

## EMPLOYMENT AGREEMENT

This Agreement, made and entered into this October 1, 2016, by and between the Town of Derry, 14 Manning Street, Derry, NH 03031 a municipal corporation, (hereinafter called "Employer") and David R. Caron, 44 Marilyn Drive, Belmont, NH 03220, (hereinafter called "Employee") an individual who has the education, training and experience in local government, both of whom agree as follows:

### **Section 1: Term**

- A. This agreement shall commence on December 5, 2016 and automatically terminate June 30<sup>th</sup>, 2020. This agreement is for three and one half years.
- B. The Employee shall notify the Employer, in writing, on or before January 15<sup>th</sup>, 2020 as to whether or not the employee wishes to commence negotiations for a successor agreement.
- C. The Employer, on or before February 15<sup>th</sup>, 2020 shall notify the Employee, in writing, as to whether or not it wishes to commence negotiations on a successor agreement.
- D. In the event that both the Employer and the Employee give notice indicating their desire to commence negotiations for a successor agreement, the parties hereto shall meet and attempt to conclude negotiations no later than April 15<sup>th</sup>, 2020.
- E. In the event the agreement is not renewed, all compensation, benefits and requirements of the agreement shall remain in effect until the expiration of the term of the Agreement unless Employee voluntarily resigns. In the event that the Employee is terminated, as defined in Section 9 of this agreement, the Employee shall be entitled to compensation as set forth in Section 9.

### **Section 2: Duties and Authority**

- A. Employer agrees to employ David R. Caron as Town Administrator to perform the functions and duties specified in Article 8 of the Town of Derry charter and to perform other legally permissible and proper duties and functions.
- B. Employee is the chief executive officer of the Employer and shall faithfully perform the duties as prescribed in the job description as set forth in the Employer's charter, Administrative Code/Ordinances and Administrative Regulations as may be lawfully assigned by the Employer and shall comply with all lawful governing body directives, state and federal law, Employer policies, rules and ordinances as they exist or may hereafter be amended.

C. Specifically, it shall be the duty of the Employee to employ on behalf of the Employer all other employees of the organization consistent with the Charter, Administrative Code/Ordinances and policies of the governing body of the Employer.

D. It shall also be the duty of the Employee to direct, assign, reassign and evaluate all of the employees of the Employer consistent with Charter, Administrative Code/Ordinances and policies of the governing body of the Employer, state and federal law.

E. It shall also be the duty of the Employee to organize, reorganize and arrange the staff of the Employer and to develop and establish internal regulations, rules and procedures which the Employee deems necessary for the efficient and effective operation of the Employer consistent with the Charter, Administrative Code/Ordinances and policies of the governing body of the Employer.

F. It shall also be the duty of the Employee to accept all resignations of employees of the Employer consistent with Charter, Administrative Code/Ordinances and policies of the governing body of the Employer.

G. The Employee shall perform the duties of Town Administrator of the Employer with reasonable care, diligence, skill and expertise.

H. All duties assigned to the Employee by the governing body shall be appropriate to and consistent with the professional role and responsibility of the Employee, The Charter, Administrative Code/Ordinances and policies of the governing body of the Employer.

### **Section 3: Compensation and Performance Evaluation**

A. Base Salary: Employer agrees to pay Employee an annual base salary of \$137,500, payable in installments at the same time that the other non-union employees of the Employer are paid. The salary shall be revised on July 1<sup>st</sup>, 2017 to \$141,625.

B. The salary may be revised on July 1<sup>st</sup>, 2018 and annually, thereafter by the Employer in accordance with Section 8.3 of the Town Charter, but in no event shall the Employee be paid less than the salary set forth in Section 3.A. of the Agreement. The Employee shall receive up to a 3% increase in salary based on the performance evaluation.

C. The Employer and the Employee shall mutually agree to a set of goals and objectives, including measurable outcomes and dependencies, on an annual basis. In January of each year, the Employee and Employer will review progress toward agreed upon goals and the Council will provide the Employee a written mid-year status report. The agreed upon goals and objectives shall be utilized by the Employer as part of the Employee's evaluation and shall be considered an addendum to this Agreement.

#### **Section 4: Health, Disability and Life Insurance Benefits**

- A. The Employer agrees to provide and to pay the premiums for health, hospitalization, surgical, vision, dental and comprehensive medical insurance for the Employee and his/her dependents, equal to that which is provided to all other non-union employees of the Town of Derry.
- B. The Employer agrees to put into force and to make required premium payments for short term and long term disability coverage for the Employee.
- C. The Employer shall pay the amount of premium due for term life insurance in the amount of one times the Employee's annual base salary, including all increases in the base salary during the life of this agreement. The Employer shall name the beneficiary of the life insurance policy.

#### **Section 5: Personal Time Off**

- A. Upon commencing employment, the Employee shall be credited with 10 accrued PTO days to be used as personal time off. In addition, beginning the first day of employment, Employee shall accrue PTO on an annual basis, at the rate of 2.1 days per month of employment to a maximum of 25 days per year.
- B. The Employee may once annually cash out any earned time accrued including the 10 days that have been front loaded.
- C. In the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall be compensated for all accrued vacation time to date.
- D. The employee is entitled to other paid time off such as holidays in accordance with the policies of the town.
- E. Upon commencing employment, the employee shall be credited with 24 sick days; no further days shall accrue until the third anniversary of the Agreement, at which time the Employee shall accrue 1 day per month to a maximum of 30 days total, including any portion of the initial 24 days credit. Sick time can be rolled over to the next contract period.
- F. In the event the Employee's employment is terminated, either voluntarily or involuntarily, the Employee shall not be compensated for any accrued sick time to date.

**Section 6: Automobile Expenses (NOT AGREED TO, NO CAR ALLOWANCES)**

The Employer agrees to pay to the Employee, during the term of this Agreement and in addition to other salary and benefits herein provided mileage at the Federal Mileage rate for any town business outside the town of Derry in the course of employment.

**Section 7: Retirement**

As an Employee of the Town performing duties and responsibilities for a specified term, under New Hampshire law, the Employee is not required to participate in the New Hampshire Retirement System. In lieu of said participation, the Town agrees to execute all necessary agreements provided by the International City Management Association - Retirement Corporation (ICMA-RC) for the Employee's participation in said ICMA-RC retirement plan. In addition to the salary paid to the Employee, the Employer agrees to contribute to ICMA-RC the amount the Town by state statute would have been required to contribute the New Hampshire Retirement System on behalf of the employee. The Employee is exempt from participation in NHRS pursuant to RSA 100-A:22

**Section 8: General Business Expenses**

The Employer agrees to budget and pay for reasonable travel and subsistence expenses of the Employee for professional and official travel, meetings, and occasions adequate to continue the professional development of the Employee. These include such meetings as the International City Management Association Annual Conference, the New Hampshire Municipal Association, the New Hampshire Municipal Management Association, and other State and Local Government and Committees upon which the Employee serves.

The Employer agrees to budget and pay for the reasonable travel and subsistence expenses of the Employee for short courses, institutes, and seminars as necessary to obtain information essential to the management of the Employer and for the Employee's professional development. The sum total of all expenses incurred pursuant to this section of the Agreement are not to exceed Five Thousand Dollars (\$5,000.00) annually. Any of the following expenses in excess of \$500 will require prior approval of both the Town Council Chair and Pro-tem

The Employee will be provided a cell phone through the Employer if Employee requests one.

### **Section 9: Termination**

- A. For the purpose of this agreement, termination shall occur when the majority of the governing body votes to terminate the Employee in accordance with Section 8.4 of the Town Charter at a properly posted and duly authorized public meeting.
- B. If the Employee is terminated, prior to the end of the agreement, the Employer shall provide a minimum severance payment equal to nine months during the first 18 months of employment, eight months during the next 12 months of employment and seven months during the last 12 months of employment at the then current rate of compensation. This severance shall be paid in a lump sum or in a continuation of salary on the existing payment schedule, at the Employee's option.
- C. The Employee shall also be compensated for all vacation leave and all paid holidays. The Employer agrees to make a contribution to the Employee's deferred compensation account on the value of this compensation calculated using the then current annual salary of Employee at the date of termination divided by two thousand and eighty (2080) hours. If the amount of the contribution under this Section exceeds the limit under the Code for a contribution to the Deferred Compensation plan, the remainder shall be paid to the Employee in a lump sum as taxable compensation.
- D. If the Employee is terminated for cause or because of a felony conviction, then the Employer is not obligated to pay severance under this agreement.
- E. If the Employee leaves the position voluntarily, then the Employer is not obligated to pay severance under this agreement.

### **Section 10: Resignation**

In the event that the Employee voluntarily resigns his/ her position with the Employer, the Employee shall provide a minimum of 60 days' notice unless Employer and Employee agree otherwise.

### **Section 11: Performance Evaluation**

Annually, the Council and the Employee shall define such goals and performance objectives which they determine necessary for the proper operation of the Town and in the attainment of the Council's policy and objectives, and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing. They shall generally be attainable within the time limitations as specified. The Council will evaluate the performance of the Employee against the defined goals and objectives, and provide the

Employee with a written summary report of his performance, which will be the basis for a discussion regarding the merit salary increase referenced in Section 3.

**Section 12: Hours of Work**

The normal work day schedule will be 9am to 5pm. However, it is recognized that the Employee must devote a great deal of time outside the normal office hours on business for the Employer. Employee shall be allowed to establish an appropriate work schedule. The schedule shall be appropriate to the needs of the Employer and shall allow Employee to faithfully perform his or her assigned duties and responsibilities.

**Section 13: Residency**

Pursuant to Section 8.2 of the Town Charter, the Employee shall not be contractually obligated to be a resident of the Town or the State of New Hampshire.

**Section 14: Indemnification**

The Town shall defend, save harmless and indemnify the Town Administrator against any tort, professional liability claims or demands or other legal action, whether groundless or otherwise, arising out of the performance of the duties as Town Administrator. The Town will compromise and settle any such claims or suit and pay the amount of any settlement of judgment, including insurance deductibles as provided for in the liability policy of the Town. The Town does not indemnify for intentional torts or actions brought on by the Administrator.

**Section 15: Bonding**

The Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.

**Section 16: Notices**

Any and all notices required or permitted to be given under this Agreement shall be sufficient if furnished in writing, sent by certified or registered mail, return receipt requested, to his last-known residence in the case of the Employee, or to its Chairman of the Council at the Municipal Building in the case of the Employer.

## Section 17: General Provisions

### A. Integration.

This Agreement sets forth and establishes the entire understanding between the Employer and the Employee relating to the employment of the Employee by the Employer. The Employer and Employee by mutual written agreement may amend any provision of this agreement during the life of the agreement. Such amendments shall be incorporated and made a part of this agreement.

### B. Binding Effect.

This Agreement shall be binding on the Employer and the Employee.

### C. Effective Date.

This Agreement shall become effective on October 3rd, 2016, and the Employee shall begin full-time employment on or about December 1st, 2016, at which time the compensation provisions of this Agreement shall commence.

### D. Severability.

In the event that any covenant, condition, term or restriction contained in this Agreement shall be held invalid, illegal or unenforceable in any respect, in whole or in part, then the remainder of this Agreement shall remain valid and enforceable so long as the economic or legal substance of the relationship of the parties contemplated hereby is not affected in any manner materially adverse to any party, and the validity of the remaining part of any term or provision held to be partially invalid, illegal or unenforceable shall in no way be affected, prejudiced or disturbed thereby. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

IN WITNESS WHEREOF, the parties have executed this Employment Agreement on the day and year hereinbefore first written.

Judith A Zola  
Witness

[Signature]  
David R. Caron

TOWN OF DERRY

Sheila M Biderader  
Witness

By: [Signature]

Town Council Chair, Duly Authorized

Date: 11-15-16

Town Councilor: [Signature]

Date: Nov 17, 2016

Town Councilor: [Signature]

Date: 11/17/16

Town Councilor: [Signature]

Date: 11/17/16

Town Councilor: David A. Joshi

Date: 12/6/16

Town Councilor: Shylla Katsakores

Date: 12/16/16

Town Councilor: [Signature]

Date: \_\_\_\_\_