

**SECOND AMENDMENT**

**TO**

**AMENDED AND RESTATED MOVING TO WORK AGREEMENT  
BETWEEN  
U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
AND  
BOULDER HOUSING PARTNERS**

This Second 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 Boulder Housing Partners (“Agency”) and is effective on the date of execution by HUD. Unless otherwise defined herein, all capitalized terms used herein shall have the same meanings ascribed to them in the Agreement.

Attachment D is amended as follows:

The following language is added to the Agency’s Attachment D:

**Use of MTW Funds**

The Agency and HUD acknowledge that Section 204(a) of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (Pub. L. 104-134) provides that an agency participating in the MTW demonstration program may combine public housing operating and capital funds provided under Section 9 of the U.S. Housing Act of 1937 (the “1937 Act”) and voucher program funds provided under Section 8 of the 1937 Act “to provide housing assistance for low-income families, as defined in section 3(b)(2) of the 1937 Act, and services to facilitate the transition to work on such terms and conditions as the agency may propose and the Secretary may approve.”

The Agency and HUD further acknowledge that the terms of the agreement under which the Agency participated in the MTW demonstration program prior to the Amended and Restated MTW Agreement (the “Original MTW Agreement”) did not state that the use of such combined public housing operating and capital funds and voucher program funds (collectively, “MTW Funds”) was restricted to those uses specified in Sections 8 and 9 of the 1937 Act.

The Agency and HUD hereby agree that they do not intend for the Amended and Restated MTW Agreement to limit or restrict the authority to use MTW Funds as provided by the Original MTW Agreement, that notwithstanding any language to the contrary, those provisions in this Agreement or its attachments that restrict the use of funds to Sections 8 and 9 are repealed, and the Agency may use MTW Funds to provide housing assistance for low-income families, as defined in section 3(b)(2) of the 1937 Act, and services to facilitate the transition to work, whether or not any such use is authorized by Sections 8 or 9 of the 1937 Act, provided such uses are consistent with other requirements of the MTW statute [i.e., including but not limited to the requirements to maintain a comparable mix of families and serve substantially the same number of families as would have been assisted if the Agency were not in the MTW demonstration, assuring that housing assisted under the

demonstration meets housing quality standards established or approved by the Secretary, that at least 75 percent of the families assisted be very low income families, that the agency has established a reasonable rent policy that is designed to encourage employment and self-sufficiency by participating families, that the requirements of sections 12 of the 1937 Act are applied to any housing assisted under the demonstration other than housing assisted solely because of occupancy by families receiving tenant-based assistance, and that Section 18 of the 1937 Act shall continue to apply to public housing notwithstanding the use of any use of the housing under the demonstration] and have been proposed in an Agency's Annual MTW Plan and approved by HUD.

Notwithstanding the above, such funds remain Federal funds, and are subject to any and all other Federal requirements outside of the 1937 Act (e.g., including but not limited to Appropriations Acts, competitive HUD notices of funding availability under which the Agency has received an award, state and local laws, Federal statutes other than the 1937 Act, and OMB Circulars and requirements), as modified from time to time.

The section in the Agency's existing Attachment D of the MTW Agreement, executed on November 10, 2011 and entitled "Use of Replacement Housing Factor Funds for Development," is stricken and replaced with the following language:

**Use of Replacement Housing Factor Funds for Development**

The Agency and HUD acknowledge that Section B(1)(a) of Attachment C of this Agreement regarding the ability to combine funds awarded annually pursuant to Section 8(o), 9(d) and 9(e) of the U.S. Housing Act of 1937 ("1937 Act") into a single, authority-wide funding source ("MTW Funds") is inclusive of replacement housing factor ("RHF") funds provided for at 24 CFR 905.10(i) provided the conditions detailed below are met. The Agency may exercise one of the following options in the administration of RHF funds.

- 1) Option 1: The Agency may administer its RHF awards outside of its MTW Funds. These funds must be used in accordance with RHF requirements and may accumulate under an approved RHF Plan or be subject to the two-year obligation and four year expenditure deadlines. The Agency would be eligible for second increment RHF funds, which would be administered outside of the agency's MTW Funds.
- 2) Option 2: The Agency may combine its first increment RHF funds in its MTW Funds and use the funds for any purpose allowable in this Agreement and approved in an MTW Plan, as detailed in Section B(1)(e) of Attachment C of this Agreement. Obligation and expenditure requirements of Section 9(j) of the 1937 Act still apply to these funds. If administering first increment RHF funds in this way, the Agency forgoes eligibility for second increment RHF funds.
- 3) Option 3: If the Agency combines its first increment RHF funds in its MTW Funds pursuant to Option 2, but wants to receive a second increment of RHF funds, while the Agency may use the funds for any purpose allowable in this Agreement and approved in an MTW Plan, the Agency must spend a portion of its MTW Funds for construction of new public and/or affordable housing. The amount of MTW Funds the Agency must spend on construction of new public

and/or affordable units must be equal to or greater than the total amount of RHF funds included in the MTW Funds. In addition, the number of new public and/or affordable units it constructs must be equal to or greater than the number of public housing units the Agency would have developed if it had not included its RHF funds in its MTW Funds. This is referred to as the "Proportionality Test." [For example, if an Agency deposits \$500,000 of RHF funds in its MTW Block Grant, the Agency must spend at least \$500,000 of its MTW Block Grant funds on the construction of new public and/or affordable housing. The specific number of new public and/or affordable housing units that must be constructed is determined by dividing \$500,000 by the Total Development Cost (TDC) limit applicable to the type of new units being developed. For example, if the Agency is developing 2-bedroom townhomes and the TDC for these types of units is \$220,000, the Agency must construct a minimum of three new 2-bedroom townhomes ( $\$500,000$  divided by  $\$220,000 = 2.7$ .) This calculation must be done for each year that RHF funds are received by the PHA and included in the MTW Block Grant.]

- i) The applicable TDC will be either the HUD TDC limit for the year in which construction of the units commences or an alternate TDC approved by HUD as part of the MTW approval process.
- ii) The new public and/or affordable units required to be developed may be developed directly by the Agency or developed through a Mixed-Finance transaction.
- iii) Any project which includes construction of public housing units must be approved by HUD following either the Development process (units owned by the Agency) or the Mixed-Finance process (units owned by an entity other than the Agency).
- iv) The Agency must show significant progress on construction of the new public and/or affordable units required during the first increment of RHF funds in order to receive the second increment of RHF funds.
- v) If an Agency chooses to include second increment RHF funds in its MTW Block Grant, then second increment RHF funds will be subject to the Proportionality Test and the same requirements as first increment funds regarding the amount of MTW Block Grant funds that must be spent on the construction of new public and/or affordable housing and the number of units which must be constructed.
- vi) Leveraging requirements still apply to the second increment RHF funds.
- vii) The 2-year obligation and 4-year expenditure deadlines are still applicable to both the first and second increment RHF funds deposited into the MTW Block Grant.
- viii) The new units constructed must be consistent with the MTW Statute and Agreement. In order to develop affordable (non-public housing) units, an Agency must have received prior HUD authority to implement local, non-traditional activities.
- ix) Prior to implementing Option 3, an Agency must amend their MTW Agreements to allow for deposit of RHF Funds in the MTW Block Grant and the receipt of second increment RHF Funds (a standard HUD Amendment must be used).

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- x) Prior to implementing Option 3, an Agency must include the development of the new public and/or affordable units in their MTW Plan and include RHF funds in Section 7, the Sources and Uses Chart.
- xi) As long as the Agency has included in its MTW Plan the construction of the new public and/or affordable units and its intention to combine RHF funds in the MTW Block Grant and receive second increment RHF funds, the Agency does not need to submit an RHF Plan to HUD. However, the MTW Plan must include the information required in an RHF Plan, as prescribed by HUD.
- xii) The Agency must include in its annual MTW Report an update on the amount of RHF funds included in the MTW Block Grant, the amount of funds spent on construction of new public and/or affordable housing, the number of units being constructed, and the status of construction. The Agency must show significant progress on construction of units during the first increment of RHF funds in order to receive second increment RHF funds.

Notwithstanding the above, such funds remain Federal funds, and are subject to any and all other Federal requirements outside of the 1937 Act (e.g., including but not limited to Appropriations Acts, competitive HUD notices of funding availability under which the Agency has received an award, state and local laws, Federal statutes other than the 1937 Act, and OMB Circulars and requirements), as modified from time to time.

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

BOULDER HOUSING PARTNERS

By: B Martens  
Name: Betsey Martens  
Its: Executive Director  
Date: 10.12.12

UNITED STATES DEPARTMENT OF HOUSING  
AND URBAN DEVELOPMENT

By: Sandra B. Hendricks  
Name: Sandra B. Hendricks  
Its: Assistant Secretary, PHH  
Date: 01/14/2013