

**EMPLOYMENT AGREEMENT BETWEEN
DANIEL W. FITZPATRICK AND
THE CITY OF ROCHESTER**

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INTRODUCTION

MEMORANDUM OF AGREEMENT between Daniel W. Fitzpatrick (hereinafter referred to as "Employee" and the City of Rochester, New Hampshire (hereinafter referred to as "Employer" or "City").

It is understood and agreed that Employee accepts appointment as City Manager of Rochester, New Hampshire effective on or before June 7, 2011.

The following conditions of employment are further understood by Employee and Employer.

SECTION 1. FUNCTION AND DUTIES:

As City Manager, Employee shall be the chief executive officer of the City government, and shall perform such functions and duties as are required by the Charter of the City of Rochester, as required by the position, and as may be assigned to him by the City Council from time to time.

SECTION 2. SALARY:

The starting salary for the position of City Manager will be at the rate of \$123,575 per year effective upon the start of employment. In addition employer agrees to increase said salary and/or benefits at the same time and similar as consideration is given to other employees generally.

SECTION 3. RELOCATION EXPENSES:

It is mutually agreed that employee will take up residency in the City of Rochester. In that regard Employer agrees to reimburse (or pay directly) Employee, for the following relocation expenses, to a maximum of \$29,000. If employee resigns within one year of this agreement, employee shall reimburse the City for the funds expended under this section.

- A. Normal expenses for storage, packing and moving Employee, his family and his personal property to Rochester, New Hampshire.
- B. Direct cost to Employee associated with the sale of Employee's existing family residence, reimbursement being limited to legal and real estate agent's fees and other closing costs that are directly associated with the sale of family home.
- C. Cost incidental to buying a family home within the City of Rochester, including legal services, title insurance, and other costs directly associated with the purchase of said home, other than financing costs.
- D. Costs of temporary living after commencing employment and moving to Rochester (six months limit).

SECTION 4. VEHICLE:

Employer will provide employee with a vehicle allowance of five hundred twenty five dollars (\$525) per month.

SECTION 5. ANNUAL LEAVE DAYS:

- A. Upon commencing employment and each employment year thereafter, (granted on the employee's anniversary date), employee shall be credited with 30 non-cumulative leave days (includes vacation, personal and sick leave).
- B. If Employee is not able to use the annual leave days within the employment year, the unused days will lapse.
- C. In the event the Employee's employment is terminated, either voluntary at the request of the City Council or involuntary, Employee shall be entitled to payment for all unused leave days.

SECTION 6. HEALTH, DISABILITY AND LIFE INSURANCE:

- A. Employer agrees to provide 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. Employer share of cost of health and dental insurance shall be the same as other non-union employees. Employer agrees to allow the Employee to waive health insurance coverage through the City when provided with proof of coverage under another comprehensive plan. If employee opts out of health insurance, Employer shall pay Employee \$2,400 annually.
- 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 agree to purchase, keep in effect, and pay the required premiums on a term life insurance policy equal to twice employees annual salary. Said policy is to be owned by the employee.

SECTION 7. RETIREMENT:

- A. The City shall execute the necessary agreement allowing the Employee to enroll in the International City Management Associations Retirement Corporation 457 Deferred Compensation Plan. Effective with employee's first date of employment the City agrees to contribute an amount equal to and not to exceed eight thousand five hundred (\$8,500) per year. Payment of this sum is to be pro-rated in accordance with the City's normal salary payment schedule.
- B. The City shall execute the necessary agreement allowing the Employee to enroll in the International City Management Association Retirement Corporation 401(a) Money Purchase Plan. Effective with employee's date of employment, the employer agrees to contribute an amount equal to and not to exceed ten percent (10%) of employee's compensation. The Employee shall be required to match the City's contribution with an amount not to exceed ten (10%) percent of his compensation. The City shall file for immediate vesting in the plan for Employee.

SECTION 8. GENERAL BUSINESS EXPENSES:

- A.** Employer agrees to budget for and pay for professional dues and subscriptions of the Employee necessary for the continuation and full participation in national, regional, state and local associations, and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.
- B.** Employer agrees to budget \$5,000 annually to pay for travel and subsistence expenses of Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of Employee and to pursue necessary official functions for Employer, including but not limited to the ICMA Annual conference, the State league of municipalities, and such other national, regional, state, and local governmental groups and committees in which Employee serves as a member.
- C.** Employer also agrees to budget for and to pay for travel and subsistence expenses of Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.
- D.** Employer recognizes that certain expenses of a non-personal but job related nature are incurred by Employee, and agrees to reimburse or to pay said general expenses. The Finance Director is authorized to pay directly or disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits.
- E.** The Employer acknowledges the value of having Employee participate and be directly involved in local civic clubs or/and organizations. Accordingly, Employer shall provide the time and pay for membership fees, costs and or/dues to enable Employee to become an active member in local civic clubs or/and organizations and participate fully in their organizations.
- F.** Employer recognized the need and desirability for the employee to be in continued communication with Employer and staff. Employer agrees to provide employee with appropriate equipment to achieve this end.

SECTION 9. OTHER TERMS & CONDITIONS OF EMPLOYMENT:

In addition to the benefits cited herein, Employer will provide Employee with any and all benefits that apply to other non-union City employees.

SECTION 10. BONDS, INDEMNITY:

- A. Employer shall bear the full cost of any fidelity or other bonds required of the Employee under any law or ordinance.
- B. The City shall defend, save harmless and indemnify Employee against any tort, professional liability claim or demand of an alleged act or omission occurring in the performance of the Employee's duties as City Manager. Employer will compromise and settle any such claim or suit and pay the amount of any settlement or judgment rendered thereon.
- C. Employer agrees to place into force and make premium payment for comprehensive general liability and errors and omissions coverage applying to all act of Employee arising out of his employment. Policy limits of said insurance shall not be less than \$5,000,000.

SECTION 11. HOURS OF WORK, OUTSIDE ACTIVITIES:

The Employee agrees that upon acceptance of the position of City Manager for the City of Rochester he will devote full time and energy to fulfilling the duties and responsibilities of the position.

The work week of the City Manager shall consist of hours reasonably required to discharge the duties and responsibilities of that office. It is recognized that the Employee must devote a great deal of his time outside normal office hours to the business of the City, and to that end, Employee will be allowed to take compensation time off as appropriate.

Employer agrees to allow employee to engage in outside writing, speaking, teaching and other professional activities as long as such activities do not conflict with employee's duties as City Manager.

SECTION 12. TERMINATION AND SEVERANCE PAY:

In the event the Employee is terminated by the City council, the City agrees to pay the Employee within thirty (30) days of said termination, a cash payment equal to four (4) months of compensation if within the first full year of employment, three (3) months of compensation if within the second full year, two (2) months of compensation if within the third or subsequent years of employment and, in addition, shall pay in full all unused, leave days (section 5). Conviction of a felony or gross misconduct will entitle employee to no benefits of sections 5 and 12.

SECTION 13. ANNUAL REVIEW:

In September of each employment year, Employer shall review the performance of the Employee subject to a process, form, criteria, and format for the evaluation, which shall be mutually agreed upon by the Employer and Employee. The process at a minimum shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The final written evaluation should be completed and delivered to the Employee within 30 days of the evaluation meeting.

SECTION 14. RESIGNATION:

In the event that the Employee voluntarily resigns his position with the Employer, the employee shall provide a minimum of 60 days notice unless the parties agree otherwise. The Employee shall assist the employer in any transition work required to assist the replacement City Manager selected by the City of Rochester.

SECTION 15. GENERAL PROVISIONS:

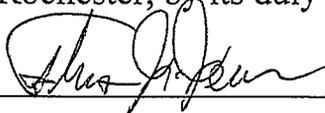
- B.** This agreement shall continue in the effect until terminated in accordance with the provisions hereof, and shall constitute the entire agreement between the parties, provided that interpretation of this agreement shall be subject to and consistent with the Charter of the City of Rochester which shall control in the event of a determination of any inconsistency herewith.
- C.** If any provisions, or any portion thereof, contained in this agreement are held unconstitutional, invalid or unenforceable, the remainder of this agreement shall not be affected and shall remain in full force and effect.
- D.** The terms and conditions of this agreement shall take effect on the effective date of appointment as outlined on page one, paragraph 2, with the exception of Section 3, which shall take effect upon approval of this agreement.

SECTION 16. PARLIAMENTARIAN:

Employer agrees to appoint employee Official Parliamentarian for the City of Rochester. Employee agrees to serve as Parliamentarian as part of employees official duties.

IN WITNESS WHEREOF, the Parties have caused this agreement to be signed and executed on the day and year first upon written.

City of Rochester, by its duly authorized representatives, to wit:

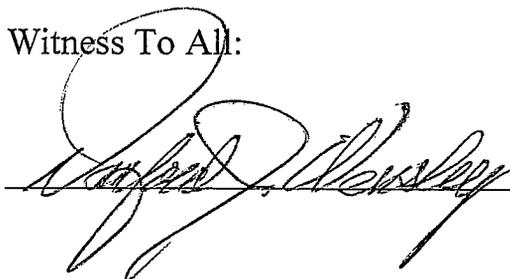

_____ Thomas J. Jean, Mayor

Employee:


_____ Daniel W. Fitzpatrick

STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD

Witness To All:


_____ Date: April 19, 2011