

ATTACHMENT D

LEGACY AND COMMUNITY-SPECIFIC AUTHORIZATIONS

TO

AMENDED AND RESTATED MOVING TO WORK AGREEMENT

BETWEEN

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

AND THE

DISTRICT OF COLUMBIA HOUSING AUTHORITY

This Attachment D describes and authorizes activities which may be implemented by the District of Columbia Housing Authority (the "Agency") pursuant to the Amended and Restated MTW Agreement between the Agency and HUD dated _____, which together with any and all attachments, exhibits, and appendices thereto is hereinafter referred to as the "Amended and Restated Agreement." Notwithstanding any other provision of this Agreement, the Agency is authorized as follows:

I. USES 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contrary, those provisions in this Agreement or its attachments that restrict the use of funds to Sections 8 and 9 are repealed, and the Agency may use MTW Funds to provide housing assistance for low-income families, as defined in section 3(b)(2) of the 1937 Act, and services to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.

II. LEGACY ITEMS

Without in any way limiting the foregoing in this Attachment D, the Agency is authorized as follows:

A. Administrative Issues

1. Energy Performance Contracting

- a. The Agency may, without prior approval from the Department, modify the current energy performance contract or enter into new performance contracts with Energy Service Companies (ESCOs), also called Energy Service Agreements (ESAs), and determine the terms and conditions of energy performance contracts, provided that, with respect to each contract, (i) the term does not exceed 20 years, and (ii) the Agency maintains adequate file documentation demonstrating EPC performance. The Agency may also function as its own ESCo, provided that any financing complies with requirements (i) and (ii) of this paragraph. However, in agreeing to forego said prior approval, the Agency agrees that no security interest or physical encumbrance shall be placed on public housing property or public housing assets as part of any modified or future performance contract. If such a security interest or physical encumbrance is proposed, the Agency shall seek prior approval from the Department for said performance contract.
- b. The Agency is authorized to pledge its reserves or other funds for use during the term of the MTW demonstration to guarantee the payment of debt service in the event that projected energy savings are not adequate to cover the debt service costs for an

energy conservation project undertaken during the term of the MTW demonstration. However, any action taken by the Agency in conjunction with a pledge of its reserves or other funds shall contain the following statement: "The Agency's obligations are not obligations of or guaranteed by HUD or the United States of America. No action taken pursuant to these documents shall result in any liability to the federal government. The Agency is solely responsible for such obligations and it makes such obligations at its own risk."

- c. In the event that the EPC(s) extends beyond the term of the MTW agreement, HUD reserves the right to determine reporting requirements for purposes of calculating Operating Subsidy. Where the EPC extends beyond the term of the MTW agreement, the rolling base consumption level for the project and utilities involved may be frozen for the entire term of the approved EPC pursuant to 24 C.F.R. § 990.185.
 - d. EPC Reporting Requirements: Each year, the Agency shall report on the performance of its EPC(s) in its Annual MTW Report. Reporting requirements include an audited consumption baseline and an annual measurement and verification of cost and consumption savings report. The Annual MTW Report will include the following data elements for each asset management project (AMP), by project number:
 - Is the project ESCo or Self-developed;
 - What are the number of rehabilitated units in the energy project;
 - What are the number of rehabilitated AMPS in the energy project; What is Total Investment; What is Total financed;
 - What is Debt Service (Annual);
 - What are Guaranteed savings (Source: Investment Grade Energy Audit);
 - What are Actual Savings (Source: annual Monitoring and Verification report);
 - What is the Investment per unit;
 - What is the Finance per unit;
 - What is the Savings per unit;
 - What is the Savings per project (AMP);
 - What is the Term of the contract;
 - What date was the Request for Proposal issued;
 - What was Date audit executed;
 - What was Date Energy Services agreement executed;
 - What was Date Repayment starts; and
 - What Types of Energy Conservation Measures were installed at each AMP site.
2. Public Housing Assessment System (PHAS). 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. Authorizations Related to Both Public Housing and Section 8 Housing Choice Vouchers

Not applicable at this time.

C. Authorizations Related to Public Housing

1. Simplification of Property Management Practices

In addition to the authorizations at Section C.9 of Attachment C, the following is added:
The Agency is authorized to develop its own energy auditing protocols and frequencies in lieu of the HUD requirement that energy audits be performed every five years.

D. Authorizations Related to Section 8 Housing Choice Vouchers

Not applicable at this time.

E. Authorizations Related to Family Self Sufficiency Programs

Not applicable at this time.