

HOUSING AUTHORITY OF THE COUNTY OF KING

RESOLUTION NO. 5711

A RESOLUTION of the Board of Commissioners of the Housing Authority of the County of King relating to human resources; adding a new section to the Human Resources Policies and Procedures manual; confirming application of state law to Authority officers and employees; authorizing and directing appropriate officers of the Authority to execute such documents as are useful or necessary to the purposes of this resolution; and, determining related matters.

Adopted December 20, 2021

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WHEREAS, the Housing Authority of the County of King (the “Authority”) maintains a Human Resources Policies and Procedure manual; and

WHEREAS, RCW 4.96.041 (1) proves that whenever an action or proceeding for damages is brought against any past or present officer, employee, or volunteer of a local governmental entity of this state, arising from acts or omissions while performing or in good faith purporting to perform his or her official duties, such officer, employee, or volunteer may request the local governmental entity to authorize the defense of the action or proceeding at the expense of the local governmental entity; and

WHEREAS, RCW 4.96.041 (2) provides for the Authority Board, or through a procedure adopted by Board resolution, to provide for the protection of its officers, employees, and volunteers from liability consistent with RCW 4.96.041 or other applicable law; and

WHEREAS, the Authority has provided such protection and by this Resolution better documents the process and procedures for indemnification and defense of officers, employees, and volunteers subject to claims.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF KING; as follows:

Section 1. Policy Manual Amended. A new chapter is added to the Authority's Human Resources Policies and Procedures manual, and applicable as set forth herein, as follows:

Indemnification and Defense Policy

1.1 **Policy Stated.** As authorized by RCW 4.96.041, there is hereby created a procedure to provide for indemnification and defense of claims of liability arising from acts or omissions of officials and employees of the Authority, including volunteers, while performed or in good faith purported to have been performed in the scope of their official duties.

1.2 **Definitions.** Unless the context indicates otherwise, the words and phrases used in this chapter shall have the following meaning:

(a) "Employee" means any person who is or has been employed by the Authority, including volunteers and appointed members of advisory boards and the Board. "Employee" does not include independent contractors. "Employee" also includes an employee's spouse when an employee's marital community is named in any action subject to this policy.

(b) "Official" means any person who is serving or has served as a member of the Authority Board, and any person who is serving or who has served as an appointed officer of the Authority as defined by RCW 42.23.020(2), as written or hereafter amended. "Official" does not include independent contractors performing the duties of appointed positions.

1.3 Legal Representation.

(a) The Authority shall provide to an official or employee, subject to the conditions and requirements of this chapter, and notwithstanding the fact that such official or employee may have concluded service or employment with the Authority, such legal representation as may be reasonably necessary to defend a claim or lawsuit filed against such official or employee resulting from any conduct, act or omission of such official or employee performed or omitted on behalf of the Authority in his/her capacity as an Authority official or employee, which act or omission is within the scope of his/her service or employment with the Authority. The provisions of this chapter shall not operate to provide legal representation to defend a claim or lawsuit for any conduct, act, or omission resulting in the termination for cause of any official or employee.

(b) The legal representation shall be provided by such legal counsel as may be appointed by the Authority and may include the Executive Director engaging the services of outside legal counsel. If any provision of an applicable policy of insurance provides legal counsel for the employee or official, Authority legal counsel will work with the policy holder for purposes of obtaining legal representation under the existing insurance policy.

(c) In the event that outside counsel is retained, the Authority shall indemnify the employee or official from the reasonable costs of defense; provided, that in no event shall the official or employee be indemnified for legal counsel's fees in excess of the hourly rates established by the Authority's contract with legal counsel selected by the Authority. The official or employee shall be liable for all hourly rates charged more than said rate.

(d) The determination whether the official or employee was acting in good faith within the scope of his or her official duties shall be made by the Executive Director, Acting

Executive Director in consultation with the Authority legal counsel and/or outside legal counsel and the Board Chair. This determination shall be based on an investigation of the facts and circumstances surrounding the incident and shall be made as early in the proceedings as is reasonably possible. Once the determination is made, the official or employee involved shall be notified by the Authority in writing. If the employee or official involved is the Executive Director, the determination shall be made by the Board Chair in consultation with the Authority legal counsel and/or outside legal counsel based on an investigation of the facts and circumstances surrounding the incident and shall be made as early in the proceedings as is reasonably possible. Once the determination is made, the Executive Director shall be notified by the Authority in writing.

(e) In any claim involving an allegation of criminal conduct, no investigation by the Authority will occur prior to a determination of guilt, or prior to a dismissal of the criminal charge with prejudice, so as not to compromise the official's or employee's constitutional right against self-incrimination. Any determination made under this Section shall not be subject to appeal.

1.4 Exclusions. Except as otherwise determined pursuant to Section 1.3, in no event shall protection be offered under this chapter by the Authority to:

(a) Any dishonest, fraudulent, criminal, willful, intentional or malicious act or course of conduct of an official or an employee.

(b) Any act or course of conduct of an official or employee which is not performed on behalf of the Authority.

(c) Any act or course of conduct which is outside the scope of an official's or employee's service or employment with the Authority; and/or,

(d) Any lawsuit brought against an official or employee by or on behalf of the Authority; or, brought by an official or employee against the Authority or any other official or employee of the Authority.

(e) Any action or omission contrary to RCW 35.82.050 or contrary to or not in furtherance of any adopted Authority policy.

1.5 Reserved Rights. Nothing herein shall be construed to waive or impair the right of the Authority to institute suit or counterclaim against any official or employee nor to limit its ability to discipline or terminate an employee.

1.6 Policy Secondary to Insurance. The provisions of this chapter shall have no force or effect with respect to any accident, occurrence or circumstance for the which the Authority or the official or employee is insured from whatever source against loss or damage; provided that the provisions of this chapter shall apply in the event the loss or damages fall within the deductible or exclusion(s) of the Authority's applicable insurance policy. The provisions of this chapter are intended to be secondary to any contract or policy of insurance whether owned by or otherwise applicable to any official or employee. The Authority shall have the right to require an employee to fully utilize any such policy protection prior to requesting the protection afforded by this Chapter.

1.7 Determination of Exclusion. The determination whether an official or employee shall be afforded a defense by the Authority under the terms of this chapter shall be made after a determination pursuant to Section 1.3 as to whether the official or employee was acting within the scope of his or her duties. The Executive Director or Acting Executive Director with Authority legal counsel shall prepare a recommendation to the Board. The decision of the Board shall be final as a legislative determination and shall be based upon a finding that an official or employee

meets or does not meet the criteria of this chapter. Nothing herein shall preclude the Authority from undertaking an official's or employee's defense under a reservation of rights. The determination as to whether a defense is to be furnished as provided under this chapter to a member or to members of the Board shall be made without the vote of the Board member named in the claim or lawsuit unless the inclusion of such member or members is required for a quorum; provided, that if a claim or lawsuit affects a quorum or greater number of the members of the Board, all such affected members shall retain their voting privileges under this Section.

1.8 Representation and Payment of Claims – Conditions. The provisions of this chapter shall apply only when all the following conditions are met:

(a) In the event of any incident or course of conduct potentially giving rise to a claim for damages, or for the commencement of a lawsuit, the official or employee involved shall, as soon as practicable, give the employee's department director and, if applicable, the Authority legal counsel and the Executive Director written notice thereof. The notice shall identify the official or employee involved, all information known to the official or employee involved with respect to the date, time, place and circumstances surrounding the incident or conduct giving rise to the potential claim or lawsuit, as well as the names and addresses of all persons allegedly injured or otherwise damaged thereby, and the names and addresses of all witnesses.

(b) Upon receipt, the official or employee shall as soon as practicable deliver any claim, demand, notice or summons or other process relating to any such incident or conduct to the Authority legal counsel and shall cooperate with the Authority legal counsel, or if the Executive Director or acting Executive Director authorizes or designates another legal counsel to handle the matter, shall cooperate with that legal counsel, and, upon request, shall assist in making settlement of any suit and enforcing any claim for any right of subrogation against any persons or

organizations that may be liable to the Authority because of any damage or claim of loss arising from said incident or course of conduct, including, but not limited to, rights of recovery for costs and legal counsel's fees arising out of state or federal statute upon a determination that the lawsuit brought was frivolous in nature. Failure to timely deliver any claim, demand, notice or summons to the Authority legal counsel, and in which an adverse decision against the official, the employee or Authority results from such failure, shall operate to negate all indemnification and opportunity for defense under this chapter and the Authority shall have no obligation to offer a defense to the named official or employee.

(c) Such official or employee shall attend interviews, depositions, hearings and trials and shall assist in securing and giving evidence and obtaining assistance of witnesses all without any additional compensation to the official or employee, and, in the event that an employee has left the employ of the Authority, no fee or compensation shall be provided.

(d) Such official or employee shall not accept nor voluntarily make any payment, assume any obligation, or incur any expense related to said claim or lawsuit, other than for first aid to others at the time of any incident or course of conduct giving rise to any such claim, loss or damage. Nothing herein shall be deemed to preclude any official or employee from retaining legal counsel to represent his/her interests relating to such claim or lawsuit; however, all costs and expenses incurred thereby shall be paid by the official or the employee.

(e) Nothing herein shall modify existing procedures or requirements of law for processing and payment of claims against the Authority.

1.9 Effect of Compliance With Conditions. If legal representation of an official or employee is undertaken by the Authority, whether by the Authority legal counsel or by legal counsel obtained by the Authority or through its insurance coverage, and all of the conditions of

representation are met, and a judgment is entered against the official or employee or a settlement is made, the Authority shall pay such judgment or settlement according to the provisions herein; provided, that the Authority may at its discretion appeal as necessary any such judgment. In no event shall this Section be interpreted to provide for payment of an award of punitive damages. The process for payment of punitive damages is discretionary under this chapter and is set forth in Section 1.16. The decision to appeal an award of damages will be made by the Board upon the recommendation of the Executive Director and the Authority legal counsel and/or outside legal counsel.

1.10 Failure to Comply With Conditions. In the event that any official or employee fails or refuses to comply with any of the conditions set forth in Section 1.8, or elects to provide his/her own representation with respect to any such claim or litigation, then all of the provisions of this chapter shall be inapplicable and shall have no force or effect with respect to any such claim or litigation.

1.11 Reimbursement of Incurred Expenses.

(a) If the Authority's investigation under Section 1.3 determines that an official or employee does not come within the provisions of this chapter and a court of competent jurisdiction later determines that such claim does come within the provisions of this chapter, then the Authority shall pay any judgment, excepting punitive damages, rendered against the official or employee and reasonable legal counsel's fees incurred in defending against the claim if said judgment is not covered by the Authority's insurance provisions or by the official's or employee's insurance. The Authority shall pay any costs and reasonable legal counsel's fees incurred by the employee or official in obtaining the determination that such claim is covered by the provisions of this chapter; provided, that if a court of competent jurisdiction determines that such claim does not

come within the provisions of this chapter, then the official or employee shall pay the Authority's costs and reasonable legal counsel's fees incurred in obtaining the determination that such claim is not covered under the provisions of this chapter.

(b) If the Authority determines that a claim against an Authority official or employee does come within the provisions of this chapter and a court of competent jurisdiction later finds that such claim does not come within the provisions of this chapter, then the Board shall have the option of requiring reimbursement by the official or employee for costs or expenses incurred in obtaining the determination that such claim is not covered by the provisions of this chapter.

1.12 Conflict With Provisions of Insurance Policies. The indemnification provisions of this chapter do not constitute a policy of insurance and nothing contained in this chapter shall be construed to modify or amend any provisions of any policy of insurance where the Authority or any of its current or former officials or employees thereof is the named insured. In the event of any conflict between this chapter and the provisions of any such policy of insurance, the policy provisions shall be controlling; provided, however, that nothing contained in this chapter shall be deemed to limit or restrict any employee's or official's right to full coverage pursuant to this chapter, it being the intent of this chapter to provide the coverage detailed in this chapter only above and beyond insurance policies which may be in effect while not compromising the terms and conditions of such policies by any conflicting provisions contained in this chapter.

1.13 Pending Claims. The provisions of this chapter shall apply retroactively to any pending claims or lawsuits against any official or employee at the time of adoption of this resolution and to any such claims or lawsuits hereinafter filed within an applicable statute of

limitations, irrespective of the date of the events or circumstances which are the basis of such claim or lawsuit.

1.14 Modification of Chapter. The provisions of this chapter shall be subject to amendment, modification and repeal, at the sole discretion of the Board, provided that unless explicitly set forth, any such amendment, modification or repeal shall apply prospectively only and shall have no effect on the obligation of the Authority to indemnify and/or defend against any claim which is based, in whole or in part, upon any action or omission of an employee or official occurring prior to the effective date of the amendment, modification or repeal.

1.15 Bargaining Unit Contracts. If a union contract under chapter 41.56 RCW covers any of the provisions of this chapter, all employees under such contract shall be governed by the provisions thereof, rather than by the provisions of this chapter, and where any conflict exists between the provisions of any such contract and this chapter, such contract shall control.

1.16 Punitive Damages. When an employee or official of the Authority has been represented in a claim and/or litigation by the Authority pursuant to this chapter and any judgment is rendered against such employee or official for punitive damages, the employee or official may make a request to the Board that the Authority pay the award of punitive damages on behalf of the official or employee. Upon receiving a request made by or on behalf of an Authority employee or official to pay punitive damages, the Board shall receive a report and recommendation from the Executive Director and the Authority legal counsel. If the official or employee is the Executive Director or a Board member, the Board may request a report and recommendation from the Authority legal counsel or may retain the services of another person or agency to provide a recommendation. Following receipt of the report and any recommendation, the Board shall determine whether the best interests of the Authority and justice will be served by payment by the

Authority of the award for punitive damages. There shall be no appeal from such determination. The Executive Director shall communicate the Board's determination with respect to the employee's or official's request for payment of punitive damages to said employee or official. Thereafter, the finance director shall prepare the payment of punitive damages if the council authorized such payment.

Section 2. Ratification and Confirmation. Any actions of the Authority or its officers or employees prior to the date hereof and consistent with the terms of this resolution are ratified and confirmed.

Section 3. Supplemental Authorization. The Authority's officers, and each of them acting alone, are authorized on behalf of the Authority to: (i) execute and deliver and, if applicable, file (or cause to be delivered and/or filed) any government forms, applications, affidavits, certificates, letters, documents, agreements and instruments that such officer determines to be necessary or advisable to give effect to this resolution.

Section 4. Execution of Duties and Obligations. The Board authorizes and directs the Authority's Executive Director to cause the Authority to fulfill the Authority's duties and obligations under this resolution.

Section 5. Acting Officers Authorized. Any action required by this resolution to be taken by the Chair of the Board or the Executive Director of the Authority may in the absence of such person be taken by the duly authorized acting Chair of the Board or the duly authorized acting Executive Director of the Authority, respectively.

Section 6. Severability. If any provision in this resolution is declared by any court of competent jurisdiction to be contrary to law, then such provision shall be null and void and shall

be deemed separable from the remaining provisions of this resolution and shall in no way affect the validity of the other provision of this resolution.

Section 7. Effective Date. This resolution shall be in full force and effect from and after its adoption and approval.

ADOPTED BY THE BOARD OF COMMISSIONERS OF THE HOUSING AUTHORITY OF THE COUNTY OF KING AT AN OPEN PUBLIC MEETING THIS 20th DAY OF DECEMBER, 2021.

**THE HOUSING AUTHORITY OF THE
COUNTY OF KING, WASHINGTON**



DOUGLAS J. BARNES, Chair
Board of Commissioners

ATTEST:



STEPHEN J. NORMAN
Executive Director and Secretary-Treasurer

CERTIFICATE

I, the undersigned, the duly chosen, qualified and acting Executive Director and Secretary-Treasurer of the Housing Authority of the County of King (the "Authority"), and keeper of the records of the Authority, CERTIFY:

1. That the attached Resolution No. 5711 (the "Resolution") is a true and correct copy of the resolution of the Board of Boarders of the Authority as adopted at a meeting of the Authority held on December 20, 2021 (the "Meeting"), and duly recorded in the minute books of the Authority;

2. That in accordance with RCW 43.06.220, and the Proclamations of the Governor of the State of Washington, as extended by the leadership of the Washington State Senate and House of Representatives (a) one or more options were provided for the public to attend the Meeting remotely, including by telephonic access, and (b) the means of attending the Meeting provided the ability for all persons attending the Meeting to hear each other at the same time;

3 The public was notified of access options for remote participation in the Meeting via the Authority's website and email to stakeholders; and

4. The Meeting was duly convened and held in all respects in accordance with law, and to the extent required by law, due and proper notice of the Meeting was given; that a quorum was present throughout the Meeting through telephonic and/or internet means of remote access, and a majority of the members of the Board of Boarders of the Authority present at the Meeting voted in the proper manner for the adoption of the Resolution; that all other requirements and proceedings incident to the proper adoption of the Resolution have been duly fulfilled, carried out and otherwise observed; and that I am authorized to execute this Certificate.

IN WITNESS WHEREOF, I have hereunto set my hand this 20th day of December, 2021.



Stephen Norman
Executive Director and Secretary-Treasurer of the
Authority