



**Board of Selectmen
10 Front Street
Exeter, NH 03833**

**Employment Agreement 2009
Russell Dean, Town Manager**

Introduction

This agreement, made and entered into this 31st day of August, 2009, by and between the Town of Exeter, Rockingham County, State of New Hampshire, a municipal corporation organized and existing under the laws of the State of New Hampshire, hereinafter called "Employer" and Russell Dean, hereinafter called "Employee" whom agree as follows:

Section 1: Term

This agreement shall remain in full force and effect from the 1st day of September, 2009, until the 31st day of December, 2012 unless terminated earlier by the Employer or the Employee as provided in Sections 10 or 11 of this agreement. Employee's employment shall end at the termination of this agreement.

This agreement shall expire on the 31st day of December, 2012. In the event the employer wishes to not renew the contract after its expiration the Town of Exeter shall provide notice of non-renewal prior to February 1, 2012. If notice is not provided by February 1st annually after the expiration of this agreement, the contract will renew for an additional twelve months with the current terms until a new contract is negotiated.

Section 2: Duties and Authority

- A) Duties:** The employee shall perform all duties imposed upon him as Town Manager by the provisions of New Hampshire Revised Statutes Annotated (RSA) 37:3 through 37:7, the Town Manager Job Description and the Personnel Plan of the Town of Exeter from time to time may require of him. The employee shall be under the general supervision and direction of the Board of Selectmen of the employer. The employee agrees to faithfully and dutifully perform the duties of the position of Town Manager, pursuant to the provisions of N.H. RSA 37:3 through 37:7, the Town Manager Job Description and the Personnel Plan of the Town of Exeter and the general supervision and direction of the Board of Selectmen of the Town of Exeter.
- B) Authority:** The employer agrees that the said employee shall be the chief administrative officer of the Town of Exeter pursuant to the provisions of N.H. RSA 37:3 through 37:7, and shall, subject to the supervision of the Board of Selectmen of the Town of Exeter, have the responsibility to direct the operations of the departments, employees, equipment and buildings in his charge. The employer agrees that such directive from the Board of Selectmen to other employees of the Town shall be through the Town Manager and those directives to the Town Manager or other town employees shall be as a result of a majority vote of the Board at a legally established meeting. The Town Manager is the hiring authority for the Town, however he will forward in writing his recommendation for promotion and new employees to the Board of Selectmen for their comments and review prior to any final verification of employment to potential employees. The employer agrees that the Town Manager has the sole right to fire and discipline employees and as such the Board of Selectmen serve as an appellate authority for any further action should any employee seek further action. The employee agrees that all legal business of the Town shall be conducted by him pursuant to the State Right to Know Laws and the civil rights provisions regarding employment and municipal government actions.

Section 3: Compensation

Employer agrees to pay employee at the same time that the other management employees of the employer are paid. Town Manager is an exempt, salaried position of the Town of Exeter. The salary for the employee over the period of this agreement is as follows:

<u>Term</u>	<u>Salary</u>	<u>up to 2% Merit-Based Incentive</u>	
09/01/2009 – 12/31/2009	\$95,421.51	\$1,908.43	based on 08/2009 Evaluation <i>.5%</i>
01/01/2010 – 12/31/2010	\$98,761.26	\$1,975.23	based on 01/2010 Evaluation <i>.5%</i>
01/01/2011 – 12/31/2011	\$102,217.90	\$2,044.36	based on 01/2011 Evaluation
01/01/2012 – 12/31/2012	\$105,795.52	\$2,115.91	based on 01/2012 Evaluation

The 2% merit-based incentive compensation will be paid in the same term as the salary listed above. It shall be paid retroactive back to the date of the term when the evaluation process is completed by the Board of Selectmen. Employee is eligible for up to 2% merit-based compensation based on the following criteria.

<u>Overall Average Evaluation Score</u>	<u>Merit-Based Incentive</u>
3.00 – 3.49	0.5%
3.50 – 3.99	1.0%
4.00 – 4.49	1.5%
4.50 – 5.00	2.0%

Section 4: Health, Dental, Disability and Life Insurance Benefits

A) **Health:** The employee shall be provided with Major Medical Health and Hospitalization Insurance for himself and his dependents. Employee shall have the right to choose which program provided by the employer he wishes for himself and his dependents. The level of benefits shall be comparable to those provided for by Blue Cross/Blue Shield Plan Indemnity, Point of Service or HMO programs being offered by the employer. The employee shall contribute an increasing percentage of the total cost of the program chosen based on the following schedule:

<u>Term</u>	<u>Employee Cost Share</u>	<u>Employer Cost Share</u>
09/01/2009 – 12/31/2009	3%	97%
01/01/2010 – 12/31/2010	8%	92%
01/01/2011 – 12/31/2011	12%	88%
01/01/2012 – 12/31/2012	12%	88%

B) **Dental:** The employer agrees to provide employee and his dependents with dental insurance. The employer shall pay one hundred percent (100%) of the premium.

C) **Disability Insurance:** The employer agrees to provide an income protection plan in case of a non-work related accident, illness or injury equal to two-thirds (2/3) of employee's monthly salary not to exceed fifty-five hundred dollars (\$5,500.00) per month. Said plan shall be effective after the sixty-first (61st) day of non-work related disability, with benefits payable to age sixty-five (65).

- D) **Life Insurance:** The employer agrees to provide life insurance at no cost to the employee, in the sum of \$50,000.00

Section 5: Sick Leave, Vacation, Holidays and Military Leave

The employer agrees that the employee shall be entitled to sick leave, vacation, personal leave, holidays and military leave in accordance with provisions of the employer's Personnel Plan.

Section 6: Automobile

The employer shall make a Town owned automobile available for the employee's use in the course of the employee's official duties as Town Manager. If the employee chooses to use his own personal vehicle in the course of his official duties he is eligible to submit mileage reimbursement requests at the current IRS rate in a total amount not to exceed \$75/per month and \$900/annually.

Section 7: Communications Device

The employer agrees to provide a stipend of up to \$100/per month paid to the employee for the employee to purchase an electronic mobile communications device and service plan to allow for communication and data service in conjunction with his official duties as Town Manager.

Section 8: Retirement

The employee will be enrolled in the New Hampshire Retirement System (Group 1) with the Town and employee contributing at the current rates required. Employee may also participate in other retirement and savings plans as provided by the Town, but without contribution by the Town.

Section 9: General Business Expenses

The Board of Selectmen hereby agrees to request in its budget sufficient funds for the expenses of the employee that can be used, at the direction of the employee, for out-of-state travel, travel reimbursements, professional development, educational expenses, professional and civic association dues, official meetings, cost of activities through involvement with related outside organizations and customary office expenses. All out-of-state travel expenses shall require prior authorization of the Board of Selectmen.

Section 10: Employment Termination

- A) The employer may cancel this agreement if the employee is convicted of a misdemeanor involving moral turpitude or a felony violation of the laws of any state during the term of this agreement. If the employer shall have the right to cancel this agreement under the provisions of this section, the employer shall not be obligated to pay severance pay nor any unused portion of annual leave.
- B) The employer agrees that if the employee negotiates a resignation or is discharged for cause other than as provided in Section 10(A), the employee shall promptly thereafter receive the full vacation allowance to which employee is entitled plus ninety (90) days severance pay unless the parties agree otherwise. If the employee voluntarily resigns his position in accordance with

Section 11, he shall receive the full vacation allowance to which he is entitled but no severance pay will be given.

Section 11: Notice of Resignation

In the event that the employee voluntarily resigns his position with the employer, the employee shall provide a minimum of four (4) weeks notice unless the parties agree otherwise.

Section 12: Performance Evaluation

Annually, the Board of Selectmen shall review the performance of the employee in January for the prior year. Said review shall be subject to a process, form, criteria and format for the evaluation that is mutually agreed upon by the employer and employee. The process at a minimum shall include the opportunities for both parties to: (1) prepare a written evaluation; (2) meet and discuss the written evaluation and (3) present a written summary of the evaluation results.

Section 13: Hours of Work

It is recognized that the employee must devote a great deal of time outside the normal office hours on business for the employer, and to that end the employee shall be allowed to establish an appropriate work schedule.

Section 14: Continuity of Operations

The Town Manager shall be responsible for naming an "Acting Town Manager" subject to approval by the Board of Selectmen. The "Acting Town Manager" should be a Department Head familiar with the operations of the office. The "Acting Town Manager" shall act in that capacity whenever the Town Manager will be away from the office for an extended period of time, including sick leave, training and conferences or planned vacations. For purposes of this section extended period of time shall mean more than two consecutive work days. The Town Manager shall provide the Board of Selectmen a written memorandum stating when he will be away in accordance with this Section and when the "Acting Town Manager" is acting in that capacity

Section 15: Other Employment and/or Extra Curricular Activities

The employee shall devote his professional time, attention, knowledge and skills solely to the interest of the employer, and the employer shall be entitled to all of the benefits arising from or incident to all work, service and advice of the employee. Recognizing that certain teaching opportunities and extra curricular are worthwhile and provide indirect benefits to the employer and the community, the employee, subject to the approval of the Board of Selectmen, may elect to accept limited teaching opportunities and or extra curricular activities with the understanding that such arrangements shall not constitute interference with nor be a conflict of interest with his responsibilities under this agreement. Approval by the Board of Selectmen shall not be unreasonable withheld.

Section 16: Residence of Employee

The employee shall reside within the Town of Exeter so long as the employee is employed by the employer as Town Manager.

Section 17: Indemnification

Beyond that required under federal, state or local law, the employer shall defend, save harmless and indemnify the employee against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of employee's duties as Town Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities, unless the act or omission involved willful or wanton conduct. Legal representation shall extend until a final determination of the legal action including any appeals brought by either party. The employer shall indemnify employee against any and all losses, damages, judgments, interest, settlements, fines, court costs and other reasonable costs and expenses of legal proceedings including attorney's fees and any other liabilities incurred by, imposed upon or suffered by such employee in conjunction with or resulting from any claim, action, suit or proceeding, actual or threatened, arising out of or in connection with the performance of his duties. Any settlement of any claim must be made with prior approval of the Board of Selectmen in order for indemnification, as provided in this section, to be available.

Employee recognizes that employer shall have the right to compromise, or settle any claim or suit unless a compromise or settlement is of a personal nature to employee and/or the employee is a party to the suit in which case the employee shall have veto authority over the settlement as long as he is still employed by the Town. Further, employer agrees to provide or pay all reasonable litigation expenses of employee throughout the pendency of any litigation to which the employee is a party, witness or advisor to the employer. Such expense payments shall continue beyond employee's service to the employer as long as litigation is pending. Further, employer agrees to pay employee reasonable consulting fees and travel expenses when employee serves as a witness, advisor or consultant to employer regarding pending litigation.

Section 18: Bonding

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

Section 19: Other Terms and Conditions of Employment

The employer, only upon written agreement with employee, shall establish any other terms and conditions of the employment as it may determine from time to time, relating to the performance of the employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of the agreement, the employer or any other law.

Section 20: Grievance Procedures

- A) If the employee is discharged under the provisions of N.H. RSA 37:3 for reasons other than set forth in Section 10(A) of this agreement, the employee shall be entitled to non-binding arbitration if the employee requests arbitration in writing addressed to the Board of Selectmen within thirty (30) days of discharge.
- B) Upon receipt of proper notice the employee shall select an arbitrator, the employer shall select an arbitrator and the two arbitrators shall select a third arbitrator. After a hearing under the

rules of the American Arbitration Association, a majority vote of the arbitrators shall constitute the decision of the Board of Arbitrators. The decision of the Board of Arbitrators shall be non-binding upon the parties.

- C) If either party appeals the decision of the Board of Arbitration it is agreed that the decision of the Board of Arbitrators shall be admissible in any court proceeding at a hearing on the merits.
- D) The provision of Chapter 18 (Grievance Procedures) as set forth in the Town of Exeter Personnel Plan shall not be applicable with regard to any employment contract between the Town of Exeter and the position of Town Manager notwithstanding the provisions of Section 8.4 of the Town of Exeter Personnel Plan.

Section 21: Notices

Notice pursuant to the agreement shall be given by depositing in the custody of the United States Postal Service, postage prepaid, addressed as follows:

EMPLOYER: Board of Selectmen
Town of Exeter
10 Front Street
Exeter, NH 03833

EMPLOYEE: Russell Dean
8 River Bend Circle
Exeter, NH 03833

Alternatively, notice required pursuant to this agreement may be personally served in the same manner as is applicable to civil judicial practice. Notice shall be deemed given as the date of personal service or of the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 22: General Provisions

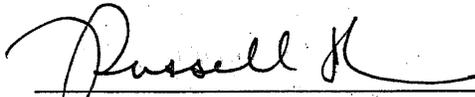
- A) **Integration:** This written agreement embodies the whole agreement between the employer and employee and there are no inducements, promises, terms, conditions or obligations made or entered into by either the employer or the employee other than those contained herein. Any prior discussions, representations or previous agreements by or between the parties are merged into and rendered null and void by this agreement. The parties by mutual written agreement may amend any portion of this agreement during the life of the agreement. Such amendments shall be incorporated in and made a part of this agreement.
- B) **Governing Law:** This agreement and the employment of the employee hereunder, shall be subject to and construed in accordance with the laws of the State of New Hampshire and the Personnel Plan of the Town of Exeter and such amendments to the Personnel Plan as shall be made during the term of this contract. Any provisions of this agreement which are not in accordance with the provisions of the Personnel Plan shall supersede and prevail over such inconsistent provisions in the Personnel Plan of the Town of Exeter.

C) **Severability:** The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid, the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

D) **Approval:** This agreement shall be effective upon signing thereof by the employer through its Board of Selectmen and the employee.

Section 23: Effective Date

Signed this 8th day of September, 2009



Russell Dean, Town Manager



William E. Campbell, Chairman

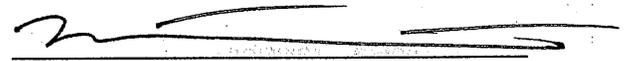


Julie D. Gilman, Vice-Chairwoman



Robert J. Aldrich, Clerk

Robert D. Eastman, Selectman



Matthew J. Quandt, Selectman