



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

Charles D. Baker, Governor ♦ Karyn E. Polito, Lt. Governor ♦ Jennifer D. Maddox, Acting Undersecretary

Public Housing Notice 2018-09

To: All Local Housing Authorities

From: Amy Stitely, Associate Director, Division of Public Housing

Date: April 10, 2018

RE: Management Services Agreement Guidelines and Templates

1. Purpose

This Public Housing Notice (PHN) provides guidance for Local Housing Authorities (LHAs) seeking to enter into a services agreement where another LHA takes responsibility for managing its day-to-day operations. This PHN includes:

- DHCD policy on Management Services Agreement fees and salary from fees;
- Three (3) Management Services Agreement templates and work plan outlines;
- Recommended practices for LHAs to follow prior to entering into an agreement; and
- DHCD's approval process and expectations during the term of the agreement.

2. What is a Management Services Agreement?

A Management Services Agreement (“Agreement”) as used in this Public Housing Notice is a contract between two (2) Local Housing Authorities (LHAs), or between an LHA and a consultant, as approved by DHCD, in which the contractor (the “Management Agent”) performs all day-to-day operations for the LHA seeking management services (the “Owner”). This includes, but is not limited to, the planning, coordinating and carrying out all responsibilities of the Owner's operations, such as the administration of programs and maintenance of the Owner's properties. The Management Agent is responsible for the assignment, direction and supervision of the Owner's existing staff (if any) and/or its own staff in performing these services.

An Owner and, in certain circumstances, DHCD may seek a Management Agent to oversee the Owner's operations through an Agreement. In exchange, the Management Agent is entitled to earn a Management Fee from the Owner, which is negotiated between both parties' Boards. Except for the Interim Executive Director/Consultant Agreement, all Management Services Agreements are between LHAs, not individuals. *All Management Services Agreements must be approved by DHCD and do not become effective until approved by DHCD.*

3. Applicability of this Public Housing Notice

The guidelines, policies, and templates in this PHN apply to the following Management Service Agreement situations:

- a) LHAs operating under an expired Agreement;
- b) LHAs operating under an Agreement expiring prior to the Agent or Owner's Budget Submission Deadline;
- c) LHAs operating under an interim (e.g., month-to-month or sixty-day) Agreement; and
- d) LHAs under an Agreement currently in effect that is set to automatically renew after the effective date of this PHN.

Agreements that are within an active contract term may, but are not required to, be amended in accordance with this PHN. However, all Agreements that are currently expired or include automatic renewal clauses must enter into a new Agreement under this guidance, using the appropriate Agreement template, and in accordance with Section 10 of this PHN. Moving forward, DHCD will not approve any Agreements with automatic renewal clauses.

Normally DHCD would expect LHA Management Agents to submit new Agreements to DHCD for approval at least sixty (60) days prior to the end of the Owner or Management Agent's Fiscal Year End (FYE) or the sixty (60) days prior to the expiration date, whichever is sooner. However, in this transition year, affected LHAs should follow the deadlines in Section 10 of this PHN.

IMPORTANT DEADLINES FOR FISCAL YEAR 2018: For affected LHAs, please see Section 10 *"Procedure for Renewing an Expired Management Services Agreement"* of this PHN for the required submittal information and the applicable deadlines.

4. Types of Management Services Agreements

LHAs are expected to use the appropriate Agreement template attached herein. Failure to use the appropriate template may delay DHCD's review and/or approval of the Agreement. There are three templates:

1. Basic Management Services Agreement (Attachment A). The Basic Agreement is used when an LHA Owner hires an LHA Management Agent to manage the Owner's day-to-day operations. This is a straightforward contract for use when there are no extraordinary operational challenges at the Owner's property or operations. In this situation, the Agent's executive director supervises the Owner's staff (if any), and there may be sharing of staff (i.e., an employee's time is expected to be allocated to more than one LHA's programs and/or properties).

If the Management Agent is allocating staff to the Owner, the Management Agent will be expected to include a staffing plan - a table of organization indicating positions currently employed by the Management Agent and how they will interact with or be deployed at the Owner LHA - as part of the Agreement. This Agreement template may also be used for a Management Agent managing LHAs on behalf of more than one Owner.

2. Management Services Agreement for LHA with Extraordinary Operational Challenges (Attachment B). DHCD makes the determination of when an LHA falls into this category. This Agreement is for LHAs that have a variety of deficiencies in their day-to-day operations and staff capacity to be remediated by the Management Agent. The Management Agent will develop and attach a Management Work Plan that sets out a plan to remediate the deficiencies and address the day-to-day issues and staff capacity (or sharing of staff). The Management Work Plan should provide goals and timelines to meet the Owner's objectives as well as the objectives of DHCD. This Agreement template may also be used for a Management Agent managing LHAs on behalf of more than one Owner.
3. Interim Executive Director/Consultant Agreement (Attachment C). This Agreement is to be used when the Owner hires a consultant, individual or an LHA, to manage the property on a *temporary basis*. This usually happens in emergency situations (i.e., the Owner's Executive Director suddenly resigns, passes away, etc.) when the Owner needs someone immediately to manage the LHA while conducting a hiring process for a new Executive Director or looking for a long term Management Agent.

SUMMARY OF MANAGEMENT SERVICES AGREEMENT TYPES			
	1. Basic Agreement	2. LHA with Extraordinary Operational Challenges	3. Interim Executive Director/Consultant
Owner Characteristics	No complications or issues with property or operations.	Variety of deficiencies in day-to-day operations and staff capacity, as determined by DHCD.	Emergency or interim situation necessitates temporary management.
Maximum Term	Up to Five (5) Years per Agreement.	Up to Five (5) Years per Agreement.	As needed.
Will Agreement extend beyond original term?	No. New DHCD approved Agreement required. See <u>Section 10</u> .	No. New DHCD approved Agreement required. See <u>Section 10</u> .	Yes, subject to written notification and DHCD Approval.
Agreement Effective Date	Upon DHCD Approval.	Upon DHCD Approval.	Upon DHCD Approval.
Management Work Plan Required?	No.	Yes; one for each Owner.	As needed.
Multiple Owner Work Plan Required?	Yes, if LHA managing more than one (1) Owner simultaneously.	Yes, if LHA managing more than one (1) Owner simultaneously.	Not Applicable.
Staffing Plan Required?	Yes, if sharing staff.	Yes, if sharing staff.	As needed.

5. Management Services Agreement Fees

The Management Services Agreement Fee Schedule below identifies the methodology for determining the *maximum* fee that an LHA may charge on an annual basis for managing a Small LHA's (1-199 units) operations. This Fee Schedule does not apply to management of larger LHAs (200+ units); in these situations, the Management Fees and percent of Executive Director Salary taken from the Fee will be negotiated between the two LHAs in consultation with DHCD.

The *maximum* Management Fee is based on the cost savings to the Owner accrued by not hiring its own executive director. This cost savings, or Avoided Cost, is equal to the LHA Calculated Salary Maximum for that LHA, plus up to 25 percent of the LHA Calculated Salary Maximum, as an offset to fringe benefits costs. The Owner and Management Agent are expected to negotiate in good faith a reasonable

Management Fee for the services provided. DHCD will work with both parties on a case-by-case basis to determine the Management Fee when DHCD finds that the Owner has extraordinary operational challenges that must be remediated.

In all circumstances, the Management Fee paid by the Owner must fit within the Owner's current ANUEL. DHCD will not grant budget exemptions for Management Fees. The Board for both the Management Agent and the Owner must approve each Agreement before it is executed and submitted to DHCD for approval, in accordance with Section 9 and Section 10 of this PHN.

The Owner and Management Agent may amend the Agreement during the contract term if the parties wish to adjust the Management Fee by signing and submitting to the Owner's Housing Management Specialist (HMS) the Management Services Agreement Amendment (see Attachment D). Mid-term amendments should have an effective date that coincides with the Owner LHAs' fiscal year end and must be approved by DHCD before they become effective.

6. Executive Director Salary from Management Fee

The Management Agent may allocate a portion of negotiated Management Fee toward its executive director's salary, subject to approval by the Board of the Management Agent and DHCD. The maximum annual salary that the executive director may receive from the Management Fee varies with the size of the Management Agent LHA (40%, 30%, or 20%, depending on the total number of units and leased vouchers included in the Management Agent's own operation).

It is the responsibility of the Management Agent's Board to determine the appropriate portion of the fee that it will allocate towards executive director salary. The Board-approved salary should take into consideration the executive director's performance to-date, any additional responsibilities required under the Agreement, as well as how the additional resources might be required or useful in the effective management of multiple LHAs.

IMPORTANT for FY2018: The Board-approved salary from the Management Fee must be included in the Management Agent's Executive Director Salary Worksheet and submitted as part of the Fiscal Year 2018 Budget (or as part of a budget revision), along with the duly executed Agreement.

MANAGEMENT SERVICES AGREEMENT FEE SCHEDULE		
Size of Management Agent	Maximum Annual Management Fee (\$)	Maximum Percent (%) of Fee to Executive Director Salary
Small LHA (1 - 199 Units) Managing Small LHA (1-199 Units)	Avoided Cost of Owner LHA Calculated Salary Maximum plus up to 25% for benefit costs	40% of DHCD Approved Management Fee
Medium LHA (200 - 499 Units) Managing Small LHA (1-199 Units)	Avoided Cost of Owner LHA Calculated Salary Maximum plus up to 25% for benefit costs	30% of DHCD Approved Management Fee
Large LHA (500 - 999 Units) Managing Small LHA (1-199 Units)	Avoided Cost of Owner LHA Calculated Salary Maximum plus up to 25% for benefit costs	20% of DHCD Approved Management Fee
Any LHA managing an LHA with more than 199 Units and/or LHAs of any size with extraordinary operational challenges	Management Services Agreement Fee and Salary as negotiated in consultation with DHCD	

7. Pre-Agreement Due Diligence

Owner Due Diligence:

It is prudent for Owners to assess prospective Management Agents before committing to a potentially long-term contract. Accordingly, DHCD advises that LHAs seeking a Management Agent *for the first time* complete the Management Agent Questionnaire (Attachment E) *prior to* executing an Agreement to assist in evaluating prospective Management Agents. The Questionnaire includes questions regarding regulatory compliance and operational performance, capacity, efficiencies and effectiveness. Much of this information can be found in the LHA's Performance Management Review (PMR) and Agreed Upon Procedures (AUP), which are state-mandated assessments of LHA operations, management and compliance. LHAs are encouraged to consult these reports when completing the Questionnaire.

The Owner should also weigh the costs of obtaining a Management Agent in lieu of hiring an executive director. For Small LHA Owners (1-199 Units), the Management Fee will never exceed the salary

maximum for an executive director, plus 25 percent. Keeping in mind that the Management Agent will likely use the Management Fee to at least cover its existing costs and as additional revenue for its own operations, savings for the Owner may be realized through:

1. Negotiating a fee that is less than the Maximum that is prescribed in the schedule above;
2. Lower benefits costs than what would have been spent when hiring a new executive director; and
3. Reduced other administrative costs from efficiencies gained through economies of scale (e.g., renting of office space, supplies, travel).

Management Agent Due Diligence:

DHCD strongly encourages prospective Management Agents to also conduct due diligence prior to entering into an Agreement. At minimum, DHCD recommends that the LHA consult the Owner's existing policies and financial statements, as well as the Owner's PMR and AUP.

Management Work Plans:

LHAs seeking to manage Owners with extraordinary operational challenges are required to complete a Management Work Plan (Attachment F) as a condition of the Agreement. The Management Work Plan is a comprehensive assessment that identifies deficiencies in the Owner's operations and establishes remedies for any deficiencies found.

Management Agents are advised to refer to the Management Work Plan as a starting point for due diligence, and to complete a draft prior to executing an Agreement. The LHA is also encouraged to consult the Owner's PMR and AUP when developing the Management Work Plan. Final Management Work Plans are due within the 30 days after DHCD approval of the Agreement. The Agreement will be voided if the Management Work Plan is not completed within 30 days of DHCD approval.

8. Managing Multiple Owner LHAs

There is no limit to how many Owners an LHA may manage simultaneously. However, Management Agents managing more than one (1) Owner simultaneously are required to submit a Multiple Owner Work Plan to DHCD as part of the Agreement approval process (see Sections 9 and 10 of this PHN for more information on the approval process).

In situations where three or more LHAs are entering into an Agreement, there must be a single Management Agent that has an executive director who must have an executive director contract only with that Agent. DHCD will not approve an Agreement between an Owner and a Management Agent where the executive director of the Management Agent is a part-time employee of two LHAs (a “Dual ED LHA”). In these circumstances, the executive director may enter into an employment contract with only one LHA (the largest of the two LHAs) and that LHA may then become the Management Agent for each of the other LHAs.

The Multiple Owner Work Plan (Attachment G) details how the Management Agent expects to allocate available resources to ensure effective management of each LHA simultaneously. Whenever a Management Agent enters into an Agreement with an additional Owner, the Multiple Owner Work Plan will need to be revised and approved by DHCD (see Section 9 of this PHN). At a minimum, the Multiple Owner Work Plan is expected to include the following elements:

- 1) A budget and written description of how the LHA will allocate personnel and other costs across all LHAs;
- 2) Identification of Management Agent costs that the Management Fee will likely cover; and
- 3) For each Owner, a list of the established goal(s), measurable outcome(s) and target date(s) within the proposed term of the Agreement. For example:

<i>Goal:</i>	<i>Reduce vacancy rate</i>
<i>Measurable Outcome:</i>	<i>By 5%</i>
<i>Target Date:</i>	<i>By expiration date of Agreement</i>

LHAs may use any format it chooses to create the Multiple Owner Work Plan, so long as it includes at a minimum the information above. DHCD will evaluate the Multiple Owner Work Plan to determine its reasonableness and feasibility, taking into consideration the following:

- 1) The provision of administrative staff hours at each Owner. Administrative staff hours should meet or exceed the required executive director hours for each Owner, as stated in the LHA Executive Director Salary and Qualifications Schedule then in effect.

- 2) The provision of maintenance Full Time Equivalents (FTEs) at the Management Agent and at each Owner. Maintenance FTEs should meet or exceed a ratio of at least one (1) FTE per 80 elderly units and at least one (1) FTE staff per 40 family units.
- 3) The LHAs' budget capacity to support the proposed staff allocation, without the need for DHCD direct exemption.
- 4) The Management Agent's track record and capacity to oversee the allocated staff.
- 5) The Management Agent's use of contracted services that can reasonably deliver cost or time-saving measures without otherwise compromising effective administration at each LHA.
- 6) Adherence to maximum Management Fee limits as stated in Section 5 and maximum Executive Director salary limits as stated in Section 6.
- 7) Where applicable, the feasibility of achieving the proposed work plan goals and outcomes within target dates. Work plans are required for Management Agents providing management services for multiple Owners or for operationally challenged Owners, per DHCD definition.

9. Procedure for DHCD Approval of First-Time Management Services Agreement

To ensure that Agreements are processed in an expedited manner, DHCD advises LHAs entering into an Agreement together *for the first time* to follow these steps, working in conjunction with the Owner's assigned DHCD Housing Management Specialist (HMS).

1. Contact the Owner's assigned HMS to state the LHA's interest in seeking or becoming a Management Agent. The HMS will be able to provide the appropriate Agreement template based on the Owner's circumstance, determine whether a Multiple Owner and/or Management Work Plan will be required, and whether DHCD needs to be consulted in the Management Fee negotiations.
2. Calculate the maximum Management Fee
(See Attachment H for the Management Fee Calculation Worksheet).
3. Engage the prospective Management Agent(s) / Owner and complete the Management Agent Questionnaire (Attachment E). If the Owner is determined by DHCD as having extraordinary operational challenges, DHCD may recommend and/or communicate with a potential Management Agent on the Owner's behalf.
4. Negotiate the terms and Management Fee. DHCD must be consulted in these negotiations for Owners with 200 units or more, or if DHCD determines that the Owner is experiencing extraordinary operational challenges.

5. Draft the Agreement using the template provided by DHCD and draft the Multiple Owner and/or Management Work Plan, if applicable.

NOTE: Prior to Board Execution, DHCD advises that either the proposed Management Agent or the Owner provide these draft documents to the Owner's assigned HMS to preemptively flag and resolve any issues prior to executing the Agreement.

6. The Owner or the Management Agent should, a *minimum of sixty (60) days prior to the proposed Agreement effective date*, send the following by email to the Owner's assigned HMS:
 - Cover Letter
 - Signed Agreement executed by the Owner(s) and the Management Agent;
 - Copy of Board Vote from Owner(s) and Management Agent approving the Agreement;
 - Management Fee Calculation Worksheet;
 - Completed Management Agent Questionnaire; and
 - If applicable, *draft* Multiple Owner and/or Management Work Plan.
7. Barring unusual circumstances, DHCD will review and respond within 30 (thirty) business days of receipt, provided that all required supporting documentation has been received. Agreements become effective upon the date of DHCD approval.
8. If applicable, submit to the Owner's assigned HMS *within thirty (30) business days of DHCD approval of the Agreement*:
 - The final Management Work Plan(s), which will become a part of the Agreement. *Failing to complete the Management Work Plan within the thirty (30) business days after DHCD approval will void the Agreement.*
 - The final Multiple Owner Work Plan.

10. Procedure for Renewing an Expired Management Services Agreement

All Agreements will terminate at the end of their current active term. There is no automatic renewal or extension; the LHAs must enter into a new Agreement. New Agreements are required for:

- a) LHAs operating under an expired Agreement;
- b) LHAs operating under an Agreement expiring prior to the Agent or Owner's Budget Submission Deadline, whichever is earlier;
- c) LHAs operating under an interim (e.g., month-to-month or sixty-day) Agreement; and
- d) LHAs under an Agreement currently in effect that is set to automatically renew after the publication date of this PHN.

Agreements become effective upon the date of DHCD approval. To receive approval from DHCD in a timely manner, the Owner or the Management Agent should submit to the Owner's assigned HMS by email *a minimum of sixty (60) days prior to the Agreement expiration date* the:

- Cover Letter;
- Signed Agreement executed by the Owner(s) and the Management Agent;
- Copy of Board Vote from Owner(s) and Management Agent approving the Agreement;
- Management Fee Calculation Worksheet(s); and, if applicable
- Draft Multiple Owner and/or Management Work Plan(s). The final Work Plan(s) must be submitted within thirty (30) business days of DHCD approving the Agreement.*

IMPORTANT DEADLINES for FY2018:

The deadlines for submitting the information in this Section 10 corresponds with the fiscal year end of the Management Agent or Owner(s), whichever is sooner. The applicable deadlines are provided below. If the Management Agent and Owner(s) have already submitted their Fiscal Year 2018 Budget, revisions to the Budget and the Executive Director Salary Worksheet may be required, as the management fee and/or executive director salary may have changed as a result of these guidelines. If this is the case, be sure to include a revised Executive Director Salary Calculation Worksheet voted by the Board and signed by the Board chair with the Budget Revision.

6/30 FYE LHAs

Submit the information in this Section 10 no later than May 31, 2018. If the Fiscal Year 2018 Budget has not yet been submitted, submit the Budget no later than May 31, 2018. LHAs with a 6/30 FYE that have already submitted the Fiscal Year 2018 Budget will need to submit the information in this Section 10 and a Budget Revision no later than May 31, 2018.

9/30 FYE LHAs

Submit the information in this Section 10 no later than May 31, 2018. LHAs with a 9/30 FYE that have already submitted the Fiscal Year 2018 Budget will need to submit a Budget Revision no later than August 1, 2018.

12/31 FYE LHAs

Submit the information in this Section 10 and the Fiscal Year 2018 Budget no later than May 31, 2018 (revised from April 30, 2018).

3/31 FYE LHAs

Submit the information in this Section 10 and the Fiscal Year 2018 Budget no later than May 31, 2018 (no change from original FY18 Budget Deadline).

Barring unusual circumstances, DHCD will review and respond within thirty (30) business days of receipt, provided that all required supporting documentation has been received.

11. Management Agent Expectations

This PHN is intended to provide tools and guidance for LHAs to navigate the management agreement process and to establish clear expectations between all parties prior to entering into such an agreement. During the term of the Agreement DHCD will monitor for the following situations which could negatively impact an Agreement:

- 1) A change to the Management Agent's Executive Director.
- 2) More than one year of unsatisfactory management performance, as documented in federal or state audits, Agreed Upon Procedures financial reviews, and/or Performance Management Reviews.
- 3) Failure to provide required submissions and certifications to DHCD.

DHCD will notify the Owner and Management Agent Boards if any of these situations occurs and is cause for concern. Where there are serious concerns, DHCD may withhold subsidy and/or recommend that the Owner terminate the Agreement.

If you have any questions regarding this PHN, please feel free to contact Robert A. Muollo, Asset Management / Redevelopment Specialist at Robert.muollo@mass.gov.