



Town of Pepperell
Engineering Department
One Main Street - Town Hall
Pepperell, Massachusetts 01463
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MEMO TO FILE: DPW Director / Town Engineer Contract

TO: Board of Selectmen / Robert Hanson

FROM: Robert Lee – 04/09/2009

I have attached a copy of my current contract with the Town as requested. As can be seen, this contract is dated 12/04/2008. The reason for this is that my prior contract ran through 06/30/2010 but included a raise in FY 2010 of 5.5% - that contract was negotiated in 2006. Recognizing that conditions had changed, in December I offered to the Board of Public Works to renegotiate the contract to cut that raise in half by spreading it out over two years, and the Board agreed.

Subsequent to signing that new contract, I was asked by the Board of Selectmen if I would forego the raise in that contract for FY 2010 and I agreed. The salaries indicated in that contract, therefore, will be 2.75% lower than shown for FY 2010.

CONTRACT OF EMPLOYMENT
BETWEEN
TOWN OF PEPPERELL
AND
DPW DIRECTOR/TOWN ENGINEER

This agreement made this 4th day of December 2008, by and between the Town of Pepperell (“the Town”), acting by and through its Board of Public Works (“the Board”) and Robert E. Lee, Jr. (“Lee” or “the DPW Director”) witnesseth that:

WHEREAS the Board has voted to provide the DPW Director/Town Engineer with a renewed contract which will supersede the final year of his previous contract; and

WHEREAS the DPW Director/Town Engineer desires to continue to serve in said office:

NOW, THEREFORE, in consideration of the promises and covenants herein, it is agreed as follows:

1. Employment:

The Town hereby employs Robert E. Lee, Jr. in the combined position of Director of the Department of Public Works, and Town Engineer of the Town of Pepperell.

During the term of this contract, the DPW Director/Town Engineer shall maintain his certification as a Massachusetts Registered Professional Engineer.

The DPW Director/Town Engineer shall work under the policy direction of the Board.

If, at any time during the term of this contract, Lee ceases, for whatever reason, to hold the DPW Director portion of the combined position, he shall retain full residual rights to the position of Town Engineer, and the designation as Appointing Authority for the Town Engineer’s position shall revert to the Board of Selectmen.

2. Term

- a) The term of this Contract shall be for two (2) years, commencing July 1, 2009, and ending June 30, 2011.
- b) Nothing in this Contract shall prevent, limit, or otherwise interfere with the right of the Town to terminate the services and employment of the DPW Director/Town Engineer (hereafter “the DPW Director”) at any time, subject only to the provisions set forth in Section 13 of this Contract.
- c) Nothing in this Contract shall prevent, limit, or otherwise interfere with the right of the DPW Director to resign at any time from the subject position(s) with the Town, subject only to the provisions set forth in Section 13 of this Contract.

3. Compensation

- a) For performing the duties of the DPW Director, the Town shall pay Lee as follows:
 - (i) For the period July 1, 2009 to June 30, 2010, the annualized sum of \$96,835.00.
 - (ii) For the period July 1, 2010 to June 30, 2011, the annualized sum of \$99,497.00
- b) From the weekly sum paid, the Town shall make all lawful withholdings and deductions.

3. Duties

The duties of the DPW Director are to coordinate the activities of the Sewer and Wastewater Division, the Water Division, the Highway Division, and the Parks and Cemetery Division of the Department of Public Works; and to report to the Board of Public Works, on a regularly scheduled basis, on the activities of these divisions; the duties of the Town Engineer shall be as described and outlined in the Job Description on file with the Town Administrator. The Board, in consultation with the DPW Director, may change the duties of the Director's position at any time, as circumstances demand, and as the position evolves.

4. Employment Status Hours

The DPW Director shall be a salaried official of the Town and, as such, shall be an exempt professional employee for the purposes of the Fair Labor Standards Act, 29 U.S.C. Section 201, et seq.

The hours of employment for the DPW Director will, generally, be the normal business hours of the Town. While expecting that the DPW Director will devote his full time and attention to Town business during regular working hours, the Board specifically acknowledges that attendance at evening or after-hour meetings and weekend assignments will be required as needed, and such attendance is expected of the DPW Director. Accordingly, the Town explicitly grants reasonable flexibility within the normal workweek hours, allowing for time expended on Town business outside of the normal workweek hours. The DPW Director shall not be required to submit a weekly time card, although he shall be responsible for timely reporting of vacation time, sick leave, or personal days taken.

5. Leave Time

- a) The DPW Director shall be entitled to twenty (20) days of vacation in each of the Fiscal Years 2010 and 2011. Up to five days vacation not used by the DPW Director in the fiscal year in which they were granted may be carried over into the following year. Any accumulated vacation leave remaining on the books at the time of termination of employment will be paid directly to the DPW Director.
- b) The DPW Director shall be entitled to ten (10) days of sick leave in each of the Fiscal Years 2010 and 2011. Unused sick leave may be accumulated to a total of ninety (90) days. Any accrued sick leave on the books at the time of termination of employment will be paid directly to the DPW Director at a rate of fifty percent (50%) of the accrued sick leave, not to exceed forty-five (45) days.
- c) The DPW Director shall be entitled to three (3) days personal leave in each of the Fiscal Years 2010 and 2011. Personal leave may not be accumulated, nor carried over into ensuing years.

- d) Funeral Leave: in the event of the death of the DPW Director's spouse, child, stepchild, parent, brother, sister, mother-in-law, father-in-law, stepparent, grandparent, or grandchild, an excused absence with pay of not more than four (4) consecutive scheduled work days will be allowed.
- e) All other types of leave (military, jury duty, etc.) shall be granted under the terms and conditions established by the Pepperell Personnel By-law.

6. Holidays

The DPW Director shall be entitled to all holidays granted to Town employees pursuant to Article V of the Pepperell Personnel By-law.

7. Insurance Benefits

The DPW Director shall be entitled to all health and life insurance benefits to which all other Town Employees are entitled. The DPW Director shall be entitled to purchase, at his own expense, the additional life insurance coverage and the dental coverage made available by the Town to other Town employees at their own expense.

8. Professional Development

- a) The DPW Director shall be given opportunities to develop his skills and abilities as a municipal engineer and public administrator. Accordingly, the DPW Director shall be allowed to attend, without loss of vacation or other leave, courses, seminars, and meetings relative to municipal engineering and public administration which are approved in advance by the Board. The Board may, at its discretion, pay for the cost of such programs. If the Board requires that the Director attend any course, seminar, or meeting, the Town shall pay the cost of such programs, and for travel and subsistence expenses incurred by the DPW Director as a result of attending such programs. If the Board requires that the DPW Director acquire any new or additional license or certification, the Town will pay the cost of any associated classes, training, books, and test or license fees - as well as reasonable associated travel and subsistence expenses, if any.
- b) The Town shall pay the annual dues of the American Public Works Association, American Society of Civil Engineers, New England Public Works Association, and any Massachusetts-based associations for municipal engineers, subject to appropriation. In addition, the Town will subscribe to periodicals dealing with municipal engineering and public works issues, as appropriate. The Town shall pay the annual Professional Engineer's registration fee for the DPW Director.

10. Vehicle and Travel Expenses

The Town may allow the DPW Director use of a Town Vehicle, subject to availability, for the purpose of conducting Town business, including travel to out-of-town seminars, workshops, and meetings. The Town shall reimburse the DPW Director, at the current mileage rate set by the Town, for use of a personal vehicle for all travel incurred on behalf of the Town when a Town vehicle is not available, or when the use of a personal vehicle may be deemed more appropriate.

11. Indemnification

The Town will provide professional liability insurance for the DPW Director in the amount of not less than Five Hundred Thousand Dollars (\$500,000) per occurrence; will provide legal counsel in defense of any action to which the DPW Director is a party by the alleged performance or non-performance of

his duties (except as may relate to his suspension or termination of employment with the Town); and will indemnify the DPW Director in all claims made against him in the performance of his duties, even if said claim has been made following his termination of Town employment, including claims for any acts or omissions of the DPW Director which do not subject the Town itself to liability. It is agreed that the DPW Director will cooperate and assist the Town in defending any claim made against him and/or the Town concerning the performance or non-performance of his duties.

12. Performance Evaluation

The Board shall annually review and evaluate the performance of the DPW Director, in advance of the adoption of the annual operating budget. Said review and evaluation shall be in accordance with specific criteria developed jointly by the Board and the DPW Director; criteria may be added or deleted, as the Board may from time to time determine, in consultation with the DPW Director. Further, the Board shall provide the DPW Director with a summary written statement of the findings of the Board, and shall provide an adequate opportunity for the DPW Director to discuss his evaluation with the Board.

13. Termination

- a) This contract may be terminated (subject to the provisions of the last paragraph of Section 1) as provided below:
 - (i) By mutual agreement, signed by the Board and the DPW Director, upon such terms and conditions as may be acceptable to both parties at the time of the termination; or
 - (ii) by majority vote of the Board, the Town may terminate this Contract and remove the DPW Director for just cause during the term of this Contract, by vote of a majority of the members of the Board, after hearing; provided, however:
 - (a) that the DPW Director has been provided with written notice, at least fourteen (14) days prior to the hearing, of the reasons for the proposed termination;
 - (b) that, at the hearing, the DPW Director shall have the right to be represented by counsel of his choice, the right to present evidence in his own behalf, and the right to call, examine, and cross-examine witnesses in regard to the charges against him;
 - (iii) by the DPW Director upon forty-five (45) days written notice to the Board. Until the effective date of termination under such circumstances, the DPW Director shall continue to perform his duties and shall, if requested, cooperate with the Board in search for, and/or the orientation of a successor.
 - (iv) In the event the Town wishes to terminate this Contract without cause, the Town shall, not less than four (4) months prior to the specified date of termination, provide the DPW Director with written notice of such intended termination; or shall pay to the DPW Director a lump sum cash payment equal to thirteen (13) weeks' aggregate salary, which amount shall be paid to the DPW Director, on or before the effective date of termination.
 - (v) In the event that the Town does not wish to renew this Contract with the DPW Director, the Town shall provide written notice to the DPW Director of such intent not to renew, on or before April 1, 2011. Failure to provide such timely notice shall result in an automatic renewal of the contract, and, if the separation of the DPW Director from the employment of

the Town is still desired, invocation of one of the processes laid out in (i), (ii), or (iv) preceding.

- b) The DPW Director may solicit other full-time employment at any time, subject to the provision of part a) of this section.

14. Suspension

The Town may suspend the DPW Director, without hearing but with notice, and with full pay and benefits, at any time during the term of this contract.

15. General Provisions

- a) This writing constitutes the complete agreement of the parties as of the date of execution, and any supplemental or additional agreement or amendment shall be effective only if in writing and signed by the Board and by the DPW Director.
- b) If any provision, or any part thereof contained within this Contract is held unconstitutional, invalid, or unenforceable, the remainder of this Contract, or any of the several portions thereof, shall be deemed not affected, and shall remain in full force and effect.
- c) This agreement is subject to ratification by the DPW Director/Town Engineer, Robert E. Lee, Jr., and by the Pepperell Board of Public Works, as well as appropriation by Town Meeting.

Board of Public Works

DPW Director/Town Engineer

Lou Shattuck, Chairman

Robert E. Lee, Jr.

Fred Farmer

Greg Rice

Lewis Lunn

Paul Tierney

Date _____