

Commonwealth of Massachusetts  
DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT

Deval L. Patrick, Governor

◆ Timothy P. Murray, Lt. Governor

◆ Aaron Gornstein, Undersecretary

Public Housing Notice 2012-05

Memorandum

To: LHA Executive Directors  
From: Lizbeth Heyer, Associate Director  
Division of Public Housing and Rental Assistance  
Subject: Subsidy Agreement Renewal  
Date: May 1, 2012

Enclosed for your execution is the Commonwealth's Comptroller's Office Operating Subsidy Agreement together with the Commonwealth Terms and Conditions and Additional Terms and Conditions. Your LHA's current Subsidy Agreement expires on June 30th, 2012 and the Department of Housing and Community and Development (DHCD) is only able to continue making operating subsidy payments to your Authority after the execution of this contract. DHCD has decided to renew the Subsidy Agreement for the duration of one year to allow time for the Public Housing Commission on Sustainability and Reform to complete its work and therefor allow for any necessary revisions to the Additional Terms and Conditions.

This document enables DHCD to register your Authority in the state accounting system and will not change the way your LHA receives operating subsidy in the future. Three copies of the new form have been enclosed for your signature. The Subsidy Agreement will cover the period from July 1, 2012 through June 30, 2013.

Please **sign all three copies, date them July 1, 2012 and return them no later than May 25, 2012.** Please note that DHCD will not be able to process any FY13 subsidy payments for your Authority until the Agreement is signed, returned to DHCD and processed through the Comptroller's Office. It is important that you execute the Subsidy Agreement and return it to DHCD even if you do not routinely receive an operating subsidy advance. Once fully executed, a copy of the Subsidy Agreement will be returned to you for your records.

Thank you for your cooperation and please contact Ayo Yakubu-Owolewa, Finance Manager, Bureau of Housing Management at 617-573-1233 or myself if you have any questions.



## COMMONWEALTH TERMS AND CONDITIONS

This Commonwealth Terms and Conditions form is jointly issued by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) for use by all Commonwealth of

Massachusetts ("State") Departments and Contractors. *Any changes or electronic alterations by either the Department or the Contractor to the official version of this form, as jointly published by ANF, CTR and OSD, shall be void.* Upon execution of these Commonwealth Terms and Conditions by the Contractor and filing as prescribed by the Office of the Comptroller, these Commonwealth Terms and Conditions will be incorporated by reference into any Contract for Commodities and Services executed by the Contractor and any State Department, in the absence of a superseding law or regulation requiring a different Contract form. Performance shall include services rendered, obligations due, costs incurred, commodities and deliverables provided and accepted by the Department, programs provided or other commitments authorized under a Contract. A deliverable shall include any tangible product to be delivered as an element of performance under a Contract. The Commonwealth is entitled to ownership and possession of all deliverables purchased or developed with State funds. Contract shall mean the Standard Contract Form issued jointly by ANF, CTR and OSD.

**1. Contract Effective Start Date.** Notwithstanding verbal or other representations by the parties, or an earlier start date indicated in a Contract, the effective start date of performance under a Contract shall be the date a Contract has been executed by an authorized signatory of the Contractor, the Department, a later date specified in the Contract or the date of any approvals required by law or regulation, whichever is later.

**2. Payments And Compensation.** The Contractor shall only be compensated for performance delivered and accepted by the Department in accordance with the specific terms and conditions of a Contract. All Contract payments are subject to appropriation pursuant to M.G.L. C. 29, §26, or the availability of sufficient non-appropriated funds for the purposes of a Contract, and shall be subject to intercept pursuant to M.G.L. C. 7A, §3 and 815 CMR 9.00. Overpayments shall be reimbursed by the Contractor or may be offset by the Department from future payments in accordance with state finance law. Acceptance by the Contractor of any payment or partial payment, without any written objection by the Contractor, shall in each instance operate as a release and discharge of the State from all claims, liabilities or other obligations relating to the performance of a Contract.

**3. Contractor Payment Mechanism.** All Contractors will be paid using the Payment Voucher System unless a different payment mechanism is required. The Contractor shall timely submit invoices (Payment Vouchers - Form PV) and supporting documentation as prescribed in a Contract. The Department shall review and return rejected invoices within fifteen (15) days of receipt with a written explanation for rejection. Payments shall be made in accordance with the bill paying policy issued by the Office of the Comptroller and 815 CMR 4.00, provided that payment periods listed in a Contract of less than forty-five (45) days from the date of receipt of an invoice shall be effective only to enable a Department to take advantage of early payment incentives and shall not subject any payment made within the forty-five (45) day period to a penalty. The Contractor Payroll System, shall be used only for "Individual Contractors" who have been determined to be "Contract Employees" as a result of the Department's completion of an Internal Revenue Service SS-8 form in accordance with the Omnibus Budget Reconciliation Act (OBRA) 1990, and shall automatically process all state and federal mandated payroll, tax and retirement deductions.

**4. Contract Termination Or Suspension.** A Contract shall terminate on the date specified in a Contract, unless this date is properly amended in accordance with all applicable laws and regulations prior to this date, or unless terminated or suspended under this Section upon prior written notice to the Contractor. The Department may terminate a Contract without cause and without penalty, or may terminate or suspend a Contract if the Contractor breaches any material term or condition or fails to perform or fulfill any material obligation required by a Contract, or in the event of an elimination of an appropriation or availability of sufficient funds for the purposes of a Contract, or in the event of an unforeseen public emergency mandating immediate Department action. Upon immediate notification to the other party, neither the Department nor the Contractor shall be deemed to be in breach for failure or delay in performance due to Acts of God or other causes factually beyond their control and without their fault or negligence. Subcontractor

failure to perform or price increases due to market fluctuations or product availability will not be deemed factually beyond the Contractor's control.

**5. Written Notice.** Any notice shall be deemed delivered and received when submitted in writing in person or when delivered by any other appropriate method evidencing actual receipt by the Department or the Contractor. Any written notice of termination or suspension delivered to the Contractor shall state the effective date and period of the notice, the reasons for the termination or suspension, if applicable, any alleged breach or failure to perform, a reasonable period to cure any alleged breach or failure to perform, if applicable, and any instructions or restrictions concerning allowable activities, costs or expenditures by the Contractor during the notice period.

**6. Confidentiality.** The Contractor shall comply with M.G.L. C. 66A if the Contractor becomes a "holder" of "personal data". The Contractor shall also protect the physical security and restrict any access to personal or other Department data in the Contractor's possession, or used by the Contractor in the performance of a Contract, which shall include, but is not limited to the Department's public records, documents, files, software, equipment or systems.

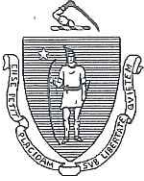
**7. Record-keeping And Retention, Inspection Of Records.** The Contractor shall maintain records, books, files and other data as specified in a Contract and in such detail as shall properly substantiate claims for payment under a Contract, for a minimum retention period of seven (7) years beginning on the first day after the final payment under a Contract, or such longer period as is necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving a Contract. The Department shall have access, as well as any parties identified under Executive Order 195, during the Contractor's regular business hours and upon reasonable prior notice, to such records, including on-site reviews and reproduction of such records at a reasonable expense.

**8. Assignment.** The Contractor may not assign or delegate, in whole or in part, or otherwise transfer any liability, responsibility, obligation, duty or interest under a Contract, with the exception that the Contractor shall be authorized to assign present and prospective claims for money due to the Contractor pursuant to a Contract in accordance with M.G.L. C. 106, §9-318. The Contractor must provide sufficient notice of assignment and supporting documentation to enable the Department to verify and implement the assignment. Payments to third party assignees will be processed as if such payments were being made directly to the Contractor and these payments will be subject to intercept, offset, counter claims or any other Department rights which are available to the Department or the State against the Contractor.

**9. Subcontracting By Contractor.** Any subcontract entered into by the Contractor for the purposes of fulfilling the obligations under a Contract must be in writing, authorized in advance by the Department and shall be consistent with and subject to the provisions of these Commonwealth Terms and Conditions and a Contract. Subcontracts will not relieve or discharge the Contractor from any duty, obligation, responsibility or liability arising under a Contract. The Department is entitled to copies of all subcontracts and shall not be bound by any provisions contained in a subcontract to which it is not a party.

**10. Affirmative Action, Non-Discrimination In Hiring And Employment.** The Contractor shall comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law. The Contractor commits to purchasing supplies and services from certified minority or women-owned businesses, small businesses or businesses owned by socially or economically disadvantaged persons or persons with disabilities.

**11. Indemnification.** Unless otherwise exempted by law, the Contractor shall indemnify and hold harmless the State, including the Department, its agents, officers and employees against any and all claims, liabilities and costs for any personal injury or property damages, patent or copyright infringement or other damages that the State may sustain which arise out of or in connection with the Contractor's performance of a Contract, including but not limited to the negligence, reckless or intentional conduct of the Contractor, its agents, officers, employees or subcontractors. The Contractor shall at no time be considered an agent or representative of the Department or the State. After prompt notification of a claim by the State, the Contractor shall have an opportunity to participate in the defense of such claim and any negotiated



# COMMONWEALTH TERMS AND CONDITIONS

settlement agreement or judgment. The State shall not be liable for any costs incurred by the Contractor arising under this paragraph. Any indemnification of the Contractor shall be subject to appropriation and applicable law.

12. **Waivers.** Forbearance or indulgence in any form or manner by a party shall not be construed as a waiver, nor in any way limit the legal or equitable remedies available to that party. No waiver by either party of any default or breach shall constitute a waiver of any subsequent default or breach.

13. **Risk Of Loss.** The Contractor shall bear the risk of loss for any Contractor materials used for a Contract and for all deliverables, Department personal or other data which is in the possession of the Contractor or used by the Contractor in the performance of a Contract until possession, ownership and full legal title to the deliverables are transferred to and accepted by the Department.

14. **Forum, Choice of Law And Mediation.** Any actions arising out of a Contract shall be governed by the laws of Massachusetts, and shall be brought and maintained in a State or federal court in Massachusetts which shall have exclusive jurisdiction thereof. The Department, with the approval of the Attorney General's Office, and the Contractor may agree to voluntary mediation through the Massachusetts Office of Dispute Resolution (MODR) of any Contract dispute and will share the costs of such mediation. No legal or equitable rights of the parties shall be limited by this Section.

15. **Contract Boilerplate Interpretation, Severability, Conflicts With Law, Integration.** Any amendment or attachment to any Contract which contains conflicting language or has the affect of a deleting, replacing or modifying any printed language of these Commonwealth Terms and Conditions, as officially

published by ANF, CTR and OSD, shall be interpreted as superseded by the official printed language. If any provision of a Contract is found to be superseded by state or federal law or regulation, in whole or in part, then both parties shall be relieved of all obligations under that provision only to the extent necessary to comply with the superseding law, provided however, that the remaining provisions of the Contract, or portions thereof, shall be enforced to the fullest extent permitted by law. All amendments must be executed by the parties in accordance with Section 1. of these Commonwealth Terms and Conditions and filed with the original record copy of a Contract as prescribed by CTR. The printed language of the Standard Contract Form, as officially published by ANF, CTR and OSD, which incorporates by reference these Commonwealth Terms and Conditions, shall supersede any conflicting verbal or written agreements relating to the performance of a Contract, or attached thereto, including contract forms, purchase orders or invoices of the Contractor. The order of priority of documents to interpret a Contract shall be as follows: the printed language of the Commonwealth Terms and Conditions, the Standard Contract Form, the Department's Request for Response (RFR) solicitation document and the Contractor's Response to the RFR solicitation, excluding any language stricken by a Department as unacceptable and including any negotiated terms and conditions allowable pursuant to law or regulation.

**IN WITNESS WHEREOF,** The Contractor certify under the pains and penalties of perjury that it shall comply with these Commonwealth Terms and Conditions for any applicable Contract executed with the Commonwealth as certified by their authorized signatory below:

CONTRACTOR AUTHORIZED SIGNATORY: \_\_\_\_\_ (signature)

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

(Check One:);  Organization  Individual

Full Legal Organization or Individual Name: \_\_\_\_\_

Doing Business As: Name (If Different): \_\_\_\_\_

Tax Identification Number: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ FAX: \_\_\_\_\_

### INSTRUCTIONS FOR FILING THE COMMONWEALTH TERMS AND CONDITIONS

A "Request for Verification of Taxation Reporting Information" form (Massachusetts Substitute W-9 Format), that contains the Contractor's correct TIN, name and legal address information, must be on file with the Office of the Comptroller. If the Contractor has not previously filed this form with the Comptroller, or if the information contained on a previously filed form has changed, please fill out a W-9 form and return it attached to the executed COMMONWEALTH TERMS AND CONDITIONS.

If the Contractor is responding to a Request for Response (RFR), the COMMONWEALTH TERMS AND CONDITIONS must be submitted with the Response to RFR or as specified in the RFR. Otherwise, Departments or Contractors must timely submit the completed and properly executed COMMONWEALTH TERMS AND CONDITIONS (and the W-9 form if applicable) to the: **Payee and Payments Unit, Office of the Comptroller, 9th Floor, One Ashburton Place, Boston, MA 02108** in order to record the filing of this form on the MMARS Vendor File. Contractors are required to execute and file this form only once.

ATTACHMENT A  
ADDITIONAL TERMS AND CONDITIONS

**I. CONTRACT**

1. This Attachment A incorporates by reference the requirements, restrictions and conditions of the following, each as may be amended from time to time:

- (a) the provisions of G.L. c. 121B as they relate to housing authorities and the regulations promulgated thereunder;
- (b) Public Housing Notices issued by the Department;
- (c) any outstanding Contracts for Financial Assistance between the Department and Recipient; and
- (d) the COMMONWEALTH TERMS AND CONDITIONS executed by Recipient, a copy of which is attached hereto and incorporated herein.

2. The COMMONWEALTH OF MASSACHUSETTS SUBSIDY AGREEMENT, including this Attachment A, is referred to as the Contract.

**II. DEFAULT; REMEDIES**

1. Failure to comply with the terms of the Contract shall be a default thereunder for which the Department may pursue any and all remedies available to it under law and equity, including but not limited to terminating or suspending this Contract pursuant to Sections 4 and 5 of the Commonwealth Terms and Conditions, as follows:

- (a) The Department may terminate or suspend this Contract for cause by giving prior written notice to Recipient. A notice of termination hereunder shall allow a reasonable time, but not less than thirty (30) calendar days prior to the specified effective date of termination, for the correction of any breach or failure to perform. The Department shall give at least fifteen (15) calendar days' notice prior to the specified effective date of a suspension and shall specify a suspension period of no greater than sixty (60) calendar days.
- (b) If the Department determines that any breach or failure to perform by Recipient endangers the life, health, or safety of the tenants of Recipient, or that immediate action is necessary to protect state and/or federal funds or property, the Department may take immediate action to suspend this Contract for a period of no greater than sixty (60) calendar days or alternatively to terminate this Contract.
- (c) Written notice of termination or suspension shall be given by letter, return receipt requested, or hand carried. Such termination or suspension shall be effective upon Recipient's receipt of written notice thereof. Failure by Recipient to respond to the notice of suspension within five (5) business days of receipt of the notice or failure by Recipient to cure any breach or failure to perform within the suspension period shall be cause for immediate termination. If the Contractor cures to the Department's satisfaction within the suspension period, the Department shall rescind the suspension immediately.



COMMONWEALTH OF MASSACHUSETTS
SUBSIDY AGREEMENT

[This Subsidy Agreement has been issued by the Office of the Comptroller for subsidies or other legislatively authorized payments to a named Recipient under 815 CMR 2.00.]

Commonwealth Of Massachusetts- Department: Department of Housing & Community Development

Address: 100 Cambridge Street, Suite 300 - Boston, MA 02114

Contact Person: Ayo Yakubu-Owolewa Telephone: (617) 573-1233

Recipient Name: Housing Authority

Address:

Contact Person: Executive Director Telephone:

Total Amount Of Subsidy Payment(s) \$ see attached

Number Of Payments To Be Made: 10 Payment(s). Attach details of multiple payment amounts, if applicable. Per year.

Amount of First Payment: \$ see attached

Anticipated Date of First Payment: July 1, 2012 Attach schedule of additional payments, if applicable.

Termination Date Of Subsidy Agreement (Payments can not be made after the expiration date of the account funding this Subsidy Agreement.): June 30, 2013

1. The Department and the Recipient understand and agree that pursuant to: [Indicate citation for Legislative Authorization for Subsidy] Chapter 121 B, the Department is legislatively authorized to initiate a payment(s) of funds to the Recipient. Payments are subject to any conditions required by law as a prerequisite to payment, including any restrictions or conditions specified by the Department in this Subsidy Agreement. Payments can not be made to the Recipient prior to the date that this Subsidy Agreement, including all relevant attachments, has been properly executed by authorized signatories of both parties in accordance with all relevant attachments, has been properly executed by the authorized signatories of both parties in accordance with all relevant general or special laws and regulation, and filed with the Office of the Comptroller. Notwithstanding the termination date of this Subsidy Agreement, the Recipient's obligations under Sections 2. and 3. shall survive the termination of this Subsidy Agreement.

2. The Recipient agrees to expend funds provided under this Subsidy Agreement in accordance with all applicable federal and state general and special laws and regulations and any restrictions or conditions specified by the Department by attachment to this Subsidy Agreement. Any actions arising out of this Subsidy Agreement shall be governed by the laws of the Commonwealth of Massachusetts. The Recipient may not use any funds provided or paid under this Subsidy Agreement for any partisan political activity or to further the election or defeat of any candidate for public office.

3. The Recipient understands and agrees that the Department, the State auditor and the Comptroller shall be entitled to copies of any programmatic or fiscal reports that verify compliance with, or are required as a condition to, receiving funds under this Subsidy Agreement, or that are specified by attachment to this Subsidy Agreement.

IN WITNESS WHEREOF, the Department and the Recipient have caused this Subsidy Agreement to be executed by their respective authorized officers, as of the last date specified below:

DEPARTMENT:

RECIPIENT:

X:

X:

Signature

Signature

Lizbeth Heyer

Print Signatory Name

Print Signatory Name

Associate Director

Executive Director

Title

Title

Date

Date