

Contract of Employment for Municipal Chief Administrative Officers

Introduction

In a world in which employment relationships are becoming more and more litigious municipal administrators, like other senior administrators, should consider the importance of an employment contract. The following briefly addresses why we should consider employment contracts, discusses some of the common terms and provides an example contract. The information herein provided should not be construed as legal advice. Since each employer-employee relationship is unique and subject to differing provincial and municipal legislation, any municipal manager considering an employment contract should contact an experienced employment lawyer to discuss legal formalities appropriate for their particular situation and no employee should start work prior to executing a written contract, if in fact it is the intent of the parties to enter into a written contract.

Why a Written Contract

The new job starts on a natural high – the employee is keen and eager to demonstrate their professional abilities and in return the employer is excited to have filled a critical vacancy in its organization. Perhaps this initial perception of satisfaction on the part of both the employer and employee is one of the reasons they often fail to put to paper the specific terms of the employment contract. Lets face it - for the vast majority of employment relationships there is simply no need to enter into a formal agreement. It is, however, arguable that for senior Administrative positions such as municipal administrators it is imperative to address in writing the specific terms of the employment relationship.

While some may argue that an employment contract does nothing more than restrict the employee's functions, a well written contract can overcome this hurdle and provide a clear directive thereby limiting future confusion and misunderstanding between the employer and employee. With any luck it will provide for a productive relationship and will keep both parties away from costly litigation.

Important Provisions to Include in the Contract

Below is a list of some of the most common provisions found in Administrative employment contracts with a brief discussion of each. The following list is by no means exhaustive, as the appropriate provisions will vary depending on the particular employment relationship.



1. Position and Effective Date

Essential to employment contracts is a description of the position and the effective date of the appointment. This clarifies the job title and provides a concrete start date.

2. Duties

Instead of listing all of the duties in the main body of the contract it is possible to refer to an attached schedule describing the duties of the position. This attachment could even be the actual job description. In many cases the duties are simply referred to generically such as "to perform the duties associated with the position of Chief Administrative Officer". However, defining the responsibilities more expansively may serve to alleviate concerns with respect to roles and responsibilities.

3. Term

The term of the contract defines the period during which the employee is employed. Employment contracts can either be for a fixed-term or an indeterminate term. Examples of fixed-term contracts are contracts for a defined number of years, or for the duration of a specific project. If a contract is not of the fixed-term variety it is presumed to be for an indeterminate term.

It is important to include in a fixed-term contract the conditions, if any, upon which the term of the contract can be renewed or extended. If a fixed-term employment situation continues beyond the fixed-term with no renewal of the term it will be deemed to have become an indeterminate term contract.

4. Termination

Arguably no other provision of a contract comes under more scrutiny than the termination provisions, thus it is essential to clearly state how the employment contract can be terminated. Effective termination provisions for municipal administrators will include a definition of cause for dismissal and will also state the amount of notice or pay in lieu of notice required to terminate the employee without cause. While it will not typically be an issue for senior managers such as municipal administrators, it should be noted that notice provisions must at least comply with statutory minimums provided in employment standards legislation.



5. Remuneration

Remuneration can take many forms from salary to other benefits such as health and dental coverage, automobile allowances and performance bonuses. While many of us are fortunate enough to enjoy what we do for a living, few of us would do it without receiving adequate remuneration. Therefore, it is important to clearly address each component of the remuneration package in the employment contract.

6. Assignment

With many municipalities having already tackled amalgamation and others on the verge of forming their own super cities it is highly recommended that municipal administrators seek the inclusion of an assignment clause. The purpose of such a provision is to have the contract binding on any successor government.

7. Other Provisions

The above list touches upon a few of the most important provisions to consider when drafting an employment contract for a municipal administrator. Other provisions that should be considered include vacation and sick leave, hours of work, professional development, and exclusivity clauses. For many provisions a simple reference in contract to the municipalities relevant personnel policy is all that will be required. For example, if the administrator's vacation benefits accrue at the same rate as other management personnel then a simple reference to the relevant human resources policy will suffice.

Conclusion

In summary, any provision of an employment contract must adhere, at a minimum, to the relevant employment standards legislation. Any provisions not conforming to the legislative standards will be deemed void. The following sample contract touches upon all of the above provisions, in addition to others, and while not intended as a boilerplate document for municipal administrators it provides a guide to some of the more common provisions.



Sample Employment Contract

THIS AGREEMENT made this the ____ day of _____, 20____

BETWEEN:

The Municipality of _____, (the "Employer"),

AND (the "Employee")

_____, of the (City /Town) of _____, in

the County of _____ and Province of _____.

WHEREAS the employer desires to employ the services of the Employee as the Chief Administrative Officer;

AND WHEREAS the Employee has agreed to accept the position of Chief Administrative Officer with the City/Town of _____ subject to and on the terms and conditions set forth in this agreement;

NOW THEREFORE IN CONSIDERATION of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows

:

1. Position

The Employer hereby agrees to employ the Employee as the Chief Administrative Officer effective the ____ day of _____, 20____.

2. Duties

The Employee shall perform:

- (a) The duties of Chief Administrative Officer as specified in the job description for Chief Administrative Officer attached hereto and marked Appendix "A" and forming a part of the within agreement; and
- (b) Such other proper duties and functions as may from time to time be assigned by the Council of the City/Town of

Term

The term of this contract shall commence on the effective date referred to in paragraph 1 above and shall run for an indefinite period of time subject to termination as provided in paragraph 4 below.

3. Termination, Resignation and Severance

- (a) This contract may be terminated at any time by mutual agreement of the Employer and Employee.
- (b) The Employee may at any time resign or retire from the position of Chief Administrative Officer by providing two (2) months written notice to the Employer.
- (c) The Employee's employment with the Employer may be terminated at any time without cause by the Employer delivering to the Employee written notice of same together with: twenty-four (24) months pay in lieu of notice, and the cash value of all accrued vacation and sick time and other benefits.
- (d) For the purpose of this agreement the Employer shall be deemed to have cause for termination if the Employee is convicted of a criminal act involving dishonesty or moral turpitude or involving any personal gain to the Employee.
- (e) The Employer may terminate the Employee at any time for cause without the requirement of providing notice or pay in lieu of notice. In the event of termination with cause the Employer shall pay the Employee any salary owing to the date of termination for cause.

4. Salary and Benefits

- (a) The Employer agrees to pay the Employee for his services rendered pursuant to this agreement an annual base salary of \$ _____ payable in installments at the same time as other employees of the Employer are paid.
- (b) On the bi-annual anniversary of the execution of this agreement the Employee's salary shall be reviewed with a view to maintaining its comparative rate, as of the date of review, to other Chief Administrative Officers of other Canadian cities or towns comparable in size to that of the Employer.
- (c) In addition to the benefits enumerated specifically for the benefit of the Employee herein, all provisions of the Employer's applicable benefits policies, including, but not limited to, health and life insurance, disability and retirement benefits, vacation and sick leave, and working conditions as they now exist or hereafter may

be amended, shall also apply to the Employee as they apply to all other employees of the Employer.

- (d) Notwithstanding paragraph (c) above, the Employee shall immediately upon execution of this agreement be entitled to six (6) weeks vacation per year and shall accrue vacation leave at the same rate as other employees of the Employer to a maximum of eight (8) weeks.

6. Assignment

This contract _____ shall be binding upon the Employer, City/Town of _____ and any successor government into which the Employer may hereafter be merged, unified or consolidated.

7. Annual Performance Review

- (a) The Employer shall perform an annual review of the Employee's performance. The review shall take place every year during the currency of this agreement during the same month that this agreement was executed. Performance reviews shall be conducted in accordance with criteria developed between the Employer and Employee.
- (b) Performance review criteria shall be developed by the Employer and Employee within sixty (60) days of executing this agreement and for every other year during the currency of this agreement performance review criteria shall be set no later than sixty (60) days following the completion of the previous years performance review.
- (c) The Employee shall be apprised of the results of the performance review and shall be given an opportunity to provide written comments to the Employer.

8. Hours of Work

- (a) The Employee shall work at a minimum such hours as required of other management personnel pursuant to the Employer's personnel policy.
- (b) Due to the unique nature of this employment, it is understood and agreed that in order to properly perform the job required, the Employee may have to expend additional time beyond the normal

work day, and the Employee agrees to do same as is required.

9. Outside Employment

The Employee shall not engage in any other employment without the prior written authorization of the Employer and such authorization shall not be unreasonably withheld.

10. Automobile

The Employer shall pay to the Employee a monthly automobile allowance in the amount of \$ _____ per month.

11. Professional Development and General Expenses

(a) The Employer agrees to budget for and to pay the following expenses related to the professional memberships and professional development of the Employee:

1. The professional dues and subscriptions of the Employee necessary for his ongoing membership and full participation in such national, provincial, and local professional associations and organizations, as are necessary and desirable for continued involvement, growth, and advancement in the profession, and for the good of the Employer.
2. The travel and subsistence expenses of the Employee for professional and official travel, meetings, or other activities necessary to continue the professional development of the Employee and to enable to pursue necessary official and other functions for the Employer.
3. The travel and subsistence expenses of the Employee for short courses, institutes, and seminars which are necessary for professional development and for the good of the Employer.

(c) The Employer shall reimburse the Employee for all reasonable and necessary expenses incurred in connection with the performance of the duties of employment hereunder, in accordance with the policies of the Employer as adopted and amended, from time to time. As a condition of reimbursement the Employee must provide verification of the nature and amount of the expense in accordance with the policies of the Employer as adopted and amended from time to time.

12. Computer Equipment

The Employer agrees to provide to the Employee, for home use, such state of the art computer equipment as may be compatible with the Employer's computer equipment. In addition, the Employer will pay for monthly internet access charge for broadband or equivalent service.

13. General Provisions

- (a) The text herein shall constitute the entire agreement between the parties.
- (b) All section headings contained herein are for the convenience of reference only and are not intended to define or limit the scope of any provision of this Agreement.
- (c) This Agreement shall be construed in accordance with, and governed by, the laws of the Province of

- (d) In the event any one or more of the sections, provisions or clauses contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision had not been contained herein.
- (e) This agreement shall be binding upon and enure to the benefit of the heirs, executors, administrators, and legal personal representatives of the Employee.
- (f) Any waiver, modification or cancellation to this agreement must be in writing and signed by the parties to have any force or effect.
- (g) Any notice required to be given under this agreement shall be delivered personally to the opposite party, or shall be deemed delivered personally four (4) days after depositing in the mail postage prepaid addressed as follows:
To the Employer: _____
To the Employee: _____
- (h) The Employer and Employee each agree that they have had the opportunity to seek independent legal advice prior to signing this agreement and each agrees that the terms are fair, reasonable and understood.

IN WITNESS WHEREOF the parties hereto have executed this agreement and affixed their corporate seal on the date first-above written.

Employer

Employee

Mayor

Clerk

Appendix “A”

Roles & Responsibilities of Chief Administrative Officer

The roles and responsibilities of the Chief Administrative Officer must be customized to each municipality. Therefore, this sample document does not contain specific wording covering this topic. For anyone interested in samples of such documents a quick Google search on the Internet will provide many examples of legislated and non-legislated job descriptions or roles and responsibilities for CAO's.

The main reason for not including sample wording is that, in Canada, a number of provinces mandate specific roles and responsibilities for CAO's in the legislation governing municipalities. You should first check the appropriate legislation.

Also, even where the provincial legislation does not provide specific duties and responsibilities some municipalities have defined the CAO role in a municipal by-law. Check for such a by-law.

You will notice that some documents present almost a task list. This may be suitable for small communities where the CAO performs a myriad of job functions. These “job descriptions” are important particularly when it comes to questions related to the role of elected officials in the micro-managing of their communities. However, for larger urban municipalities where the CAO performs high level strategic functions such job descriptions are not very useful in describing the role of the CAO.