Commonwealth of Massachusetts
DEPARTMENT OF HOUSING & COMMUNITY DEVELOPMENT
Charles D. Baker, Governor ◆ Karyn E. Polito, Lt. Governor ◆ Jennifer D. Maddox, Undersecretary

Public Housing Notice 2020-40

To: All Local Housing Authorities

From: Ben Stone, Director, Division of Public Housing

Date: December 17, 2020

RE: Management Services Agreement and Interim Executive Director Contract Guidelines and Templates

1. Purpose

This Public Housing Notice (PHN) provides guidance for Local Housing Authorities (LHAs) seeking to enter into a fee-for-services agreement where one LHA takes responsibility for managing another LHA's day-to-day operations and maintenance (referred to below as a "Management Services Agreement"). This guidance supersedes the Department of Housing and Community Development (DHCD) Public Housing Notice (PHN) 2018-09 and seeks to standardize and streamline approval of these agreements while ensuring that the interests of both the LHA seeking assistance (the "Owner LHA") and the LHA taking on management responsibility (the "Management Agent") are protected.

This PHN also provides guidance and contract templates for LHAs seeking management assistance on an emergency basis through engagement of an individual as a contract employee to serve as an interim executive director. In special cases where an LHA contracts with a *management company*, the LHA should reach out to DHCD for guidance.

What You Need to Know – Key Points

1. DHCD encourages LHAs to submit new Management Services Agreements by the Owner LHA's budget submission deadline. Agreements submitted after the deadline will require a budget revision.

2. Approval of Management Services Agreements will now include DHCD verification of all anticipated costs payable to the Management Agent, including Management Fee and charge-backs.

3. DHCD will no longer review staffing and other resource reallocations between LHAs except to ensure there is a regular staffing presence at Owner LHA offices.

4. LHAs must agree to restore employment and cost allocations to pre-agreement levels in the event that the management agreement is terminated or expires and is not renewed.

5. DHCD will verify that the Owner LHA and Management Agent LHA boards acknowledge review of relevant PMR and AUP materials prior to approving a new management agreement.

6. DHCD sets standards and template documents for interim executive director contracts, on an emergency basis, with individuals as contract employees.

7. Revisions and clarifications to DHCD's submission, approval, and monitoring standards to promote streamlined DHCD approval and board-level monitoring.

2. What is a Management Services Agreement?

- **General.** A Management Services Agreement is a contract between two (2) LHAs, in which the Management Agent agrees to perform all of the day-to-day operations and maintenance activities for the Owner LHA which is purchasing the services.

- **Scope of Responsibilities.** Management Agents are responsible for all planning and implementation of all responsibilities of program administration, operations, and maintenance of the Owner LHA which is under management. Subject to existing LHA policy, the Management Agent is responsible for the assignment, direction, and supervision of existing staff (if any) and/or its own staff in performing these services. In exchange, the Management Agent is entitled to earn a negotiated Management Fee from the Owner approved by both LHAs' Boards, up to the DHCD-published maximum.

- **Cost Limitations:** The Management Fee, along with any charge-backs payable to the Management Agent during the term of the agreement must fit within the Owner LHA's ANUEL. DHCD **will not** grant budget exemptions for costs above the ANUEL except in very limited circumstances based on extraordinary operational challenges. In the event that the Owner LHA has made payment for such costs to the Management Agent, DHCD will require the Management Agent to repay that same amount to the Owner LHA.

- **Applicability:** This guidance applies to LHAs that do not yet have a signed Management Services Agreement approved by board vote as of the date of this PHN. This guidance also applies to renewals of existing Management Services Agreements that will expire after the date of this PHN.

- **Effective Dates:** Management Services Agreements do not become effective until approved by DHCD.

3. What if an LHA Needs to Engage an Interim Executive Director, Instead of Signing an Agreement for Management by Another LHA ?

- In emergency circumstances an LHA may require immediate management. The Contract of Employment for Interim Executive Director is meant to be used in emergency or unexpected situations where the Owner needs immediate management and wishes to immediately engage an individual not currently employed by any LHA, on a temporary basis, to serve as Executive Director while the LHA is actively seeking a new Executive Director or Management Agent. Since this agreement is intended as an interim measure, it will automatically terminate six (6) months after its effective date, with the LHA allowed to request, at maximum, a six (6) month extension.

4. Types of Agreements and Templates

- **General.** This guidance includes agreement templates for use by LHAs for the three main categories of management relationships recognized by DHCD. Using the appropriate template will cut down on the time required for DHCD to review and approve the Agreement.

    - **Basic Management Services Agreement.** This is a straightforward contract for use when there are no extraordinary operational challenges at the Owner LHA's properties or operations, as may be determined by DHCD. This agreement must be between LHAs, not individuals. **(Attachment A).**

    - **Management Services Agreement with Management Work Plan.** This Agreement is for Owner LHAs that, as a result of performance ratings and/or other extraordinary operational challenges, may require extensive DHCD involvement and technical assistance. DHCD determines whether an Owner LHA falls into this category and will notify Owner LHAs seeking a Management Agent whether this work plan will need to accompany the contract.

If a Management Agent requests a time-limited budget exemption above ANUEL to address extraordinary operational challenges at an Owner LHA, it must submit a management work plan for DHCD to consider the request. Such requests, as noted above, will only be considered and granted on a very limited basis.

The Management Agent is responsible for assessing the Owner LHA's current operations, identifying deficiencies, and developing a comprehensive plan to address how identified deficiencies will be resolved to meet the Owner LHA's expectations and regulatory requirements. This agreement must be between the Owner LHA and the Management Agent, not individuals. A Management Work Plan template is included with this PHN, though LHAs may organize it in any format. **(Attachment B).**

- **Contract of Employment for Interim Executive Director**. This Agreement is for use by an LHA to hire an individual not currently employed by any LHA to manage operations on a *temporary basis. This contract automatically terminates six (6) months after its effective date, with the LHA allowed to request, at maximum, a six (6) month extension* **(Attachment C).**

  This Contract is not to be used to engage another LHA or a professional management company (corporation or partnership) as Management Agent. In the event that an LHA wants to contract with a professional management company, as opposed to an individual, the LHA must obtain DHCD approval of a contract which shall require the company to maintain its own liability insurance.

  This Contract is not to be used for existing employees of the LHA who may be temporarily elevated to the position of Acting Executive Director in accordance with PHN 2017-21 DHCD Guidelines for Local Housing Authority Hiring of Executive Director. Acting Executive Directors must agree to perform the job duties set out in the Executive Director's job description and may be paid no more than 105% of their current salary. LHAs may not employ an Acting Executive Director for a period longer than 6 months, which may be extended for another 6 months with written approval from DHCD.

- **Amendment for Existing Agreements.** Use this template during the term of the agreement to change the management fee or to change the contract term **(Attachment D).**

Types of Agreements				
Status of LHA being managed	**Agreement Type**	**Maximum Term**	**Ability to Extend Beyond Term**	**Management Work Plan Required?**

LHA with no extraordinary operational challenges.	Basic Management Services Agreement	Up to five (5) years.	No. New DHCD approved Agreement required.	No.
LHA with Extraordinary operational challenges.	Management Services Agreement with Management Work Plan	Up to five (5) years.	No. New DHCD approved Agreement required.	Yes; one for each Owner with extraordinary operational challenges under management.
Emergency or interim situation necessitates temporary management.	Contract of Employment	As needed, up to six (6) months with maximum six (6) month extension.	Yes, subject to written request and DHCD Approval.	As needed.

5. Management Services Agreement Fee Schedule

- **Fee calculations.**
  - **For managing small LHAs (1-199 Units).** Start with the Executive Director Salary Calculation Worksheet to determine the maximum salary that could be paid to a permanent executive director of the Owner LHA. Use this result in the Management Fee Calculation Worksheet to calculate the *maximum* management fee that an LHA serving as Management Agent may charge on an annual basis. **(Attachment E).**

  - **For managing medium/Large LHAs or LHAs with extraordinary operational challenges.** The management fee will be negotiated between the two LHAs in consultation with DHCD. Contact your Housing Management Specialist (HMS) for next steps.

  - **Interim Executive Directors**: compensation for interim executive directors are negotiated on a case-by-case basis. Consult with your Housing Management Specialist.

MANAGEMENT SERVICES AGREEMENT FEE SCHEDULE		
Contract Type	**Maximum Annual Fee Management Agent May Charge**	**Maximum Fee toward Executive Director Salary**
Small LHA managed by Small LHA (1-199 Units)	Up to Owner LHA Executive Director Salary Maximum plus 25%	40% of Actual Management Fee

Small LHA managed by Medium LHA (200 - 499 Units)	Up to Owner LHA Executive Director Salary Maximum plus 25%	30% of Actual Management Fee
Small LHA managed by Large LHA (500 - 999 Units)	Up to Owner LHA Executive Director Salary Maximum plus 25%	20% of Actual Management Fee
Medium or Large LHA managed by LHA of any size.	Consult with your Housing Management Specialist (HMS).	
LHA with extraordinary operational challenges managed by LHA of any size.	Consult with your Housing Management Specialist (HMS). DHCD may, on a case-by-case basis, consider a reasonable fee structure and/or direct cost exemption to address identified deficiencies for LHAs with extraordinary operational challenges.	

6. Executive Director Salary from Management Fee

- **General.** The Management Agent may allocate a portion of its **actual** Management Fee, not to exceed the maximum, toward its executive director's salary. It is the responsibility of the Management Agent to determine by a vote of its Board the appropriate portion of the actual fee that it will allocate towards executive director salary.

- **Calculating salary from fee.** The **maximum** annual salary that the executive director may receive from the Management Fee varies with the size of the Management Agent LHA, as shown above. To confirm the size of the Management Agent LHA, use the total number of units and leased vouchers in the Management Agent's HAFIS Unit Count for the current fiscal year. Regardless of calculated fee, Executive Director's salary including fee may not exceed an overall maximum, currently $218,295, per PHN 2022-02e.

7. Staffing and Resource Allocations

- **General.** DHCD will no longer review resource reallocations between LHAs entering into a Management Services Agreement. Both LHAs may allocate their staff and other housing authority resources according to their agreed-upon needs and expectations, up to the approved ANUEL.

- **Restoration to Pre-Agreement Levels.** By signing a Management Services Agreement, the LHAs agree that any employment status and cost allocation changes made in preparation for, or during the term of the Agreement, will be fully restored to pre-agreement levels once the Agreement has terminated.

- **Staffing Plans.** LHAs are expected to include a staffing plan as an exhibit to the Management Agreement for the benefit of each of the Owner LHA and the Management Agent and their residents. The Staffing Plan does not require DHCD approval. However, DHCD will not approve the Management Services Agreement if there is not a proposed staffing presence (during hours open to the public) at the Owner LHA's office during the Owner LHA's regular business hours. DHCD will not approve an agreement where there is a significant reduction in staffing presence (during hours open to the public) below the pre-agreement levels. DHCD will consider a reduced presence of office staff from pre-agreement levels based on written justification from the Owner LHA on a case-by-case basis.

- **Agreement-Funded Positions.** LHAs serving as Management Agents may cover some portion of employee compensation through fees collected through a Management Agreement. DHCD advises each LHA to include in its personnel policy and any job posting to be funded by a Management Services Agreement an acknowledgement that: 1) employee compensation is funded from agreement fees, and 2) positions are subject to reduced compensation, hours, or elimination in the event that the Management Services Agreement terminates.

- **Dual Executive Director Employment.** Where two or more LHAs are entering into a Management Services Agreement, the Management Agent's executive director must be under an employment contract with only the Management Agent LHA. DHCD will not approve an Agreement between an Owner LHA and a Management Agent where the executive director of the Management Agent is a part-time executive director of two LHAs (a "Dual-ED LHA").In this circumstance, the executive director must first limit employment to one LHA before DHCD will approve a Management Services Agreement. The executive director may enter into an employment contract with the largest LHA by HAFIS unit count. The LHA may then serve as Management Agent for the remaining LHAs.

8. Submitting a Management Agreement for DHCD Approval

Please note that the below approval process and requirements apply going forward from the date of this PHN; any agreements with board votes dated on or before date of this PHN **do not** need to be resubmitted using templates associated with this PHN.

a. **Responsibility.** Management Agents are responsible for submitting the complete packet to the Owner's HMS for approval.

b. **Timing of Submittal.** LHAs are encouraged to submit new Agreements and any Agreement amendments to the Owner LHA's assigned HMS in tandem with the Owner LHA's budget by the Owner LHA's budget submission deadline. If the LHAs reach agreement after the Owner LHA's budget submission deadline, both LHAs are expected to submit a budget revision *in tandem with* the Agreement. Budgets must be submitted in accordance with the published DHCD Budget Guidelines of each authority's current fiscal year.

c. **Required Information for DHCD Approval.** DHCD will begin its review once all required information is received:

- Owner LHA's budget submission or the Owner LHA's and Management Agent's budget revision;

- An extract of board meeting minutes with board vote from each LHA acknowledging receipt and review of each LHA's published AUP and PMRs and approving the agreement;

- Signed Management Services Agreement, with the following as exhibits:
    - Staffing Plan;
    - Management Fee Calculation Worksheet;
    - Management Work Plan (if applicable);

- Other documents, if applicable:
    - Extract of board meeting minutes with board vote and accompanying executive director salary calculation worksheet with Management Agent ED's new salary;
    - Signed due diligence memorandum of understanding.

9. Submitting an Interim Executive Director Contract of Employment for DHCD Approval

a. **Timing of Submittal**: While LHAs are encouraged to submit new Contracts of Employment in tandem with their budget submission, we understand that due to the emergency nature of these interim contracts this will not always be possible. We ask LHAs to submit as soon as they have an approved board vote.

b. Required Information for DHCD Approval. DHCD will begin its review once all required information is received:

a. Signed Interim Executive Director Contract for Employment;
b. Extract of board meeting minutes with Board Vote Approving Contract;
c. Contractor Employee resume.

10. DHCD Standards for Approval and Monitoring

a. **Management Services Agreement Approval Standards.** Upon submittal of all required information DHCD will confirm that the Management Services Agreement meets the following standardse

- The Agreement is signed, accurate, and complete.

- Owner/ Agent LHA(s) vote acknowledging receipt and review of published PMR/AUPs and approval of the Agreement.

- Management Fee and executive director salary from the fee are within existing maximums, and are calculated in accordance with published guidance.

- Management Fee and all anticipated charges payable to the Management Agent fits within the Owner's approved ANUEL, without any need for budget exemptions.

- Owner LHA includes all anticipated payables and charge-backs to the Management Agent in the appropriate accounts as part of Owner LHA's budget submission/ revision. A summary total of these anticipated costs are included in the Dialogue Box section of the budget. (Note: DHCD HMS staff will confirm that the Management Agent includes all anticipated fees and charge-backs from the Management Agreement in the appropriate accounts as part of the Management Agent LHA's budget submission/revision).

- Proposed physical staff presence (during hours open to the public) at the Owner LHA's office during regular business hours. Owner has provided justification if the proposed staffing is below pre-agreement levels.

- Owner / Agent LHA agree to restore employment and cost allocations to pre-agreement levels in the event that the management agreement is terminated or expires and is not renewed.

- The Management Work Plan is complete (applicable for LHAs using an Agreement with a Management Work Plan).

b. Contract for Employment for Interim Executive Director Approval Standards

- The contract provides a competitive fee for the services provided.

- The individual's resume includes recent experience in affordable housing management.

c. Monitoring Standards during Agreement Term:

- DHCD expects that each LHA will monitor the Agreement through regular reports as may be determined by their Boards.

- In support of LHA's own monitoring, DHCD will copy the appropriate LHA on correspondence regarding these occurrences:

    - DHCD has approved a change to the Management Agent's Executive Director.

    - The Owner cannot afford the Management Fee and any related reimbursements and charge-backs within its approved ANUEL.

11. Recommended Best Practices before Entering into an Agreement

a. **Contact your HMS.** The HMS will be able to provide the appropriate Agreement template based on the Owner's circumstance.

b. **LHAs seeking management services.** LHAs are encouraged to establish an open and public search and selection process to evaluate and choose a Management Agent. DHCD has provided an optional template Management Agent Questionnaire that can be used to assist in vetting prospective Management Agents as part of this process **(Attachment F).**

c. **Prospective Management Agents.** Prospective Management Agents are encouraged to use the Memorandum of Understanding ("MOU") prior to entering into an agreement **(Attachment G).** Under this MOU:

- The prospective Management Agent is given the authorizations needed to access and inspect owner records for up to 30 days prior to committing to an agreement.

- During this time, the Owner remains responsible for providing day-to-day operations. The prospective Agent is not responsible for day-to-day operations and is not paid by the Owner.

- DHCD's approval to enter into the template MOU is not required.

- The MOU will automatically terminate at the sooner of DHCD's approval of the Management Agreement or 30 days of the MOU's effective date.

- This MOU is not intended for use in interim or emergency situations; LHAs should instead use an interim executive director/ consultant agreement.

d. **Cost Considerations and Fee Structuring.** Owners should weigh the costs/benefits of obtaining a Management Agent in lieu of hiring an executive director and consider the following when negotiating a management fee:

- A base fee less than the maximum that steps up over the contract term, based on:
  - improvements to AUP, PMR (e.g., reduction in TAR), and/or resident survey results;
  - new or increased retained revenue;
  - meeting or exceeding management work plan targets;
  - successful implementation of special programs or receiving competitive funding awards.

- Whether the costs inclusive of charge-backs payable to the management agent outweigh the costs of hiring a new executive director.

- Whether any savings are gained through economies of scale.

- Budget-neutral measures like tying the management fee to changes in the ANUEL.

- Determine staffing plans and other resource reallocations between LHAs.

- Identify all possible charge-backs the Management Agent may charge.

e. **Preparing the Contract**

- Draft the Agreement and, if applicable, the Management Work Plan. Be sure to tie the expiration date of the Agreement to the Owner's fiscal year end.

- Prior to a Board vote, provide the draft documents to the Owner's assigned HMS to flag any threshold issues. Though not required, this may ultimately save time.

12. Amending an Existing Agreement

a. **General.** During the agreement term, the Owner and Management Agent may amend the term (up to maximum five years) or the fee (up to the maximum) by signing the Management Services Agreement Amendment. If extending or changing the term of the agreement, be sure to use **Attachment D** and change the end date to coincide with the Owner LHAs' fiscal year end. The amendment does not require DHCD approval if it stays within maximum term and fee.

b. **Option to Extend Agreement.** The initial term of the agreement is up to five (5) years. LHAs must first receive DHCD approval for new agreements beyond the five (5) year term limit.

c. **ANUEL changes during the term.** LHAs may amend their Management Agreements during the term of the Agreement to change the management fee each budget year in conjunction with the change in the Owner's ANUEL published in the DHCD LHA Budget Guidelines. The Management Agent Board may also vote to give the Management Agent's executive director a salary increase based on the increased management fee, up to the maximum allowable fee, and not to exceed the Executive Director Salary Cap. If such change does not exceed ANUEL and does not exceed Executive Director Salary cap, LHA does not need to submit an amendment to DHCD for approval. In this circumstance, DHCD will review for changes in management fee and executive director salary in the next budget submission.

13. Managing Multiple LHAs

a. **Limits.** There is no fixed limit to how many Owners an LHA may manage simultaneously, so long as the management agent continues to properly manage the owners and its own LHA, as shown through PMRs, AUPs, and Authority budgets.

b. **Multiple Owner Work Plans.** DHCD is removing the expectation of a Multiple Owner Work Plan effective for all new agreements submitted to DHCD after the publication date of this PHN. LHAs under an existing agreement with a Multiple Owner Work Plan must continue to adhere to the existing contract.

14. DHCD Review and Approval Timelines

Management Services Agreement

a. **30 calendar days** from time LHA submits completed Management Agreement (with no work plan) and required information
b. **45 calendar days** from time LHA submits completed Management Agreement with work plan and required information
c. **60+ calendar days** from time LHA submits agreement not on DHCD template

Interim Executive Director Contract

a. 20 calendar days from time LHA submits completed Contract of Employment using DHCD template and required information
b. 40 calendar days from time LHA submits completed Contract of Employment and required information NOT on DHCD template

15. Templates and Technical Assistance:

Attachment A: ***Template Management Services Agreement – Basic***
Attachment B: ***Template Management Services Agreement – Management Work Plan***
Attachment C: ***Template Management Services Agreement – Contract of Employment***
Attachment D: ***Template Management Services Agreement – Amendment***
Attachment E: ***Management Fee Calculation Worksheet***
Attachment F: ***Owner Due Diligence – Management Agent Questionnaire***
Attachment G: ***Template Agent Due Diligence – Memorandum of Understanding***
Attachment H: ***Template Board Vote for Management Agent***
Attachment I: ***Template Board Vote for Owner***