

Community Development Committee

Meeting date: December 18, 2023

For the Metropolitan Council meeting of January 10, 2024

Subject: Approval of Joint Powers Agreement for the Metropolitan Housing Opportunities Program

District(s), Member(s): All

Policy/Legal Reference: U.S. Department of Housing and Urban Development Notices PIH 2014-24 and PIH 2019-05

Staff Prepared/Presented: Terri Smith, Director, Housing and Redevelopment Authority (651) 602-1187

Division/Department: Community Development / Metro HRA

Proposed Action

That the Metropolitan Council:

1. Approve a Joint Powers Agreement, substantially in the form of the attached, between the Metropolitan Council, the Minneapolis Public Housing Authority (MPHA) and the City of Plymouth governing the transfer and conversion of Metropolitan Housing Opportunity Program units.
2. Authorize the Community Development Director to execute the Agreement on behalf of the Council.

Background

The Metropolitan Housing Opportunities Program (MHOP) was established by the Minneapolis Public Housing Authority (MPHA) in 1998 as part of the Hollman Consent Decree. The Consent Decree required MPHA to demolish 770 Public Housing program units and provided funding for the development of replacement Public Housing units within the City of Minneapolis and metropolitan-area suburban locations.¹

These 770 units were developed, and MPHA now holds the federal funding agreement for 106 units in 16 sites and 11 cities around the region. While these are considered Public Housing units, MPHA neither owns nor manages the units directly, and all are privately owned and operated. This is a unique one-of-a-kind product in the country; the process of managing and operating these scattered Public Housing units alongside other types of rental assistance has proven onerous and costly for both the property owners and the agency. This product also does not afford meaningful choice for participants, as they must remain in their public housing unit or risk giving up their assistance. As a result, MPHA is interested in pursuing a conversion of the Public Housing

¹ The Metropolitan Council separately developed 150 of these units, known as the Family Affordable Housing Program.

program units to vouchers, by voluntarily transferring the units to the Council's Housing and Redevelopment Authority (Metro HRA) as contemplated in the original Consent Decree.

Council staff discussed this program and potential partnership with [the Community Development Committee on June 5, 2023](#) and on [October 16, 2023](#). Committee members expressed support for the path forward.

The process would include a [Streamlined Voluntary Conversion](#) (SVC) application to the U.S. Department of Housing and Urban Development (HUD), which would result in an award of 106 new housing vouchers to the Metro HRA. The new vouchers would provide continued rent assistance to the current unit occupants who are able to remain in their current unit or move to another unit of their choice. There will be little disruption to the residents as a result of the process: there will be no temporary or permanent displacement, and their rent portions would remain nearly the same.

A joint Powers Agreement is required to allow MPHA to continue operating the units as Public Housing until the conversion process is complete. The anticipated completion date is October 2024.

Funding

Funding for the Housing Choice Voucher and Project Based Voucher programs is provided by the U.S. Department of Housing and Urban Development. The Metro HRA will receive 106 vouchers from HUD for the conversion action and the associated funding.

Known Support / Opposition

The conversion action is being completed with the support of the U.S. Department of Housing and Urban Development, the Minneapolis Public Housing Authority and the Plymouth Housing and Redevelopment Authority.

Council Contract No. _____
MPHA No. _____
Plymouth HRA No. _____

**JOINT EXERCISE OF POWERS AGREEMENT
GOVERNING THE TRANSFER AND CONVERSION OF
METROPOLITAN HOUSING OPPORTUNITY PROGRAM UNITS**

THIS AGREEMENT (“Agreement”) is between the Minneapolis Public Housing Authority in and for the City of Minneapolis (“MPHA”), the Metropolitan Council (“Council” or “Metro HRA”), and the Plymouth Housing and Redevelopment Authority (“Plymouth HRA”). The MPHA, the Council, and the Plymouth HRA are collectively the “Parties” and individually a “Party” to this Agreement.

WHEREAS, under the *Hollman* consent decree (D. Minn. Apr. 20, 1995 (Civ. No. 4-92-712)) (as amended) the U.S. Department of Housing and Urban Development (“HUD”) provided capital funding to the MPHA for the development of 770 replacement public housing units located outside of minority- and poverty-concentrated areas in Minneapolis and the metropolitan area; and

WHEREAS, under its Metropolitan Housing Opportunity Program (“MHOP”) the MPHA entered into Regulatory and Operating Agreements and other agreements with owners of mixed-finance developments and provided capital funding to pay a portion of the owners’ development costs and operating assistance to help operate and maintain the low-income character of the public housing program units (“MHOP Units”) in the developments; and

WHEREAS, seventy-nine MHOP Units are located in the Council’s Section 8 area of operation (*i.e.*, its “jurisdiction” under 24 C.F.R. § 982.4(b)), eight MHOP Units are located in Minneapolis, and nineteen MHOP Units are located in the City of Plymouth; and

WHEREAS, operation of the MHOP Units under the federal public housing program is financially and administratively challenging for the MPHA and the owners of the developments within which these MHOP Units are located; and

WHEREAS, in consultation with HUD the Parties determined these 106 MHOP Units can be administered more efficiently and still be maintained as affordable housing in their respective communities if the MHOP Units are converted from public housing program units to Section 8 Housing Choice Voucher (“HCV”) or Project-Based Voucher (“PBV”) assistance; and

WHEREAS, this proposed conversion will require the MPHA to transfer the public housing program MHOP Units to the Council under the process prescribed in HUD Notice PIH 2014-24 (HA) (or subsequent guidance) after which transfer the Council will convert the public housing program MHOP Units to Section 8 HCV or PBV assistance under the Streamlined Voluntary Conversion (“SVC”) process prescribed in HUD Notice PIH 2019-05 (HA) (or subsequent guidance); and

WHEREAS, the Parties anticipate that the transfer and conversion of these MHOP Units will occur concurrently, or that the conversion will occur very soon after the transfer; and

WHEREAS, the MPHA has engaged the services of a consultant (“Consultant”) to implement this transfer and conversion, including the development of a Conversion Plan for the MHOP Units and an SVC application; and

WHEREAS, through its Metro HRA unit the Council administers Section 8 HCV and PBV assistance for households in Anoka, Carver, and most of suburban Hennepin and Ramsey counties; and

WHEREAS, the MPHA and the Plymouth HRA administer their own Section 8 HCV and PBV programs within their respective jurisdictions; and

WHEREAS, as part of the SVC process, the Council will apply to HUD for 106 Tenant Protection Vouchers (“TPVs”); and

WHEREAS, upon receipt of the TPVs the Metro HRA will transfer participant files through portability to Minneapolis and Plymouth for the residents that remain in those MHOP Units and the other TPVs will be converted to PBVs for the MHOP Units in Metro HRA’s service area; and

WHEREAS, implementation of this proposed transfer and conversion plan may require the Council to administer the public housing program MHOP Units located in Minneapolis and Plymouth until the MHOP Units are converted to Section 8 HCV or PBV assistance; and

WHEREAS, the Council, the MPHA, and the Plymouth HRA are “governmental units” under Minnesota Statutes section 471.59, subdivision 1, and are authorized under section 471.59, subdivisions 1 and 10, to enter into a joint powers agreement under which they can perform on behalf of the others services or functions they are authorized to provide for themselves; and

WHEREAS, this Agreement will permit the Council to temporarily hold the Annual Contributions Contract (ACC) for the public housing program MHOP Units located in Minneapolis and Plymouth; and

WHEREAS, the Board of Commissioners of the Minneapolis Public Housing Authority approved this Agreement by action at its _____, 20__, meeting (Resolution No. __-__), the governing body of the Metropolitan Council approved this Agreement by action at its _____, 20__, meeting (Business Item No. 20__-__), and the Board of Commissioners of the Plymouth Housing and Redevelopment Authority approved this Agreement at its _____, 20__ meeting (Agenda Item ____).

NOW, THEREFORE, the MPHA, the Council, and the Plymouth HRA agree as follows:

I. PURPOSE AND FRAMEWORK

1.01 Purpose. The purposes of this Agreement are to: (1) implement a transfer of 106 public housing program MHOP Units to the Council and the conversion of those public housing MHOP Units to Section 8 HCV or PBV assistance; (2) establish terms and conditions under which the

MHPA will continue to manage the MHOP Units as public housing units until the transfer and conversion processes are successfully accomplished; and (3) establish a framework for accomplishing this transfer and conversion in a manner that is least disruptive to the households and individuals currently living in the MHOP Units and consistent with statutory and regulatory requirements and HUD guidance.

1.02 Framework. The framework for transferring and converting the 106 MHOP Units envisioned by the Parties comprises five components: (1) all 106 MHOP Units will be voluntary transferred to the Metro HRA as public housing program units; (2) the MPHA will continue to operate all 106 MHOP Units while the MHOP Units are public housing program units; (3) concurrently with this transfer, the Metro HRA will submit a Voluntary Conversion Plan to HUD to convert all 106 MHOP Units to Section 8 HCVs or PBVs; (4) the Metro HRA will transfer the eight MHOP Units located in Minneapolis to the MPHA and transfer the nineteen MHOP Units located in Plymouth to the Plymouth HRA, both of which transfers will be accomplished through portability; and (5) the Metro HRA will convert the seventy-nine MHOP Units in its jurisdiction to Section 8 PBV units.

II. DEFINITIONS

2.01 Definitions. For the purposes of this Agreement, the following terms have the meanings ascribed to them in this section, unless otherwise indicated by the context:

- (a) “*Administrative Plan*” means the written administrative plan required under federal regulations (24 C.F.R. § 982.54) that establishes a PHA’s policies for the administration of its Section 8 HCV and PBV programs. The Administrative Plan may be amended from time to time.
- (b) “*Affordability Period*” means the period specified in a Housing Assistance Payments (“HAP”) contract when an MHOP Unit in a development must be made available for occupancy by households or individuals receiving Section 8 HCV or PBV assistance. The Affordability Period is intended to help: (1) ensure the long-term affordability of the MHOP Units which were financed with capital grant funding under the *Hollman* consent decree; (2) retain affordable units located outside of minority- and poverty-concentrated areas; and (3) make affordable units available in higher-rent areas of the metropolitan area. The Affordability Period will extend at least through 2035 which is consistent with the time period specified in HUD’s Declarations of Trust/Restrictive Covenants.
- (c) “*Conversion Plan*” means a voluntary conversion plan that meets the applicable requirements of 24 C.F.R. sections 972.227 to 972.233 and HUD Notice PIH 2019-05 (HA).
- (d) “*Effective Date*” means the date this Agreement has been fully executed by the Parties’ authorized signatories.
- (e) “*MHOP Households*” means the households and individuals living in the 106 MHOP Units as of the Effective Date who are issued Tenant Protection Vouchers in connection with the transfer and conversion of the MHOP Units. The term “MHOP Households” does not include

households and individuals living in MHOP Units as of the Effective Date who do not qualify for Section 8 HCV, PBV, or TPV assistance.

- (f) “*MHOP Units*” means the 106 public housing program MHOP Units that are the subject of this Agreement. The MHOP Units are located in mixed-finance developments. The MHOP Units are not owned by the MPHA but, under the terms of HUD-required Declarations of Trust/Restrictive Covenants recorded against the properties, the MHOP Units currently must be made available to households and individuals who are eligible for public housing program assistance. A list of the 106 MHOP Units is attached to this Agreement.
- (g) “*Portability*” means the statutory and regulatory provisions (24 C.F.R. § 982.355) under which a person or family moves to an area outside the “initial” PHA jurisdiction and whose Section 8 HCV assistance is administered by the “receiving” PHA if a PHA with a Section 8 HCV program has jurisdiction in the area where the unit is located.
- (h) “*Tenant Protection Vouchers*” or “*TPVs*” mean replacement Tenant Protection Vouchers issued to eligible MHOP Households pursuant to applicable federal statutory and regulatory requirements and HUD PIH notices.

III. TERM, EXPIRATION, AND TERMINATION

3.01 Term. This Agreement is effective on the Effective Date.

3.02 Expiration. Unless this Agreement is terminated earlier under Section 3.03, this Agreement will expire when the transfer and conversion process is complete.

3.03 Termination. This Agreement may be terminated or rescinded: (1) by a Party for any reason upon 90 days’ written notice to the other Parties; or (2) by mutual written agreement of the Parties. This Agreement automatically terminates if: (1) HUD does not approve the transfer of the MHOP Units; or (2) HUD does not approve the Conversion Plan; or (3) HUD does not provide Tenant Protection Vouchers sufficient to cover all eligible MHOP Households. If HUD approves the transfer but does not approve the Conversion Plan, the Parties will cooperatively work with HUD to expeditiously transfer the MHOP Units back to the MPHA.

IV. EXERCISE OF POWERS

4.01 Implementation. The Parties intend to implement this MHOP Unit transfer and conversion in a manner that is least disruptive to the households and individuals living in the MHOP Units as of the Effective Date, and consistent with HUD Notice PIH 2014-24 (HA), HUD Notice PIH 2019-05 (HA), and applicable statutory and regulatory requirements.

- (a) ***Council and Plymouth HRA Responsibilities.*** To accomplish this transfer and conversion the Council and the Plymouth HRA will:
 - (1) provide assistance and information to the MPHA and its Consultant in conjunction with the Consultant’s development of the Conversion Plan and SVC application;

- (2) assist the MPHA in both developing a plan for informing and informing the MHOP Unit households and individuals, and their landlords, about the transition to Section 8 HCV or PBV assistance and the households' or individuals' right (if any) to remain in the MHOP Units;
- (3) inspect the MHOP Units in accordance with HUD housing inspection standards for the units located in their respective jurisdictions;
- (4) enter into HAP contracts with the owners or property managers of the MHOP Units for the units located in their respective jurisdictions;
- (5) administer Section 8 HCV or PBV assistance for MHOP Households in MHOP Units located in their respective jurisdictions in accordance with their Administrative Plans; and
- (6) if required by HUD, execute and record new Declarations of Trust/Restrictive Covenants against the MHOP Units as required by the ACC and Notice PIH 2011-61 and subsequent guidance. [*Source: Notice PIH 2014-24, sec. 8.h., p. 10*]

In addition to items (1) through (6), the Council will process MHOP Household applications for Section 8 HCV or PBV assistance, determine MHOP Household eligibility for Section 8 HCV or PBV assistance for the MHOP Units the household occupied as of the Effective Date, and issue HCVs or PBVs to eligible families and individuals.

(b) ***MPHA Responsibilities.*** To accomplish this transfer and conversion the MPHA will:

- (1) fulfill the resident notification requirements specified in Section 8.q. of HUD Notice PIH 2014-24 (HA);
- (2) provide any required comparable housing and relocation assistance for all MHOP households and individuals who are “over-income families” or otherwise not eligible for replacement TPVs;
- (3) be responsible for complying with or cooperating with HUD regarding any environmental clearance requirements; and
- (4) administer Section 8 HCV or PBV assistance for MHOP Households in MHOP Units located in its jurisdictions in accordance with applicable regulations and policies.

4.02 Collaborative Efforts. On an as-needed basis, or as requested by a Party, the Parties will confer with each other on the status and implementation of the transfer and conversion.

4.03 No Disbursement of Funds. The MPHA, the Council, and the Plymouth HRA will be responsible for their own costs and expenses relating to the implementation of this conversion and transfer and will not be responsible for the other Parties' costs and expenses., and none of the Parties will disburse any fees or other funds to the other Parties under this Agreement except that the MPHA will be responsible for:

- (a) all costs of its Consultant including the Consultant’s work in developing an impact analysis, a Conversion Plan for the MHOP Units, and an SVC application;
- (b) the costs of providing any required comparable housing and/or relocation assistance for all households and individuals who are “over-income families” or otherwise are not eligible for replacement TPVs;
- (c) for all MHOP Households who may choose to move from their MHOP Units after conversion and all households and individuals who are “over-income families” or otherwise not eligible for replacement TPVs, the costs of the following activities, to the extent those activities are required: (1) providing information on counseling services; (2) direct relocation assistance; (3) providing relocation notices; and (4) relocation expenses;
- (d) the costs of any required environmental review associated with the transfer and conversion of the MHOP Units if those costs are paid by a PHA; and
- (e) the costs of preparing, executing, and recording: (1) any new Declarations of Trust/Restrictive Covenants that may be necessary; or (2) releases from existing Declarations of Trust/Restrictive Covenants that may be necessary.

V. Management of MHOP Public Housing Units

5.01 Pre-Conversion Management of MHOP Units. When the MHOP units are transferred to the Council the MPHA will remain responsible for managing all MHOP Units until HUD approves the Conversion Plan (either in writing or by automatic approval under 24 C.F.R. § 972.236 HUD Notice PIH 2019-05 (HA)) and the MHOP Units are converted to Section 8 HCV or PBV assistance.

5.02 Operating Subsidy, Capital Funding, and Reserves. Until HUD approves the Conversion Plan and the MHOP Units are converted to Section 8 HCV or PBV assistance, the MPHA will be entitled to receive all public housing program operating subsidy and capital funding for the units. When the MHOP Units are transferred to the Council the MPHA will transfer to the Council the total budget authority on hand, restricted and unrestricted fund balances, grant balances, and accumulated reserves related to the MHOP Units. [*Source: Notice PIH 2014-24, sec. 8.a., p. 8*]

5.03 Post-Conversion of MHOP Units. Until the Affordability Period expires, the converted MHOP Units will be made available to households and individuals who are eligible for Section 8 HCV, TPV or PBV assistance.

VI. REPRESENTATIONS AND WARRANTIES

6.01 Representations and Warranties. Except for Declarations of Trust/Restrictive Covenants recorded against the MHOP Units in connection with the capital funding HUD provided under the *Hollman* consent decree, the MPHA represents and warrants that the MHOP Units are not the subject of any: court orders, consent decrees (including the *Hollman* consent decree), unsatisfied judgments, or any known potential or pending legal actions; or unresolved letter of findings under

any fair housing or civil rights authority or a currently effective Voluntary Compliance Agreement (“VCA”) or Inspector General audit. [Source: Notice PIH 2014-24, sec. 5.b.(3), p. 5]

VII. LIABILITIES

7.01 Liability. Under Minnesota Statutes, section 471.59, subdivision 1a, each Party will be responsible for its own acts and omissions and the results of those acts or omissions. None of the Parties waives any tort liability limitations conferred on it by Minnesota Statutes sections 466.04, or 471.59, subdivision 1a, or any other liability limitations or immunities conferred on it by state or federal law.

7.02 Indemnification. To the extent permitted by law, the MPHA will hold harmless, defend, and indemnify the Council and the Plymouth HRA for: (1) any performance deficiencies and HUD liabilities related to the MHOP Units sustained by the MPHA prior to the transfer of the MHOP Units while the MHOP Units are still under the MPHA’s own ACC; and (2) liabilities relating to the MHOP Units arising under pending litigation associated with the U.S. Housing Act of 1937, requirements of the Fair Housing Act, Title VI of the Civil Rights Act, or Section 504 of the Rehabilitation Act of 1973. [Source: Notice PIH 2014-24, sec. 5.e. and f., pp. 5 & 6]

VIII. GENERAL PROVISIONS

8.01 Amendments. This Agreement may be amended by written agreement signed by the Parties’ duly authorized signatories. Any substantive amendments to this Agreement must be approved by action of the Council’s governing body, action of the Board of Commissioners of the Plymouth Housing and Redevelopment Authority, and action of the Board of Commissioners of the Minneapolis Public Housing Authority.

8.02 Authorized Representatives. For the purposes of administering this Agreement and receiving notices relating to this Agreement, the Parties’ authorized representatives (or their successors) are:

For the Metropolitan Council:

Lisa Barajas, Executive Director, CD
390 Robert Street North
Saint Paul, Minnesota 55101
terri.smith@metc.state.mn.us

For the Minneapolis Public Housing Authority:

Dominic Mitchell, Deputy Executive Director
1001 Washington Avenue North
Minneapolis, Minnesota 55401
dmitchell@mplspha.org

For the Plymouth Housing and
Redevelopment Authority:

Grant Fernelius, Executive Director
Plymouth City Hall
3400 Plymouth Boulevard
Plymouth, Minnesota 55447
gfernelsius@plymouthmn.gov

If a Party designates a different authorized representative the Party will notify the other Parties about the designation. The authorized representatives may not execute substantive amendments to this Agreement unless their respective governing bodies or their respective administrative policies and procedures authorize them to execute amendments.

8.03 Government Data. Data on household members and individuals living in the MHOP Units, including their home addresses, are classified as private data on individuals under Minnesota Statutes section 13.462, subdivisions 1 and 3. Data on household members and individuals that may be shared by the Parties under this Agreement will be administered consistent with Minnesota Statutes chapter 13, and other applicable state and federal laws and regulations.

8.04 Survival of Obligations. The representations, warranties, and indemnification obligations in this Agreement shall survive the expiration or termination of this Agreement. The Parties' obligation to preserve the affordability of the MHOP Units and make the units available as HCV or PBV units at least through 2035 also shall survive the expiration or termination of this Agreement.

8.05 Application of Federal Law, Regulations, and HUD Notices. Nothing in this Agreement is intended to abrogate or conflict with applicable federal law, regulations, or HUD notices as applicable relating to or governing the transfer and conversion of the MHOP Units.

8.06 Execution in Counterpart; Electronic Signatures. This Agreement may be executed in counterpart. Electronic signatures of the Parties' duly authorized signatories, by facsimile or email/Portable Document Format (PDF) transmission, shall be valid as an original signature of the authorized signatories and shall be effective to bind the Parties under this Agreement.

IN WITNESS WHEREOF, the MPHA, the Council, and the Plymouth HRA have caused this Agreement to be executed by their duly authorized signatories.

**MINNEAPOLIS PUBLIC
HOUSING AUTHORITY in and for
the City of Minneapolis**

By: _____
Abdulkadir Yassin Warsame
Executive Director/CEO

Date: _____

METROPOLITAN COUNCIL

By: _____
LisaBeth Barajas
Executive Division Director
Community Development

Date: _____

**PLYMOUTH HOUSING AND
REDEVELOPMENT AUTHORITY**

By: _____
Grant Fernelius
Executive Director

Date: _____

ATTACHMENT

**JOINT EXERCISE OF POWERS AGREEMENT
GOVERNING THE TRANSFER AND CONVERSION OF
METROPOLITAN HOUSING OPPORTUNITY PROGRAM UNITS**

The 106 MHOP Units are identified on the following page.

Minnesota Government Data Practices Act Notice

Under Minnesota Statutes section 13.462, subdivision 3, street addresses (and unit numbers) of the MHOP Units listed in this Attachment are private “benefit data” on the families and individuals living in the MHOP Units because the street addresses (and unit numbers) uniquely identify tenant families. Private data on individuals cannot be disclosed to unauthorized third persons or the general public.

DRAFTER’S NOTE: Attach list of units with addresses and unit numbers.