

CHAPTER 7

Social Services

- Article 1 Migrant Housing
Resolution No. 92-10, June 22, 1992**
- Article 2 Migrant Housing
Resolution No. 95-7, July 3, 1995**
- Article 3 Human Services
Memorandum of Understanding, June 30, 2008**

ARTICLE 1

Migrant Housing

Resolution No. 92-10

June 22, 1992

WHEREAS, Otero County has undertaken efforts to provide reasonable and sanitary housing for migrant seasonal farm workers; i.e., the Valle Housing Facility, and one (1) of its objectives is to ensure that certain quality standards be adhered to in the provision of housing to these farm workers throughout Otero County; and

WHEREAS, Resolution #92-8 was adopted by the Board of Commissioners in order to establish a minimum quality standard; and

WHEREAS, additional clarification is required in order to ensure that this standard is applied throughout the County;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners, County of Otero, State of Colorado, that the following action is taken.

1. Resolution #92-8 is hereby voided.
2. The quality standard used in Otero County for migrant seasonal farm worker housing for multi-family complexes with twenty-five (25) units or more is hereby established as the criteria identified in "Housing for Agricultural Workers," 20 CFR, Part 654.

ARTICLE 2

Migrant Housing

Resolution No. 95-7

July 3, 1995

WHEREAS, Otero County has undertaken efforts to provide reasonable and sanitary housing for migrant seasonal farmworkers, and one (1) of its objectives is to ensure that certain quality standards are adhered to in the provision of housing to these farmworkers throughout Otero County; and

WHEREAS, Resolutions #92-8 and #92-10 were adopted by the Board of Commissioners in order to establish a minimum quality standard for multi-family complexes of more than twenty-five (25) units; and

WHEREAS, the quality standard outlined for migrant seasonal farmworker housing for multi-family complexes with twenty-five (25) units or more was established as the criteria identified in "Housing for Agricultural Workers," 20 CFR, Part 654; and

WHEREAS, the County is developing a program to assist private growers in the renovation and/or construction of migrant seasonal farmworker housing;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners, County of Otero, State of Colorado:

1. Resolution #92-10 is amended with the establishment of quality standards for single and/or multi-family units which are funded under the "Otero County Migrant Housing Building Fund" and the "Otero County Migrant Housing Revolving Loan Fund" programs.

2. The quality standards used in Otero County for single and/or multi-family units which are funded under the aforementioned programs shall use the quality standard identified in "Housing for Agricultural Workers," 20 C.F.R. Part 654.

ARTICLE 3

Human Services

*Memorandum of Understanding
June 30, 2008*

**The State of Colorado Department of Human Services
and
The Board of County Commissioners of Otero County, Colorado**

This Memorandum of Understanding (or "MOU") is made this 30th day of June, 2008, between the State of Colorado Department of Human Services (the "Department") and the Board of County Commissioners of Otero County, Colorado (the "County").

WHEREAS, the Department is the sole state agency having the responsibility to administer or supervise the administration of the human services programs set forth in Section 26-1-201, C.R.S.; and

WHEREAS, the Colorado General Assembly enacted Senate Bill 97-120 in response to the passage of the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" and thereby adopted the Colorado Works Program (the "Works Program") and the Colorado Child Care Assistance Program (the "Child Care Program"); and

WHEREAS, Section 26-2-715, C.R.S., requires the Department and the County to enter into an annual performance contract identifying the County's duties and responsibilities in implementing the Works Program and the Child Care Program; and

WHEREAS, nothing in this MOU shall create a legal entitlement in any person to assistance provided pursuant to the Works Programs or the child care assistance provided pursuant to the Child Care Program; and

WHEREAS, the parties understand and agree that the services and assistance contemplated in this MOU are subject to available appropriations by the General Assembly and the County, and neither party shall be obligated to provide services or assistance if adequate appropriations have not been made; and

NOW, THEREFORE, it is agreed that:

1. MOU Meets Performance Contract Requirement.

The parties hereto specifically agree that the provisions of this MOU in their entirety constitute compliance with the provisions of Section 26-2-715, C.R.S.

2. Term.

The term of this MOU will be from July 1, 2008, to and including June 30, 2009.

3. Duties of the County.

Subject to the other limitations set forth herein, including without limitation those contained in Subsections 4(b.5) and 4(d):

a) The County shall administer and implement the Works Program and the Child Care Program using fair and objective criteria and in compliance with federal law; and

b) The County shall not reduce the basic assistance grant administered pursuant to Section 26-2-709, C.R.S., except as otherwise provided by law; and

c) The County shall not restrict eligibility or the provisions of services, nor shall it impose sanctions, in a manner inconsistent with Part 7 of Article 2 of Title 26, C.R.S., or the State Plan submitted by the Department to the federal government pursuant to Section 26-2-712, C.R.S.; and

d) For the term of this MOU, from July 1, 2008, to June 30, 2009, the County shall achieve work participation rates equal to the federally required participation rate minus any employment credit, caseload reduction credit or other credit against such rate for a fiscal year that may be subsequently adopted by the federal government; and the County will also achieve a participation rate for two-parent families that is equal to the required federal participation rate minus any employment credit, caseload reduction credit or other credit against such rate for a fiscal year that may be subsequently adopted by the federal government. The percentages contained in this Paragraph (d) represent the maximum work participation rates to which the County may be held during the term of this MOU. By agreeing to these rates, the Department acknowledges that, to the best of its knowledge or ability to know at the time this MOU is executed, achievement of these rates will allow the Department to meet any work participation rates imposed on the Department by the federal government; and

e) The parties acknowledge that the work participation rate is, as of the signing of this MOU, the only performance goal identified pursuant to Section 26-2-712(4), C.R.S.; and

f) The County shall maintain the records, and shall permit the Department, its duly designated agents and/or appropriate representatives of the federal government, to inspect the records and shall make such records available to the Department as specified in Section 26-2-717, C.R.S. The County shall also continue to report to the Department as required by Sections 26-2-716 and 26-2-717, C.R.S., and shall report to the Department in the future as required by law; and

g) The County agrees to provide the Department with written information as specified herein. The County may, in its sole discretion, change the way in which it implements the Works and Child Care Programs in any manner consistent with state and federal law. The County agrees to provide the Department with updated written information when or if changes to these Programs are made. The County agrees to provide the County policies adopted by the County as required by Section 26-2-716(2.5), C.R.S. The County agrees to provide the information and policies specified in this Paragraph (g) to the Department within thirty (30) days of their adoption by the County, and agrees to submit amendments to its policies in accordance with this Paragraph (g); and

h) The parties expressly agree and understand that information and policies provided by the County to the Department as set forth in Paragraph (g) above are for informational purposes and are provided to assist the Department in discharging its responsibilities with respect to these Programs. Nothing in this MOU gives the Department the authority to approve, deny or require any County policies. The County acknowledges the Department's right to review, comment upon or request reasonable additional information or cla-

rification of any such County policies or records. Such requests shall be made in writing and directed to the County Department of Social Services Director. The County asserts that it will consider such comments in its implementation of these Programs without being obligated to incorporate in its Programs any Department comments or suggestions.

4. Duties of the Department.

a) The Department shall oversee the implementation of the Works Program statewide and, in connection therewith, shall develop, in consultation with the counties, standardized forms that shall streamline the application process, delivery of services and tracking of participants; and

b) The Department will monitor the County's provision of basic assistance grants and, if necessary, perform those duties set forth in Section 26-2-712(5)(e), C.R.S.; and

b.5) The Department shall oversee and is responsible for the development, implementation, maintenance and enhancement of the Colorado Benefits Management System (CBMS) and its application relative to the Colorado Works Program. As CBMS is a system that utilizes decision tables run by a rules engine for determining eligibility and amount of benefits, to the extent allowed by law, the counties shall be held harmless for erroneous decisions made by CBMS. Without limitation, this applies to erroneous eligibility decisions, erroneous determinations of amount of benefits, erroneous decisions resulting in overpayments and subsequent claims and erroneous decisions resulting in underpayments and subsequent supplemental payments or restorative benefits. This hold harmless also applies to any legal or recovery actions resulting from erroneous, inaccurate or inadequate CBMS controlled noticing to Colorado Works households. The State will hold counties harmless and not take recovery action against a county for any claim, including a legal claim, that is defined as a system-caused error. This hold harmless does not apply to any errors, claims or otherwise caused by the entry of inaccurate data into the system, failure to follow clear, reasonable, lawful instructions with available training provided by CDHCP&F and CDHS or failure to follow program rules formally adopted by the State Board of Human Services. This hold harmless does apply to CBMS training and data entry rules and/or any rules that are part of the CBMS rules engine.

c) The Department shall develop and provide training for Works Program staff as required by Section 26-2-712(7), C.R.S.; and

d)(i) Actions subject to sanction or remediation. Subject to the other limitations set forth herein, including those contained in Subsection 4(b.5) of this Section, the Department may impose sanctions or develop a remediation plan as provided in this MOU if the actions of the County result in the County:

(A) Failing to maintain the minimum cash assistance grant to a family in which the single caretaker of a child under six (6) years of age has not complied with work requirements due to an inability to obtain needed child care as determined by the County or in violation of federal law.

(B) Misusing federal or state Works Program or Child Care Program funds, including receipts or recoveries that are not reported, where a federal or state law or regulation enacted before the use of the funds requires the funds to be spent in a different way. County Works Program and Child Care Program funds that are misused will not qualify toward meeting the County maintenance of effort or County share requirements.

(C) Failing to satisfy work participation rates as contained in this MOU.

(D) In violation of state or federal law, reducing the basic assistance grant, restricting eligibility or the provision of services or imposing sanctions in a manner inconsistent with state law or a state plan, which is in compliance with federal law.

(E) Failing to comply with any other provision of the Colorado Works Program if such failure causes the Department to incur a federal fiscal sanction.

(ii) Limitations on sanctions for failure to meet work participation rate.

(A) If the Department is sanctioned by the federal government for failing to meet the state work participation rate, the Department may impose a sanction on the County as provided in Paragraph 4(d)(iii) of this MOU, except that the Department may not impose a sanction upon a county if the County has met the federal work participation rate for the federal fiscal year for which the State has been sanctioned. However, if the federal government does not sanction the Department and the County fails to achieve the negotiated work participation rate for the County, then the provisions for a remediation plan contained in Paragraph 4(d)(iv) apply. In any case in which the Department is considering a sanction or remediation plan for the County due to the County's failure to achieve its work participation rate, the Department shall first follow the procedures for determining whether the County made a good faith effort to achieve its work participation rate as outlined in Paragraph (B) of this Paragraph (ii).

(B) The Department shall not impose a sanction on the County for the County's failure to meet its work participation rate if the Department determines that the County made a reasonable and good faith effort towards meeting its work participation rate. In making this determination, the Department, without limitation, shall consider documentation of the following: implementation of a County-defined and -approved process for moving clients through the welfare-to-work system using the full range of countable federal work activities; implementation of a County procedure for encouraging participation at the required number of hours, such as incentives for meeting individual responsibility contract (IRC) hour commitments, an assessment and an IRC for all Works Program participants, accurate and timely data entry in CBMS for all Works program participants, including proper coding and work participation data tracking, any other documentation which may demonstrate good faith effort, and County identification of problems in performance; and implementation of an action plan to improve performance. In determining whether the County made a reasonable and good faith effort toward meeting its work participation rate, the Department shall also consider the operational capacity of CBMS. The County shall be held harmless for any CBMS programming irregularities, missing or incomplete functionality necessary to support work programs and work participation documentation and/or implementation problems attributed to the Department that affect documentation for work participation. The Department shall investigate and make a determination as to whether the County has made such a reasonable and good faith effort prior to imposing any sanction or remediation plan for this reason. The Department shall not sanction or develop a remediation plan for the County's failure to meet its work participation rate unless the Department has found that the County did not make a reasonable and good faith effort towards meeting its work participation rate.

(iii) Sanction procedures when department has been sanctioned. In any instance where the Department determines that the County has failed in an obligation specified in Paragraph 4(d)(i) of this MOU, causing the Department to incur a fiscal sanction, and the Department is considering a fiscal sanction against the County, the Department shall proceed as follows:

(A) The Department shall provide the County thirty (30) days' written notice of the proposed sanction before imposing any fiscal sanction. Such written notice shall include: 1) All of the reasons for the imposition of the sanction; 2) Documentation specifying how the sanction was calculated and documen-

tation supporting the amount of the sanction; 3) A specific indication of what constitutes a remedy or correction that will allow the County to avert the sanction, if any remedy or correction is possible; and 4) An acknowledgment that, if the County remedies or corrects the sanctionable action as set forth in the notice, a sanction will not be imposed by the Department. The corrective action contained in the notice shall be specific to the action giving rise to the sanction and shall not extend beyond such violation. Upon receiving such notice, the County shall have the opportunity within thirty (30) days to contest, explain, offer evidence of mitigating factors and/or submit a plan to correct the alleged failure before the Department imposes the sanction.

(B) If the County corrective action plan has not eliminated the performance problem, the Department shall negotiate a County remediation corrective action plan (RCAP) with the Board of County Commissioners for the County. The RCAP shall be designed not as a punitive measure but, instead, as an effort to further the mutual goal of the Department and the County to achieve successful operation of MOU-related programs. The negotiated RCAP shall include a sufficient deployment of resources, which may include fiscal resources, over a specified period of time agreed to between the Department and the County to meaningfully attempt to correct the performance problem. If the agreement includes deployment of fiscal resources, the County shall determine the source of such fiscal resources. Such fiscal resources expended by the County shall not be considered a "financial sanction" as contemplated by Section 26-2-716(4)(b), C.R.S. The amount of the resources committed shall be mutually agreed upon and adequate to meaningfully attempt to correct the performance problem, and shall not exceed the amount for a fiscal sanction calculated by the Department in Paragraph 4d(iii)(A). The RCAP shall be agreed to within thirty (30) days of failure of the corrective action plan specified in Paragraph 4d(iii)(A). In the event the Department and County cannot agree to an RCAP, the Department shall be authorized to proceed with the sanction against the County as identified in Paragraph 4d(iii)(A).

(C) If the County fails to correct the action and a sanction is imposed, the Department may impose a sanction for the failure of the County in an amount no greater than the fiscal sanction imposed by the federal government against the Department. Additionally, the amount of said sanction cannot exceed the funds spent by the Department for a sanction incurred because of the County's failure to meet its obligation. If the Department has incurred a sanction due to the failure of more than one (1) county to meet its obligations, the County shall only be sanctioned for its share of the sanction incurred by the Department.

(D) The Department agrees to provide the County with all documents received from the federal government related to any proposed or imposed federal sanction within twenty (20) days of receipt by the Department, together with all Department documents related to the actions giving rise to that federal sanction, or which relate to the sanction process.

(iv) Remediation procedure. In any instance where the Department determines that the County has failed in an obligation specified in Paragraph 4(d)(i) of this MOU, the Department has not incurred a fiscal sanction and the Department is considering a corrective action for the County, the Department shall proceed as follows:

(A) The Department shall provide the County thirty (30) days' written notice of the proposed corrective action. Such written notice shall include: 1) All of the reasons for the corrective action; 2) Documentation specifying how the corrective action was determined and documentation supporting the justification of the corrective action; 3) A specific indication of what constitutes a remedy or correction that will allow the County to avert the corrective action, if any remedy or correction is possible; and 4) An acknowledgment that, if the County remedies or corrects the performance problem identified in the

notice, a corrective action will not be imposed by the Department. The corrective action contained in the notice shall be specific to the performance problem giving rise to the corrective action and shall not extend beyond such performance problem. Upon receiving such notice, the County shall have the opportunity within thirty (30) days to contest, explain, offer evidence of mitigating factors and/or submit a plan to correct the alleged failure before the Department imposes the corrective action.

(B) If the County corrective action plan has not eliminated the performance problem, the Department shall negotiate a County remediation corrective action plan (RCAP) with the Board of County Commissioners for the County. The RCAP shall be designed not as a punitive measure but, instead, as an effort to further the mutual goal of the Department and the County to achieve successful operation of MOU-related programs. The negotiated RCAP shall include a sufficient deployment of resources, which may include fiscal resources, over a specified period of time agreed to between the Department and the County to meaningfully attempt to correct the performance problem. If the agreement includes deployment of fiscal resources, the County shall determine the source of such fiscal resources. Such fiscal resources expended by the County shall not be considered a "financial sanction" as contemplated by Section 26-2-716(4)(b), C.R.S. The amount of the resources committed shall be mutually agreed upon and adequate to meaningfully attempt to correct the performance problem, and shall not exceed the amount of resources identified in the corrective action notice specified in Paragraph 4d(iv)(A). The RCAP shall be agreed to within thirty (30) days of failure of the corrective action plan specified in Paragraph 4d(iv)(A). In the event the Department and County cannot agree to an RCAP, the Department shall be authorized to proceed with the corrective action for the County as identified in Paragraph 4d(iv)(A).

(C) The Department agrees to provide the County with all documents received from the federal government related to any performance problem within twenty (20) days of receipt by the Department, together with all Department documents related to the actions giving rise to the performance problem or which relate to the remediation process.

e) The Department (or its duly designated agent) may assume the County's administration and implementation of the Works Program and the Child Care Program if the County deliberately or consistently fails to meet its obligations under this MOU or under federal or state law pertinent to the Works Program or the Child Care Program. The Department shall provide the County thirty (30) days' written notice before assuming these duties. Upon receiving such notice, the County shall have the opportunity to contest, explain, offer evidence of mitigating factors or to correct the failure before the Department assumes the duties; and

f) The Department shall allocate the amount of moneys that are provided to the County as part of the County's block grant for the purpose of its administration and implementation of the Works Program pursuant to the formulas described in Section 26-2-714, C.R.S. Payment of all money so allocated shall be made to the County in accordance with Section 26-1-122(3)(b), C.R.S.; and

g) The Department will, in consultation and in conjunction with the County, develop or modify automated systems to meet the reporting requirements of Section 26-2-717, C.R.S.

5. Discretionary Matters Remain the Same.

The parties agree that all portions of Senate Bill 97-120 that grant discretion to either party regarding the administration of the Works or Child Care Programs in the County shall not be affected by the execution of this MOU.

6. Severability.

To the extent that this MOU may be executed and performance of the obligations of the parties may be accomplished within the intent of the MOU, the terms of the MOU are severable; and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof. The waiver of any breach of term hereof shall not be construed as a waiver of any other term or of the same term upon subsequent breach.

7. Integration of Understanding.

This MOU is intended as the complete integration of the understanding between the parties concerning the matters negotiated between them and incorporated in this MOU. No prior or contemporaneous addition, deletion or other amendment hereto shall have any force or effect whatsoever unless embodied in writing. No subsequent notation, renewal, addition, deletion or other amendment hereto shall have any force or effect unless embodied in a written amendment executed by the parties.

The parties, however, recognize the nature of the relationship between the County and the State. This relationship is governed more broadly by pertinent provisions of the Colorado Constitution and of state statutes and rules, including lawful rules promulgated by the State Board of Human Services. The parties further recognize that this MOU is not intended to supersede or change the relationship between the County and the State as established by any legal authority.

8. No Third Party Beneficiary.

Except as herein provided otherwise, this MOU shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. It is expressly understood and agreed that the enforcement of the terms and conditions of this MOU, and all rights of action relating to such enforcement, shall be strictly reserved unto the Department and the County, to the extent permitted by law. Nothing contained in this MOU shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Department and the County that any such person or entity, other than the Department or the County, receiving services or benefits under this MOU shall be deemed an incidental beneficiary only.

9. Dispute Resolution.

A. Disputes arising prior to the execution of the MOU. If the parties are unable to reach agreement concerning the inclusion of, or wording of, provisions of the MOU, either party may refer the dispute to the State Board of Human Services for resolution pursuant to the provisions of Section 26-2-715(3), C.R.S.

B. Disputes arising after the execution of the MOU. The parties shall work in good faith to resolve a dispute arising from any provision of this executed MOU. If the parties are unable to resolve such dispute, any of the following options is available:

1. Either party may ask the Governor to review a disputed issue. Such review must be initiated by notice provided to the Governor and other party by certified mail. Such notice must indicate that the parties are deadlocked on the dispute and further negotiations between the parties are not likely to be productive. Such notice shall also contain a copy of the executed MOU, an outline of the issue involved and a summary of the parties' respective positions. The Governor may establish a review process and shall provide a non-binding resolution based on the actions and equities of each situation. The Governor has the discretion to decide whether or not to review the dispute or whether to delegate the review of the dispute to a third party not directly involved with the dispute. The Governor need not state a reason for refusing to review a dispute or for delegating it to a third party.

2. By agreement of both parties, the parties may refer the matter to a dispute resolution panel for non-binding mediation. The dispute resolution panel will consist of three (3) members: One (1) selected by the County, one (1) selected by the Department, and one (1) selected by the other two (2) members of the panel. The parties shall provide the panel with the information necessary to consider the dispute. Each party shall pay for its own costs and attorney fees and shall share equally in any fees paid to panel members. The panel's decision shall be made by a majority vote of its members.

3. By agreement of both parties, the parties may request that the State Board of Human Services mediate a dispute arising following the execution of the MOU. If the State Board agrees to such nonbinding mediation, the provisions of Section 26-2-715(3), C.R.S., concerning time limits and final effect of the State Board's decision, shall not apply.

None of these options shall be a jurisdictional prerequisite to legal action by either party.