



Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Charles D. Baker, Governor ♦ Karyn E. Polito, Lieutenant Governor ♦ Chrystal Komegay, Undersecretary

PUBLIC HOUSING NOTICE 2017-25

To: All Local Housing Authorities
From: Amy Stitely, Associate Director, Division of Public Housing
Subject: Revised DHCD Guidelines for Executive Director Contracts
Date: October 31, 2017

Statutory Authority: G.L. c.121B, §7A as added by Section 7 of Chapter 235 of the Acts of 2014.

Regulatory Authority: 760 CMR 4.04

Effective Date: These Guidelines are effective October 31, 2017, and supersede the previous guidelines issued December 27, 2016 at PHN 2016-40.

Transition After Effective Date: Contracts in existence on the effective date of these Guidelines will be valid until they expire but may not be renewed or extended. Within thirty (30) days of the effective date of these Guidelines, each Local Housing Authority (LHA) shall send a written communication to its assigned Housing Management Specialist (HMS) at the Department of Housing and Community Development (DHCD) specifying whether it has an existing oral or written contract in effect, and, if so, providing the expiration date of that contract, if any.

Other Pertinent Guidelines: DHCD Guidelines for Hiring an Executive Director, DHCD Guidelines for At-Will Employment of Executive Director, DHCD Executive Director Salary and Qualifications Schedule, as well as DHCD Local Housing Authority Budget Guidelines as currently in effect and revised from time to time.

I. PURPOSE

The issuance of these guidelines is in accordance with M.G.L. c. 121B as amended by Chapter 235 of the Acts of 2014. Specifically, Section 7A states the following;

The department shall promulgate guidelines for contracts to be executed by the housing authority and an executive director. The department may review all contracts between the housing authorities and executive directors and all terms for payments or monetary remuneration relevant to state payments; provided, however, that the department shall review all contracts and all terms

for payments or monetary remuneration worth more than \$100,000 per annum. The department may strike contract provisions that do not conform to the guidelines.

Every contract of employment executed by a housing authority and an executive director is subject to review and written approval by DHCD, to ensure that the guidelines and standards for executive director employment contracts have been met.

The title “Executive Director” as used in these Guidelines means any person occupying the position of chief executive officer at a housing authority regardless of title. A person who is temporarily acting as a housing authority chief executive officer, either as a consultant or as an interim executive director, while the housing authority conducts a search for a new executive director, must also execute a contract with the housing authority unless that person is a current LHA member or employee. Such a contract between an interim executive director or consultant and a housing authority must be approved by DHCD, but is not covered by these Guidelines.

These Guidelines are intended to serve as a tool for both DHCD and local housing authorities to facilitate ease of review by DHCD staff when fulfilling its obligation to review employment contracts. These Guidelines set forth the minimum requirements for the contract of employment, including the mandatory contract cover sheet, required basic terms, other material terms (identified as “Standard Provisions” in the contract template), restrictions on any such terms, as well as prohibited terms.

The DHCD Mandatory Contract Cover Sheet (Attachment A) must be completed and submitted by the LHA with the Contract for Employment of Executive Director for review by DHCD. All Mandatory Cover Sheets must identify the LHA and the Executive Director and set out the Executive Director qualifications. LHAs must also identify on the Mandatory Cover Sheet any and all contract provisions that differ from the DHCD Contract for Employment of Executive Director template.

Attachment B is the DHCD Contract for Employment of Executive Director template. DHCD highly recommends use of this contract template in order to facilitate its prompt review and approval, and will provide expedited review for housing authorities utilizing the contract template.

LHAs that employ an executive director as an at-will employee (without a specified term of years and without requiring any cause for termination) should use the current DHCD Memorandum of Agreement for At-Will Employment of Executive Director template. That template and Guidelines pertaining to at-will employment of executive directors were issued as DHCD PHN 2017-18. LHAs that employ an at-will executive director but desire contract provisions that are different from the Memorandum of Agreement for At-Will Employment of Executive Director template must follow these Guidelines.

II. NO PREEMPTION OF STATE OR FEDERAL LAW

Local housing authorities are subject to federal and state statutes and regulations which often vary between LHAs based on considerations such as the size of the LHA or the source of government funding. Nothing contained in these Guidelines relieves a local housing authority of its legal obligations and duties arising under any other source whether expressly noted herein or not. LHA Board members, Executive Directors, and other management staff shall remain responsible for upholding the legal obligations of a local housing authority.

III. PARTIES TO CONTRACT and DHCD APPROVAL

The Contract for Employment is between the Housing Authority Board and the Executive Director. DHCD is not a party to the contract. DHCD has authority to approve the Executive Director's salary (760 CMR 4.04), and review all terms to ensure they are in compliance with these Guidelines (G.L. c. 121B, §7A). To be valid and enforceable, the contract must be executed by both the housing authority and its executive director, and must include the following language appearing after the signature lines of the Parties,

“This Agreement is subject to the prior review and approval of the Massachusetts Department of Housing and Community Development (“DHCD”). Unless and until this Agreement is approved by DHCD in writing, this Agreement is without force and effect and may be deemed to be null and void by DHCD, in its sole discretion. The Executive Director understands that, if he/she commences work before this Agreement is approved by DHCD he/she shall be deemed an employee at will of the Authority unless and until such approval.”

IV. MANDATORY CONTRACT COVER SHEET (Attachment A - To Be Completed and Submitted By the LHA With the Contract for Employment of Executive Director For Review by DHCD)

For contracts prepared using the DHCD template with no changes other than insertion of factual information, the LHA must complete only Sections I and IV of the cover sheet. If the LHA does not use the DHCD contract template, or if the LHA uses the DHCD contract template with amended terms, the LHA must complete all sections of the cover sheet.

To facilitate DHCD review of executive director employment contracts other than the DHCD template, the LHA must complete all sections of the cover sheet including a summary of qualifications and all basic and material contract terms and identify by article, paragraph and/or sub-paragraph where the material terms appear in the contract being submitted for review.

SECTION I. Parties and Executive Director Qualifications

This section must be completed by all LHAs.

- Housing Authority (name and address)
- Executive Director (name, address, number of years as Executive Director or Assistant Executive Director or other senior staff at any LHA)
- Original date of hire of Executive Director at this LHA
- Certifications
- Educational Level
- Experience in the Field

SECTION II. Basic Terms

LHAs using the DHCD-approved contract template do not need to complete this section. Please note, however, that the subject matter covered by these Basic Terms must be included in all contracts.

- Length of Contract Term and contract termination date coinciding with LHA fiscal year end.

- Public Housing/Rental Assistance Programs Operated
 - List the number of units for each program at the LHA (state-aided public housing, state-aided rental vouchers—MRVP and/or AHVP, federally subsidized public housing, federal Section 8 vouchers). For vouchers, please include leased units only.
- Other program activities, if any, including, for example, management services agreements, Community Development Block Grant or other private or public grants.
- Full/Part Time
- Required hours/week
- Salary (not including bonus)
- Percentage of Authority’s state-aided public housing units and units that are leased with state-aided rental vouchers (MRVP and/or AHVP)
- Approved State Share
- Bonus, if any, identifying amount, funding source, and a statement that the bonus is for activity related to a program funded under that source (i.e., HUD activity, private management activity, etc.). State funds are not an allowable source for bonuses.)
- Other Taxable Compensation
- Benefits (check all that apply)

SECTION III. Other Material Terms

All material terms are mandatory and must be included in all contracts. LHAs utilizing the DHCD-approved contract template do not need to identify template provisions, but do need to identify any provisions set forth in the Special Contract Provisions (Rider 1) that affect or differ from these material terms. Please see the list of mandatory material terms in Section V, below.

SECTION IV. Certification

The LHA must certify that the information contained in the contract cover sheet, is true and correct. Signature of the LHA Chair or other authorized Board member, printed name, title and date are all required.

V. LIST OF MANDATORY CONTRACT PROVISIONS

A contract executed by a housing authority and an executive director shall include, at a minimum, provisions setting forth the following terms and conditions of employment, in compliance with the requirements described in Section VI of these Guidelines. The provisions shall be included in the contract in the order set forth below, to facilitate DHCD review:

- 1. Identification of the Contract and Parties.**
- 2. Term and End Date of Contract.**
- 3. Duties of the Executive Director (Job Description).**
- 4. Type of Public Housing/Rental Assistance (P/RA) Programs operated.**
- 5. Other program activities, if any.**
- 6. Full-Time/Part-Time: Nature of Commitment.**
- 7. Required Hours.**
- 8. Salary/Compensation.**
- 9. State percentage of the Authority’s public housing units and leased vouchers.**

- 10. Approved State Share of Salary.**
- 11. Other Taxable Compensation, if any (include non-monetary compensation such as laptops, cell phones, etc. as well as non-salary monetary compensation such as bonus).**
- 12. Benefits.**
- 13. Reimbursement of Expenses.**
- 14. Termination of Agreement.**
- 15. Notices.**
- 16. Modification.**
- 17. Dispute Resolution.**
- 18. Post-Term Activities.**
- 19. Assignment.**
- 20. Governing Law (Massachusetts).**
- 21. Signature Page and Acknowledgement that Contract is Subject to DHCD Review and Written Approval.**
- 22. Certification Page**

If the housing authority does not use the recommended DHCD contract template, a completed cover sheet summarizing these provisions, as stated in Section IV above, must be submitted to DHCD on the Mandatory Contract Cover Sheet form prescribed by DHCD to facilitate contract review. Nothing in these Guidelines shall be deemed to limit a housing authority's ability to include additional terms and conditions in an executive director contract, provided that such additional terms and conditions do not conflict with the requirements of these Guidelines. Without limiting the foregoing, a housing authority may adopt provisions that are more restrictive or impose a greater obligation on an executive director than required by these Guidelines with respect to salary, benefits or the minimum obligations of an executive director.

To qualify for expedited DHCD review, any additional provisions must be included in a rider to the contract template. However, housing authorities may also include such additional provisions in the body of an executive director employment contract, so long as they appear after the required contract provisions and are noted on the Mandatory Contract Cover Sheet.

While not mandatory, DHCD highly recommends that provisions governing the following terms be included in any executive director employment contract:

- Severability.**
- Waiver.**
- Counterparts.**
- Federal Requirements.**

VI. MANDATORY CONTRACT PROVISIONS

The mandatory contract provisions identified in Section V above must comply with the following requirements.

1. Identification of the Contract and Parties.

Each contract must set forth the name and address of the Executive Director and the Housing Authority and must identify the contract as a contract of employment.

2. Term and End Date.

Each contract must specify its term in years and/or months, as well as the termination date of the contract. The end of the contract term must coincide with the end of the LHA's fiscal year. The employment of the Executive Director shall continue for the specified term, unless terminated earlier pursuant to the contract. No contract should be for a period of less than one (1) year plus such additional fraction of a year as shall be required to cause the end of the contract term to coincide with the end of the LHA fiscal year nor for a period of more than five (5) years, based on the conditions below:

New Hire - any individual initially serving as Executive Director for that LHA may sign a one (1) year contract plus such additional fraction of a year as shall be required to cause the end of the contract term to coincide with the end of the LHA fiscal year. In addition, the contract may contain a provision for a one (1) year renewal. The option to renew may be exercised only upon mutual agreement of the parties.

End of One Year - Contract term for those persons having completed one (1) year of service in the position of Executive Director for the LHA may be for one to three (1-3) years whether it be as a new contract or a renewal of the existing contract. In combination, the two periods cannot exceed three (3) years total, and the contract termination date shall continue to coincide with the LHA's fiscal year.

After Two Years - Contract term for those persons having completed two (2) years' service in the position of Executive Director for the LHA may be for one to five (1-5) years whether through a new contract or renewal of the existing contract. In combination, the two periods cannot exceed five (5) years total, and the contract termination date shall continue to coincide with the LHA's fiscal year.

Where the candidate selected has served as the Executive Director, the Assistant Executive Director or in another senior level administrative position in any satisfactorily performing local housing authority of comparable size and program composition, the time in that position may be taken into account when determining the length of contract.

Exception: DHCD may consider a request from a housing authority to approve a multi-year contract in excess of the terms stated above where the housing authority has been identified as troubled or a chronically poor performer pursuant to DHCD guidance, including guidance issued by DHCD with respect to performance monitoring under M.G.L. c. 121B, §26B, and where a longer tenure for the executive director may be integral to the successful improvement of the LHA's current operations. In these instances, it will be required that the housing authority develop and adhere to a DHCD-approved time table for corrective action.

3. Duties (Job Description).

Contract must state the minimum duties and responsibilities of the Executive Director, either in the body of the contract or incorporated as an attachment entitled "Job Description." If not using the

DHCD contract template, the contract provision must also include the following language: “In addition to any duties specifically enumerated in this Contract or any Exhibit hereto, as amended from time to time, the Executive Director shall perform such duties as are commensurate with the position of executive director, including without limitation, such duties as may be assigned to the Executive Director from time to time by the Board during the term of the agreement. In performing his or her duties the Executive Director shall comply with all applicable federal, state and local laws, DHCD regulations and guidelines, and directives and policies of the Board.”

4. Type of Public Housing/Rental Assistance (PH/RA) Programs operated.

The Contract must specifically identify the housing programs managed by the housing authority, including state-aided programs such as the state-aided public housing program, federally subsidized public housing and leased units for the Massachusetts Rental Voucher programs (MRVP), Alternative Housing Voucher programs (AHVP), and Section 8 rental assistance.

5. Other program activities, if any.

The contract must include a description of any activities to be undertaken and/or programs/properties managed by the Executive Director on behalf of the housing authority other than the public housing or rental assistance programs identified in Section 4 above. This may include third party management services contracts for other housing authorities or for private developers, non-profit entity work, grant administration, etc.

6. A. Full-Time/Part-Time: Nature of Commitment.

The contract must state whether the Executive Director is a full-time employee or part-time employee.

Please note that in accordance with the DHCD Executive Director Salary and Qualifications Schedule currently in effect, or any such Schedule subsequently issued by DHCD, no full-time Executive Director, e.g., any individual employed as an executive director by a housing authority having more than 199 units, including rental assistance units, shall be employed in any capacity, by more than one housing authority.

Prior to entering into a contract for a part-time executive director, a housing authority must consult with DHCD on the terms of compensation and benefits. Note that the compensation and benefits paid by a single housing authority to an individual employed on a part-time basis as the executive director for two or more housing authorities shall not exceed that housing authority’s pro rata share of an equivalent full-time executive director’s compensation and benefits.

The contract provision must include a statement that the Executive Director understands that the duties and responsibilities of Executive Director are a significant commitment (full-time or part-time) and acknowledges that he/she is expected to work the required number of hours per week specified in the Basic Terms, which shall be performed at the office of the LHA during its established business hours.

In addition, this contract provision must include a statement that the Executive Director agrees that he/she shall not engage in any business or other activity which would interfere with his/her duties as executive director or create a conflict of interest in violation of the Massachusetts Conflict of Interest law. This paragraph shall not prevent an Executive Director from undertaking speaking engagements or other professional activities, provided that such activities do not interfere with or

conflict with his/her duties as executive director. An Executive Director shall obtain, in advance, the approval of the Board before engaging in such activities.

7. Required Hours.

The contract must state the required hours to be worked per week by the Executive Director. The required hours stated must be consistent with the DHCD Executive Director Salary and Qualifications Schedule, currently in effect, or any such Schedule subsequently issued by DHCD, setting forth the hours required to be worked by an executive director, based on the number and size of units in all programs that are operated by the Housing Authority.

8. Salary/Compensation.

The contract must state the total annual salary to be paid to the Executive Director. LHAs should refer to the DHCD Executive Director Salary and Qualifications Schedule and the DHCD Local Housing Authority Budget Guidelines currently in effect for salary matters. For a salary that includes amounts that are funded by a management services contract with another housing authority or by another contract that is temporary or otherwise may terminate, the executive director contract must specify the amount of the salary that is funded by such contract and state that the salary will be reduced by the amount funded by such contract when those funds are no longer due and payable under such contract.

9. State percentage of the LHA's public housing units.

The contract must specify the percentage of the housing authority's total unit count that are state-aided (including state-aided public housing units and units that are leased with state-aided vouchers - MRVP and/or AHVP). For new Executive Directors, please refer to the Executive Director's Salary Calculation Worksheet (Line #15, "Total Units") that is attached to the DHCD Executive Director Salary and Qualifications Schedule currently in effect. For existing Executive Directors, please review total unit count in Housing Authority Financial Information System (HAFIS), ("Report of Total LHA Units") tab, for the LHA's total unit count.

10. Approved State Share of Salary.

The contract must set out the approved state share of the Executive Director's salary. (Percentage of state-aided public housing units and units that are leased with state-aided vouchers, MRVP and/or AHVP, multiplied by the salary.) Please refer to the DHCD Local Housing Authority Budget Guidelines currently in effect for specific guidance regarding pro-rations and the allowable state share of the executive director's salary. DHCD will monitor pro-rations on an ongoing basis through the budget, Agreed Upon Procedures (AUP) and Performance Management Review (PMR) process.

DHCD will not permit LHAs the allocation of the executive director salary to the state or to federal programs in an amount that is greater than the pro-rated share of each, based upon the unit count. Unit count pro-rations will be derived from the number of state-aided and federally subsidized units and rental vouchers. Any portions of the salary that are covered by external contract, such as but not limited to LHA management agreements and private management contracts, will not be

considered in unit count pro-ration calculation. However, those sources of compensation must be clearly identified, as described in the next section.

11. Other Taxable Compensation.

The contract must enumerate all forms of “other compensation” the Executive Director shall receive. All other compensation must be itemized and clearly stated for audit purposes. The specific items of compensation may be stated on a separate Rider and incorporated by reference in the contract. Housing Authorities granting other compensation are strongly advised to consult with a tax professional (a tax attorney or certified public accountant) as to what items of compensation are required by law to be reported as income to the Massachusetts Department of Revenue and the federal Internal Revenue Service.

Any bonus to be paid to the Executive Director should be listed in this section. The term “bonus” refers to additional taxable compensation that a covered individual receives during the LHA’s fiscal year that is generally a one-time payment for exemplary performance or additional performance beyond the duties of the job description for a specific activity or program implementation. Bonuses may not be paid from state funds and must comply with any and all rules from the funding source from which they are paid. Multi-year contracts that include payment of a bonus must specify the amount of the bonus, the source of funds from which the bonus will be paid, and the year or years in which it is anticipated to be paid. The contract should also specify any conditions on the payment such as the continuation of the funding source or the accomplishment of certain goals.

12. Benefits.

Benefits received by the Executive Director must be clearly stated in the contract and be in accordance with either an LHA Personnel Policy previously approved by DHCD or by an LHA Personnel Policy attached to the contract for DHCD approval¹. Any provisions regarding benefits that are inconsistent with or in addition to the standard benefits stated in the LHA’s Personnel Policy must be specified clearly in the contract or in a separate rider attached to the contract and incorporated by reference.

13. Reimbursement of Expenses.

The contract must indicate whether, and to what extent, the housing authority shall reimburse its Executive Director for expenses incurred by the Executive Director in the normal performance of his/her duties and responsibilities. Any such reimbursement must be for reasonable expenses and must be in compliance with applicable housing authority policies and procedures and federal and state statutes, regulations, and guidance, including DHCD Budget Guidelines as in effect and revised from time to time.

14. Termination of Agreement.

The contract must include provisions at least as protective of the Housing Authority as the following in regards to termination (provided, that a Housing Authority may adopt more stringent

¹ Note that DHCD will limit its review and approval of an LHA Personnel Policy to provisions applicable to benefits. LHAs are advised to consult with legal counsel when drafting or amending personnel policies.

termination provisions, including a provision providing for termination at-will):

A. Compensation and Benefits. In the event the Contract is terminated for any reason, all compensation and benefits provided to Executive Director by the LHA pursuant to the Contract or otherwise shall cease as of the effective date of termination (the “Termination Date”), except as follows:

- i. Salary. Executive Director shall receive payment for any Salary earned but unpaid through the Termination Date.
- ii. Vacation. Executive Director shall be paid for any vacation time that, as of the Termination Date, was accrued but not used, provided that no more than two (2) years of accrued vacation may be carried over from year to year.
- iii. Sick Time. Upon death or retirement pursuant to G.L. c. 32, the Executive Director shall be paid 20% of sick time that, as of the Termination Date, was accrued but was not used; in all other circumstances, the Executive Director shall not be compensated for accrued but unused sick time.

B. Termination. The Contract shall be terminated earlier than the end of the contract term under the following circumstances:

- i. Termination by LHA for Cause. The LHA may and, under certain circumstances as described below, shall terminate the Contract at any time for Cause which shall be defined as any lawful reason in good faith relied upon by the Board, including, but not limited to, any of the following:
 - a) Executive Director breaches any material duty or obligation under the Contract;
 - b) Executive Director refuses or is unwilling to perform any of the duties set forth in the Contract and/or the applicable job description after a written request from the Board to do so;
 - c) Executive Director is convicted of any criminal act, including without limitation fraud, embezzlement, theft, or any other crime against the LHA or the Commonwealth of Massachusetts, including, but not limited to, the offer, payment, solicitation or acceptance of any unlawful bribe or kickback with respect to the LHA’s business;
 - d) Executive Director engages in intentional or grossly negligent conduct which adversely or materially affects the LHA, including but not limited to its reputation;
 - e) Executive Director has engaged in conduct, or caused the LHA to engage in conduct, which violates any federal or state statute, regulation, or administrative guidance, including without limitation a violation of the Massachusetts Conflicts of Interest law (G.L. c. 268A)

or regulations of the federal government or the Commonwealth of Massachusetts governing local housing authorities;

- f) The LHA has a reasonable basis to determine that Executive Director has committed any other criminal act or act of moral turpitude; or
- g) Executive Director is repeatedly absent from work (excluding vacations, illnesses, disability leaves, or other leaves of absence approved by the Board).

In the event that Cause is based on the conviction of the Executive Director of any criminal act pursuant to Section 14(B)(i)(c) above, the Contract shall automatically terminate as of the date of such conviction, without the requirement of any action by the LHA.

In all other circumstances, prior to termination, the Board shall adopt a resolution by affirmative vote at a meeting of the Board called for such purpose (after reasonable notice to Executive Director and an opportunity for Executive Director to be heard before the Board at or prior to the meeting called for such purpose), finding by vote of the majority of the members present that in the good faith opinion of the Board, Executive Director's conduct constitutes "Cause" and specifying the particulars thereof. *Provided*, that nothing contained herein shall prevent the Board from immediately suspending Executive Director without pay prior to formal Notice of Termination or pending an opportunity to be heard, if the Board believes that the Executive Director's conduct warrants immediate action for the good of the LHA.

The Board shall terminate the Contract if it finds "Cause" under one or more of subsections 14(B)(i)(d), (e) or (f) above. In all other cases, the Board shall have discretion to terminate the Contract or take other action based on a determination, in its sole discretion, as to the severity of the conduct constituting "Cause."

Any disputes regarding termination or other disciplinary action by the Board shall be subject to the dispute resolution procedures set forth in Section 17 below.

- ii. Termination by Executive Director. Executive Director may terminate the Contract at any time by providing ninety (90) days advance written notice to the LHA, provided that the LHA may, in its sole discretion, waive all or part of the notice period and accelerate the Termination Date.
- iii. Death. In the event of the death of Executive Director during the term of the Contract, the Contract shall automatically terminate as of the date of his/her death.
- iv. Inability to Perform Essential Functions. Subject to the requirements of the Family and Medical Leave Act, the Americans With Disabilities Act, and any other provision of applicable law, the Housing Authority may terminate the Contract if it determines that the Executive Director is unable to mentally or physically perform the essential functions of his/her job as Executive Director, with or without reasonable accommodation, for an extended period of time (not

less than ninety (90) days in any given twelve (12) month period.) The Board of the Authority shall make such determination in its sole discretion, provided that in making the decision as to whether the Executive Director can perform the essential functions of the job, and whether or not an accommodation is reasonable, it shall review all available and relevant information, including medical information.

- v. Termination by DHCD. The Contract may be terminated at any time by the DHCD in its sole discretion in accordance with G.L. c. 121B, §26B(d) if DHCD finds clear and convincing evidence of a demonstrable threat to tenant safety attributable to the conduct of the Executive Director or financial misconduct or criminal activity by the Executive Director.

C. Notice of Termination. Any termination of the Contract shall be communicated by written Notice of Termination. For purposes of the Contract, a “Notice of Termination” shall mean a notice which shall indicate the specific termination provision in the Contract relied upon as well as the Termination Date.

15. Notices.

There must be a notice provision that provides the name, address and e-mail address for both the Executive Director and the Housing Authority. See example:

To Executive Director: [name] [address] [e-mail address]	To Authority: [name] [address] [e-mail address]
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The contract must state the required or permitted forms of notice, when notice is deemed effective after being given, and require the parties to notify each other of any change of address. DHCD recommends the adoption of language similar to the following: Any notices required or permitted under the Contract be sent by both electronic mail and one of (a) certified mail, return receipt requested, postage prepaid, or (b) reputable overnight delivery service, or (c) delivery in person, to the address stated on in the Basic Terms of this Agreement. Notice shall be deemed effective upon delivery in person, or one business day after being deposited with an overnight courier service, or three (3) business days after being deposited with the United States Post Office, certified mail, return receipt requested. It shall be the obligation of each party to this Agreement to provide notice to the other party in writing of any changes to the above notice addresses.

16. Modification.

The contract must state that the agreement constitutes the entire understanding and agreement between the parties with regard to the subject matter thereof, and supersedes all prior understandings and agreements, and must further state that the agreement may not be amended, supplemented, revised or otherwise modified except by a writing signed by the parties and approved by DHCD.

17. Dispute Resolution.

The contract must state that any dispute as to its interpretation or application shall be resolved in accordance with the Employment Arbitration Rules and Mediation Procedures of the American Arbitration Association, or DHCD-approved equivalent, which shall be the sole and exclusive remedy available, and as to which judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

18. Post-Term Activities.

The contract must state that in the event that the Executive Director continues to serve in that capacity after the term of the agreement, he or she shall be an employee at-will, and the termination for cause provisions of the contract shall not apply. In no event shall any of the other terms and conditions of employment (including without limitation the salary, benefits, job description, scope of services, duties and nature of commitment) be modified from what is contained in the contract without being incorporated into an amendment to the contract or a new employment contract and approved in writing by DHCD.

19. Assignment.

The contract must state that the agreement may not be assigned, in whole or in part, by any party without the prior written consent of the other party.

20. Governing Law.

The contract must state that the agreement shall be construed under, and governed by, the laws of the Commonwealth of Massachusetts, excluding its choice of law rules, and that the state or federal courts of Massachusetts shall be the forum for any lawsuit arising from or incident.

21. Signature Page with Acknowledgement That Contract Subject to DHCD Review and Written Approval.

All contracts must have a signature page indicating that the document is executed as an instrument under seal. Execution on behalf of the LHA must be by its Executive Director, its Chair and its Treasurer. Each of the pages preceding the signatures and the signature page must include the following statement:

This Agreement is subject to the prior review and approval of the Massachusetts Department of Housing and Community Development (“DHCD”). Unless and until this Agreement is approved by DHCD in writing as evidenced by the Certification of Review and Approval, this Agreement is without force and effect and may be deemed to be null and void by DHCD, in its sole discretion. The Executive Director understands that, if he/she commences work before this Agreement is approved by DHCD he/she shall be deemed an employee at will of the Authority unless and until such approval.

22. Certification Page

All contracts must contain a certification page in the form set out below. The page preceding the certification must include the following statement: [Certification on Next Page]

CERTIFICATION OF REVIEW AND APPROVAL

The Massachusetts Department of Housing and Community Development (“DHCD”), hereby certifies that upon review of the terms and conditions of the foregoing Contract of Employment, between _____ and the _____ Housing Authority, the Contract:

_____ meets all the requirements set out in DHCD’s Guidelines for Executive Director Contracts; and is hereby approved.

_____ substantially meets the requirements set out in DHCD’s Guidelines for Executive Director Contracts and is hereby approved except for the following provisions:

_____ fails to meet the requirements set out in DHCD’s Guidelines for Executive Director Contracts is not approved, and is being returned unsigned.

Department of Housing and Community Development

By: _____
Its: _____
Date: _____

VII. RECOMMENDED PROVISIONS

DHCD recommends that each contract include provisions addressing the following issues:

1. Severability.

DHCD recommends that the contract include a severability provision, to the effect that: (a) if any portion or provision of the agreement shall to any extent be declared illegal or unenforceable by a court of competent jurisdiction, then the remainder of the agreement, or the application of such portion or provision in circumstances other than those as to which it is so declared illegal or unenforceable, shall not be affected thereby, and each portion and provision of the agreement shall be valid and enforceable to the fullest extent permitted by law, and (b) if any of the provisions of the agreement is held to be excessively broad, it shall be reformed and construed by limiting and reducing it so as to be enforceable to the maximum extent permitted by law.

2. Waiver.

DHCD further recommends that the contract include a provision to the effect that no waiver of any provision thereof shall be effective unless made in writing and signed by the waiving party, and that the failure of either party to require the performance of any term or obligation of the agreement, or the waiver by either party of any breach of the agreement, shall not prevent any subsequent enforcement of such term or obligation or be deemed a waiver of any subsequent breach.

3. Counterparts.

The contract must state that the agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and in pleading or proving any provision of the agreement it shall not be necessary to produce more than one such counterpart. No counterpart shall be effective until each party has executed at least one counterpart. For the convenience of the parties, facsimile and pdf signatures shall be accepted as originals.

4. Federal Requirements.

Where the Executive Director's compensation is paid in part from federal funds, the contract should include any provisions required by the federal government.

VIII. CONTRACT PROVISIONS THAT WILL NOT BE APPROVED BY DHCD

DHCD will not approve contract provisions that:

1. Allow automatic renewals or extensions of the contract,
2. Grant increased compensation on the basis of increased years of service (so-called "longevity payments") to the Executive Director, or
3. Provide for indemnification of the Executive Director.

IX. PROCEDURE FOR DHCD APPROVAL OF CONTRACTS.

Executive Director Contracts for Employment should be submitted to the DHCD Housing Management Specialist (HMS) who is assigned to the LHA. To facilitate DHCD review of Executive Director Employment Contracts, LHAs must provide a summary of all qualifications, basic terms and material terms of the contract on the Mandatory Contract Cover Sheet, along with the Contract. The Contract must meet all the requirements set out in these Guidelines and submitted to DHCD in the following manner.

- Contract should be sent to DHCD a minimum of sixty (60) days prior to the proposed effective date of the contract.
- Every contract submission must include the Mandatory Contract Cover Sheet, prescribed by DHCD, summarizing the basic terms and other material terms, along with an extract of the minutes of the meeting at which the vote was taken to approve the Contract, salary and length of term.
- For newly hired Executive Directors, LHA must also submit evidence of having followed the DHCD's Executive Director Hiring Guidelines in effect at the time.
- If the contract is on the DHCD contract template form, the LHA may attach a rider, so long as provisions of the rider are not inconsistent with these Guidelines.
- If the contract is not on the DHCD contract template form, it must comply with all of the basic terms and material terms required by these Guidelines.
- Contract must include a copy of job description.
- If on DHCD contract template form, without any material changes to the template form or by means of one or more rider(s), DHCD will review and respond within (thirty) 30 days following its receipt of the LHA's submission as long as all required supporting documents have been received,

all information required by the template is provided, and barring any unusual circumstances. DHCD's response will inform the LHA whether the contract is approved, rejected, or approved with revisions and/or conditions.

- If not on DHCD contract template form, DHCD will endeavor to review and respond within sixty (60) days following its receipt of the LHA's submission as long as all required supporting documents have been received and barring any unusual circumstances. DHCD's response will inform the LHA whether the contract is approved, rejected, or approved with revisions and/or conditions.