

# **Contract of Employment**

**Between**

**The Town of Ayer**

**And**

**Robert A. Pontbriand  
Town Administrator**

**July 1, 2016 – June 30, 2019**

## **A. PREAMBLE**

THIS AGREEMENT, made as of April 19, 2016 by and between the Town of Ayer, acting by and through their Board of Selectmen, hereinafter referred to as “Selectmen”, and Robert A. Pontbriand of Fitchburg Massachusetts, hereinafter referred to as “Pontbriand”.

In consideration of the promises contained herein, the parties hereto mutually agree as follows:

## **B. EMPLOYMENT**

The Selectmen hereby agree to employ Pontbriand and to appoint him to the position of Town Administrator and Pontbriand hereby accepts employment on the following terms and conditions.

## **C. DUTIES**

Pontbriand shall fulfill all of the duties and responsibilities of the Town Administrator in conformance with MGL, Chapter 41, section 23A, and the duties and responsibilities set forth in the Town’s job description for the position. Pontbriand will ensure the Board of Selectmen’s office is staffed during Town Hall hours of operation.

## **D. TERMS**

Pontbriand shall be appointed for a multi-year contract beginning July 1, 2016 and ending June 30, 2019. The contract shall be extended for successive three year periods unless the Selectmen decide to terminate the contract in accordance with the non-reappointment clause of this contract.

It is expressly understood and agreed that a decision to not reappoint Pontbriand on the expiration of this Contract, or any renewal or extension thereof shall not be construed as a dismissal.

Either party may request that the provisions of this contract be renegotiated for any extensions beyond June 30, 2019. The parties hereby agree that said negotiations shall commence on or before April 1, 2019 of the final year of the contract.

For all purposes of this contract, a majority vote of the Full Board of Selectmen is considered to be two (2) votes out of three (3) Selectmen (a 2/3<sup>rd</sup>s majority).

It is expressly understood that the terms and conditions of the expiring contract shall stay in full force and effect until new terms and conditions, if any, are negotiated and signed by the parties.

#### **E. RESIGNATION, NON-REAPPOINTMENT, DISCIPLINE**

1. **Resignation**

In the event that Pontbriand desires to terminate this contract before the term of service expires, he may do so by giving the Selectmen forty-five (45) days notice in writing.

2. **Non-Reappointment**

The Selectmen shall have the right to not reappoint Pontbriand to this position, without cause, on June 30, 2019, as long as the following conditions have been met:

a. Pontbriand shall have been formally evaluated, using a performance evaluation tool as further detailed in section M of this agreement, and notified, in writing, of the Selectmen's intention not to reappointment, and the reasons therefore, prior to January 1, 2019. Said evaluation and notification shall be made via certified mail, return receipt requested, to his residence or may be delivered in hand and;

b. Pontbriand shall be paid severance in a lump sum cash payment in an amount equal to four months of his salary. Said payment shall be made to Pontbriand on or before his last day of employment. This severance provision shall be waived if Pontbriand starts a new job that is economically comparable to the position in Ayer, after said notice of non-renewal but before June 30<sup>th</sup> of the final contract year and;

c. A majority vote of the Selectmen.

3. **Reprimand or Suspension**

The Selectmen may reprimand or suspend Pontbriand for just cause (with or without pay and with or without benefits) at any time during the term of the contract after:

a. Written notice of a hearing to be held to consider such reprimand or suspension is sent to Pontbriand at least two business days (for a reprimand) and ten business days (for a suspension) prior to such hearing; the notice includes a list of charges warranting consideration of reprimand or suspension, and the notice is sent via certified mail, return receipt requested, to his residence or may be delivered in hand, and;

b. A duly noticed hearing, to be made public at Pontbriand's request, at which Pontbriand shall be afforded all rights provided under the Open Meeting Law; and;

c. A majority vote of the Selectmen (a 2/3<sup>rd</sup>s majority).

4. **Dismissal**

The Selectmen may dismiss Pontbriand only for just cause at any time during this contract after:

a. Written notice of a hearing to be held to consider dismissal is sent to Pontbriand at least fifteen business days prior to such hearing, the notice to include a list of charges warranting consideration of dismissal, and the notice is sent via certified mail, return receipt requested, to his residence or may be delivered in hand, and;

b. A duly noticed hearing, to be made public at Pontbriand's request, at which Pontbriand shall be afforded all rights provided under the Open Meeting Law; and

c. A majority vote of the Selectmen.

5. **Appeal**

For administrative remedies, Pontbriand shall first have the right of appeal from a reprimand, suspension or dismissal as provided for in the Personnel Policies and Procedures Manual.

As a second level of appeal, Pontbriand shall have right to appeal to the American Arbitration Association. The costs associated with said arbitration shall be split between the parties unless Pontbriand shall prevail and then the costs shall be borne by the Town.

Pontbriand shall continue to receive his full salary and benefits until any such appeal in accordance with the Personnel Policies and Procedures Manual has been exhausted.

Pontbriand shall have the right of appeal from either suspension or dismissal to the Superior Court under the provisions of MGL Chapter 249, sec. 4 on the standard that requires sufficient evidence on the record to justify and discipline action taken by the Selectmen. Pontbriand would have equal access to the courts under contract law with regard to any breach of contract. Any such legal action would be at Pontbriand's own expense.

## **F. COMPENSATION**

Pontbriand shall be paid weekly at the annual salary rate of \$117,992.88 (Grade 17, Step 7) for FY 2017. Compensation for FY 2018 shall be \$120,936.96 at Grade 17, Step 8; and for FY 2018 shall be \$123,964.56 at Grade 17, Step 9; as established by the Town's Classification and Compensation plan in conformity to the Town's Personnel Policy.

The position of Town Administrator shall be classified on the Town's Non-Union Classification and Compensation Plan and the compensation of the position of Town Administrator shall be governed by the Town's Non-Union Classification and Compensation Plan.

Pontbriand shall be eligible for any Cost of Living Adjustment (COLA) each year as authorized by the Town.

The Parties agree to re-open this section of the agreement should the Town's Classification and Compensation Plan be amended during the term of this agreement.

Pontbriand shall have the right to request a contract wage reopener, once each fiscal year of the Contract for the purposes of discussing/negotiating wages only. Pontbriand must make the request in writing to the Ayer Board of Selectmen.

## **G. HOURS OF WORK**

Pontbriand agrees to devote that amount of time and energy which is reasonably required to faithfully perform the duties of Town Administrator. It is also recognized that this position frequently requires evening work and further that carrying out the responsibility of position requires the Town Administrator to be out of the Town Hall for business purposes.

## **H. BENEFITS**

### **Vacation**

Pontbriand shall be granted three (3) weeks of vacation leave effective July 1, 2016, with said time being available at the start of each Fiscal Year, with the understanding that he would be eligible for buyback of unused vacation days only as allowed under the Personnel Policy & Procedures Manual. Pontbriand shall not take more than two (2) weeks consecutively without prior approval of the Board of Selectmen.

Upon mutual agreement between the parties, Pontbriand shall be eligible to buy-back up to two weeks of vacation leave during each fiscal year of this agreement.

### **Sick Days, Personal Days and Holidays:**

Pontbriand shall be granted sick, personal and holiday leave as per the Personnel Policy & Procedures Manual.

Upon termination of service, unused sick days have no monetary value.

**Insurance**

Pontbriand shall be offered enrollment in the Town of Ayer's health insurance plan. The Town shall pay the same premium for such plan as it does for other town non-union employees. Pontbriand shall be offered enrollment in the Town of Ayer's basic life insurance plan. The town shall pay the same premium for such plan as it does for other non-union town employees. Any additional life insurance offered by the Town may be purchased at Pontbriand's expense.

**Automobile Allowance**

Pontbriand shall receive reimbursement at the standard IRS mileage rate to cover all of Pontbriand's official duty travel miles in his personal vehicle according to the Town of Ayer's Policy.

**Retirement Benefits**

Pontbriand shall be eligible to participate in the Town's retirement system.

**Professional Development and Membership**

The Town recognizes its obligations to the professional development of the Town Administrator and Pontbriand shall be given an annual allowance, subject to the limitations of the budget, to be used toward the cost of membership to professional organizations and toward seminars and courses and associated expenses that are necessary for his professional development.

During the life of the Contract, Pontbriand shall be granted a sum of \$500 to take an approved Purchasing and Procurement Course offered by the Massachusetts Inspector General. Pontbriand must submit written evidence to the Ayer Board of Selectmen of satisfactorily completing the course to receive payment.

For FY 2018 or FY 2019 (Depending on Scheduling and Availability) Pontbriand shall be granted \$3,000.00 (includes the cost of course materials and mileage) to enroll in the Massachusetts Municipal Association's Certificate in Local Government Leadership and Management Program offered in conjunction with Suffolk University and granted the time off to attend the program. Pontbriand must satisfactorily complete the Program in order to be compensated for the \$3,000 tuition, cost of materials, and mileage. Attendance at courses and programs require the prior approval of the Board of Selectmen.

**Outside Employment:**

Pontbriand shall be allowed to perform outside employment, with the following conditions:

1. Any outside employment shall be approved in writing, in advance, by a majority of the Board of Selectmen.
2. Any outside employment shall be compatible with the professional standing of the Town Administrator.

3. The outside employment shall not conflict with his responsibilities as the Town Administrator.

The parties expressly agree that Pontbriand shall be entitled to continue with pre-existing outside employment as an adjunct faculty instructor and researcher at Fitchburg State University and Northern Essex Community College.

**Leave of Absence**

Pontbriand shall be granted such leave, including but not limited to, Family Medical Leave; Small Necessities Leave; Paternity Leave; jury duty leave; military leave and other leave as required by law.

**Other Benefits**

Pontbriand shall receive all other benefits offered to all non-union, exempt employees in the Town of Ayer.

**I. INDEMNIFICATION**

The Selectmen agree to maintain Professional Liability Insurance for the Town of Ayer in the amount of \$1,000,000 per occurrence, or any such greater amount allowed under the law, which policy shall cover Pontbriand, to provide legal counsel for Pontbriand in accordance with the provisions of MGL Chapter 258, Section 2, in defense of any action in which Pontbriand is named as a party except as may relate to his reprimand, suspension or dismissal; and to indemnify, defend, save and hold harmless Pontbriand in any demands, claims actions, suits and legal proceedings brought against him in his official capacity, as an agent of the Town in accordance with the provisions of MGL Chapter 258, Sections 9 and 13. This indemnification shall survive and endure the expiration of this contract.

Should, subsequent to his service as Town Administrator, the Town call or summons Pontbriand to provide information about or testify as to actions that took place during his tenure as Town Administrator, he agrees that, if requested in writing by the Board of Selectmen, he will cooperate. The Town agrees to reimburse him for his reasonable per diem expenses associated with such testimony or cooperation.

**J. INVALIDITY**

If any paragraph, part of, or rider to this contract is found invalid, it shall not affect the remainder of the contract, but said remainder of the contract shall remain in full force and effect.

**K. ENTIRE AGREEMENT**

This contract embodies the entire agreement between the Selectmen and Pontbriand and there are no other inducements, promises, terms and conditions, or obligations made or entered into by either party other than those contained herein. This contract may not be changed except in writing and signed by the parties.

**L. GOALS AND OBJECTIVES**

The Board shall meet with Pontbriand annually no later than June 30 for the purpose of jointly discussing and establishing a set of goals and objectives for the ensuing twelve months and for reviewing any previously established goals.

**M. PERFORMANCE EVALUATION**

The Board of Selectmen may conduct a performance counseling session by December of each fiscal year and shall write a performance evaluation of Pontbriand by June of each fiscal year. The performance evaluations shall be conducted in accordance with the standard Personnel Evaluation Form attached to this contract with mutually agreed performance measures, goals and objectives. These written evaluations shall be submitted to Pontbriand, who may offer a written response. The evaluations and response shall then be discussed by the Selectmen and Pontbriand.

Within fifteen (15) days following the discussion of the evaluation and responses by Pontbriand, the Board shall adopt, by majority vote, a consolidated written evaluation which, together with any written response Pontbriand may offer, shall be placed in Pontbriand's personnel file.


**N. APPROPRIATION OF AYER TOWN MEETING**

The funding of this Employment Contract is subject to the appropriation of funding by the Ayer Town Meeting.


**IN WITNESS WHEREOF**, the parties have hereunto signed and sealed this contract, in duplicate, as of the date first written above (April 19, 2016).

**AYER BOARD OF SELECTMEN**

**TOWN ADMINISTRATOR**

  
Jannice L. Livingston, Chair

  
Robert A. Pontbriand  
Town Administrator

  
Gary J. Luca, Vice-Chair

Date: April 19, 2016  
April 19, 2016

  
Christopher R. Hillman, Clerk

Date: April 19, 2016  
April 19, 2016