

EMPLOYMENT AGREEMENT
Town of Barrington and John Scruton

Introduction

This Agreement, made and entered into and effective this seventeenth day of May 2011 amended August 29, 2011 and May 21, 2012 by and between the Board of Selectmen for the Town of Barrington, a municipal corporation in New Hampshire, hereinafter referred to as the "Town" or "Employer", as the case may be, and John F. Scruton, hereinafter called the "Employee" both of whom understand and mutually agree as follows:

Section 1: Term

This agreement shall remain in full force in effect from the date which this document is signed until terminated by the Employer or Employee as provided in Section 9, 10 and 11 of this agreement.

Section 2: Duties and Authority

The Town hereby employs the Employee and the Employee hereby accepts employment as Town Administrator of the Town of Barrington. The Employee is appointed pursuant to and shall, at all times, serve and hold office as Town Administrator at the will and sole pleasure of the Barrington Board of Selectmen. The Employee's duties as Town Administrator shall be those set forth as an addendum to this agreement and as modified from time to time by mutual agreement agreeable to the constitution and laws of the State of New Hampshire with respect to Town Administrators, and such other duties as the Board of Selectmen may, from time to time, assign to the Town Administrator pursuant to the authority of the Barrington Board of Selectmen as set forth therein. This agreement is subject to termination by either party in accordance with the provisions of Section 9, 10 and 11 of this agreement.

Section 3: Compensation

- A. Employer agrees to pay Employee an hourly rate of \$49 through May 31, 2011 increasing June 1, 2012 to \$50.47 for hours actually worked. Employee will be limited to no more than \$74,160 on an annual basis and must provide services to the Town while scheduling of those hours in such a way that the duties of the position are fulfilled and spaced reasonably throughout the year. Employee will be paid for those days worked in any given pay period at the same time that the other employees of the Employer are paid.
- B. The Employer agrees to annually review the compensation of the Employee dependent upon the results of the performance evaluation conducted under the provisions of Section 12 of the Agreement and can increase the compensation as the Employer determines appropriate or decide not to make a change in the compensation.

Section 4: Health, Disability and Life Insurance Benefits

- A. It is agreed that the Employee does not desire health insurance coverage from the Employer, and the Employer agrees to allow the Employee to waive health insurance coverage through the Town when provided with proof of coverage under another comprehensive plan. If the employee at a later point elects to obtain health insurance coverage through the Town either for himself or himself and dependent(s), the salary and other benefits would be then subject to negotiations and a reduction reflective of the cost of such coverage.
- B. The Employer agrees to put into force and to make required premium payments for such other benefits as other part-time employees customarily receive from the Town.

Section 5: Earned Time in lieu of Vacation, Sick, and Personal Days

- A. Employee does not accrue leave time and is not entitled to any paid vacation, sick, personal, earned, Holiday or other paid days off. He is only paid for actual hours worked.
- B. The Employee may set a reasonable schedule and notify the Board of that as soon as practical. The Board of Selectmen shall be able to request changes in that schedule, which shall not be unreasonably denied by the Employee.

Section 6: Vehicle Allowance

The Employer agrees to pay to the Employee for the use of his personal vehicle, during the term of this Agreement at the current IRS rate. The Employee shall be responsible for paying for liability, property damage, and comprehensive insurance coverage upon his personal vehicle and shall further be responsible for all expenses attendant to the purchase, operation, maintenance, repair, and regular replacement of said vehicle. The Employer shall reimburse the Employee at the IRS standard mileage rate for any business use of the vehicle including attendance at work-related educational sessions and conferences. The commute from the Employee's home to Barrington is not reimbursable.

Section 7: Retirement

- A. The Employer agrees to formally vote in public session at the time of the initial hiring of the Employee to exclude the Employee as the chief administrative officer from the New Hampshire Retirement System (NHRS) under the provisions of RSA 100-A:22 and other relevant sections. This provision in the contract is also evidence that the Board of Selectmen has voted to exclude this position from the New Hampshire Retirement System as outlined in the relevant state statutes at the time of the initial hiring of the Employee. This will also be considered a part-time position under NHRS rules. The Employer and Employee agree to work with NHRS and make adjustments as needed to this agreement so that the Employee can continue to collect benefits earned by prior employment while working for the Town.
- B. In addition the Employer agrees to execute all necessary agreements to allow the employee to contribute from his salary toward a section 457 deferred

compensation supplementary retirement plan of his choosing and monthly to remit those contributions to that provider of the 457 plan selected by the Employee. The parties shall fully disclose to each other the financial impact of any amendment to the terms of Employee's retirement benefit.

Section 8: General Business Expenses

- A. Employer agrees to annually budget \$200 for and to pay up to \$200 for professional dues to the New Hampshire Municipal Management Association (NHMMA), New Hampshire Login, New Hampshire Government Finance Officers Association (NHGFOA) and the New Hampshire Association of Certified Public Managers (NHACPM) and to budget for the Employee's participation in these state associations and any agreed upon 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 annually budget \$800 for and to pay up to \$800 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 Local Government Center Annual Conference, the NHMMA annual conference and NHGFOA annual conference. The Employee shall not be paid for those hours of attendance at these three conferences, but expenses will be covered for these conferences and any other conferences he chooses to attend up to \$800. The Board of Selectmen could also agree to cover expenses beyond that amount.
- C. Employer also agrees to annually budget \$400 for and to pay up to \$400 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. The Employee shall not be paid for those hours of attendance at these training sessions, but expenses will be covered up to the amount budgeted. The Board of Selectmen could also agree to cover expenses beyond that amount.
- 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 disburse such moneys upon receipt of duly executed expense or petty cash vouchers, receipts, statements or personal affidavits and approval by the Board of Selectmen.
- E. Employer recognizes the value of technology in assisting in the work of the Employee and will provide these tools in keeping with what is done for other employees and is appropriate for the position.

Section 9: Termination

For the purpose of this agreement, termination shall occur when:

- A. The majority of the Board of Selectmen votes to terminate the Employee at a duly authorized meeting of the Board after 30 days advance notice to the Employee

- and each member of the Board of Selectmen that such a vote will be taken. At the Employee's request the meeting will be held either in nonpublic or public session, but any action taken will be announced in public session.
- B. If the Employer, citizens or legislature acts to amend provisions of the role, powers, duties, authority, responsibilities of the Employee's position that substantially changes the role and responsibility of the Town Administrator, the Employee shall have the right to declare that such amendments constitute termination. This would include state changes that prevent the Employee from collecting full NH Retirement System benefits while working for the Town. If there were such a change to the retirement system, there would be no severance paid.
 - C. Breach of contract declared by either party with a 30-day cure period for either Employee or Employer. Written notice of a breach of contract shall be provided in accordance with the provisions of Section 18.
 - D. Annually within 30 days of the anniversary date of hire the Board of Selectmen will have an opportunity on whether to renew this employment agreement or not. The lack of action will be taken as annual renewal of the agreement. If there is action to unilaterally change the agreement or to reject renewal of the agreement then the Employee may declare a termination as of the date of the vote to either not renew the agreement or to make unilateral changes unacceptable to the Employee.
 - E. The compensatory and monetary provisions of this agreement are conditioned and subject to statutory legal authority granted by and reserved to the legislative body (Town Meeting) and provisions of the New Hampshire Revised Annotated Statutes. If the Board of Selectmen determines the Town Administrator must be laid off due to legislative budget action, the severance package in Section 10 shall be made prior to hiring of any new employees or promoting of current employees.
 - F. Upon the fifth anniversary date of hire the employment of the Employee will be terminated unless the Board of Selectmen votes to extend the agreement. There shall be no severance.

Section 10: Severance

- A. Except as provided in paragraph D and E of this Section 10, severance shall be paid to the Employee when employment is terminated as defined in Section 9.
- B. If the Employee is terminated, the Employer shall provide a minimum severance payment of \$30,000. This severance shall be paid in a lump sum within 72 hours of the last day of employment unless otherwise agreed to by the Employer and the Employee. The Employee's acceptance of this \$30,000 will be in lieu of any further legal action by the Employee against the Employer for action related to the discharge.
- C. The Employee will have no accrued leave or earned time.
- D. If the Employee is terminated because of an arrest for a felony or misdemeanor, then the Employer is not obligated to pay severance under Section B of this section until a resolution of the charges. If the Employee is not found to be guilty and has been terminated, the severance must be paid at that time.

- E. If the termination is the result of changes at the state level of the role of Town Administrator or to the retirement system, including legislative, administrative or court actions, then the Employer is not obligated to pay severance under this section.
- F. If the employment of the Employee is terminated under section 9 F at the end of the term of this agreement, the employee will not be paid any severance.

Section 11: Resignation

In the event that the Employee voluntarily resigns his/her position with the Employer, the Employee shall provide a minimum of 30 days notice unless the parties agree otherwise or it is a result of changes by the state which would impact his continued collection of state retirement benefits in which case it can come earlier if needed to avoid loss of retirement benefits. There is no severance if the manager voluntarily resigns.

Section 12: Performance Evaluation

Employer shall annually 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 13: Hours of Work

It is recognized that the Employee shall be allowed to establish an appropriate work schedule but be responsive to reasonable requests from the Employer to modify that schedule.

Section 14: Outside Activities

The employment provided for by this Agreement shall be the Employee's sole employment. Recognizing that certain outside consulting or teaching opportunities provide indirect benefits to the Employer and the community, the Employee may elect to accept limited teaching, consulting or other business opportunities with the understanding that such arrangements shall not constitute interference with, nor a conflict of interest with his or her responsibilities under this Agreement. The exercise of these opportunities shall be subject to approval by the Board of Selectmen. Unpaid work for a religious organization is not considered employment for purposes of this section.

Section 15: Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify 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 Administrator 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. The Employee may request and the Employer shall not unreasonably refuse to provide independent legal representation at Employer's expense and Employer may not unreasonably withhold approval. Legal representation, provided by Employer for Employee, 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 attorneys fees, and any other liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual or threatened, arising out of or in connection with the performance of his or her duties. Any settlement of any claim must be made with prior approval of the Employer in order for indemnification, as provided in this Section, to be available.

The Employer shall have the right to settle or compromise any suit in which the Employee has been named as a party, as long as the Employer is indemnifying the Employee. Further, Employer agrees to 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 after the end of employment with the Employer.

Section 16: Bonding

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

Section 17: Other Terms and Conditions of Employment

- A. The Employer, only upon agreement with Employee, shall fix any such other terms and conditions of 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 this Agreement or any other law.
- B. Except as otherwise provided in this Agreement, the Employee shall be entitled to the highest level of benefits that are enjoyed by other non-union part-time employees of the Employer.
- C. The job description for the Town Administrator position is included as a part of this agreement and may be amended over time as a result of mutual agreement. The job description as amended should indicate the Town Administrator position is part time.
- D. The parties agree that the Employee will be an exempt employee as that term is used under the FLSA, as he will be supervising other employees, and that therefore in any week that he may happen to work in excess of 40 hours, all time will be paid at the single rate referenced in Section 3 A of this contract.

Section 18: Notices

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

- (1) EMPLOYER: Barrington Town Board of Selectmen
Barrington Town Hall
Post Office Box 660
Barrington, NH 03825
- (2) EMPLOYEE: John F. Scruton
10 Meaderboro Road
Farmington, NH 03835

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

Section 19: 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. Any prior discussions or representations 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 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 as well as their heirs, assigns, executors, personal representatives and successors in interest.
- C. Effective Date. This Agreement shall become effective upon its execution, however the appointment as Town Administrator shall not formally occur until on or after June 1, 2011 to coincide with the effective resignation date of the current Town Administrator. From May 18 to June 1 the Employee shall be employed as a part-time hourly employee analyzing and preparing recommendations to the Board for implementation, meeting employees, working on technology and other tasks associated with preparing to assume the role of Town Administrator. The hourly wage rate shall be \$49 (forty-nine dollars) per hour. The employee will not work more than 32 hours in any given week during this period.
- D. 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.

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

Town of Barrington (Employer)

Date: _____

Employee

_____ John F. Scruton

**STATE OF NEW HAMPSHIRE
COUNTY OF STRAFFORD**

Witness To All:

_____ Date: _____
Suzanne McNeil

Amendments August 2011 reflect suggestions from attorney to improve the agreement in various sections

Amendment May 2012 only to introduction and Section 3A reflecting a 3% increase