatory guidance exempted pursuant to this MTW ACC Amendment and the MTW Operations Notice, conflicts with any exemption or authorization granted by this MTW ACC Amendment, the MTW Agency remains subject to that Requirement.

Section 6. At least one year prior to expiration of this MTW ACC Amendment¹, the PHA shall submit a transition plan to HUD. It is the PHA’s responsibility to be able to end all MTW activities that it has implemented through its MTW Supplement to the PHA Plan upon expiration of this MTW ACC Amendment. The transition plan shall describe plans for phasing out such activities. The plan may also include any proposals of authorizations/features of the ACC Amendment and the MTW Operations Notice that the PHA wishes to continue beyond the expiration of the MTW ACC Amendment. The PHA shall specify the proposed duration and shall provide justification for extension of such authorization/features. HUD will review and respond to timely-submitted transition plans from the PHA in writing within 75-days or they are deemed approved. Only authorizations/features specifically approved for extension shall continue beyond the term of the MTW ACC Amendment. The extended features shall remain in effect only for the duration and in the manner specified in the approved transition plan and be subject to any necessary ACC Amendments as required by HUD.

Section 7. Termination and Default

(A) If the PHA violates or fails to comply with any requirement or provision of the ACC, including this amendment, HUD is authorized to take any corrective or remedial action described in this Section 7 for PHA default or any other right or remedy existing under applicable law, or available at equity. HUD will give the PHA written notice of any default, which shall identify with specificity the measures, which the PHA must take to cure the default and provide a specific time frame for the PHA to cure the default, taking into consideration the nature of the default. The PHA will have the opportunity to cure such default within the specified period after the date of said notice, or to demonstrate within 10 days after the date of said notice, by submitting substantial evidence satisfactory to HUD, that it is not in default. However, in cases involving clear and apparent fraud, serious criminal behavior, or emergency conditions that pose an imminent threat to life, health, or safety, if HUD, in its sole discretion, determines that

¹ Should the PHA receive an extension(s) of its MTW participation (e.g. by extension or replacement of its MTW ACC Amendment) the transition plan will be due one year prior to the end of the extension(s).

immediate action is necessary it may institute the remedies under Section 7(B) of this MTW ACC Amendment without giving the PHA the opportunity to cure.

- (B) If the PHA is in default of this MTW ACC Amendment and/or the MTW Operations Notice and the default has not been cured, HUD may, undertake any one or all remedies available by law, including but not limited to the following:
- i. Require additional reporting by the PHA on the deficient areas and the steps being taken to address the deficiencies;
 - ii. Require the PHA to prepare and follow a HUD-approved schedule of actions and/or a management plan for properly completing the activities approved under this MTW ACC Amendment;
 - iii. Suspend the MTW waiver authorization for the affected activities;
 - iv. Require reimbursement by the PHA to HUD for amounts used in violation of this MTW ACC Amendment;
 - v. Terminate this MTW ACC Amendment and require the PHA to transition out of MTW;
 - vi. Restrict a PHA's ability to use its MTW funding flexibly; and/or
 - vii. Take any other corrective or remedial action legally available.

(C) The PHA may choose to terminate this MTW ACC Amendment at any time. Upon HUD's receipt of written notification from the PHA and a copy of a resolution approving termination from its governing board, termination will be effective. The PHA will then begin to transition out of MTW and will work with HUD to establish an orderly phase-out of MTW activities, consistent with Section 6 of this MTW ACC Amendment.

(D) Nothing contained in this ACC Amendment shall prohibit or limit HUD from the exercise of any other right or remedy existing under any ACC or available under applicable law. HUD's exercise or non-exercise of any right or remedy under this amendment shall not be construed as a waiver of HUD's right to exercise that or any other right or remedy at any time.

Section 8. Notwithstanding any provision set forth in this MTW ACC Amendment, any future law that conflicts with any provision of this ACC Amendment, as determined by HUD, shall not be deemed to be a breach of this ACC Amendment. Nor shall HUD's execution of any future law be deemed a breach of this ACC Amendment. Any future laws affecting the PHA's funding, even if that future law causes a decrease in the PHA's funding, shall not be deemed a breach of this ACC Amendment. No future law or HUD's execution thereof shall serve as a basis for a breach of contract claim in any court.

Section 9. If any clause, or portion of a clause, in this Agreement is considered invalid under the rule of law, it shall be regarded as stricken while the remainder of this Agreement shall continue to be in full effect.

In consideration of the foregoing covenants, the parties do hereby execute this MTW ACC
Amendment:

PHA

By: _____

Its: _____

Date: _____

UNITED STATES DEPARTMENT OF HOUSING AND
URBAN DEVELOPMENT

By: _____

Its: _____

Date: _____