ELEMENTS TO INCLUDE IN A CHIEF EXECUTIVE EMPLOYMENT CONTRACT

Nonprofits should draft a formal employment contract in all but the simplest employment relationships. A formal contract provides security to both the executive and to the board, and makes absolutely clear the details of the compensation arrangement and the mutual expectations of the two parties.

The most important elements of a chief executive contract are as follows:

- **Term of the contract and provisions for contract renewal.** A term of three years is most common in our experience, but longer or shorter terms are possible. Five-year contracts also occur with some frequency, especially among chief executives renewing their contracts. Contracts often will have an option to renew the contract on mutual agreement of the parties.
- **Job description.** May be attached as an appendix.
- **Starting salary.**
- **Salary adjustment terms.** A schedule for future salary levels over the life of the contract, or language explaining how the salary will be adjusted going forward. In the latter case, salary may either be increased based on increases in the marketplace or increased at the discretion of the board based on performance and the market. (BoardSource recommends it be based on performance and the market.)
- **Incentive plans and performance bonuses.** This indicates what the level or range of incentive will be, how the incentive or bonus will work, and the how the incentive or bonus amount will be determined if there is a range. (It is important to establish a level or range for incentive compensation to avoid misunderstanding.)
- **Evaluation.** Indicates how often, how, and by whom the chief executive's performance will be assessed.
- **Retention bonus.** Indicates the amount to be paid if the chief executive stays for a certain term, either as a single amount paid at the end of the contract or as a stepped retention bonus with an amount paid out at stages over the life of the contract.
- **Retirement/savings plan benefits.**
- **Deferred compensation.** May be covered in the retirement plan.
- **Benefits and perquisites.** Health and other insurance coverage, as well as other benefits provided as part of the overall employment agreement.
- **Reimbursement of expenses.** Indicates types of expenses that will be reimbursed, and the terms of reimbursement.
- **Noncompetition agreement.** Prohibits the executive from engaging in private consulting work that may compete with the work of the organization. Upon the executive's departure, this agreement may also set restrictions on future business dealings as well as restrictions on whom the executive may hire away from the organization. Organizations need to be careful that such a clause, if included, is not so restrictive or punitive that it discourages applicants.
- **Outside employment/board service.** Clause recognizing that it can be appropriate and beneficial for the executive to perform certain activities such as serving on boards, delivering speeches, and performing charitable work, but laying the parameters for such activities. For example, the clause may require that such work not present a conflict

of interest to the organization or affect the executive's duties to the organization, and may require the executive to inform the board in writing of such currently ongoing commitment and require the executive to request approval for additional commitments in the future.

- **Confidentiality clause.** Ensures that any private information that is confidential or privileged to the organization will not be made publicly available.
- **Conflict-of-interest provision.** Describes potential conflicts of interest and indicates ways of preventing such conflicts.
- **Termination clauses.** Provision stipulating that with-cause termination releases the chief executive without severance benefits. With-cause termination is often the result of legal wrongdoing. Contracts that stipulate without-cause termination allow organizations to release the executive for poor performance or other related reasons, but the organization is typically obligated to pay severance benefits with termination.
- **Severance provisions.** May be part of the contract or may be a separate document.
- **Arbitration.** Indicates how conflicts over the contract will be resolved.
- **Governing law.** Identifies the state or jurisdiction under whose law the contract will be interpreted.

Resource: *Nonprofit Executive Compensation: Planning, Performance, and Pay*