Employment Agreements

BEGIN WITH THE END IN MIND

INTROCUTION

- The vast majority of city and county managers have an employment agreement.
- Not all agreements are created equal. Differences in the provisions can have an enormous impact on the total compensation of the manager and by extension the manager's ability to weather a period of transition.
- Employment Agreements for Assistant City Managers and Department Heads are becoming more common then they were ten or twenty years ago (?).

TERM

- Continuing Service Agreement; no term.
- Term Agreement: 3 years, 5 years, etc.
  - "Evergreen Clause":
    - This agreement shall automatically and perpetually renew to subsequent and additional 3 year terms unless the Employee receives formal notification by majority vote of the City Commission of their intent not to new this agreement on or before six months prior to the expiration of the current term.
  - No purpose with Florida Severance Limitation
    - Just allows Commission to "sunset" a manager without taking action (Majority to keep).
    - Remove as "Manager": serve remainder of term on admin leave or in a different role (e.g. management consultant on retainer) – Still questionable with State Law.

SALARY

- Things to consider:
  - Previous Manager's Salary
    - Turnover (Compression)
    - Merit/Step Increases (or just COLA)
  - Department Head's Salary
    - 50% Higher than average of three highest paid department heads (more stable, best indicator of compression).
- Phase In Approach
    - Date of Hire 1/1/10: $100,000
    - 1/1/11: $105,000
- Same Increases as other Employees carried forward to base salary.
    - Don't want to be negotiating for COLA increases.
    - Step increases, education incentive pay, etc.

EVALUATION

- Annual vs. Biennial (every other year).
- Evaluation instrument that both the Employee and City Commission agree to.
- Exceed Expectations; Meet Expectations; Below Expectations
- Get away from school grade system where a “3” is seen as a “C” and a “5” is seen as perfect (and nobody is perfect) and avoid the headline “Manager’s Performance Slips” when you go from a 4.8 to a 4.7 out of 5.

EVALUATION

- PERFORMANCE INCREASE:
  - If you did not pick up the automatic COLAs, step increases, or phase in increase to Salary this “may” be where you seek increases:
    - Example: 1-2% increase if meets expectations or 2-4% increase if exceeds expectation (standard pre recession private sector increase: 5%).
    - CAUTION: May cause a reduction in scores if Commission knows compensation is directly tied to evaluation. Also, if other Employees don’t receive “merit” increases it could create a perception issue (even if you don’t receive the same step increases or COLAs as other employees).
    - BEST OPTION is still to pick up the “same increases” as other employees.

SECTION 5: EVALUATION

- BONUS: IF automatic increases or performance increases are not included or if the salary is lower than what it should be:
  - Example: Bonus in a lump sum payment equal to 5% of base salary received in the evaluation period in a lump sum following an evaluation with an overall rating of "meets expectations" as determined by the evaluation instrument (10% if exceeds expectations).
  - CAUTION: Florida Statutes require that a "bonus scheme" created by a rule or ordinance must be available to all employees (AG Opinion? Cases? Too new).
  - Overall: Not Recommended if other employees don't receive it (Public Perception/Tolerance: Community Dependent).

SECTION 6. HOURS OF WORK.

- Things to include:
  - Compensatory Time
    - Accrue and to Take Compensatory time in same manner as “other leave time”
- Things to avoid:
  - Specific Hours (8am to 5pm)
  - Specific Place (City Hall)

SECTION 7. SEVERANCE PAY

- MIT: One month of full time job searching for every $10,000 of salary.
  - $120,000 position; 12 months **on average** to find comparable employment.
- Florida Severance Limitation:
  - ICMA Model: 12 months
  - Florida: 20 weeks (5 months)
- Base it on "total compensation" (ICMA Ethics case*)
  - 800 hours instead of 20 weeks.
  - Could "increase" severance pay by 50%.
  - Base payout of vacation/sick/comp on "total compensation."
  - Death/Disability trigger.
  - GOAL: Essentially compensated as if you had worked the twenty weeks or used the accrued time.

SECTION 8. AUTOMOBILE

- Provide vehicle:
  - New & leased
  - For business and **personal** use
  - Represented as net tax benefit (“gross up”)
- Allowance:
  - In lieu of providing vehicle.
  - Monthly amount (biweekly – extra 2 payments)
  - Represented as net tax benefit (“gross up”)
  - CPI provision (greater of 2-3% or annual change in CPI)
  - For use within the County (outside; IRS mileage).

LEAVE TIME BENEFITS

- Accrual:
  - Highest rate provided to other employees
  - -or- Number of years in profession
  - -or- As a 5,10,15 year employee of the organization
  - Additional leave (administrative leave) equal to vacation accrual, ½ vacation accrual, x number of hours/weeks
  - Without limit, vested with employee upon being credited to personal account.
  - Disbursement: Upon request, buyback program, 457 match
    - Rate based on compensation (taxable income)

LEAVE TIME BENEFITS

- Starting Balance:
  - “xx” number of hours upon starting
  - As if the employee had completed “x” number of years with the organization.
    - (2080 hours in year: 800 through severance: Remaining gap to reach ICMA Model: 1,280 hours)

INSURANCE BENEFITS

- Baseline: Same as other employees.
  - Tier 2: Employer pays employee contributions
  - Tier 3: Employee dependent coverage
- Short/Long Term disability coverage.
  - As “key employee” the manager does not have the same protection under FMLA as other employees.
- Life insurance:
  - ICMA Model: x3 base salary
- “or allowance equal to the same.”

INSURANCE BENEFITS (Cont'd)

- Baseline plus:
  - City agrees to pay the employee an additional "xx %" of base salary in lieu of any additional or supplemental health, disability, or life insurance benefits.
- In Lieu of Baseline:
  - In lieu of providing the Employee any benefits the City agrees to pay the Employee an amount equal to "xx%" of base salary (or proportional benefit of median city employee: 30k employee with 6k insurance benefit = 20%).
  - CAUTION: Fixed amount will diminish over time as insurance costs will likely exceed wage growth. Likewise, a proportional benefit may grow excessively over time for the same reason.

RETIREMENT

- 3 Legged Stool: Pension, Savings, Social Security
  - In Late 70s added a “fourth leg” : 401(k) designed to be a tax shelter for high earners.
- Pensions: reduced pay now for secure retirement later.
- Government Employees: reduced pay for increased benefits & a pension.
  - “They wait for retirement to be fully compensated.”

RETIREMENT

- Defined Benefit:
  - Multiplier? COLA? Retirement Age? Member Contribution? Vesting? Based on what? (3-5 year highest income average? Overtime? Sick/Vacation payout?)
  - **Significant Value to Employee**
    - Guaranteed benefit, no investment decisions/risk
    - Gains the most value from participation in the years before retirement (highest salary).

RETIREMENT

- Defined Contribution
  - 401(a): $53,000 annual limit (10% early withdrawal penalty)
  - 457(b): $18,000 limit (FICA*)
- Significantly reduced value to Employee
  - Employee bears the risk, must make investment decisions.
    - Will incur higher fees and experience a lower rate of return by investing solo (Especially for “managed funds” or smaller plans).
  - Early investments in career (when you make the least) or at least those that are 10+ years from retirement have the largest effect on the benefit due to compounding returns (and before significantly deleveraging in the years before retirement).
  - Would require a 40-60% contribution rate to provide the same retirement income as a pension (2.5 multiplier, 55 retirement age).
    - Rule of 25 & Safe Withdrawal Rate (SWR) of 4%

RETIREMENT

- Why 40-60% contribution to equal pension?
  - Higher Fees (economies of scale; plan size)
  - Lower Rate of Return
  - Deleveraging in the 5-10 years before retirement.
  - Lower contribution rate and amount at beginning of career (rate and salary; promotions).
  - Can’t hedge bets on mortality table; must plan for 30-40 year retirement.

RETIREMENT

- BEST OPTION:
  - If your organization offers a pension consider a 401a/457 contribution with a “buy in” clause that allows you to buy into the pension by turning over your 401a contributions if you reached vesting.
    - You would effectively participate in both the pension and receive the defined contribution and if/when you reached vesting you would give back what they contributed.
    - Have the organization pay for the member contribution (ICMA Model)

RETIREMENT

- OPTIONS:
  - If your organization “closed” their plan to new members but current department heads or the previous manager operated under it you may want to work out a 401a/457b contribution model that attempts to provide a similar retirement income. Any reduction in this value should be seen as a concession given by you to receive other benefit/salary increases.
    - If the total equivalent value is a 40% contribution consider negotiating a 401a rate of 25% and trying to pick up the remaining through receiving the 457(b) limit or a matching contribution up to the 457(b) limit.

RETIREMENT

- OPTIONS:
  - If your organization just has a defined contribution plan (e.g. 5 or 10% to a 401(a)) accept that as a starting point and then attempt to negotiate an additional percentage on top of it or an additional 457 contribution equal to the deferral limit or a match up to the limit, etc.
    - Split it up, phase it in, base it on 401(a)/457(b) limits, base it on City's contribution rate to other pension plans or the FRS contribution rate for senior management (vest in the highest rate).

RETIREMENT

- OTHER CONSIDERATIONS:
  - Immediately vested in contributions & associated returns.
  - A 5% – 10% contribution rate is not a “good” public sector contribution rate (Keep this in mind for yourself and your employees).
    - Does not gel with the public sector compensation model of “Reduced pay for increased benefits” or “Waiting for retirement to be fully compensated.”
    - More in line with a private sector compensation model with higher up front compensation (e.g. a 5% contribution is great if you’re making 400k)

GENERAL BUSINESS EXPENSES

- Allowances (grossed up):
  - Cell Phone: $50 per pay period
    - City as Purchasing Agent (cheaper rate?).
  - General Expense Allowance: $50 - $100 per pay period.
- Professional memberships and subscriptions.
- FCCMA/FLC Conference + subsistence
- Professional Development Allocation
    - For other conferences, training, seminars, tuition, etc.
    - Separate line item for manager in lieu of other city programs (e.g. tuition assistance).
    - -or- Combined expense/professional development allowance.

RELOCATION EXPENSES

- City/County Management agreements seem to be lacking in this area (public sector in general).
  - Average Cost of US Domestic Transfers:
    - Current Employee Homeowner: $90,219*
    - New Hire Homeowner: $71,952
    - Current Employee Renter: $24,995
    - New Hire Renter: $22,048
  - Cost of Shipping Household Items: $12,937
  - (From Worldwide ERC Statistics)(*underwater)

RELOCATION EXPENSES

- Buy a $200,000 Home:
  - 4% Closing Costs: $8,000 (gross up: $11,878)
  - Moving Expenses: $5,000 (<50 miles: $7,423)
  - Discount Points: 3(ICMA Model): $6,000
    - Mortgage Interest Differential Allowance (MIDA) for any remaining interest differential?

RELOCATION EXPENSES

- Sell $200,000 home:
  - 9% Closing Costs: $18,000
    - After tax gross up: $25,714 (30% Tax Rate*)
      - * 25% Federal/7.65% FICA or 28%/1.45% medicare
  - 5% Market Allowance (Home staging; exit improvements) in lieu of Employer purchasing home: $10,000 (gross up: $14,285)
  - Carrying Costs? Loss on Sale Protection?

RELOCATION EXPENSE

- TOTAL COSTS:
  - Buy/Sell 200k House: $47,000
    - Gross Up: $64,571 (30% Tax Rate – discount points)
  - Buy/Sell 300k House: $68,000
    - Gross Up: $93,285
- May be able to pare down closing costs. However, these cost totals exclude temporary housing allowances, scouting trips, carrying costs, loss on sale protection, etc.

RELOCATION EXPENSE

- FINAL CONSIDERATIONS:
  - Take a job in a City 20 miles away: Salary from 100k to 130k.
    - Net Additional Income: $21,000 after taxes (30% tax rate)
  - Buy/Sell a 200k home to relocate ($47k).
    - Will take **2.2 years to break even.**
  - Buy/Sell a 300k home to relocate ($68k)
    - Will take **3.2 years to break even.**
- Consider a total relocation package cap of 50% of annual salary (For you & dept. heads/acms)
- "Claw Back" Provision: Consider a 5 year vesting schedule in the relocation package (20% per year, 100% vested if terminated).

OTHER TERMS/MISC.

- No reduction in compensation/benefits
- Construction/Operation of Agreement:
  - Execute/Carry out provisions in agreement (with the exception of severance) without further City Commission Action.
  - Allow Employee to interpret/execute provisions as long as the context does not clearly require otherwise.
  - "Good Faith" provision in settling disputes, conflicts, or interpretation of the agreement.
    - In Favor of the Employee (if you can get it).
  - Provide for any costs incurred by the Employee associated with the agreement (e.g. legal).

OTHER THOUGHTS

- The operator of a free standing Chik-Fil-A makes on average, $190,000 per year and is responsible for $3 million dollars of annual revenue.
- Average CEO Compensation for a private company with 10 million dollars or less in annual revenue in 2012 was $225,000 ($170k salary, $30k bonus, $20k benefits, $5k perks)(Chief Executive Research Survey).
- ICMA Statistic: Localities run by professional managers operate 10% more efficiently than other forms (i.e. The manager produces a 10% return on investment).
  - Broker/Fund Manager Fee: 0.5-1.5% of fund balance

CONCLUSION

- A Rising Tide Floats All Boats: As you look to negotiate benefits for yourself look to your other (key) employees (first).
- Educating yourself and your elected officials is key: There was probably a time when a “car allowance” was unheard of but now it is one of the most common benefits received by managers.
  - Salary at least 50% higher than average of three highest direct reports (By extension your direct reports shouldn’t be much lower than this).
  - Relocation benefit up to 50% of annual salary with 5 year vesting schedule.
  - “Proportional Insurance” justification for supplemental dependent, disability, and life insurance coverage/allowance).