

TOWN OF AYER, MASSACHUSETTS
DEPARTMENT OF PUBLIC WORKS DIRECTOR CONTRACT
October 1, 2021 to June 30, 2024

AGREEMENT made August 17, 2021, to be effective from October 1, 2021 until June 30, 2024, by and between the Town of Ayer (hereinafter the "TOWN") and Daniel Van Schalkwyk, of Harvard, Massachusetts (hereinafter the "DIRECTOR" or "Van Schalkwyk").

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

WHEREAS, DIRECTOR is willing to perform the duties of the position of DIRECTOR according to the terms and conditions of this contract; and shall furnish the Town Manager with evidence of professional training, licenses and certifications.

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 DIRECTOR.

1. DUTIES

The administrative control of the Department of Public Works for the TOWN shall be the responsibility of the DIRECTOR in accordance with the job description. DIRECTOR works under the policy direction of the Select Board and under the administrative direction of the Town Manager.

DIRECTOR's duties shall include all of the requirements of the attached job description. In addition, DIRECTOR shall be the Town's Trench Permitting Officer as that term is defined under MGL c. 82A, sec. 4 and 520 CMR 14, and shall be responsible, to the best of his ability, for the Town's compliance with the National Pollutant Discharge Elimination System (NPDES) requirements.

2. HOURS OF WORK

DIRECTOR agrees to devote that amount of time and energy which is reasonably necessary for DIRECTOR to faithfully perform the duties of the DIRECTOR under this contract.

It is recognized that the DIRECTOR may devote a great deal of time outside the normal office hours to the business of the TOWN, and to that end, the DIRECTOR shall be allowed, upon notification of the Town Manager, to take administrative time off as he shall deem appropriate during said normal office hours at such time which DIRECTOR reasonably determines will least adversely impact department operations.

3. INSURANCE

A. Professional Liability

The Select Board 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 DIRECTOR to provide legal counsel for

DIRECTOR in accordance with the provisions of Massachusetts General Laws Chapter 258, section 2 in defense of any action in which DIRECTOR is named as a party except as may relate to reprimand , suspension or dismissal, and to indemnify, defend, save and hold harmless DIRECTOR 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 DIRECTOR 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 DIRECTOR after having been pre-approved by the Town Manager, the TOWN will reimburse said expense according to the normal warrant process.

5. AUTOMOBILE

The DIRECTOR is 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 DIRECTOR in connection with the performance of his duties as Director, and for his professional growth and development. Due to the extensive on-call nature of the position, DIRECTOR is allowed to take the DPW vehicle to and from his home as required to fulfill his duties as his schedule dictates, with said use being monitored by the Town Manager.

The DIRECTOR may, upon mutual agreement of both parties, use his own private automobile for his official duties as DIRECTOR if the assigned Town automobile is not available. In the event such agreement is reached, the TOWN shall reimburse DIRECTOR at the current rate approved by the Select Board.

6. DISCIPLINE OR DISCHARGE

The Select Board may suspend and/or dismiss DIRECTOR 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 Select Board shall give DIRECTOR forty-five (45) days' notice and rights to a hearing in accordance with Massachusetts General Law Ch. 39, Section 23B.

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

DIRECTOR 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 DIRECTOR and the Town.

7. COMPENSATION

- A. Effective October 1, 2021, the DIRECTOR shall receive annual compensation of Grade 16, Step 3, \$109,473.84 (based on 52.2 weeks at \$2,097.20 per week). The parties agree that such compensation shall be paid on a bi-weekly basis, at the discretion of the Town Treasurer.
- B. At the time of obtaining the following licenses, the DIRECTOR shall be increased to Grade 16, Step 6, and shall receive the annual compensation effective at such time:
 - a. Commonwealth of Mass. Drinking Water Supply Certified Operator (Grades T1 and D1).
 - b. Wastewater Certified Operator Grade 2.
- C. The annual salary will be increased by one (1) Step on July 1 of each year of the Contract in accordance with the Non-Union Personnel Classification and Compensation Grid and subject to the completion of a satisfactory annual job performance evaluation. The annual salary will be increased by any a cost-of-living-allowance (COLA) as voted by Town Meeting for non-union employees. The Step increase shall be based on the DIRECTOR's current Step at the time.
- D. 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 Select Board. Either party may request to reopen this section, for compensation only, one-time in any fiscal year. Additionally, the Parties agree that if any other Department Head receives an increase in compensation (during the term of this Contract), then this reopener clause shall take effect.

8. BENEFITS

The TOWN agrees that DIRECTOR 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

Effective for fiscal year 2023 and each fiscal year thereafter, Van Schalkwyk shall receive twenty (20) working days of vacation leave. Note: Van Schalkwyk has already received 20 working days of vacation leave for fiscal year 2022 in his current position as Town Engineer. 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 Town Manager.

B. Sick Leave

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

C. Holidays

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

D. Personal Days

DIRECTOR 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

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

G. License Increment - DIRECTOR shall be given an annual License Increment equal to five (5%) percent of the salary, payable as detailed in Section 7 above, so long as he maintains the following licensures in active status:

- a. Massachusetts Registered Professional Engineer (P.E.),
- b. Certification of Training in Asset Management (CTAM), Associate Water Asset Manager (AWAM)
- c. The Town shall pay all application and license fees related to these licenses.

H. Youth Works Program Stipend - For each fiscal year in which the DIRECTOR is managing the DPW Youthworks program, the DIRECTOR shall receive an amount of money equal to two and one half (2.5%) percent of the salary under Section 7 as a stipend for the additional responsibility of overseeing the management of the DPW Youth Works Program.

I. Energy Management and LED Streetlight Stipend - For each fiscal year the DIRECTOR shall receive an amount of money equal to two and one half (2.5%) percent of the salary under Section 7 as a stipend for the additional responsibilities of overseeing the management of the Town's Mass Energy Insight Database, Green Community Reporting, Town owned electric vehicle charging station(s), and the Town's LED Streetlight System.

J. Professional Expenses -The Town shall pay any and all reasonable professional expenses associated with the duties of DPW Director. Expenses shall include but are not limited to: Dues and subscriptions to professional associations; Seminars and conferences for the acquisition of required certification educational units; Travel and subsistence expenses to occasions adequate to continue the professional development. Overnight and out-of-state travel must be approved by the Town Manager.

K. 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.

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 October 1, 2021 and ending June 30, 2024.
- B. This contract shall be formally reviewed prior to its termination, and the DIRECTOR shall be advised of the Select Board’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 DIRECTOR 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 DIRECTOR desires to terminate this agreement before the end of the term of service shall have expired, the DIRECTOR may do so by giving the Select Board thirty (30) calendar day notice of such intention.

13. PERFORMANCE

On or before July 1st of each year of the term of this agreement, the Town may provide DIRECTOR 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 on August 17, 2021.

TOWN OF AYER:
BY: TOWN MANAGER



Robert A. Pontbriand

FOR THE DIRECTOR:



Daniel S. Van Schalkwyk, P.E.

This contract of employment was presented, reviewed, and approved/ratified by the Ayer Select Board by a vote of (2-0) on August 17, 2021