

DEPARTMENT OF PUBLIC WORKS – TOWN ENGINEER CONTRACT

AGREEMENT made October 20, 2014 effective November 17, 2014 until June 30, 2017 by and between the Town of Ayer (hereinafter the “TOWN”) and Daniel Van Schalkwyk , of Charlestown, Massachusetts (hereinafter the “ENGINEER” or “Van Schalkwyk”).

WHEREAS, the TOWN is desirous of securing the services of the Town Engineer of the Ayer Department Public Works; and

WHEREAS, Van Schalkwyk is willing to perform the duties of the position of ENGINEER according to the terms and conditions of this contract; and shall furnish the Board of Selectmen with evidence of professional training accomplishments.

NOW, THEREFORE, the TOWN and Van Schalkwyk hereby agree that the following terms and conditions shall govern the salary and fringe benefits payable under this contract to which said Van Schalkwyk shall be entitled as ENGINEER.

1. DUTIES

Van Schalkwyk shall perform all the duties in accordance with the job description for Town Engineer. Van Schalkwyk works under the administrative direction of the DPW Superintendent and under the policy direction of the Ayer Board of Selectmen through the Town Administrator.

Van Schalkwyk will assist the Department of Public Works and town boards/departments in matters relating to the design and inspection of public works construction and other related engineering matters.

Van Schalkwyk duties shall include all of the requirements of the attached job description.

2. HOURS OF WORK

- A. Van Schalkwyk agrees to devote that amount of time and energy which is reasonably necessary for Van Schalkwyk to faithfully perform the duties of the ENGINEER under this contract.
- B. It is recognized that the ENGINEER may devote a great deal of time outside the normal office hours to the business of the TOWN, and to that end, the ENGINEER shall be allowed, upon notification of the DPW Superintendent, to take administrative time off as he shall deem appropriate during said normal office hours at such time which Van Schalkwyk reasonably determines will least adversely impact department operations.

3. INSURANCE

A. Professional Liability

The Selectmen agree to maintain Professional and General Liability Insurance for the Town of Ayer in the amount of \$1,000,000 per occurrence which policy shall cover Van Schalkwyk to provide legal counsel for Van Schalkwyk in accordance with the provisions of Massachusetts General Laws Chapter 258, section 2 in defense of any action in which Van Schalkwyk is named as a party except as may relate to reprimand, suspension or dismissal, and to indemnify, defend, save and hold harmless Van Schalkwyk 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 Massachusetts General Law 258, Sections 9 and 13. This indemnification shall survive the expiration of this contract.

B. Health and Life Insurance

The ENGINEER shall be eligible for all health and life insurance benefits for which other non-bargaining unit, general government employees are eligible.

4. GENERAL EXPENSES

The TOWN agrees that if expenses of a non-personal and job related nature are incurred by Van Schalkwyk after having been pre-approved by the DPW Superintendent, the TOWN will reimburse said expense according to the normal warrant process.

5. AUTOMOBILE

The ENGINEER shall be authorized to use a DPW vehicle for business purposes only, and the Town shall pay for all attendant operating and maintenance expenses and insurance. Said vehicle is to be used by Van Schalkwyk in connection with the performance of his duties as Engineer.

The ENGINEER may, upon approval of the DPW Superintendent, use his own private automobile for his official duties as ENGINEER if a DPW vehicle is not available. Personal vehicle mileage shall be expensed at the Federal IRS rate at the time of travel.

6. DISCIPLINE OR DISCHARGE

The DPW Superintendent may suspend and/or dismiss Van Schalkwyk under the terms and conditions of this agreement and in accordance with the Massachusetts General Laws. Any dismissal shall terminate this agreement. In the case of dismissal, the Board of Selectmen shall give Van Schalkwyk forty-five (45) days' notice and rights to a hearing in accordance with Massachusetts General Law Ch. 39, Section 23B.

It is agreed that Van Schalkwyk can be discharged only for cause, upon proper notice, and only after a hearing for which Van Schalkwyk shall have the right to be represented by counsel. Van Schalkwyk shall have the option of choosing whether or not the hearing shall be closed to the public or held as an open public hearing.

Van Schalkwyk may appeal any discharge or discipline by the appointing authority, after such hearing to the American Arbitration Association. The cost for such arbitration shall be split equally between Van Schalkwyk and the Town.

7. COMPENSATION

The ENGINEER shall receive a weekly compensation not-to-exceed \$1,396.15 (annualized at \$70,000 salary plus license increment) for the remainder of fiscal year 2015. Such compensation includes an annual salary as noted above, together with a \$2,600 annual license increment as identified in Section 8G below, to be paid in weekly installments. The parties acknowledge that the compensation may be paid in bi-weekly installments at the discretion of the Town Treasurer.

The annual salary may be adjusted once annually in succeeding fiscal years of this agreement by a cost-of-living-allowance (COLA) that may be determined in the sole discretion of the Board of Selectmen.

The Parties agree that the Contract shall be reopened once for compensation only for FY 2016 and once for compensation only for FY 2017.

8. BENEFITS

The TOWN agrees that Van Schalkwyk shall receive any and all benefits generally available to full time non-union employees, under the same terms and conditions, unless specifically modified under the terms of this agreement.

A. Vacation

For Fiscal Year 2015, Van Schalkwyk shall accrue vacation leave at the rate of 1.25 days per month of employment. Effective for fiscal year 2016 and each fiscal year thereafter, Van Schalkwyk shall receive three (3) weeks, or fifteen (15) working days, of vacation leave. Such vacation shall not be accrued to more than twice the annual leave and such leave shall be taken at such time or times as may be approved by the DPW Superintendent.

B. Sick Leave

Van Schalkwyk shall be granted fifteen (15) sick days per fiscal year. The ENGINEER may accumulate up to one hundred sixty (160) sick leave days. Sick leave accumulated but not used is not reimbursable at termination.

C. Holidays

Van Schalkwyk shall receive holidays as per the Personnel Policies and Procedures Manual.

D. Personal Days

Van Schalkwyk shall receive three (3) personal days off per fiscal year. Personal Days may not be carried over from one fiscal year to another and shall not be reimbursable at termination.

E. County Retirement

Van Schalkwyk shall be a member of the Middlesex County Retirement System with the appropriate percentage withheld from his salary and with appropriate payments made to the system by the TOWN, and shall receive the benefits provided by that system in accordance with the applicable law.

F. Death During Term of Employment

If the ENGINEER dies during the term of employment, the TOWN shall pay Van Schalkwyk's estate all the compensation which would otherwise be payable to the ENGINEER up to the date of Van Schalkwyk's death, including, but not limited to, unused vacation, holidays, and personal days.

G. License Increment

Van Schalkwyk is currently a Massachusetts Registered Professional Engineer (P.E.). Van Schalkwyk shall be given a License Increment of \$2,600 per year, payable as detailed in Section 7 above, so long as he maintains his P.E. license.

H. Professional Expenses

The Town shall pay any and all reasonable professional expenses associated with the duties of Town Engineer. Expenses shall include but are not limited to: Expenses and fees required to maintain / obtain professional licenses; dues and subscriptions to professional associations; Seminars and conferences for the acquisition of required certification educational units; Travel expenses to occasions adequate to continue the professional development. Overnight and out-of-state travel must be approved by the DPW Superintendent.

I. Tuition Reimbursement

In each fiscal year of the contract, Van Schalkwyk may receive up to \$3,200 as Employer-Provided Educational Assistance reimbursement for tuition towards courses required for a higher education advanced degree such as a Master's Degree. Upon

completion of each course, Van Schalkwyk shall submit an expense report, in accordance with Section 4 above, for tuition reimbursement. Reimbursement shall not exceed a total of \$3,200 per fiscal year.

J. Outside Employment

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

1. Any outside employment shall be approved in writing, in advance, by the Superintendent of Public Works.
2. Any outside employment shall be compatible with the professional standing of the Town Engineer.
3. The outside employment shall not conflict with his responsibilities as the Town Engineer.

9. MODIFICATION

No change or modification of this contract shall be valid unless it shall be in writing and signed by both of the parties.

10. LAW GOVERNING

This contract shall be construed and governed by the laws of the Commonwealth of Massachusetts.

11. SEVERABILITY OF PROVISIONS

If any clause or provision of this contract shall be determined to be illegal by a court of competent jurisdiction, the remainder of this contract shall not be affected thereby.

12. LENGTH OF CONTRACT

- A. The term of appointment shall be for a period commencing November 17, 2014 and ending June 30, 2017. However, this contract may be extended as provided by its terms. Unless either party gives the other written notice of its intention not to renew this agreement at least 30 days prior to its expiration date, that agreement shall be automatically extended for one additionally year.
- B. This contract shall be formally reviewed prior to its termination, and the ENGINEER shall be advised of the Board of Selectmen's decision to renew or not to renew this agreement sixty days (60) prior to its expiration date.

- C. If the decision is to renew, then either the ENGINEER or the TOWN may request that the provisions be renegotiated. It is expressly understood and agreed by the parties that a decision not to renew is not to be construed as a dismissal.
- D. If the ENGINEER desires to terminate this agreement before the end of the term of service shall have expired, the Superintendent may do so by giving the Board of Selectmen thirty (30) calendar days notice of such intentions.

13. PERFORMANCE

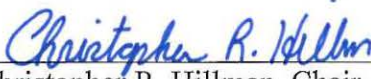
On or before July 1st of each year of the term of this agreement, the TOWN may provide Van Schalkwyk with an annual performance review using the approved performance review set forth in the Town's Personnel Policies Manual.

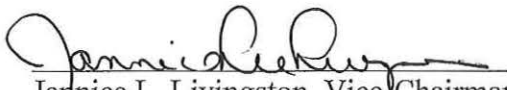
14. FUNDING

The funding of this contract is subject to the appropriation of Ayer Town Meeting.

IN WITNESS WHEREOF, the parties hereunto have set their hands and seals to this instrument the date and year first above written.

TOWN OF AYER:
BY: BOARD OF SELECTMEN


Christopher R. Hillman, Chair


Jannice L. Livingston, Vice-Chairman


Gary J. Luca, Clerk

Date: October 20, 2014

FOR THE TOWN ENGINEER:


Daniel Van Schalkwyk

Date: October 20, 2014