



EMPLOYMENT AGREEMENT GUIDELINES FOR PUBLIC TRANSPORTATION SYSTEM MANAGEMENT



AMERICAN
PUBLIC
TRANSPORTATION
ASSOCIATION

1666 K Street, N.W.
Washington, D.C. 20006-1215

www.apta.com

APTA's Vision Statement

Be the leading force in advancing public transportation.

APTA's Mission Statement

To strengthen and improve public transportation, APTA serves and leads its diverse membership through advocacy, innovation, and information sharing.

APTA would like to acknowledge the past contributions of former APTA Chief Counsel Robert Batchelder and the work of outside counsel Dannie Foglemen of Ford and Harrison in the development and writing of this booklet. For further information, please contact APTA's Chief Counsel or APTA's Vice President-Program Management and Educational Services.

EMPLOYMENT AGREEMENT GUIDELINES FOR PUBLIC TRANSPORTATION SYSTEM MANAGEMENT

revised
June 2005

Published by

American Public Transportation Association
1666 K Street, N.W.
Washington, D.C. 20006-1215

TABLE OF CONTENTS

ForwardII

IntroductionIV

Part I: Objectives of an Employment Agreement.....1

Part II: Comments on the Sample Employment Agreement3

Recitations and Authority3

Section 1: Duties and Responsibilities3

Section 2: Conditions of Employment4

Section 3: Term of Employment5

Section 4: Compensation7

Section 5: Termination/Suspension7

Section 6: Compensation after Termination8

Section 7: Other Conditions of Employment.....9

Section 8: Performance Standards & Evaluation11

Section 9: Expenses.....11

Section 10: Indemnification13

Section 11: Dispute Resolution14

Section 12: Other Terms and Conditions14

Part III: Sample Employment Agreement Between a Transit System and a General
Manager15

FOREWORD

A very important aspect of professionalism in the transit industry is the relationship between boards of directors and general managers. A highly effective, unambiguous, and well-articulated working relationship between boards of directors and general managers is more important today than ever before in the history of public transit.

To achieve the most effective relationship, steps must be taken to minimize the potential for misunderstandings and to provide both policy makers and executives with the maximum opportunity to work cooperatively together. An essential ingredient in this undertaking is the clear definition and delineation of their respective roles and responsibilities. In today's environment, a well-drafted employment agreement is essential to the establishment of an effective working relationship.

APTA has prepared these guidelines on transit manager employment agreements in the hope that they will be of assistance in assuring that such agreements can meet this objective. They have been prepared with reference to numerous employment agreements in the transit industry and elsewhere, and with the assistance and advice of APTA's attorneys. These guidelines are necessarily broad and general, but an attempt is made to discuss all of the various provisions and issues which might be considered in developing an agreement. Where appropriate, a discussion of what other public employers are doing in this area has been included.

I believe this report will be of significant value to transit board members and general managers. We certainly welcome all comments you may have on the report so they may be considered as this report is updated from time to time.



William W. Millar

President

INTRODUCTION

These guidelines are divided into three parts. Part I discusses the major objectives which a transit system and its general manager should seek to achieve through an employment agreement. Part II is a sample agreement, containing examples of language and clauses that might be used as a basis for drafting the text of an agreement. Part III is an analysis of the sample agreement, discussing the major issues which should be considered and providing more details on the various agreement clauses, elements, and options.

There is no single employment agreement format that will uniformly meet the specific needs of every transit system. Certain portions of the sample agreement may be too detailed for a small system. On the other hand, other portions may not be sufficiently specific for a large, more complex system. The effort here is to provide guidelines and to point out areas that require special thought by the parties concerned. Inasmuch as there is no single "best" way to handle drafting the various provisions, options are discussed in each section. It must be emphasized that all of the provisions of an employment agreement are highly dependent upon the individual needs and interests of the parties to the agreement and that APTA is not recommending any particular approach or provision.

PART I

OBJECTIVES OF AN EMPLOYMENT AGREEMENT

Today, most transit boards have written employment agreements with their general managers. The reason why this is so is obvious. The policy direction and management of a public transportation system is an exceedingly high profile function. The pressures on the policy board and the general manager are unrelenting, simply because transit is such a vital public service and touches so many lives in the community it serves. The working relationship among the top policy makers and managers becomes crucial in such an operating arena, and in particular the understanding of respective roles between the policy board itself and the general manager. Thus, the use of employment agreements to define the relationship between the policy board and top executive in the public sector has become almost universal.

An employment agreement should be drafted to ensure that it accomplishes certain basic goals. These include the following:

(1) An employment agreement should formally establish the relationship between, and the expectations of, the board of directors and the general manager.

Board members generally understand that the board of directors "makes policy" and the staff "implements policy on behalf of the board." However, both board and staff members may, on occasion, have difficulty in applying this broad formulation to specific situations such as operational affairs, the supplying of information to board members, procurement, and personnel. An employment agreement can help clarify the policy-making/implementation distinction between board and staff members.

(2) An employment agreement should seek to provide for stability and improved management of a transit system by minimizing areas of potential future disagreement.

Closely related to the above, the process of establishing in advance the specific duties, responsibilities and compensation of the general manager and the prerogatives of the board can greatly reduce sources of disagreement.

(3) An employment agreement provides a framework for the board to periodically evaluate the general manager's performance.

The agreement can establish in advance the procedures to be utilized in conducting a performance evaluation. Also, by spelling out clearly the duties and responsibilities of the general manager, the employment agreement can help establish the criteria upon which an evaluation will be based. Specific goals and objectives for the transit system are normally needed, but the statement of duties and responsibilities will assist even in that process.

(4) An employment agreement should set out agreed upon ground rules to be followed in the event either the board or the general manager wish to terminate the relationship, thereby reducing the potential for disruptive changes in management.

An employment agreement should include reasonable notice requirements for the resignation of a manager and reasonable procedural requirements to follow in the event the board wishes to terminate the relationship. Such provisions can reduce the potential for precipitous actions by either the manager or the board and smooth the transition to a new general manager for the system, all of which project a positive business-like impression to the general public, thus encouraging public confidence in the organization.

PART II

COMMENTS ON THE SAMPLE EMPLOYMENT AGREEMENT

This Part is organized to follow the accompanying sample agreement and, in each case, the sections are numbered and titled identically. The first section of the sample agreement, "Recitations and Authority" is the only unnumbered section. This deals with the basic preliminaries to the agreement, including a recitation of the nature of, and the transit board's authority to enter into, the agreement.

Before discussing the elements of the sample agreement, a word of caution is in order. Employment agreements are complex documents that may raise significant legal and tax issues at local, state, and federal levels. Therefore, it is essential that legal counsel, well-versed in the related state, local, and federal laws, as well as the tax implications, be consulted and involved in the drafting of an agreement. In this regard, a staff attorney for the system should not be expected to represent the interests of both parties to the agreement since that would create a basic conflict of interest. In addition, the prospective general manager would be well advised to have the entire agreement reviewed by a competent estate planner in order to ensure that individual financial considerations have been covered adequately.

Recitations and Authority

The sample agreement begins with a simple statement about the nature of the agreement, the date executed by the parties, and the names of the parties. To avoid any later questions about the legal authority of a transit system to enter into an employment agreement, the introductory section of the agreement should refer to that authority, i.e., state statute, city charter, resolution, or some combination of these sources of authority.

Section 1: Duties and Responsibilities

The first section of the sample agreement sets out the specific duties and responsibilities of the general manager, providing the basis for a cooperative working relationship between the board and the chief executive. Not infrequently, this is the area of greatest potential ambiguity in the Board/Manager relationship. The Board's expectations of the general manager may be unclear – not only to the manager but to the Board members as well. This adds to the potential for future misunderstandings.

Where written policies and guidelines on the duties and responsibilities of the general manager do exist, the employment agreement should include direct reference to them in this section.

If written guidelines are not available, this section may need to be more descriptive

and, in any case, more care should be taken in its negotiation and wording. It may be desirable to design, clarify, and set forth in broad but succinct terms what is expected of the general manager and the expected board/manager relationship.

The duties and responsibilities section should normally include a "performance statement." This is a statement to the effect that the general manager agrees or pledges to perform "in good faith" the duties set forth in the agreement and any other referenced material. Examples of other matters that should at least be considered in stating the general manager's duties and responsibilities include:

- Whether the general manager has the right or is expected to serve as an "ex-officio" member of the board of directors;
- Any specific reporting requirements regarding the operation of the transit system or budgetary matters;
- Whether any other executive officers will report directly to the board and if so, what the general manager's relationship with this person or persons will be;
- The extent of the manager's authority and responsibility as regards the selection, hiring, firing, and compensation of other key personnel and executives; and
- Specific exceptions, additions, deletions, or alterations of the normal duties, roles, and responsibilities which are provided or set forth in other existing policies or guidelines. For instance, it may be useful for the board to delegate to the general manager its authority to negotiate and approve contracts up to a certain dollar limit.

In the sample agreement, the duties and responsibilities clause is fairly general and is representative of most of the contracts reviewed in the course of preparing these guidelines. It provides for inclusion of any specific duties that may need to be added. As indicated in the sample agreement, where state or local laws or existing formal policy prescribes the general manager's duties, they should be referenced specifically.

Section 2: Conditions of Employment

In this section of the sample agreement, matters such as hours of work and conflict of interest are addressed. Other related topics, such as outside activities, residency requirements, or other specific conditions of employment could also be included. Often these clauses will be more or less "standard" in their wording, format, and subjects covered. Nevertheless, they are important and deserve careful attention.

Hours of Work and Outside Activities. While some employment agreements are quite specific about the hours of work expected of a general manager, most general manager agreements contain language to the effect that the employee shall devote full employment energy to the job. This is the model followed in the sample agreement.

In some cases, a general manager may have or expect to have outside teaching,

consulting, or other interests that are compatible with service as a general manager for a transit system. If so, an "outside activities" clause may be added to authorize the pursuit of these interests. Some employment agreements set very specific and definite time limits for these kinds of activities when they were allowed. The kinds of outside activities referred to in this clause will naturally depend on the particular situation.

Conflict of Interest. Conflict of interest is usually a major concern in public employment, including the public transit industry. For this reason, it should be addressed separately from the discussion of outside activities. Nevertheless, these two aspects are related and are usually addressed in the same agreement clauses rather than in separate sections.

The nature of the transit industry environment and the high public and political profiles of the chief executive and other key personnel are such that the concerns about conflict of interest are highlighted and complicated. Because of this, many transit systems have extensive conflict of interest policies, usually in written form. These policies may be extended and supplemented by a written code of ethics and, in some cases, may entail record keeping and report procedures on the part of the general manager as well.

Where formal policies and guidelines for conflict of interest exist, they should be referred to in the agreement. If they are none, a little more care may be required in the drafting of a conflict of interest clause.

Residency Requirements. Residency requirements are not common for public transit systems and the sample contract does not specifically address this matter. If a particular transit system does have a residency requirement, however, it would be logical to include it here.

When a manager will need to relocate and there is a residency requirement, the employment agreement should allow a reasonable period of time for meeting the requirement. This should be provided for in the agreement. Relocation time allowances may also be specified or limited by local statutes. The amount of time required will vary with the manager's particular situation, i.e., if a home in the previous location must be sold, this may affect the amount of time needed to establish residency. These matters should be considered before the residency clause is developed. (Relocation allowances are covered in more detail in Section 9.)

Miscellaneous Conditions. There may be other matters that either party wishes to include or address in this part of the agreement. The specific subjects will vary with the situation and needs of the board and the general manager. Any unique conditions of employment could logically be provided for in this section of the agreement.

Section 3: Term of Agreement

This section of the sample agreement defines the time frame within which the agree-

ment will be effective and establishes the specific term of office. The length of time varies from agreement to agreement and is largely a matter of negotiation between the parties.

In the sample agreement, the term of employment is made expressly subject to the provisions for termination. This assures that the board of directors will retain the absolute right to select a new general manager when necessary even though the board may, depending on the provisions for compensation after termination, continue to have financial obligations under the agreement. Making the term subject to the termination clause also protects the general manager's right to resign.

In each case, the specific term of employment will be dependent upon local circumstances, the intentions and interests of both parties, and other unique considerations. The allowable term may also be limited or influenced by state law or existing policies.

Provision for Minimum Term. In addition to the overall term, provision for a minimum term is sometimes included in an employment agreement. Provision for a minimum term may be useful where a general manager needs a reasonable degree of security to ensure that, if the relationship does not work to the satisfaction of all concerned within the specified time frame (usually six months to a year), there will be some form of guaranteed continuing compensation. This may be particularly desirable, for example, when the general manager must relocate. On the other hand, the board may need assurance that the general manager will not resign for a designated period of time, or will not seek other employment during that time frame without the board's prior approval. This provision might also serve to preclude any precipitous or capricious action on the part of either party during the early stages of the relationship.

Agreements with Indefinite Terms. Agreements with indefinite terms may have certain advantages. In general, if there is no contract of specific duration, the employment is considered "at will" in the courts regardless of the existence of an employment agreement. Under "employment at will", the relationship is terminable at will by either party. Thus, the employee can be dismissed for any reason, so long as the reason is not unlawful, and the courts will usually support the employer's action. The general manager may have no recourse and important provisions in the agreement may thus be effectively nullified. On the other hand, the employee may be able to ignore the notification and termination provisions of the agreement without penalty. The results of either action could prove costly for both parties to the agreement.

Term of Ten or More Years. Agreements with terms of ten or more years are unusual in the public sector and are usually made because of specific provisions relating to long-term deferred compensation requirements. These longer term agreements will usually necessitate some provision for continued employment until the manager is entitled to receive the deferred compensation. The tax and legal implications of the longer terms must be carefully considered.

In these cases—as in all cases—care should be taken to ensure the absolute authori-

ty of the employing body to terminate the general manager as well as to protect the rights of the general manager in the event of resignation or termination. This aspect is usually addressed in the termination and severance clauses (see Sections 5 and 6).

Section 4: Compensation

This section of the sample agreement provides for the payment of a salary "in accordance with ... regular payroll procedures" and provides for the establishment of a specific minimum salary. It provides for consideration of salary increases in a flexible manner and at the discretion of the board of directors. The sample agreement also provides for regular performance evaluations and paragraph (b) of the compensation clause links salary increases with performance evaluations. Although provision for performance evaluations may not be made a part of every agreement, it has been included in the sample agreement in order to demonstrate how it might be treated.

In negotiating and developing compensation clauses, it is necessary to keep in mind all forms of compensation provided. The Internal Revenue Service may consider as income many non-salary benefits and this must be remembered in establishing compensation provisions and clauses. The general manager's particular tax situation—both present and future—will usually prescribe the most effective compensation package.

Although most agreements will indicate a specific salary amount, there may be situations where this is not desirable. In these cases, it may be best to simply say that the general manager will receive a salary "at a rate fixed by the board of directors from time to time, but at a rate in no event less than that currently paid"

Section 5: Termination/Suspension

A natural and common concern in developing an employment agreement in the public sector is the preservation of the basic and traditional employer-employee relationship where the public employee serves at the pleasure of the public employer, i.e., its governing board. To undermine this basic concept is to risk destroying, or at least hindering, both the integrity and effectiveness of the relationship as well as the transit system's ability to carry out its mission of providing public service. This concept needs to be kept in mind in the development of the entire agreement, but perhaps most especially in the termination clause.

The termination section of the sample agreement is typical of those contained in many public sector employment agreements and is consistent with the traditional rule that the chief executive of a public agency serves at the pleasure of the board of directors. The key provision is contained in subsection 5(a) (ii), which provides that the employment agreement may be terminated by the board of directors upon the adoption of a resolution.

Such a provision is a common feature of public sector employment contracts. However, the agreed upon procedures that the board is obligated to follow vary consider-

ably from agreement to agreement. There may be a state law or other legal requirement that the general manager must be afforded the opportunity to know why he is being terminated and the opportunity to appear before the board. Beyond any minimum requirements, however, additional procedural safeguards can be included to the advantage of both the general manager and the board. These include such procedural requirements as prior notice, a statement of reasons, a hearing before the board of directors, etc.

Other circumstances under which the employment agreement may be terminated are spelled out in the sample agreement. They include termination by mutual agreement, resignation of the general manager, and his/her disability or death. These provisions are frequently found in both public and private sector employment agreements.

The sample agreement also contains a provision permitting the suspension of the general manager with full benefits during the time of suspension. As in the case of termination by the adoption of a resolution, there may be some required procedural guarantees that should be included in the agreement as well as a range of additional procedures that are matters of negotiation between the parties. The major advantage of a suspension provision is that it provides the board of directors with a means of relieving the general manager of his or her responsibilities pending an investigation or some other action, but allows for a later reinstatement.

The final subsection of the termination provision preserves the rights and remedies available to the board or the manager in the event of a breach of the employment agreement. It includes a provision where each party has 30 days after notice of a breach in which to take remedial action.

Section 6: Compensation After Termination

This section of the sample agreement sets out the rights of the general manager to receive compensation upon termination of the employment agreement. The agreement is typical of other public sector employment agreements, and for purposes of severance pay, distinguishes between those instances where the board terminates the agreement "for cause" or for some other reason.

If the termination is for cause, as defined in the sample agreement, then the transit system has no further obligation under the agreement. Unless a state statute or other provision defines those conditions under which an employee can be discharged for cause, it is advisable to define the term using language similar to that contained in the sample agreement.

If the employment agreement is terminated by the board for some other reason, typically there is some form of continuing compensation, if not for the term of the contract. The length of time compensation will continue to be paid is a matter for negotiation between the parties. However, if the agreement provides for a lengthy period of continuing compensation, the transit system can reduce the financial impact of such a provision by pro-

viding, as has been done in the sample agreement, for reduced payments in the event the discharged employee accepts other employment.

As is common in most agreements, the sample agreement provides that if the general manager resigns, the transit system will have no obligation other than it would have to other employees who resign. Finally, the sample agreement provides for the negotiation of any agreed-upon provisions in the event of termination by disability or death of the general manager. In some agreements, the transit system's obligation is limited to the obligation it would have in the event another employee becomes disabled or dies. In others, special disability or death benefits are provided for.

Section 7: Other Conditions of Employment

This section of the sample agreement establishes the other conditions and benefits of employment that the general manager will receive while employed. Like the section that establishes salary level, this section is highly negotiable. The sample agreement provides that the general manager is entitled to the benefits and conditions available to other employees of the transit system. It also provides for the negotiation of any other appropriate benefits including deferred compensation.

Almost all employment agreements provide that the chief executive is entitled to the benefits and conditions of employment available to other employees. While the range of "standard" benefits may vary somewhat from system to system, these generally include some form of health insurance, life insurance, and a retirement program. Since it may be easy to overlook one or more of these benefits, the words "including without limitation" have been inserted to cover any oversights.

Other Appropriate Conditions. Generally, employees lose accumulated vacation, sick leave and other benefits that are related to job tenure when they change jobs. Since transit system general managers often are highly mobile, it may be appropriate to compensate for the loss of tenure-related benefits by providing agreed-upon levels of credit for prior service for the purpose of determining certain benefits, such as pension, sick leave, and vacation. In fact these provisions are quite common in almost all employment agreements for public officials.

The issue of vacations may be approached in a variety of ways. Some employment agreements simply provide the manager with an agreed upon credit of annual leave, generally the amount of leave that could have been accumulated had the employee been employed by the transit system for one year. Another common arrangement, in cases where an employee's vacation benefit increases depending on years worked, is to provide that the general manager shall accrue vacation time as if he or she had been an employee for a stipulated period of time. Of course, a combination of these approaches could also be used.

The question of sick leave may also be important. Many transit systems rely on

accumulated sick leave to supplement disability benefits. There is often a substantial waiting period for disability benefits, and most employees accrue sick leave as a form of "supplemental insurance" to ensure, in the event of disability, that they will not have to rely on savings to support their families while waiting for disability payments to begin. Again, there are several ways this issue can be handled in an employment agreement. One option is to provide advance sick leave until a specified level of actual sick leave is accrued. Another option is to credit the employee with the amount of sick leave accumulated in his or her previous job. Finally, it may be possible to provide a supplemental insurance policy for the general manager.

The issue of pension benefits and retirement is a particularly complex area. Generally, an employee must work for a particular transit system for a set number of years, usually three to five but, perhaps as many as 10, before the employee gains a "vested right" in the system's pension plan. Once vested, the employee becomes entitled to a pension, according to the terms of the plan. If an employee resigns, many plans provide for the option of withdrawal of employee payments into the plan.

Highly mobile professionals in the public transit sector often face difficulties in establishing a solid retirement program because they may not stay in one job long enough to gain a vested right in a pension plan. Even if they do, they may not have enough years of service to establish a reasonable level of retirement income. Therefore, it may be necessary for a transit system address this issue. There are three common approaches: (1) credit for prior service in an existing pension plan; (2) creation of a supplemental retirement program for the executive; and (3) establishment of a deferred compensation program.

The first option, credit for prior service in an existing pension plan, is conceptually quite simple. The board of directors and the general manager would simply agree on a appropriate number of years for which credit would be provided. The transit system or the general manager might or might not have to make an actual payment into the pension plan. The drawback to this approach is that it may not be allowed under the enabling statutes or regulations establishing the transit system's pension program, and may also raise issues under the federal laws regulating employee pensions plans. When considering this option, the transit system's legal counsel should look carefully into these state and federal requirements.

Where it is not feasible to provide credit for prior service in the system's existing pension plan, a supplemental retirement program designed specifically for the general manager can be created. Such a plan would have to cover such details as how the supplemental plan would be funded, the amounts, method, and timing of payments, and whether the employee would be entitled to benefits in the event of termination "for cause." Since these are "non-qualified" plans, the tax consequences to the employee of such "non-qualified" plans would also have to be considered carefully. In this regard, an insurance company or other professional organization might be called upon to provide guidance.

Finally, the transit system and the employee might want to address the retirement issue by establishing a deferred compensation program under the Internal Revenue Code (26 U.S.C. §457). The deferred income, as well as investment income, is not subject to tax until it is withdrawn and the funds can be invested in a variety of ways. Among the issues to be considered in establishing a deferred compensation program are the selection of a plan manager and the determination of whether payments into the plan will be deducted from, or in addition to, the annual salary.

Miscellaneous Provisions. Employment agreements can include a wide range of other provisions depending on the needs of the general manager, such as the payment of dues to professional organizations, subscriptions, and club fees where there is an important business connection. Some agreements also provide for the professional development of the general manager by authorizing reimbursement at a specified level for workshops, training courses, and conferences related to the management and operation of a transit system. Still other agreements provide of regular medical examinations of the general manager.

If an automobile will be provided for the general manager's use, the matters of insurance liability, and operation expenses will also have to be considered. Some transit systems have long-standing policies and standards for the provision and use of cars by executives. These policies and standards will provide the basis for the clause.

Finally, some employment agreements provide for additional insurance on the life of the general manager. While the proceeds of such insurance may be for the benefit of the general manager's heirs, it is not uncommon to insure the life of the general manager for the benefit of the transit system. In the event the general manager dies unexpectedly, the proceeds of the insurance can help defray the often substantial costs of searching for and hiring a new general manager.

Section 8: Performance Standards and Evaluations

The sample agreement includes a provision for regular performance evaluations based on criteria developed by the board of directors in consultation with the general manager. It also provides that this criteria will be available to all concerned prior to the period of time covered by the evaluation. The sample clause is very general. It may be desirable, depending on the situation, to be more specific or descriptive. It may also be possible or desirable to make reference to existing performance standards. The sample agreement ties salary reviews to the performance evaluation. This is referred to in the compensation clause so it is not necessary to repeat the stipulation in the performance standards clause. The tie-in is, of course, optional. It has been included in the sample agreement simply to demonstrate how this might be handled in an agreement.

Section 9: Expenses

This section of the sample agreement covers three areas of expense reimbursement

that are common in public employment agreements--business expenses, relocation expenses, and expenses related to the sale of the general manager's current house and the purchase of a new one. The use of expense accounts is sometimes a source of discord or public criticism. An employment agreement cannot provide a guarantee against these possibilities. However, it can establish guidelines that can avoid potential controversy.

Many transit systems have established policies and procedures with respect to the various types of expenses an employee may incur and for which he is entitled to reimbursement. These policies and procedures typically establish any limits or exclusions to reimbursable expenses as well as procedures and documentation required as a condition of reimbursement. Where such policies and procedures have been established, they can be referred to in the agreement.

If the transit system does not have established guidelines for these expenses, it may be necessary to include a more detailed specification of general expense provisions in the agreement. It might be preferable in this case to attach an appendix to the agreement spelling out, in detail, these allowances rather than attempting to accomplish this in the main body of the agreement.

General business expenses may be restricted or affected by conflict of interest policies as well as local ordinances or charters. These sources should be checked before drafting this section of the agreement.

Relocation Expenses. The cost of relocating a family and of selling a home and buying another are often a major concern for employees and employers alike. Many public employers are limited in what they can provide in the way of compensatory allowance or incentives--not only with respect to housing cost differentials and moving expenses but in other benefits and compensation as well. However, it is common to provide reasonable assistance, not only for the usual moving expenses, but the expenses of changing homes as well.

Cost of living factors will influence these provisions to a greater or lesser extent. There are very real differences from one community to another as regards financing a home, local and personal property taxes, and such things as commuting to and from work. These factors can be taken into account both in the relocation allowances and in compensation negotiations.

Typically, an agreement will provide for all expenses directly related to moving, such as packing, transportation, in-route expenses, and some form of temporary living allowance. Often the employer will assist the employee in connection with the costs associated with selling a house and buying another one. In some cases, mortgage assistance on the new home is offered. "Double mortgage reimbursement" is sometimes provided. This reimburses the employee for the cost of carrying two mortgages. A reasonable time frame may very well depend on the location of the former home. If it is located in an area

where homes normally move slowly, a longer time might be reasonable. "Compensation loans" or "bridge loans" are also sometimes provided. These are subject to IRS regulations and tax counsel should be consulted before entering into such arrangements.

The amount of time taken by employee relocation may be shortened in some cases by making use of the services of a relocation real estate firm. These firms specialize in employee relocation and can help the general manager find a new home as well as sell the old one. Sometimes these firms agree to buy the former home if it is not sold within a designated time period. Relocation firms frequently handle all details of the move for the employee, including the buy-sell aspects, and may even provide personal services to the family, such as counseling and assistance in getting settled in a new community. Most of these firms operate on a nation-wide basis and are highly experienced in the complications and details of long distance relocation.

Some employment agreements provide for one lump sum payment to cover all such expenses, including buy-sell expenses. This sum may also include some allowance for such things as tax or interest rate differentials, or other considerations. For this form of reimbursement as well as for others, the tax consequences to the employee should be considered. While the Internal Revenue Service generally permits the deduction from income of relocation expenses, there are limitations.

Section 10: Indemnification

The extent of the general manager's personal liability and legal position is a matter of important concern, and it is becoming increasingly common for public employment contracts to provide protection against liability by way of an indemnification clause. Some means of reasonable limitation and protection is often essential.

Court cases on the personal liability of public officials have become increasingly common in recent years and the traditional exemption from liability has been reduced or abrogated in many cases. The position of the general manager today is less clear in these matters and is therefore a matter of increasing concern for both the general manager and the employer.

Indemnification may be provided for by statute or ordinance or it may be contingent upon state laws specifically limiting the degree, terms, and types of potential liability. Where state or local law does provide for indemnification of public employees, or sets limits on the extent to which such indemnification may be provided, the state or local law should be referred to in the employment agreement. Both the general manager and the employer may also want to review any existing insurance in this area and consider whether additional protection is needed. The transit system may, under state statute or resolution, reserve the right to defend any cases that arise.

Section 11: Dispute Resolution

Unfortunately, disputes concerning the employment of general managers do sometimes arise. In anticipation of such a possibility, the parties should consider a provision in the contract through which they would agree to submit any dispute arising out of, or connected with, the general manager's employment, or the termination of his/her employment, to binding arbitration. This would ensure that such disputes would be resolved expeditiously and economically without resorting to litigation. It is recommended that the arbitration clause be broad, covering the entire employment relationship, and not just disputes arising under the contract. This will prevent attempts to take the dispute out of the arbitration forum by labeling the dispute as something other than a contract claim.

Section 11: Other Terms and Conditions

The final section of the sample agreement contains several miscellaneous provisions common to most public employment agreements. These include a specific provision on how both the general manager and transit system should provide any required notice under the agreement. This can avoid any later disagreements over the adequacy of such notice.

Other matters covered in this section include a statement to the effect that the employment agreement supercedes any prior agreements and that the agreement may only be changed in writing. Also included is a non-assignability clause and a provision that the agreement is binding on the employee's heirs. Finally, a statement is included which designates the law that is to be applied in interpreting the agreement.

PART III

Sample Employment Agreement Between a Transit System and a General Manager

This is an Employment Agreement made and entered into on _____ [date] _____, by and between the _____ [Name of Transit System] _____ (hereafter referred to as Transit system) and _____ [Name of General Manager] _____ (hereafter referred to as Employee).

The Board of Directors of the Transit System is authorized pursuant to _____ [reference to state statute, city charter, provision, or other source of authority] _____ to enter into contracts on behalf of the Transit System and to appoint and fix the salary of the General Manager. _____ [Name of General Manager] _____ desires to be appointed as General Manager.

Therefore, in consideration of the terms and conditions of this Agreement, the parties agree as follows:

Section 1: Duties and Responsibilities

(a) Transit System agrees to employ the Employee as General Manager and the Employee hereby accepts such employment upon the terms and conditions set forth in this Agreement.

(b) Employee shall have and agrees to perform in good faith, the duties and responsibilities of General Manager such, Employee shall maintain his [or her] office at the headquarters of Transit System, shall have general supervision and management of the affairs of the Transit System under the direction of the Board of Directors, and shall perform such other duties and responsibilities as may be assigned from time to time by the Board of Directors. As General Manager, the Employee shall _____ [insert any specific duties and responsibilities with respect to reporting to the Board of Directors, personnel, contracts, etc.]

Section 2: Conditions of Employment

Employee shall devote his [or her] full time, energies, interests and abilities to the performance of the duties and responsibilities of General Manager and shall not engage in any activities that conflict with, or interfere with, the performance of this Agreement.

¹ If the duties and responsibilities of the General manager are set forth by state law or local code or prescribed by other written policies of the Transit System, this statement could refer to the state law, local code, or written policies

Section 3: Term of Employment

Subject to the provisions for termination set forth in Section 5 of this Agreement, the term of Employee's employment shall begin _____ [date] _____ and shall continue for _____ years, unless terminated as provided for elsewhere in this Agreement. This Agreement may be extended at any time during its term by mutual agreement of Transit System and Employee.

Section 4: Compensation

(a) As compensation to Employee for the services rendered to Transit System during the term of this Agreement, Employee shall be paid a base salary at an annual rate of not less than _____ [amount] _____, payable in accordance with Transit System's regular payroll procedures.

(b) During the term of this Agreement, the base salary set forth in Paragraph 4 (a) will be increased from time to time in such amounts as the Board of Directors may approve based on a performance evaluation to be conducted at least once a year in accordance with Section 8 of this Agreement. [Note: The timing and method of computation of salary increases may vary widely according to the negotiated circumstances.]

Section 5: Termination/Suspension

(a) This Agreement may be terminated:

- (i) by mutual agreement and upon such terms and conditions as agreed to in writing by Employee and Transit System;
- (ii) by the adoption of a resolution approved by the affirmative vote of a majority of the Board of Directors for the removal of Employee as General Manager. _____ [add any agreed-upon Procedural requirements such as prior notice, statement of reasons, opportunity of General Manager to appear before Board of Directors, etc., as discussed in previous part of this report] _____;
- (iii) by resignation of Employee, provided Employee shall have provided _____ months written notice unless the parties otherwise agree in writing;
- (iv) by Transit System if Employee is permanently disabled or otherwise unable perform his [or her] duties and responsibilities because of sickness, accident, injury, mental incapacity, or health for a period of _____ successive months; and
- (v) by the death of the Employee.

(b) Transit System may suspend the Employee with full pay and benefits by the option of a resolution setting forth the reasons for the suspension approved by the affirmative vote of a majority of the Board of Directors for the suspension of

Employee as General Manager. _____ [add any agreed upon procedural requirements such as prior notice, opportunity of General Manager to appear before Board of Directors, etc., as discussed in previous section of this report].

(c) Nothing in this Agreement shall limit the rights and remedies the parties may otherwise have in the event of a breach of this contract by the other party not cure within 30 days after the date of notice of such breach.

Section 6: Compensation After Termination

(a) If this Agreement is terminated under Section 5(a)(ii) by the adoption of a resolution and the grounds for Employee's termination are "for cause," Transit System shall have no further obligation under this Agreement. "For cause" is defined as the following:

- (i) Employee's willful breach of duties, obligations or policies of the Transit System;
- (ii) Employee's continued neglect of duties or obligations required of the General Manager after written notice of same;
- (iii) Employee's continued violation of written rules and policies after written notice of same;
- (iv) Employee's commission of any criminal act amounting to a felony while employed as General Manager of the Transit System;
- (v) Employee's commission of any dishonest act in a public or private capacity such as theft, fraud, misappropriation or embezzlement of funds;
- (vi) Employee's engagement in acts which would constitute grounds for immediate dismissal of any employee by the Transit System under existing policies or as may be subsequently enacted;

(b) If the grounds for Employee's termination under Section 5(a)(ii) are other than those set forth in the preceding Section 6(a), Transit System shall _____ [insert agreed upon provision respecting termination.], provided that compensation paid by Transit System to Employee shall be reduced by an amount equal to the amount received by Employee from another party for services rendered during the time in which termination pay is required.

(c) If this Agreement is terminated under Section 5(a)(iii) for reasons other than those set forth in the preceding Section 6(a), Transit System shall have no obligations under this Agreement other than providing such benefits to Employee as other employees of Transit System would be entitled to upon resignation.

(d) If this Agreement is terminated under Section 5(a)(iv) by Employee's disability or Section 5(a)(v) by the death of Employee, Transit System shall _____ [insert agreed upon provisions] _____.

Section 7: Other Conditions of Employment

(a) Employee shall be entitled to and receive the conditions of employment which are available generally to other employees of Transit System, including, without limitation, hospital, surgical, medical, dental, or other group health insurance, life insurance and disability benefits, holidays, sick leave, vacation, travel insurance, and participation in Transit System's pension or retirement program.

(b) [insert any other appropriate conditions such as provision for credit for prior service for pension, sick leave and vacation purposes, accrual of unused vacation, use of an automobile, professional membership dues, etc

(c) [insert any appropriate condition regarding participation in a deferred compensation plan.]

Section 8: Performance Standards and Evaluation

The Board of Directors shall review and evaluate the performance of Employee at least once annually based upon criteria developed by the Board of Directors in consultation with the Employee. Such criteria must be developed and available to the Employee prior to the beginning of the period covering by the evaluation.

Section 9: Expenses

(a) Transit System shall reimburse Employee for reasonable and necessary business expenses of the Employee incurred in the performance of the duties and responsibilities set out in this Agreement upon presentation, in accordance with Transit System's normal practice, of reasonably detailed statements of expense for which reimbursement is claimed.

(b) Transit System shall also reimburse Employee for the reasonable and documented travel and subsistence of Employee for short courses, institutes and seminars necessary for Employee's professional training and for serving the best interests of the Transit System.

(c) Transit System may, in the sole discretion of the Board, budget and pay for memberships, dues, and expenses in professional organizations or in clubs to be used primarily for non-personal, job-affiliated meetings and entertainment. The payment of such expenses is a general benefit to the Transit System, serves the best interests of the Transit System and shall not be considered as compensation to Employee.

(d) Employee shall be reimbursed by Transit System for the necessary and reasonable expenses of relocating Employee and his [or her] family and their belongings and personal effects from _____ [City, State] _____ to _____ [City,

State] _____. Such reimbursement shall include expenses for moving costs, storage of furniture and personal effects, travel by Employee and his [or her] family for one trip to and from _____ [City, State] _____ for the purpose of locating suitable housing and the cost of renting a temporary temporary residence after employment begins not to exceed _____ days, pending the availability of suitable housing.

(e) Employee shall be reimbursed for the direct costs of selling Employee's residence _____ [City, State] _____. Such reimbursement shall include real estate agent's fees, attorney's fees, and other closing costs related to the sale of Employee's residence and attorney's fees, title insurance, and other closing costs related to the purchase of a residence in _____ [City, State] _____.

Section 10: Indemnification

To the extent permitted under _____ [refer to applicable state law or other source of authority, if any] _____, Transit System shall indemnify and hold harmless Employee from any claim or legal action arising out of Employee's actions as General Manager of Transit System.

Section 11: Dispute Resolution

The parties agree that all claims and disputes relating to or arising out of Employee's employment with the Transit System including, but not limited to, the interpretation of this Agreement, shall be resolved through binding arbitration. Any arbitrator shall be selected and the arbitration conducted in accordance with the rules of the American Arbitration Association ("AAA") then in effect. Either party may invoke arbitration and the decision of the arbitrator shall be binding.

Employee expressly acknowledges that Employee agrees to submit to binding arbitration all claims relating to, or arising out of, Employee's employment, including, but not limited to, claims under Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act, the Age Discrimination in Employment Act and all other federal, state or local laws prohibiting discrimination. In doing so, Employee understands that he/she agrees to waive his/her right to pursue in state or federal court any such dispute or claim and that such waiver includes whatever right to a jury trial might otherwise exist at the time the claim might arise. In rendering an award, the arbitrator shall have full authority to fashion any remedy that would otherwise be available to either party in an action brought in a court of law or administrative agency.

All filing and administrative fees and other such costs related to the arbitration, including, but not limited to, the arbitrator's fees and travel and subsistence expenses shall be paid by the Transit System. All other costs, including attorneys' fees, (unless awarded by the arbitrator) shall be borne by the party incurring the costs.

Section 12: Other Terms and Conditions

(a) Any notice to Transit System under this Agreement shall be furnished in writing by Employee to the Chairman of the Board, Transit System, _____ [address] _____. Any notice to Employee under this Agreement shall be furnished in writing by Transit System to _____ [name and address of Employee] _____. All such notices must be sent by first-class mail or delivered in person by messenger.

(b) This Agreement represents the entire agreement between the parties and supercedes any prior agreements or understandings whether oral or written. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, oral or otherwise, have been made which are not embodied herein and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding.

(c) This Agreement cannot be changed or terminated orally and may be modified only by a written agreement executed by both parties.

(d) This Agreement is personal to Employee and cannot be assigned to any other person.

(e) This Agreement shall be binding upon and inure to the benefit of the Employee's executors and heirs.

(f) The waiver by the Transit System of a breach of any provision of this Agreement by Employee shall not operate or be construed as a waiver of a subsequent breach by Employee.

(g) If any provision of this Agreement is held to be invalid, void or unenforceable, the remaining provisions shall, nevertheless, continue in full force and effect without being impaired or invalidated in any way.

(h) This Agreement shall be interpreted, construed and applied according to the laws of _____ [State where Transit System located] _____.

(i) Employee warrants that he has been afforded an opportunity to consult with counsel with respect to the contents of this Agreement prior to its execution.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the date indicated above.

TRANSIT SYSTEM _____

By _____