

EMPLOYMENT AGREEMENT

BETWEEN THE TOWN OF UPTON AND DENNIS WESTGATE

WHEREAS, it is the desire of the Town Manager (the “Manager”) of the Town of Upton (the “Town”), acting on behalf of the Town, to employ the services of Dennis Westgate.

WHEREAS, it is the desire of the Manager to negotiate for the benefits, establish certain conditions of employment and provide a just means for terminating the Director of Public Works services at such time as he may be unable fully to discharge his duties or when the Manager may otherwise desire to terminate his employ; and

NOW, THEREFORE, be it agreed by Dennis Westgate and the Manager, that the employment relationship between the Director of Public Works and the Town shall be governed in accordance with the terms and conditions of this agreement (“Agreement”):

Section 1 – Duties

- A. The Town hereby agrees to employ said Dennis Westgate as the Director of Public Works of the Town of Upton to perform, and Dennis Westgate accepts such employment and agrees to perform, the functions and duties of Director of Public Works, and to perform other legally permissible and proper duties and functions as the Manager shall from time to time assign.

Section 2 – Term

- A. This Agreement shall become effective July 1, 2023 and shall be in full force and effect until June 30, 2028 (the “Expiration date”). The Agreement shall be subject to Section 2D, and shall be binding on the Town and the Director of Public Works in each year of duration.
- B. Nothing in this Agreement shall prevent, limit, or otherwise interfere with the right of the Manager to terminate the services of the Director of Public Works for just cause and with due process that is subject only to the provisions set forth in Section 4, Paragraphs A and B of this Agreement.
- C. Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of the Director of Public Works to resign at any time from his position with the Town, or to elect not to renew this Agreement pursuant to the provisions of Section 2.D below, subject only to the provisions set forth in Section 4, Paragraph C of this Agreement.
- D. If the Manager decides not to renew this Agreement beyond the Expiration Date, the Manager shall give the Director of Public Works written notice at least eight (8) months in advance of the Expiration date of its intent not to renew this

Agreement. A written notice shall provide explanation for such non-renewal of this Agreement but for no other reason shall the non-renewal need to be justified.

Section 3 – Suspension

- A. The suspension of the Director of Public Works shall be governed by the Town's Personnel By-Law.

Section 4 – Termination and Severance Pay

- A. The termination of the Director of Public Works shall be governed by the Personnel By-Law. If the Director of Public Works is terminated for just cause, the Director of Public Works shall not be entitled to any severance pay nor any compensation beyond the date of removal. This paragraph does not constitute "non-renewal" of said Agreement under Section 2.
- B. If removed without just cause, the Town shall provide a severance payment equal to six (6) months salary based on the then current annual rate of pay divided by twelve. The Director of Public Works shall continue on the Town's health insurance for a period of six (6) months from the date of separation, each party continuing to contribute their respective percentage contribution. Unless otherwise agreed by the parties, this shall be paid in one lump sum, less usual and customary withholdings. The Director of Public Works shall also be compensated for accrued but unused vacation time.
- C. In the event the Director of Public Works voluntarily resigns his position with the Town before expiration of the aforesaid term of his employment, then the Director of Public Works shall give the Town six (6) weeks' notice in advance unless the parties otherwise agree. During this six (6) weeks' notice period, the Director of Public Works may not take vacation leave. In the event the Director of Public Works voluntarily resigns, without having been requested to do so by the Manager, he shall not be eligible for severance benefits set forth in Section 4, Paragraph B, except for the lump sum payment in lieu of accumulated vacation leave.
- D. If the Director dies during the term of his employment, the Town shall pay to the Director's estate all the compensation which would otherwise be payable to the Director up to the date of the Director's death, including, but not limited to, payment for any accrued, unused vacation leave days.
- E. Subsections A, B, C, and D of this Section shall survive any termination of this Agreement.

Section 5 – Salary

- A. Effective July 1, 2023, the Town agrees to pay the Director of Public Works for his services pursuant to this Agreement a prorated salary based on an annual base

of \$160,000.00 (One Hundred Sixty Thousand Dollars) payable in weekly installments, subject to this Section 5.

- B. The Manager agrees to annually review the base salary of the Director of Public Works and make any higher adjustments that the Manager deems appropriate, based on market conditions, the financial condition of the Town, and the Director of Public Works' performance relative to established goals. However, such higher adjustment shall not be less than what is received by all other non-union Town Employees. Each year, the Town Manager may recommend a merit increase of \$2,000 to the Director's base salary upon the satisfactory performance review of annual department goals.
- C. The Director of Public Works is considered an exempt employee, on-call 24/7 for all work-related purposes except, however, during snow & ice events when certain criteria listed below are met and with only the following allowances:
 - 1. There is a significant snow & ice event that requires ALL DPW employees to be called into work to address the storm.
 - 2. The Director is needed to operate equipment and/or trucks to assist the department with snow & ice operations and by doing so, there is a cost benefit to the Town.
 - 3. The Director shall receive hourly compensation equal to his base hourly rate for all hours worked outside of his normal 8-hour day, Monday through Friday work schedule, excluding paid holidays, above his weekly salary. Compensation shall be paid separate from his weekly check. The Director shall not receive time and one half, double time, or triple time, as is contractually agreed with the Union.
 - 4. The Director may elect to receive compensatory time off at the rate of 1 ½ times his base hourly rate in lieu of pay.
 - 5. Compensatory time must be used in the same fiscal year it was accrued and cannot be carried over.
- D. The Director of Public Works will pay the same percentage contribution towards health care premiums as is required of other non-union employees of the Town, as the same may be adjusted from time to time.

Section 6 – Hours Worked

- A. It is recognized that the Director of Public Works must devote a great deal of time outside the normal office hours on business for the Town and needs to be available twenty-four (24) hours a day; and to that end the Director of Public Works shall be allowed to establish an appropriate work schedule. In addition, anytime the Director of Public Works is required to work on a Town observed

holiday or the actual holiday, he will be allowed to take a paid day off of his choosing during the same fiscal year.

Section 7 - Automobile

- A. The Town shall provide a vehicle stipend of \$3,500.00 annually to the Director of Public Works for use of his personal motor vehicle. This annual stipend of \$3,500 shall be paid in one lump sum at the beginning of each contract year. Additionally, any out of Town business or emergency travel shall be paid at the rate of the Internal Revenue Service mileage reimbursement rate. The Director of Public Works shall obtain the prior approval of the Manager for any out of town business or emergency travel. If in the case of an early termination of this Agreement, the Town shall be made whole for such vehicle stipend on a pro-rated basis, or;
- B. The Director of Public Works is considered on duty 24/7. As such, the Director may have use of a Town automobile, subject to approval by the Manager, once approved, the vehicle shall not be withheld without good cause. The Town shall be responsible for paying insurance for liability, property damage, comprehensive damage, and costs associated with operation, maintenance, repair, fuel, and regular replacement for all work-related travel. The vehicle may be used in State for de minimis personal reasons, since the Director is "on-call" in the event of emergency..

Section 8 – Authorized Leave

- A. The Director of Public Works shall accrue and have credited to his account sick leave at the same rate as other non-union employees of the Town. Sick leave buy-back provisions shall apply to the same extent that they apply to other non-union employees of the Town. The Town will also provide a short-term disability policy for the Director at the Town's expense in accordance with the Personnel By-Law.
- B. The Director of Public Works shall accrue annually, and have credited to his account on July 1 of each calendar year, vacation leave at an annual rate of six (6) weeks per year, two (2) professional days, and two (2) Administrative days. Up to ten (10) days of unused vacation leave may be carried over from year to year on July 1 of each calendar year or the Director of Public Works may choose a lump sum payment for ten (10) days of unused vacation in lieu of carry over. Upon separation from employment, the Town will reimburse for any remaining earned days.

Section 9 – Expenses

- A. Subject to Town Meeting appropriation, the Town agrees to budget and pay for professional dues and subscriptions of the Director of Public Works necessary for his participation in national, state, regional and local associations and

organizations, as is necessary and desirable for his continued professional development and for the good of the Town. Subject to Town Meeting appropriation, the Town also agrees to budget and pay for reasonable travel, tuition and subsistence expenses for the Director of Public Works for professional and official travel, meetings and occasions required by the duties of his office or for the professional development and education of the Director of Public Works, said expenditures to be subject to the approval of the Manager. The Town will reimburse the Director for the monthly cost to carry a cell phone for work purposes up to fifty dollars (\$50.00) per month.

Section 10 – Performance Evaluation

- A. The Manager shall review and evaluate the Director of Public Works at least once annually during the term of this Agreement. This evaluation shall be based on goals and objectives developed jointly by the Manager and Director of Public Works. Further, the Manager may provide the Director of Public Works with a summary written statement of the findings of the Manager and provide an adequate opportunity for the Director of Public Works to discuss his evaluation with the Manager.
- B. Annually, the Manager, in conjunction with the Director of Public Works, shall define such goals and objectives which they determine necessary for the proper operation of the Town and in the attainment of the Manager's policy objectives and shall further establish a relative priority among those various goals and objectives, said goals and objectives to be reduced to writing.

Section 11 – Indemnification

- A. The Town shall defend, save harmless and indemnify the Director of Public Works against any tort, professional liability, civil claim or demand, or other legal action, whether groundless or otherwise arising out of an alleged act or omission occurring in the performance of his duties as Director of Public Works, even if said claim has been made following his termination from employment, provided that the Director of Public Works acted within the scope of his duties. The Town shall pay the amount of any settlement or judgment rendered thereon. The Town may compromise and settle any such claim or suit and will pay the amount of any settlement or judgment rendered thereon without recourse to the Director of Public Works.
- B. The Town shall reimburse the Director of Public Works for any attorneys' fees and costs incurred by the Director of Public Works in connection with such claims or suits brought by third parties involving the Director of Public Works in his professional capacity.
- C. This section shall survive the termination of this Agreement.

Section 13 – Retirement

- A. In addition to participating in the Worcester County Retirement System, to the extent permitted by law, the Town shall establish a voluntary §457 retirement plan. The Town shall have no obligation to contribute to this plan on behalf of the Director of Public Works.

Section 14 – General Provisions

- A. The text herein shall constitute the entire agreement between the parties with regard to the matters set forth herein. There are no other understandings or agreements, verbal or otherwise, in relation thereto, between the parties except as expressly set forth herein. This Agreement may be amended or modified only by a written instrument executed by the parties hereto or by their successors and assigns.
- B. All provisions of the Town's General By-Laws, and the regulations, policies and practices of the Town relating to vacation and sick leave, retirements and pensions, contributions, holidays and other benefits and working conditions as they now exist or hereafter may be amended, also shall apply to the Director of Public Works as they would to other employees of the Town in addition to the benefits enumerated in this Agreement specifically for the benefit of the Director of Public Works. In the event of any conflicts, the provisions of this Agreement shall prevail
- C. For the purposes of the United States Fair Labor Standards Act, the Director of Public Works shall be considered an exempt employee.
- D. This Agreement shall be deemed effective as of July 1, 2023.
- E. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid, or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.
- F. This Agreement shall be binding upon and inure to the benefit of the heirs at law and executors of the Director of Public Works.
- G. This Agreement is entered into in the Commonwealth of Massachusetts and shall be construed and interpreted in accordance with its laws.

Section 15 – Notices

Notices pursuant to this Agreement shall be made as follows:

Town: Joseph Laydon
Town Manager
Town of Upton
1 Main Street, Box 1
Upton, MA 01568

Director of Public Works: Dennis Westgate
93 New Street
Rehoboth, MA 02769

The Town Manager of the Town of Upton and Dennis Westgate have caused this
Agreement to be signed and executed this 8th day of March, 2023.

The Town of Upton,
By its Town Manager



Dennis Westgate



Joseph Laydon