



Yolo County Housing

Lisa A. Baker, Executive Director

147 W. Main Street
WOODLAND, CA 95695

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BOARD OF COMMISSIONERS

Duane Chamberlain
Marlene Garnes
Michael H. McGowan
Jim Provenza
Matt Rexroad
Helen M. Thomson
Bernita Toney

DATE: December 9, 2010
TO: YCH Board of Commissioners
FROM: Lisa A. Baker, Executive Director
SUBJECT: **Review and Approve Proposed Employment Agreement with the Executive Director and Authorize the Board Chair to Execute the Agreement**

RECOMMENDED ACTIONS:

That the Board of Commissioners:

1. Review and approve the proposed employment agreement with the Executive Director; and
2. Authorize the Board Chair to Execute the Agreement.

BACKGROUND / DISCUSSION

After an executive search and conducting interviews on September 19, 2006, the Yolo County Housing ("YCH") Board of Commissioners extended an offer of employment to Lisa A. Baker to serve as Executive Director of YCH. In April of 2007, Ms. Baker's employment agreement was extended from a three (3) year agreement to five (5) years, expiring November 19, 2011. As part of the original terms of the agreement, the Executive Director is entitled to an annual 5% increase per year based on successful performance. As part of the process of transitioning from the interim Board of Commissioners to a new permanent Board of Commissioners, it is proposed to enter into a new five (5) year agreement with the Executive Director. The terms of the proposed agreement are as follows:

- A four percent (4%) merit increase for Ms. Baker;
- There will be no automatic pay increase clause in the new agreement.

FISCAL IMPACT

The salary for the Executive Director was included in the FY 2010-2011 budget.

CONCLUSION

Ms. Baker has fulfilled her obligations under the employment agreement as of November 2010 and it is recommended that she continue to serve as Executive Director and that the proposed new five (5) year agreement be approved.

Attachment: Employment Agreement

YOLO COUNTY HOUSING
AGREEMENT NO. _____

**SECOND AMENDED AND RESTATED EMPLOYMENT AGREEMENT
OF EXECUTIVE DIRECTOR**

THIS AGREEMENT is made this _____ day of October, 2010, by and between the Housing Authority of the County of Yolo, a public body corporate and politic (hereinafter referred to as "YCH"), and Lisa A. Baker, an individual (hereinafter referred to as "EMPLOYEE"), who agree as follows:

RECITALS

WHEREAS, on October 3, 2006, the parties entered into Agreement No. 06-06 to employ EMPLOYEE as YCH's Executive Director; and

WHEREAS, on April 17, 2008, the parties entered into Agreement No. 08-03 to extend the term of Agreement No. 06-06; and

WHEREAS, on January 14, 2010, the parties made an addendum to Agreement No. 08-03 to modify EMPLOYEE's annual salary; and

WHEREAS, the Board of Commissioners of YCH (hereinafter referred to as "BOARD") and EMPLOYEE have determined that it is in the best interests of YCH to further extend the term of EMPLOYEE's employment with YCH for an additional five (5) years; and

WHEREAS, the parties wish to enter into this Second Amended and Restated Employment Agreement of Executive Director (hereinafter referred to as "Agreement"), which sets forth the terms and conditions of said employment.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth in this Agreement, the parties agree as follows:

SECTION 1.0. TERM OF EMPLOYMENT

Section 1.01 **Term:** The BOARD hereby employs EMPLOYEE and EMPLOYEE hereby accepts employment with YCH for a period of nine (9) years, commencing on November 20, 2006 and ending at midnight on November 20, 2015.

Section 1.02 **Option to Extend Agreement:**

- A. If EMPLOYEE complies with all of the terms and conditions of this Agreement, then and in such event, the BOARD may elect, on or before July 31, 2015, to further extend the term of this Agreement for an additional two (2) year period, subject to the parties negotiating prior to

July 31, 2015 the terms and conditions of employment mutually agreeable to both parties.

- B. In the event that either (1) the BOARD fails to elect to exercise this option by July 31, 2015, or (2) the parties fail to negotiate the terms of the contract by July 31, 2015, then this Agreement shall continue or terminate as provided for in Section 1.03 of this Agreement.

Section 1.03 **Expiration of Term:** In the event that the parties to this Agreement do not enter into such a written extension agreement as referred to in Section 1.02 on or before July 31 of the initial or any extended term, then and in such event this Agreement shall be automatically renewed and extended on the same terms and conditions as then in effect on an annual basis unless either the BOARD or EMPLOYEE gives written notice to the other party by August 1 of the year in which the Agreement is to expire, that it is the expressed intention of that party that the Agreement terminate on the expiration date.

Section 1.04 **At-Will Employee:** EMPLOYEE understands and agrees that EMPLOYEE serves at the pleasure of the BOARD and may be terminated at the will of the BOARD, subject to the provisions set forth in Section 5.02 of this Agreement. In like manner, nothing in this Agreement shall prevent, limit or otherwise interfere with the right of EMPLOYEE to resign at any time from the position of Executive Director, subject only to the provisions set forth in Section 5.02 of this Agreement.

SECTION 2.0. DUTIES AND OBLIGATIONS OF EMPLOYEE

Section 2.01 **Duties:**

- A. The BOARD hereby agrees to employ EMPLOYEE as Executive Director of YCH to perform the functions and duties as specified in the Job Description for the position of Executive Director, marked Exhibit "A", attached hereto and made a part herein by this reference, and to perform such other legally permissible and proper duties and functions as the BOARD shall, from time to time, assign to EMPLOYEE which are reasonably related to the position of Executive Director.
- B. EMPLOYEE shall report to and be responsible to the BOARD. EMPLOYEE will be responsible and will have full authority for the management of YCH, subject to and in accordance with the policies and direction set by the BOARD. The BOARD retains the right to alter the specific duties of EMPLOYEE; however, the duties will at all times be consistent with the position of an executive director of a public housing authority.

Section 2.02 **Devotion to Duties:** EMPLOYEE will faithfully perform the duties assigned to EMPLOYEE to the best of EMPLOYEE's ability during the employment term of this Agreement; provided, however, this provision shall not be

interpreted or intended to prohibit EMPLOYEE from making passive personal investments in accordance with Conflict of Interest Laws and Regulations.

- A. EMPLOYEE shall not engage in any outside employment or consulting work, unless EMPLOYEE first obtains the express written approval from the BOARD.
- B. EMPLOYEE may telecommute from home as necessary a minimum of two (2) days per month, or as permitted by YCH's policies, whichever is greater, provided that EMPLOYEE's telecommuting does not negatively interfere with EMPLOYEE's ability to perform her duties in a satisfactory manner.

Section 2.03 **Relationship with Board:** EMPLOYEE shall perform said duties, subject to the directives of the BOARD. EMPLOYEE and the BOARD will engage in a complete and frank exchange of views and, shall be consulted on policy decisions. EMPLOYEE is obligated to present EMPLOYEE's views to the BOARD upon request in a timely manner and in a clear and precise manner. EMPLOYEE shall be responsible for the execution of policy and for carrying out other directives of the BOARD.

Section 2.04 **Performance Evaluation Procedure:** The BOARD shall review and evaluate the performance of EMPLOYEE on an annual basis. Said review and evaluation shall be in accordance with specific criteria developed by the BOARD with input from EMPLOYEE. EMPLOYEE, in consultation and with the approval of the BOARD, shall establish performance goals and objectives for the upcoming year. The criteria for EMPLOYEE's annual evaluation shall include consideration of EMPLOYEE's performance in accordance with EMPLOYEE's stated performance goals and objectives during the immediately preceding twelve-month period. The evaluation shall be performed by the BOARD. Any adjustment in salary as it relates to the annual performance evaluation shall be effective November 20th, unless otherwise mutually agreed by the parties.

SECTION 3.0. COMPENSATION OF THE EXECUTIVE DIRECTOR

Section 3.01 **Annual Base Salary:** The BOARD agrees to pay to EMPLOYEE for services rendered by EMPLOYEE pursuant to this Agreement an annual base salary of One Hundred Twenty-Five Thousand Dollars and No Cents (\$125,000.00), commencing on November 20, 2006 and ending on November 19, 2007, calculated as an annual amount payable in equal installments at the same time and in the same manner as other employees of YCH are paid. Beginning on November 20, 2007, EMPLOYEE's annual base salary shall be One Hundred Thirty-One Thousand Two Hundred Fifty Dollars and No Cents (\$131, 250.00), calculated as an annual amount payable in equal installments at the same time and in the same manner as other employees of YCH are paid. Beginning on November 20, 2010, EMPLOYEE's annual base salary shall be One Hundred Forty-Three Thousand Three Hundred Twenty-Four

Dollars and No Cents (\$143,324.00), calculated as an annual amount payable in equal installments at the same time and in the same manner as other employees of YCH are paid. Thereafter during the remainder of the term of this Agreement, provided that EMPLOYEE's job performance is satisfactory to the BOARD, the BOARD, in its sole discretion, may increase EMPLOYEE's annual base salary by no more than four percent (4%) on November 20th of each year.

Section 3.02 **Modification of Annual Base Salary:** The BOARD, in its sole and absolute discretion, may increase the annual base salary of EMPLOYEE by following the Performance Evaluation Procedure of Section 2.04. Any modification made to EMPLOYEE's salary shall be in the form of a written addendum to this Agreement.

Section 3.03 **Cost of Living Adjustment:** Beginning on or after July 1, 2007, EMPLOYEE shall be entitled to receive and shall receive such cost of living adjustment(s) provided by YCH to its other management employees during the term of this Agreement, at the same rate accorded to said employees.

SECTION 4.0. EMPLOYEE BENEFITS

Section 4.01 **Generally:** Except as otherwise provided in this Section 4.0, EMPLOYEE shall be entitled to receive and shall receive all employee benefits provided by YCH to its management employees at the same rate accorded to said employees, including but not limited to, retirement benefits, health, dental and vision coverage, sick leave, and holidays, and shall be similarly compensated as provided by law for any unused accruals at termination of employment.

Section 4.02 **Vacation:**

- A. For Years 1 and 2 of this Agreement, beginning on November 20, 2006 and ending on November 19, 2008, EMPLOYEE shall be entitled to receive eighty (80) hours of paid vacation per year.
- B. For Year 3, beginning on November 20, 2008 and ending on November 19, 2009, EMPLOYEE shall be entitled to receive one hundred twenty (120) hours of vacation.
- C. Beginning on or after November 20, 2009, EMPLOYEE shall be entitled to receive one hundred twenty (120) hours of vacation, unless the parties mutually agree otherwise.
- D. EMPLOYEE may accrue a maximum of three hundred twenty (320) hours of vacation.

Section 4.03 **Holidays:**

- A. EMPLOYEE shall be entitled to receive ten (10) paid holidays per year in the same manner as is provided to its other management employees by YCH.
- B. EMPLOYEE shall be entitled to receive four (4) paid floating holidays annually.

Section 4.04 **Administrative Leave:** EMPLOYEE shall be entitled to receive one hundred (100) hours of paid administrative leave per year.

Section 4.05 **Leave Buy-Back:** EMPLOYEE shall have the option of accrued leave buy-back, not to exceed fifty (50) hours per fiscal year. For purposes of “buy-back,” leave is defined as only vacation, administrative leave, and floating holidays. All requests for buy-back shall be submitted in writing to the BOARD Chairperson and forwarded to the YCH Finance Department for processing. Payments will be issued as soon as administratively feasible.

Section 4.06 **Sick Leave:** EMPLOYEE shall be entitled to receive twelve (12) days of paid sick leave per year. All unused sick leave may be carried forward into the next year.

Section 4.07 **Automobile Allowance:** EMPLOYEE shall use her own automobile for transportation. During the term of this Agreement, EMPLOYEE shall be entitled to receive an automobile allowance of Seven Thousand Two Hundred Dollars and No Cents (\$ 7,200.00) per year.

Section 4.08 **Cell Phone Allowance:** During the term of this Agreement, EMPLOYEE shall be entitled to receive a cell phone allowance of Sixty-Five Dollars and No Cents (\$65.00) per month.

Section 4.09 **Professional Dues and Subscriptions:** The BOARD agrees to pay for professional dues and subscriptions of EMPLOYEE necessary for EMPLOYEE’s continuation and full participation in national and state housing YCH associations, subject to BOARD approval during YCH’s annual budget.

Section 4.10 **Expenses:** EMPLOYEE shall be entitled to reimbursement for all actual expenses incurred by EMPLOYEE in the performance of the duties of the Executive Director upon presentation of receipts indicating the amount and purpose thereof, and further provided that such expenses are in accordance with policies established from time to time by the BOARD and consistent with budget allocation adopted by the BOARD for that purpose during the term of this Agreement. Any such expenses of EMPLOYEE, not in the normal course of business or not set forth and approved in YCH’s annual budget, shall be approved by the BOARD.

Section 4.11 **Industry Organization:**

- A. The BOARD hereby agrees to pay, in accordance with YCH's Travel Policy, travel and subsistence expenses of EMPLOYEE for official travel, meetings, and occasions to adequately pursue necessary official and other functions for YCH including, but not limited to, such national, regional, state and local government groups and committees which EMPLOYEE serves as a member, provided the BOARD has made provisions for such costs in the annual budget.

- B. The BOARD also agrees to pay tuition, travel and subsistence expenses of EMPLOYEE for short courses, institutes and seminars that are necessary for EMPLOYEE's development in carrying out her duties and responsibilities and for the good of YCH, provided the BOARD has provided for same in the annual budget.

Section 4.12 **Modification of YCH Employee Benefits:** The BOARD, in its sole and absolute discretion, may increase the employee benefits of EMPLOYEE at such times and to such extent as the BOARD may determine. The BOARD shall annually review with the EMPLOYEE her on-the-job performance as Executive Director, and with a satisfactory performance, the BOARD may approve an increase in EMPLOYEE's benefits. In exercising its discretion, the BOARD shall act fairly and in good faith with EMPLOYEE. Any modification made to EMPLOYEE's benefits shall be in the form of a written addendum to this Agreement.

SECTION 5.0. RESIGNATION AND TERMINATION

Section 5.01 **Resignation:** In the event EMPLOYEE voluntarily and without the official request of the BOARD resigns the position of Executive Director before the expiration of this Agreement, EMPLOYEE shall give written notice to the BOARD at least sixty (60) calendar days in advance of the final date of employment, unless the parties otherwise agree. Such resignation shall not be deemed to be a "termination" within the meaning and context of the severance benefit provision of Section 5.02, and severance benefits shall not apply.

Section 5.02 **Early Termination of Agreement:**

- A. **Disability:**
 - 1. Subject to EMPLOYEE's rights under the provisions of the Americans With Disabilities Act and the Family and Medical Leave Act, if, for a period of four (4) successive weeks beyond any accumulated sick leave, or for twenty (20) working days over a thirty (30) day period beyond any accumulated sick leave, EMPLOYEE is permanently disabled or is otherwise unable to perform the duties of Executive Director because of illness, accident, injury, mental incapacity, or any other health or physical

condition, the BOARD may, at its option, terminate this Agreement without any prejudice to EMPLOYEE's rights to disability benefits through the Public Employees Retirement System or Workers' Compensation. However, EMPLOYEE shall be compensated for any accumulated leave time and any other benefit for which EMPLOYEE is eligible.

2. For the purposes of this Agreement and any extension thereof, disability shall be determined by two (2) physicians licensed to practice medicine in the State of California, one of which shall be selected by EMPLOYEE or her duly authorized representative. The other physician shall be selected by the BOARD. In the event the two physicians disagree as to the existence or extent of disability, a third physician shall be selected by mutual agreement of both parties. If the parties are unable to mutually agree to a third physician, the two physicians shall then select a third physician to review the matter. The physicians shall determine whether EMPLOYEE is able to perform the essential functions of the Executive Director position.

B. Termination for Cause:

1. The BOARD may terminate this Agreement, and any extension thereof, at any time for cause. The term "cause," as used in this Agreement, shall include but not be limited to, any of the following:
 - a. Substantial neglect by EMPLOYEE of her duties, obligations, and responsibilities;
 - b. EMPLOYEE's willful disobedience of orders and/or directives of the BOARD;
 - c. Probable cause that EMPLOYEE has committed a felony;
 - d. EMPLOYEE being under the influence of alcohol or drugs during regular working hours, or otherwise while performing her duties;
 - e. A material violation by EMPLOYEE of any of the terms or conditions of this Agreement or any extension thereof;
 - f. Any other cause which would amount to a material breach of the terms of this Agreement, or any extension thereof, or would constitute a ground for dismissal under YCH's Personnel Rules as those rules now exist or are hereafter amended.

2. If the BOARD exercises its authority under this paragraph B of Section 5.02 to terminate the employment of EMPLOYEE for cause, that employment shall terminate on the effective date of the termination as specified by the BOARD. Once a final decision by the BOARD has been made to terminate the employment of EMPLOYEE, and notwithstanding the provisions of paragraph C of Section 5.02 below, EMPLOYEE shall be entitled to no further compensation beyond the effective date as established by the BOARD. EMPLOYEE shall not be entitled to the severance pay benefits described in paragraph D of Section 5.02. Prior to making this final determination, the BOARD shall first provide written notice to EMPLOYEE of the BOARD's intent to consider the possible termination of this Agreement, or any extension thereof, and the BOARD shall provide EMPLOYEE an opportunity to meet with the BOARD in closed session (if permitted by law) or in open session for the purpose of permitting EMPLOYEE to provide input to the BOARD prior to the BOARD making its final determination. The BOARD shall then make its final decision and provide notice of it to EMPLOYEE.
3. The parties understand and agree that the authority to terminate this Agreement pursuant to this paragraph B of Section 5.02 is in addition to the BOARD's authority to terminate in accordance with paragraph C of Section 5.02 below. The BOARD reserves the authority to terminate for "cause" pursuant to either paragraph B or C of Section 5.02.

C. Termination For Convenience: Notwithstanding the provisions of paragraph B of Section 5.02 above, this Agreement, and any extension thereof, may be terminated at any time for any reason, with or without "cause," by the BOARD, with at least thirty (30) calendar days prior written notice to EMPLOYEE of such intent.

D. Severance Benefits:

1. If EMPLOYEE is removed from the position of Executive Director and this Agreement, or any extension thereof, is terminated pursuant to paragraph C of Section 5.02, the amount of compensation to be paid EMPLOYEE shall be a sum equal to six (6) months' salary, as determined by EMPLOYEE's current salary rate at the effective date of termination, and all accrued, unused vacation, floating holiday, and administrative leave, minus applicable federal and state withholding taxes. The parties agree that the payment of said amount shall constitute the only cash settlement to which EMPLOYEE will be entitled as a result of the termination of this Agreement, or any extension thereof, and shall satisfy any and all claims, rights, and causes of action of

EMPLOYEE in any way arising out of her employment and/or terms of this Agreement, or any extension thereof.

2. Notwithstanding subparagraph 1 above, if there are less than seven (7) months remaining on the current term of employment as of the effective date of termination, the amount of compensation to be paid EMPLOYEE shall be equal to her salary for the remainder of the term of employment and all accrued, unused vacation, floating holiday, and administrative leave, minus applicable federal and state withholding taxes. The parties agree that the payment of said amount shall constitute the only cash settlement to which EMPLOYEE will be entitled as a result of the termination of this Agreement, or any extension thereof, and shall satisfy any and all claims, rights, and causes of action of EMPLOYEE in any way arising out of her employment and/or the terms of this Agreement, or any extension thereof.

SECTION 6.0. MISCELLANEOUS PROVISIONS

Section 6.01 **Notices:** All notices under this Agreement shall be in writing and shall be deemed effective either upon personal delivery or, if sent by registered or certified mail, return receipt requested, addressed to the address of the party to whom such notice is to be given as follows:

- A. To EMPLOYEE, at her residence address as from time to time is maintained in the official records of the YCH.
- B. To YCH, addressed to the Chairperson of the Board, Board of Commissioners, Yolo County Housing, 147 W. Main Street, Woodland, CA 95695.

Any party may change the address to which notice is to be made by providing the other party with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change. Notice shall be deemed served forty-eight (48) hours after deposit in the United States mail.

Section 6.02 **Indemnification:** To the extent permitted by law, YCH shall defend, save harmless and indemnify EMPLOYEE against any and all claims, costs, liabilities, damages or demands or other legal action, whether groundless or otherwise, arising out of or connected with any alleged act or omission occurring within the course and scope of EMPLOYEE's employment as Executive Director, for that period of time commencing November 20, 2006 and continuing until EMPLOYEE leaves the employment of YCH. YCH will compromise and settle any such claims or suit and pay the amount of any settlement or judgment rendered thereon. This indemnification does not apply to any act, action or omission arising out of the gross negligence or willful misconduct on the part of EMPLOYEE.

- Section 6.03** **Severability**: If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.
- Section 6.04** **Governing Law**: This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- Section 6.05** **Attorneys' Fees**: Should any litigation be commenced between the parties concerning the rights and duties of either party in relation to this Agreement, the prevailing party in such litigation shall be entitled, in addition to such other relief as may be granted, to recover such reasonable attorneys' fees and court costs as are awarded by the court.
- Section 6.06** **Waiver of Breach**: The waiver by the BOARD or EMPLOYEE of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any prior or subsequent breach by any of the parties hereto.
- Section 6.07** **Public Records Act**: Upon its execution, this Agreement (including all exhibits and attachments) shall be subject to disclosure pursuant to the California Public Records Act.
- Section 6.08** **Entire Agreement**: This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of EMPLOYEE, and contains all of the covenants and agreements between the parties with respect to such employment in any matter whatsoever. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement will be effective unless it is in writing, signed and dated by the parties to be charged. In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first set forth above.

EMPLOYEE:

LISA A. BAKER

By _____
Lisa A. Baker
Executive Director

YCH:

HOUSING AUTHORITY OF THE COUNTY OF YOLO

By _____
Matt Rexroad, Chair
Board of Commissioners of the
Housing Authority of the County of Yolo

Approved as to Form:

By _____
Sonia Cortés, Agency Counsel

Attest:

Julie Dachtler, Clerk
Board of Commissioners of
the Housing Authority of the County of Yolo

By _____
Agency Clerk