

**NEW BUSINESS**  
**10-25-10**

**MEMORANDUM OF AGREEMENT BETWEEN TOWN OF  
MIDDLEBOROUGH AND AFSCME COUNCIL 93, LOCAL  
1700("Middleborough DPW Union")**

The Town of Middleborough and AFSCME Council 93, Local 1700 ("Middleborough DPW Union") hereby agree that the parties' 2008-10 Agreement will be extended for two years, through June 30, 2012, with the changes agreed to by the parties' negotiating teams and set forth below. This offer and Agreement shall be considered **off-the-record** until ratified by the Union's membership and the Board of Selectmen. The bargaining teams shall sponsor and support such ratification.

If ratified by both parties' principals, any funding request will be presented to the spring 2010 Town Meeting for funding. If Town Meeting funds it, a new comprehensive Collective Bargaining Agreement shall be drafted which incorporates the material terms of this Agreement into the unchanged provisions of the 2008-2010 Agreement. Failing ratification by both parties' principals and funding by Town Meeting, the Agreement shall be deemed void and both parties will be free to return to their prior bargaining positions.

Unless otherwise specified, all the changes set forth below will take effect July 1, 2010.

**1. ARTICLE 13-VACATION- p. 12**

A. Section c - Add the following:

The winter period will be December 1<sup>st</sup> through March 31<sup>st</sup>. Beginning with the 2010-11 winter period, the Director shall allow one (1) bargaining unit member from the combined highway and water distribution divisions to be on vacation on any day provided that the request for vacation is made in writing on or before November 15<sup>th</sup>, 2010. The order of request, and if requests are made at the same time, seniority, shall

determine conflicting requests. The Director will determine whether to continue the trial beyond the 2010-11 winter period.

For any vacation request during the winter period which is made after November 15<sup>th</sup>, the Director will continue to allow them based on the condition that the employee report to work if needed for weather-related duties.

B. Section f- Delete existing language and insert in its place:

“An employee shall be permitted to carry over up to seven (7) days of vacation into the following year provided that reasonable written notice, ordinarily at least two calendar weeks, is provided to the Superintendent.

An employee may carry over five (5) additional days of vacation if the employer, due to operational necessity, denied the employee vacation.

In no event shall the employee carry over more twelve (12) days of vacation and all carry-over must be taken prior to the end of the fiscal year.”

## 2. ARTICLE 18- HEALTH AND WELFARE- p. 17

Replace the existing language with the following:

“The Town’s contribution to the PPO plan it offers will be 60 % (sixty percent) of the monthly premium. The Town’s contribution to the HMO plan it offers will be 80% (eighty percent) of the monthly premium. Except for the Town’s contribution toward the monthly premium, the employee will be obligated to pay all other costs associated with the health insurance coverage, except that the Town will provide reimbursements, after July 1, 2010, for the following:

a. The amount by which a co-pay for a 90-day drug prescription or refill (Tier 3) exceeds \$60;

b. The amount by which a deductible for a hospital admission exceeds \$300;

c. The amount by which a deductible for a day surgical procedure exceeds \$75.

d. After an employee on an individual HMO plan has expended a total of more than \$160 in a fiscal year to pay any increase from fiscal year 2010 in the co-pays and deductibles described in a, b and c, (“the increases”), the

Town will reimburse the full amount of the increases in those co-pays and deductibles;

e. After an employee on an a family HMO plan has expended a total of more than \$ 420 in a fiscal year to pay any increase from fiscal year 2010 in the co-pays and deductibles in a, b and c (“the increases”), the Town will reimburse the full amount of the increases in those co-pays and deductibles.

The reimbursement of the amounts described above will be done under a reimbursement procedure established by the Treasurer/Collector’s office. Compliance with the procedure is a condition precedent for reimbursement.

Any reduction in the reimbursement program on or after June 30, 2012 is subject to the Town meeting any bargaining obligation it has to implement the reduction.

The Town will make available and pay the administrative costs for a flexible spending account (FSA) that covers medical expenses and dental care.

3. **ARTICLE 22 - MISCELLANEOUS**

Add a new item 12:

With advanced notice to and permission of the Director, employees assigned to be on call may be allowed to take a Town vehicle home. Its use will be limited to responding to calls.

4. **ARTICLE 27-TERMINATION- p. 25**

a. Section “1”: Change to read as follows:

“This Agreement shall remain in effect through June 30, 2012. At that time, either party may terminate this Agreement provided such termination is transmitted through U.S. Mail to the responsible signatories to the Agreement. In no case may a termination notice be sent less than ninety(90) days prior to the above termination date.

At the request of either party, the Agreement may be reopened to bargain about changes in the second year, July 1, 2011 through June 30, 2012, except that this reopener shall not apply to ARTICLE XXI- HEALTH AND WELFARE.”

5. In the event that the Town voluntarily agrees to provide any Town side bargaining unit with a more generous reimbursement of health insurance co-pays and deductibles for Fiscal

Year 2011 than that set forth above, the Town agrees to reopen bargaining on that issue only with the Union if the Union so requests. No bargaining unit in the Middleborough Gas & Electric Department constitutes a Town side bargaining unit for purposes of this provision.

6. In the event that the Town voluntarily agrees to provide any Town side bargaining unit an increase in wages for Fiscal Year 2011, the Town agrees to reopen bargaining on that issue only with the Union if the Union so requests. No bargaining unit in the Middleborough Gas & Electric Department constitutes a Town side bargaining unit for purposes of this provision.

MIDDLEBOROUGH DPW UNION

TOWN OF MIDDLEBOROUGH

*David P. ...*

*G.A.P. ...*  
*Richard A. Pelletier*  
*with: ...*

*Manning AFSCME Council 97*  
DATED:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
DATED:

THESE PROPOSALS ARE PRESENTED FOR THE SOLE PURPOSE OF NEGOTIATING A SUCCESSOR CONTRACT. THE TOWN RESERVES THE RIGHT TO WITHDRAW OR MODIFY THE PROPOSALS AT ANY TIME. THESE PROPOSALS ARE PRESENTED WITH THE EXPRESS CONDITION THAT THEY CANNOT BE USED TO PREJUDICE IN ANY MANNER THE TOWN'S POSITION IN ANY PENDING OR FUTURE MATTER. NO PROPOSAL IS A CONCESSION BY THE TOWN OF ANY LIMITATION ON ITS EXISTING RIGHTS UNDER THE COLLECTIVE BARGAINING AGREEMENT OR OTHERWISE CONCERNING THE SUBJECT MATTER COVERED BY THE PROPOSAL. NO PROPOSAL IS A CONCESSION THAT THE TOWN HAS A BARGAINING OBLIGATION PRIOR TO IMPLEMENTING THE SUBSTANCE OF THE PROPOSAL.

**TOWN OF MIDDLEBOROUGH'S OFF THE RECORD OFFER  
TO MIDDLEBORO LIBRARY STAFF ASSOCIATION, LOCAL 4928, MLSA, AFT  
MASSACHUSETTS, AFL-CIO FOR ONE YEAR CONTRACT EXTENSION**

(Submitted: April 29, 2010).

**This offer can be withdrawn, at the Town's option, if it is not ratified by the Association on or before May 3, 2010.**

The Town of Middleborough ("the Town") and the Middleborough Library Staff Association, Local 4928, MLSA, AFT Massachusetts, AFL-CIO ("the Association") hereby agree that the collective bargaining agreement between the Town and the Association will be extended for another year, through June 30, 2011, with the changes agreed to by the parties' negotiating teams and set forth below. This offer and Agreement shall be considered off-the-record until ratified by the Association's membership and the Board of Selectmen. The bargaining teams shall sponsor and support such ratification. Failing ratification by both parties' principals, the Agreement shall be deemed void and both parties will be free to return to their prior bargaining positions.

If ratified by both parties' principals, any funding request will be presented to the spring 2010 Town Meeting for funding. If Town Meeting funds it, a new comprehensive Collective Bargaining Agreement shall be drafted which incorporates the material terms of this Agreement into the unchanged provisions of the 2007-2010 Agreement. Failing ratification by both parties' principals and funding by Town Meeting, the Agreement shall be deemed void and both parties will be free to return to their prior bargaining positions.

Unless otherwise specified, any changes in the existing Contract reflected by the language changes set forth below will take effect June 30, 2010.

1. ARTICLE 21- HEALTH INSURANCE- Replace existing language with the following

The Town's contribution to the PPO plan it offers will be 60 % (sixty percent) of the monthly premium. The Town's contribution to the HMO plan it offers will be 80% (eighty percent) of the monthly premium. Except for the Town's contribution toward the monthly premium, the employee will be obligated to pay all other costs associated with the health insurance coverage, except for the following reimbursements from the Town effective for the following co-pays and deductibles paid after July 1, 2010.

- a. The amount by which a co-pay for a 90-day drug prescription or refill (Tier 3) exceeds \$60;
- b. The amount by which a deductible for a hospital admission exceeds \$300; and,
- c. The amount by which a deductible for a day surgical procedure exceeds \$75.
- d. After an employee on an individual HMO plan has expended a total of more than \$160 to pay any increase from fiscal year 2010 in the co-pays and deductibles described in a, b and c, ("the increases"), the Town will reimburse the full amount of the increases in those co-pays and deductibles;
- e. After an employee on an a family HMO plan has expended a total of more than \$ 420 to pay any increase from fiscal year 2010 in the co-pays and deductibles in a, b and c ("the increases"), the Town will reimburse the full amount of the increases in those co-pays and deductibles.

The reimbursement of the amounts described above will be done under a reimbursement procedure established by the Treasurer/Collector's office. Compliance with the procedure is a condition precedent for reimbursement.

Any reduction in the reimbursement program on or after June 30, 2011 is subject to the Town meeting any bargaining obligation.

The Town will make available and pay the administrative costs for a Flexible Spending Account (FSA) that covers medical expenses and dental care.”

The Town will make available and pay the administrative costs for a Flexible Spending Account (FSA) that covers medical expenses and dental care.”

2. ARTICLE 20-TERMINATION- Change date to June 30, 2011.

a. July 1, 2010-June 30, 2011

3. ARTICLE 22-FLEXIBLE SPENDING ACCOUNT-p. 16

Section 22.1- Update section by deleting last sentence so that section reads as follows:

“22.1 The Town will make available an pay the administrative costs for a flexible spending account(FSA) that covers medical expenses and dependent care.”

4. In the event that the Town voluntarily agrees to provide any Town side bargaining unit with a more generous reimbursement of health insurance co-pays and deductibles for Fiscal Year 2011 than that set forth above, the Town agrees to reopen bargaining on that issue only with the Association if the Association so requests. No bargaining unit in the Middleborough Gas & Electric Department constitutes a Town side bargaining unit for purposes of this provision.

5. In the event that the Town voluntarily agrees to provide any Town side bargaining unit to a salary increase for Fiscal Year 2011, the Town agrees to reopen bargaining on that issue only with the Association if the Association so requests. No bargaining unit in the Middleborough Gas & Electric Department constitutes a Town side bargaining unit for purposes of this provision.

THESE PROPOSALS ARE PRESENTED FOR THE SOLE PURPOSE OF NEGOTIATING A SUCCESSOR CONTRACT. THE TOWN RESERVES THE RIGHT TO WITHDRAW OR MODIFY THE PROPOSALS AT ANY TIME. THESE PROPOSALS ARE PRESENTED WITH THE EXPRESS CONDITION THAT THEY CANNOT BE USED TO PREJUDICE IN ANY MANNER THE TOWN'S POSITION IN ANY PENDING OR FUTURE MATTER. NO PROPOSAL IS A CONCESSION BY THE TOWN OF ANY LIMITATION ON ITS EXISTING RIGHTS UNDER THE COLLECTIVE BARGAINING AGREEMENT OR OTHERWISE CONCERNING THE SUBJECT MATTER COVERED BY THE PROPOSAL.

MIDDLEBOROUGH LIBRARY STAFF  
ASSOCIATION, LOCAL 4928, MLSA, AFT  
MASSACHUSETTS, AFL-CIO

TOWN OF MIDDLEBOROUGH

Christine Dargelis  
[Signature]  
4/29/10

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

DATED:

DATED:

MIDDLEBOROUGH CHRISTMAS PARADE COMMITTEE  
16 ROCK STREET  
MIDDLEBOROUGH, MA 02346

October 12, 2010

Chairman Marsha Brunelle  
Middleborough Board of Selectmen  
Town Hall  
10 Nickerson Avenue  
Middleborough, MA 02346

Dear Chairman Brunelle,

It is with great enthusiasm that I write to request a parade permit for the 51st Annual Middleborough Christmas Parade. The parade is to be scheduled for the Saturday after Thanksgiving (November 27<sup>th</sup>), with a start time of 1PM. The rain date will be Sunday, November 28<sup>th</sup>.

The parade will follow its usual route. We begin at the Mary K. Goode School, travel up Mayflower Avenue, cross South Main Street and continue up Courtland Avenue. The parade continues down Station Street, through Everett Square and down Centre Street. Once the parade arrives at the four corners, it makes a right onto South Main Street, ultimately returning back to the Mary K. Goode School on Mayflower Avenue.

In the past, we have asked for a parking ban from Everett Square all the way through the center of town. This has worked out well for both the participants of the parade, as well as the spectators. It just makes for a safer environment. We are asking again for your approval of the parking ban.

We also heard from Santa Claus, and he plans on making his annual trek from the North Pole. He is again requesting the use of a fire truck to ride on. He is seeking your approval of this request.

We appreciate your continued support!!

Happy Holidays!!



Greg & Jen Thomas  
Co- Chairs  
Middleborough Christmas Parade

xc: Police Chief  
Fire Chief

## Jacqueline Shanley

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**From:** Chief Bruce Gates  
**Sent:** Monday, October 18, 2010 10:36 AM  
**To:** Jacqueline Shanley  
**Subject:** RE: Christmas Parade

Jackie, I have reviewed the letter. This is the same route traveled for over 25 years so I do not have any problem with it and will be able to adjust our patrol forces to cover the Town as we have in the past. Bruce Gates

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**From:** Jacqueline Shanley [mailto:jshanley@middleborough.com]  
**Sent:** Monday, October 18, 2010 10:16 AM  
**To:** Lance Benjamino; Chief Bruce Gates  
**Subject:** Christmas Parade

Good Morning:

Please see attached request from the Middleborough Christmas Parade Committee and provide comments/concerns/requirements to the Selectmen's office by Wednesday, October 20, 2010.

This item will be on the Board's agenda for next Monday, October 25<sup>th</sup>.

Thank you!

Jackie

No virus found in this incoming message.  
Checked by AVG - [www.avg.com](http://www.avg.com)  
Version: 9.0.862 / Virus Database: 271.1.1/3204 - Release Date: 10/18/10 02:34:00

**Jacqueline Shanley**

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**From:** Lance Benjamino  
**Sent:** Monday, October 18, 2010 10:22 AM  
**To:** Jacqueline Shanley  
**Subject:** RE: Christmas Parade

Jackie,

I will provide Tower #3 for Santa, provided we are not busy.

Thank you,

Lance Benjamino  
Chief of Department  
125 North Main Street  
Middleborough, MA 02346  
508-946-2461

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**From:** Jacqueline Shanley  
**Sent:** Mon 10/18/2010 10:15 AM  
**To:** Lance Benjamino; Chief Bruce Gates  
**Subject:** Christmas Parade

Good Morning:

Please see attached request from the Middleborough Christmas Parade Committee and provide comments/concerns/requirements to the Selectmen's office by Wednesday, October 20, 2010.

This item will be on the Board's agenda for next Monday, October 25<sup>th</sup>.

Thank you!

Jackie

COMMONWEALTH OF MASSACHUSETTS  
TOWN OF MIDDLEBOROUGH  
BOARD OF SELECTMEN (BOARD OF HEALTH)

NOTICE OF BETTERMENT AGREEMENT October 19, 2010.  
NOTICE OF BETTERMENT

TO THE REGISTER OF DEEDS OF PLYMOUTH COUNTY

NOTICE is hereby given that the Board of Selectmen of the Town of Middleborough acting as a Board of Health pursuant to General Laws, Chapter 111, Section 127B 1/2 entered into a Betterment Agreement

Dated August 18, 2010 with David & Marion L. Gunning  
(insert date) (insert name(s) of property owner(s))

with respect to real estate located at 143 Everett Street  
(insert address of property)

in Middleboro, Massachusetts and described in a deed recorded in the Plymouth County

Registry of Deeds in Book 11037, Page 297  
(insert book and page)

or filed as Document Number \_\_\_\_\_ with the Plymouth  
(insert document number of deed)

District of the Land Court. The purpose of the Betterment Agreement is to authorize and enable the aforesaid property owner(s) to cause the said property to be serviced properly

by a septic system funded by financial assistance from the Town of Middleborough in the sum of up to and not exceeding

Thirteen Thousand Seven Hundred Sixty One Dollars (\$ 13,761.00 ).  
(insert amount in writing) (insert amount in numbers)

The aforesaid property owner(s) shall be responsible to pay the Town of Middleborough for all funds advanced to the owner(s) pursuant to the Betterment Agreement together with interest.

The Betterment Agreement and this Notice shall be subject to the provisions of Chapter 80 of the General Laws relative to the apportionment, division, reassessment and collection of Assessment, abatement and collections of assessments and to interest. The lien for betterment under Chapter 80, the Betterment Agreement and this Notice of Betterment Agreement shall take effect by operation of law on the day immediately following the due date of such assessment or apportioned part of such assessment.

This Notice of Betterment Agreement shall be a betterment under Chapter 80.

\_\_\_\_\_  
Marsha L. Brunelle, Chairman

\_\_\_\_\_  
Alfred P. Rullo Jr., Vice Chairman

\_\_\_\_\_  
Muriel C. Duphily

\_\_\_\_\_  
Stephen J. McKinnon

\_\_\_\_\_  
Steven P. Spataro

Board of Selectmen  
Town of Middleborough

**Commonwealth of Massachusetts  
County of Plymouth**

**On This \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ before me the  
undersigned Notary Public, personally appeared \_\_\_\_\_, proved  
to me through satisfactory evidence of identification which was \_\_\_\_\_  
to be the person whose name is signed on the preceding or attached document, and  
acknowledged to me that he/she signed it voluntarily for its stated purpose(s).**

\_\_\_\_\_  
**Signature of Notary  
Jacqueline M. Shanley**

**(Seal)  
My commission expires:**

# MIDDLEBOROUGH POLICE DEPARTMENT

99 NORTH MAIN STREET  
MIDDLEBOROUGH, MA 02346

(508) 947-1212

Fax (508) 947-1009



**Bruce D. Gates**  
Chief of Police

October 18, 2010

Board of Selectmen  
Middleboro, MA 02346

Re: New Street Names

Honorable Board:

I am submitting the following names, Access Paths, for a new 40B development to be located off W. Grove Street. Map 057 Lot 1375.

Pemmican Path  
Water Reel Path  
Quarry Path  
Claret Path

Cranes Head Path  
Bear Berry Path  
Bog Iron Path  
Blossom Path

These names do not conflict with any existing street names in the Town of Middleboro.

Kindly advise if the above names meet Board approval.

Please call at 508-946-2451 x121 if you should have any questions or concerns.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Damon".

Barbara Damon  
E-911 Database Coordinator

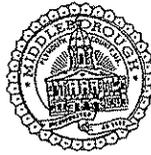
Enclosure

cc: John M. Barges



CRANE'S HEAD VILLAGE

CRANBERRY CAPITAL  
OF THE WORLD



Phone: 508-946-2405  
Fax: 508-946-0058

# Town of Middleborough Massachusetts

BOARD OF SELECTMEN

## APPLICATION FOR LICENSE (PLEASE TYPE OR PRINT CLEARLY)

DATE 10-12-10  
NAME OF APPLICANT Don TRIGER  
ADDRESS OF APPLICANT 13 HARDING STREET, LAKEVILLE  
ASSESSORS MAP & LOT \_\_\_\_\_  
NAME OF BUSINESS MUCKEY'S LIQUORS  
OWNER OF PROPERTY TO BE LICENSED BILL SECKINGER  
ADDRESS OF PROPERTY TO BE LICENSED 200 OAK POINT DRIVE  
ASSESSORS MAP & LOT \_\_\_\_\_

### TYPE OF LICENSE REQUESTED (Check One)

2<sup>nd</sup> Hand Furniture \_\_\_\_\_ 2<sup>nd</sup> Hand Clothing \_\_\_\_\_  
Class I License \_\_\_\_\_ Class II License \_\_\_\_\_  
Class III License \_\_\_\_\_ Liquor License BEER & WINE  
Common Victualler \_\_\_\_\_ Other ONE DAY

Anticipated Start Date for Business NOV 3<sup>rd</sup> + NOV 4<sup>th</sup>  
Hours requested: 4 PM TO 11 PM

Has the Applicant previously held a similar license in the Town of Middleborough or elsewhere? If yes, explain:

yes This is for a fundraiser  
for HOMES for our TROOP

Signature \_\_\_\_\_

DATE OF HEARING 10.25.10

APPROVED/DENIED

Do not write below line: To be Completed by Treasurer/Collector:

Please inform this department, as well as the Board of Selectmen, as to whether or not the above listed property owner/applicant/petitioner owes the Town of Middleborough any outstanding taxes and/or municipal charges that remain unpaid for more than one year.

Does Property Owner/Applicant/Petitioner owe Taxes/Municipal Charges? \_\_\_\_\_



**The Bartending Service of New England, LLC.**

P.O.Box 425, Middleboro, MA 02346

**William H. Fuller** -owner

Office- 508-947-9520/508-923-4744

Cell - 508-400-1709 Fax - 508-923-4784

Email - [bill@thebartendingservice.com](mailto:bill@thebartendingservice.com)

Board of Selectmen  
Nickerson Ave.  
Middleborough, MA. 02346

Honorable Board:

This letter serves as a request for a special one day liquor license. The event is a Birthday Party and is being held at 46 South Main Street, Middleboro, MA. The date of the event is November 5th, 2010 and the hours of service are from 7:00 p.m. until 12:30 am p.m. The expected number of guests is 60

Copies of the appropriate insurance binders are on file with the Town.

If there are any questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Fuller', written over a horizontal line.

William H. Fuller  
President

The Bartending Service of New England, LLC



Town of Middleborough  
Massachusetts

BOARD OF SELECTMEN

APPLICATION FOR LICENSE  
(PLEASE TYPE OR PRINT CLEARLY)

DATE 10/13/10  
NAME OF APPLICANT William Fuller  
ADDRESS OF APPLICANT 13 WEST END AVE  
ASSESSORS MAP & LOT 490-5595  
DAYTIME TELEPHONE 508 923 9744

NAME OF BUSINESS BARTENDING SVC. of N.E. LLC  
OWNER OF PROPERTY TO BE LICENSED MASON'S LODGE  
ADDRESS OF PROPERTY TO BE LICENSED 46 SOUTH MAIN ST.  
ASSESSORS MAP & LOT 580-595

TYPE OF LICENSE REQUESTED (Check One)

- 2<sup>nd</sup> Hand Furniture \_\_\_\_\_
- Class I License \_\_\_\_\_
- Class III License \_\_\_\_\_
- Common Victualler \_\_\_\_\_
- Entertainment \_\_\_\_\_
- 2<sup>nd</sup> Hand Clothing \_\_\_\_\_
- Class II License \_\_\_\_\_
- Liquor License
- Automatic Amusement \_\_\_\_\_
- Other \_\_\_\_\_

Anticipated Start Date for Business NOV. 5, 2010  
Hours requested: 7:00pm - 12:30 AM.

Has the Applicant previously held a similar license in the Town of Middleborough or elsewhere?  
If yes, explain:

YES, SIMILAR REQUESTS AND APPROVAL FOR VARIOUS  
events

Signature WJ

DATE OF HEARING 10/25/10 APPROVED/DENIED

Do not write below line: To be Completed by Treasurer/Collector:

Please inform this department, as well as the Board of Selectmen, as to whether or not the above listed property owner/applicant/petitioner owes the Town of Middleborough any outstanding taxes and/or municipal charges that remain unpaid for more than one year.

Does Property Owner/Applicant/Petitioner owe Taxes/Municipal Charges? NO

Wm J. MacLellan  
-P

**AGREEMENT BETWEEN**  
**THE TOWN OF MIDDLEBOROUGH**  
**and**  
**STEVEN M. DOONEY**

Whereas, the Town of Middleborough, acting by and through the Board of Selectmen, (hereinafter the "Town"), and Steven M. Dooney, (hereinafter, "Dooney"), are desirous of entering into an employment agreement pursuant to the provisions of G.L.Chapter 41, section 108N;

Whereas, the Town desires to employ Dooney as the Town Accountant pursuant to the authority granted to the Board of Selectmen;

Whereas, Dooney, is willing to perform the duties of Town Accountant subject to the terms and conditions of this agreement;

Now therefore, in consideration of the covenants and undertakings contained herein, the Town and the Town Accountant hereby agree that the following terms and conditions shall govern salary and fringe benefits payable under this agreement. Said salary and benefits shall be subject to appropriation by Town Meeting.

**ARTICLE 1. TERM**

- A. This agreement shall be effective October 9, 2010 and shall remain in effect for three (3) years until October 9, 2013, unless sooner terminated as hereinafter provided. Thereafter, this agreement may be extended as provided by its terms.
- B. Nothing in this agreement shall prevent, limit or otherwise interfere with the right of Dooney to resign at any time upon sixty (60) days written notice to the Board of Selectmen.

**ARTICLE 2. DUTIES**

- A. As set forth in Massachusetts General Laws, Chapter 41, Sections 55, 56, 57, 58, 60 and 61, the Dooney will, under the general direction of the Board of Selectmen, have full charge and responsibility for the operation and management of the office of Town Accountant.
- B. Dooney will perform all of the duties set forth in the attached job description for the Town Accountant, which is incorporated by reference.
- C. Dooney will provide all reports, accounts and documents reasonably necessary to complete the obligations of the Town Accountant.

- D. Dooney shall keep all town offices and departments advised of unexpended balances in the said appropriations.
- E. Dooney will, at the close of each year, notify, in a timely manner, the Board of Selectmen, by written memorandum, of the financial status of the Town as detailed in General Laws, Chapter 41.
- F. Dooney will maintain a complete set of books for appropriations, expenditures, revenues, assessments and abatements.
- G. Dooney will prepare review and submit all financial reports required by the Department of Revenue, including Schedule A, Year End Balance Sheet, Audit Report, Quarterly Cash Reconciliation. Furthermore, Dooney will prepare annually, 5 year expenditure and revenue projections.
- H. Dooney will perform all other duties not otherwise herein defined as may be required by the position of Town Accountant by Middleborough Town Charter or as requested by the Board of Selectmen (as well as the Town Manager).

### **ARTICLE 3. INSURANCE**

Dooney shall be eligible to enroll in the Town's health and life insurance programs in accordance with their terms. If he enrolls for health insurance, the Town will contribute up to 75 % (seventy five percent) of the monthly premium. He will be obligated to pay all other costs associated with the health insurance, including without limitation the balance of the monthly premium and any co-pays and deductibles. The Town will provide, at its expense, the standard life insurance that it provides other employees under M.G.L. c. 32B.

### **ARTICLE 4. COMPENSATION/EVALUATION**

- A. The annual salary of the Town Accountant during the first year of the agreement shall be \$78,409 (52 weeks).
- B. Any increase in salary for the second and/or third years of the agreement shall be determined by the Board of Selectmen, subject to an annual performance evaluation and Town Meeting appropriation.
- C. Dooney shall be entitled to any cost of living allowances that may be granted to any non-bargaining unit employees.
- D. Annually, the Board of Selectmen, through the Town Manager, and the Town Accountant shall define such goals, objectives and performance appraisal measures as they determine necessary for the proper operation of

the Town and the attainment of the Board's policy objectives. The Board of Selectmen, through the Town Manager, shall review and appraise the performance of the Town Accountant annually. This review and appraisal shall be in accordance with the procedure established by the Town Manager.

#### **ARTICLE 5. HOURS OF WORK**

- A. Dooney's Town Accountant hours of work will consist of a 4 day work week and any additional hours reasonably necessary for him to faithfully perform the duties of the position, including but not limited to attendance at meetings, off site work via computer or telecommunications, etc. as needed or required.
- B. It is recognized that the Town Accountant position is exempt from federal and state statutory provisions governing hours of work and overtime.

#### **ARTICLE 6. BENEFITS**

All benefits shall accrue on a fiscal year basis.

- A. Holidays-- The Town Accountant shall be entitled to twelve (12) paid holidays as follows:

New Year's Day	Martin Luther King Day	Presidents Day
Patriots Day	Memorial Day	Independence Day
Labor Day	Columbus Day	Veteran's Day
Thanksgiving Day	Day After Thanksgiving	Christmas
- B. Vacation Dooney shall be credited with (25) twenty-five days of vacation. With advance request and approval of the Board of Selectmen, up to five days may be carried over to the next calendar year. Vacation time will be taken on a schedule that minimizes the disruption to the performance of the duties of Town Accountant. The vacation credit presumes that Dooney will fulfill the full Contract term; if he does not, the vacation credit will be pro-rated based on the portion of the term fulfilled.
- C. Dooney shall be granted three (3) personal days, with pay, in each year of the agreement.
- D. Dooney shall be granted five (5) days bereavement leave for immediate family members. Immediate family shall include spouse, parents, children, sibling, grandparents, grandchildren and in-laws. Vacation and/or personal days may be used if additional time is required and as approved by the Board of Selectmen.

- E. Dooney shall be eligible for sick leave pursuant to the following schedule: Upon completion of the probation period, sick leave shall accrue at a rate of one and one-half (1 1/2) days per month, for a maximum of eighteen (18) days per calendar year. Unused sick leave may be accrued from year to year up to a maximum of 225 days. No compensation will be provided for unused sick leave.

#### **ARTICLE 7. AUTOMOBILE EXPENSE**

In accordance with the Town's Vehicle Use Policy, the Town shall reimburse Dooney at the prevailing per mile Town Rate.

#### **ARTICLE 8. PROFESSIONAL DEVELOPMENT**

Dooney will be allowed to attend any job-related conferences, meetings and seminars each year without a loss of vacation or other leave, and will be reimbursed by the Town for all reasonable expenses (including travel expenses) incurred while attending or traveling to the aforementioned, with the prior approval of the Board of Selectmen. Reimbursement will exclude all non-business related expenses.

#### **ARTICLE 9. DUES AND SUBSCRIPTIONS**

With the prior approval of the Board of Selectmen, the Town agrees to pay for Dooney's job-related professional dues and subscriptions for his continued participation in state and local associations and organizations necessary and desirable for his professional growth and advancement and for the good of the Town.

#### **ARTICLE 10. DEATH DURING TERM OF EMPLOYMENT**

If Dooney dies during the term of his employment, the Town shall pay to his estate all the compensation which would otherwise be payable to him up to the date of death, including, but not limited to unused personal and vacation days.

#### **ARTICLE 11. SUSPENSION, DISCHARGE, ENDING TOWN'S OBLIGATIONS**

In addition to its rights under the probationary period provisions set forth above, the Town may suspend without pay or terminate Dooney's employment, as well as end any of its obligations under this Agreement prior to July 30, 2010 for just cause, including without limitation the failure of Dooney to satisfactorily meet his obligations under this agreement.

- A. Dooney shall be entitled to a hearing before the Board of Selectmen or its designee and the right to be represented by counsel, except that this shall only apply to suspensions without pay and/or a discharge.

- B. Dooney may appeal any decision to suspend him without pay or discharge him or to end the Town's obligations under the agreement to an arbitrator mutually selected by the Town and Dooney. Any appeal must be filed in writing thirty (30) days of Dooney's receipt of the Town's decision and it shall specify the grounds for the appeal. Failure to do so will result in a waiver of any appeal.
- C. If Dooney and the Town are unable to agree, a labor/employment arbitrator will be selected and the issues decided under the procedures and rules of the American Arbitration Association pertaining to labor and employment disputes.
- D. Dooney and the Town shall divide equally the costs of the arbitration, including the arbitrator's fees. Each side shall pay its own legal expenses.

## **ARTICLE 12. CONTRACT RENEWAL/TERMINATION**

- A. The term of this agreement shall be from October 9, 2010 through October 9, 2013.
- B. There will be an automatic extension of the agreement for a single, one year term, from October 9, 2013–through October 9, 2014 under the following conditions:
  - 1. Between June 9, 2012 and July 9, 2012, Dooney notifies the Town in writing that the October 9, 2012 automatic extension date for the agreement is approaching.
  - 2. The Board fails to notify Dooney in writing by October 9, 2012 of its intention not to automatically extend the agreement at the end of its term. The notice may include a statement of the Board's willingness to attempt to negotiate a successor agreement without negating the notice of no automatic extension. Likewise, any subsequent negotiations shall not negate the notice of no automatic extension.
- C. In the event that Dooney intends to resign voluntarily at any time following commencement of this Agreement, he shall give the Town sixty (60) days' written notice in advance, unless the parties otherwise agree in writing. In such circumstances, Dooney shall only be entitled to receive compensation due him up to the effective date of his resignation.

**ARTICLE 13. GENERAL PROVISIONS**

- A. This Agreement is a Massachusetts contract and shall be governed by the laws of the Commonwealth of Massachusetts. If any of the provisions of this Agreement shall be determined illegal by a court of competent jurisdiction, such provision shall be considered null and void and shall not be binding on the parties hereto. In such event, the remaining provisions of this Agreement shall remain in full force and effect.
  
- B. This Agreement supersedes any and all prior written or oral agreements and constitutes the entire agreement between the parties. No extension or modifications or same shall be effective unless by an instrument in writing duly executed by the parties.

**ARTICLE 14. NON-WAIVER**

No addition to, alteration, modification or waiver of any terms or provisions of this Agreement shall be valid, binding, or of any force and effect unless it is made in writing and executed by the parties hereto. The failure by either party in one or more instances to observe or enforce any provisions of this Agreement shall not be construed to be a waiver of said provisions

IN WITNESS WHEREOF, the parties hereunto set their hands and seal by their duly authorized representatives this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

TOWN OF MIDDLEBOROUGH

STEVEN M. DOONEY

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
\_\_\_\_\_

Rock Village Church  
92 Miller Street  
Middleborough, MA 02346  
(508) 947-2310  
www.rockvillagechurch.org

The Reverend Brian M. Cook,  
Pastor

15 October 2010

To the Selectmen,

On behalf of Rock Village Church, I would like to apply to use the Town Hall lawn for our Live Nativity Pageant at 7:00 pm on December 11 with an inclement weather date of December 18. Set up of the stable would begin at 2:00 pm and we would be cleaned up and gone by 8:30 pm. A certificate of insurance can also be provided.

We have presented this pageant for over 25 years, most of them in the parking lot at Middleborough Crossing (we do not have the space to host at our location in Rock Village). Unfortunately new management of the plaza is unwilling to allow us to use that space any longer. Our desire is to present the story of Christ's birth for the community in an open setting with available parking. We were grateful to be able to use the Town Hall lawn in 2005 and hope we will be able to use it again this year, along with access to electricity and the bathrooms as we had in 2005.

Thank you for your consideration of this request. Please don't hesitate to contact me with any questions you may have.

Sincerely,

  
Brian M. Cook

*We would also like to post a sign from December 4-11  
announcing the pageant.*

*"we proclaim christ . . ."*

DECAS, MURRAY & DECAS

ATTORNEYS AT LAW

132 NORTH MAIN STREET • MIDDLEBORO • MASSACHUSETTS 02346 • (508) 947-4433

GEORGE C. DECAS (RETIRED)  
DANIEL F. MURRAY, ESQUIRE  
WILLIAM C. DECAS, ESQUIRE  
**HAND DELIVER**

REPLY TO POST OFFICE BOX 201  
MIDDLEBORO, MA 02346-0201  
FAX (508) 947-7147

WAREHAM OFFICE:  
219-B MAIN STREET  
(508) 947-4433

October 22, 2010

Charles J. Cristello, Town Manager  
Middleboro Town Hall  
Nickerson Avenue  
Middleboro, MA 02346

RE: WWTP Permits Study Contract with CDM

Dear Charlie:

You asked whether the enclosed contract (triplicate original) includes the revisions which I recommended. I previously reported to you on February 10, 2010 that all suggested revisions had been done with a few exceptions. The enclosed contract was altered from the revised version to include the revisions which were not made except for those included in Section 4 of Exhibit A. This section of the enclosed contract differs from the revised version in that it provides that the Engineer is not required to provide services for Task 1 in excess of a cost of \$22,240.00. The cost for Task 2 and Task 3 are to be determined upon completion of Task 1. The previous revised version of Section 4 (5<sup>th</sup> paragraph) provided that the engineering budget (for all services) was not to exceed \$146,550.00.

It seems to me that the agreement may be signed if you agree that current Section 4 of Exhibit A accurately reflects your understanding of the compensation for the contract.

Very truly yours,

Daniel F. Murray  
Town Counsel

DFM/s  
Enclosure  
10-103-4



One Cambridge Place, 50 Hampshire Street  
Cambridge, Massachusetts 02139  
tel: +1 617 452-6000  
fax: +1 617 452-8000

September 30, 2010

Mr. Charles Cristello  
Town Manager  
Town of Middleborough  
10 Nickerson Avenue  
Middleborough, Massachusetts 02346

Subject: WWTP Permit Limits Study

Dear Mr. *Charlie* Cristello:

Per our discussion, I am forwarding 3 signed copies of a Standard Agreement and Exhibit A for your review and signature.

This scope of work reflects the proactive approach the town would like to understand where nutrient limits are likely to be in any new permit. This is the first phase of the process as the town prepares for financing, planning, design and construction of potential plant modifications.

If you have any questions, or need any further information, please do not hesitate to contact me or Dana Green, P.E. at 617-452-6639.

Very truly yours,

F. Adam Yanulis  
Camp Dresser & McKee Inc.



**STANDARD FORM OF AGREEMENT  
BETWEEN  
OWNER AND ENGINEER  
FOR PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT made as of \_\_September 31, 2010 between Town of Middleborough, Massachusetts ("OWNER") and Camp Dresser & McKee Inc., 50 Hampshire Street, Cambridge, Massachusetts 02139 ("ENGINEER").

OWNER intends to study the Middleborough Water Pollution Control Facility addressing capacity issues and potential permit limits (the "Project").

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance or furnishing of services by ENGINEER with respect to the Project and the payment for those services by OWNER as set forth below. Execution of this Agreement by ENGINEER and OWNER constitutes OWNER's written authorization to ENGINEER to proceed on the date first above written with the Services described in Article 1 below. This Agreement will become effective on the date first above written.

**ARTICLE 1 – SCOPE OF SERVICES**

- 1.1 *ENGINEER agrees to perform for OWNER services as described in Exhibit A (hereinafter referred to as "Services") in accordance with the requirements outlined in this Agreement.*

**ARTICLE 2 – TIMES FOR RENDERING SERVICES**

- 2.1 The specific time period for the performance of ENGINEER's Services are set forth in Exhibit A. Dates for performance of Tasks 2 and 3 will be agreed upon by Engineer and Owner.
- 2.2 If the specific periods of time for rendering services or specific dates by which services are to be completed are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changes in the scope, extent, or character of the Project, the time of performance and compensation for ENGINEER's services shall be adjusted equitably.
- 2.3 If ENGINEER's services are delayed or suspended in whole or in part by OWNER for more than three months through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised

**ARTICLE 3 – OWNER'S RESPONSIBILITIES**

OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER and shall bear all costs incident thereto:

- 3.1 Pay the ENGINEER in accordance with the terms of this Agreement.
- 3.2 Designate in writing a person to act as OWNER's representative with respect to the services to be performed or furnished by ENGINEER under this Agreement. Such person will have complete authority to transmit instructions, receive information, interpret, and define OWNER's policies and decisions with respect to ENGINEER's services for the Project.

- 3.3 Provide all criteria and full information as to OWNER's requirements for the Project, including, as applicable to the Services, design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.
- 3.4 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and, as applicable to the Services, any other data relative to design or construction of the Project, all of which ENGINEER shall be entitled to rely upon.
- 3.5 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or time of performance or furnishing of ENGINEER's Services or any defect in conformance in ENGINEER's Services or in the work of any Contractor.
- 3.6 Bear all costs incident to compliance with the requirements of this Article 3.

#### **ARTICLE 4 – PAYMENTS TO ENGINEER FOR SERVICES**

- 4.1 Methods of Payment for Services of ENGINEER.
  - 4.1.1 OWNER shall pay ENGINEER for Services performed or furnished under this Agreement or as described in Exhibit A.
  - 4.1.2 Invoices for Services will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER at least monthly. Invoices are due and payable on receipt.
  - 4.1.3 If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal provided OWNER defaults in a payment to engineer.

OWNER agrees to pay ENGINEER all costs of collection including but not limited to reasonable attorneys' fees, collection fees and court costs incurred by ENGINEER to collect properly due payments.

#### **ARTICLE 5 – GENERAL CONDITIONS**

- 5.1 Standard of Care

The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar conditions at the same time and in the same locality.
- 5.2 Opinions of Probable Construction Cost

ENGINEER's opinions of probable Construction Cost, as applicable to the Services, provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer generally familiar with the construction industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, or when the Project will be constructed ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER

shall employ an independent cost estimator.

5.3 Termination

The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party to perform in accordance with the terms thereof through no fault of the terminating party. In the event of any termination, ENGINEER will be paid for all services rendered and reimbursable expenses incurred to the date of termination.

5.4 Use of Documents

5.4.1 All Documents are instruments of service in respect to this Project, and ENGINEER shall retain an ownership and property interest therein (including the copyright and the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.

5.4.2 OWNER may rely upon that data or information set forth on paper (also known as hard copies) that the OWNER receives from the ENGINEER by mail, hand delivery, or facsimile, are the items that the ENGINEER intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by the ENGINEER to the OWNER are furnished only for convenience, not reliance by the OWNER. Any conclusion or information obtained or derived from such electronic files will be at the OWNER's sole risk. In all cases, the original hard copy of the documents takes precedence over the electronic files.

5.4.3 Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the OWNER agrees that it will authorize receipt, after which the OWNER shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the ENGINEER.

5.4.4 When transferring documents in electronic media format, the ENGINEER makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the ENGINEER.

5.4.5 OWNER may make and retain copies of documents for information and reference in connection with use on the Project by OWNER. ENGINEER grants OWNER a license to use the Documents on the Project, extensions of the Project, and other projects of OWNER, subject to the following limitations: (1) OWNER acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by ENGINEER, or for use or reuse by OWNER or others on extensions of the Project or on any other project without written verification or adaptation by ENGINEER; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants; (3) OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by ENGINEER; if use, reuse or modification was approved by OWNER in writing (4) such limited license to OWNER shall not create any rights in third parties.

5.4.6 If ENGINEER at OWNER's request verifies or adapts the Documents for extensions of the Project or for any other project, then OWNER shall compensate ENGINEER at rates or in an amount to be agreed upon by OWNER and ENGINEER.

5.5 Controlling Law

This Agreement is to be governed by the law of the Commonwealth of Massachusetts.

5.6 Mutual Waiver of Consequential Damages

Notwithstanding any other provision of this Agreement to the contrary, neither party including their officers, agents, servants and employees shall be liable to the other for lost profits or any special, indirect, incidental, or consequential damages in any way arising out of this Agreement however caused under a claim of any type or nature based on any theory of liability (including, but not limited to: contract, tort, or warranty) even if the possibility of such damages has been communicated.

5.7 Limitation of Liability

In no event shall ENGINEER's total liability to OWNER and/or any of the OWNER's officers, employees, agents, contractors or subcontractors for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to this agreement from cause or causes, including, but not limited to, ENGINEER's wrongful act, omission, negligence, errors, strict liability, breach of contract, breach of warranty, express or implied, exceed the total amount of fee paid to ENGINEER under this agreement or the limits of applicable insurance set forth in this agreement, whichever is greater.

5.8 Successors and Assigns

5.8.1. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 5.8.2 the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

5.8.2. Neither OWNER nor ENGINEER may assign, sublet or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

5.8.3. Unless expressly provided otherwise in this Agreement:

5.8.3.1. Nothing in this Agreement shall be construed to create, impose or give rise to any duty owed by ENGINEER to any Contractor, Subcontractor, Supplier, other person or entity, or to any surety for or employee of any of them, or give any rights in or benefits under this Agreement to anyone other than OWNER and ENGINEER.

5.8.3.2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

5.9 Notices

Any notice required under this Agreement will be in writing, addressed to the appropriate party at the address which appears on the signature page to this Agreement (as modified in writing from time to time by such party) and given personally, by registered or certified mail, return receipt requested, by facsimile, or by a nationally recognized overnight courier service. All notices shall be effective upon the date of receipt.

5.10 Severability

Any provision or part of the Agreement held to be void or unenforceable by a court of competent jurisdiction under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such

stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

5.11 Changed Conditions

If concealed or unknown conditions that affect the performance of the Services are encountered, which conditions are not ordinarily found to exist or which differ materially from those generally recognized as inherent in the Services of the character provided for under this Agreement or which could not have reasonably been anticipated, notice by the observing party shall be given promptly to the other party and, if possible, before conditions are disturbed. Upon claim by the ENGINEER, the payment and schedule shall be equitably adjusted for such concealed or unknown condition by change order or amendment to reflect additions that result from such concealed, changed, or unknown conditions.

5.12 Environmental Site Conditions

It is acknowledged by both parties that ENGINEER's scope of services does not include any services related to Constituents of Concern, as defined in Article 6. If ENGINEER or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern as defined in Article 6, then ENGINEER may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern, and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of ENGINEER's services under this Agreement, then the ENGINEER shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days' notice.

OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, so defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.

5.13 Insurance

During the term of this Agreement, ENGINEER shall procure and maintain insurance as follows: (1) Workers' Compensation Insurance to the minimum limits as required by law and Employer's Liability Insurance with limits of \$1,000,000 per accident; (2) Commercial General Liability Insurance with limits of \$1,000,000 per occurrence and \$1,000,000 annual aggregate and naming the OWNER as an additional insured; (3) Automobile Liability Insurance covering owned, non-owned and hired vehicles with a limit of not less than \$1,000,000 combined single limit and annual aggregate; and (4) Professional Liability Insurance with a limit of \$1,000,000 per claim and \$1,000,000 annual aggregate. ENGINEER shall provide a certificate of insurance evidencing the required insurance and shall provide thirty (30) days prior notice to the OWNER in the event of cancellation of any of the required insurance.

5.14 Discovery

ENGINEER shall be entitled to compensation on a time and materials basis when responding to all requests for discovery relating to this Project and to extent that ENGINEER is not a party to the lawsuit.

5.15 Nondiscrimination and Affirmative Action

In connection with its performance under this Agreement, ENGINEER shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or

because he or she is a disabled veteran or veteran of the Vietnam era. ENGINEER shall take affirmative action to ensure that qualified applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, age, sex, marital status, sexual orientation or affectional preference, national origin, ancestry, citizenship, physical or mental handicap or because he or she is a disabled veteran or veteran of the Vietnam era. Such actions shall include recruiting and hiring, selection for training, promotion, fixing rates or other compensation, benefits, transfers and layoff or termination.

5.16 Force Majeure

Any delays in or failure of performance by ENGINEER shall not constitute a default under this Agreement if such delays or failures of performance are caused by occurrences beyond the reasonable control of ENGINEER including but not limited to: acts of God or the public enemy; expropriation or confiscation; compliance with any order of any governmental authority; changes in law; act of war, rebellion, terrorism or sabotage or damage resulting therefrom; fires, floods, explosions, accidents, riots; strikes or other concerted acts of workmen, whether direct or indirect; delays in permitting; OWNER's failure to provide data in OWNER's possession or provide necessary comments in connection with any required reports prepared by ENGINEER, or any other causes which are beyond the reasonable control of ENGINEER. ENGINEER's scheduled completion date shall be adjusted to account for any force majeure delay and ENGINEER and OWNER shall seek to negotiate reimbursement to ENGINEER of costs incurred in connection with or arising from a force majeure event, including but not limited to those costs incurred in the exercise of reasonable diligence to avoid or mitigate a force majeure event, subject to written agreement by the parties.

5.17 Waiver

Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

5.18 Headings

The headings used in this Agreement are for general reference only and do not have special significance.

5.19 Subcontractors

ENGINEER may utilize such ENGINEER's Subcontractors as ENGINEER deems necessary to assist in the performance of its Services.

5.20 Purchase Order

Notwithstanding anything to the contrary contained in any purchase order or in this Agreement, any purchase order issued by OWNER to ENGINEER shall be only for accounting purposes for OWNER and the pre-printed terms and conditions contained on any such purchase order are not incorporated herein, shall not apply to this Agreement, and shall be void for the purposes of the Services performed by ENGINEER under this Agreement.

5.21 Dispute Resolution

In the event of any dispute between the parties arising out of or in connection with the contract or the services or work contemplated herein; the parties agree to first make a good faith effort to resolve the dispute informally through negotiations. Negotiations shall take place between the designated principals of each party. In the event that negotiation is unsuccessful in resolving the dispute, then either party may submit the controversy to a court of competent jurisdiction. The foregoing is a condition precedent to the filing of any action other than an action for injunctive relief or if a Statute of Limitations may expire.

Each party shall be responsible for its own costs and expenses including attorneys' fees and court costs incurred in the course of any dispute, mediation, or legal proceeding. The fees of the mediator and any filing fees shall be shared equally by the parties.

5.22 Indemnification

The ENGINEER shall indemnify and hold the OWNER harmless for all claims for damages of whatever description caused by the negligent act, error or omission by the ENGINEER during the performance of the services under the Agreement or from the ENGINEER's breach of the Agreement.

#### ARTICLE 6 – DEFINITIONS

6.1 Whenever used in this Agreement the following terms have the meanings indicated which are applicable to both the singular and the plural.

6.1.1 Services

The services to be performed for or furnished to OWNER by ENGINEER described in this Agreement.

6.1.2 Agreement

This Agreement between OWNER and ENGINEER for Professional Services including those exhibits listed in Article 7.

6.1.3 Constituent of Concern

Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.

6.1.4 Construction Cost – ♦

The total cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to properties, or OWNER's legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to Article 3. Construction Cost is one of the items comprising Total Project Costs.

6.1.5 Documents

As applicable to the Services, the data, reports, drawings, specifications, record drawings and other deliverables, whether in printed or electronic media format, provided or furnished by ENGINEER to OWNER pursuant to the terms of this Agreement.

6.1.6 Contractor - ♦

The person or entity with whom OWNER enters into a written agreement covering construction work to be performed or furnished with respect to the Project.

6.1.7 ENGINEER's Subcontractor.

A person or entity having a contract with ENGINEER to perform or furnish Services as ENGINEER's independent professional subcontractor engaged directly on the Project.

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♦ This provision is applicable for projects where ENGINEER provides Design, Bidding and/or Construction Phase Services.

6.1.8 Reimbursable Expenses.

The expenses incurred directly in connection with the performance or furnishing of Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit A.

6.1.9 Resident Project Representative - ♦

The authorized representative of ENGINEER who will be assigned to assist ENGINEER at the site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are set forth in Exhibit B, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative" ("Exhibit B").

6.1.10 Total Project Costs - ♦

The sum of the Construction Cost, allowances for contingencies, the total costs of design professional and related services provided by ENGINEER and (on the basis of information furnished by OWNER) allowances for such other items as charges of all other professionals and consultants, for the cost of land and rights-of-way, for compensation for or damages to properties, for interest and financing charges and for other services to be provided by others to OWNER under Article 3.

#### ARTICLE 7 – EXHIBITS AND SPECIAL PROVISIONS

7.1 This Agreement is subject to the provisions of the following Exhibits which are attached to and made a part of the Agreement:

Exhibit A - Engineer's Services, Owner's Responsibilities, Time for Performance, Method of Payment, and Special Provisions.

This Agreement (consisting of Pages 1 to 9 inclusive), and the Exhibits identified above constitute the entire agreement between OWNER and ENGINEER and supersede all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

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♦ This provision is applicable for projects where ENGINEER provides Design, Bidding and/or Construction Phase Services.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the date first above written.

OWNER:

ENGINEER:

By: Charles Cristello  
Title: Town Manager  
Date: \_\_\_\_\_



By: F. Adam Yanulis  
Title: Vice President  
Date: 9-30-10

Town of Middleborough  
Board of Selectmen

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address for giving notices:

10 Nickerson Avenue  
Middleborough, Massachusetts 02346

Address for giving notices:

One Cambridge Place  
50 Hampshire Street  
Cambridge, Massachusetts 02139

**EXHIBIT A  
TO AGREEMENT BETWEEN  
OWNER AND ENGINEER  
(STUDY AND REPORT)**

This is an exhibit attached to and made a part of the Agreement dated SEPT 21, 2010, between the Town of Middleborough, Massachusetts (OWNER) and Camp Dresser & McKee Inc. (ENGINEER) for professional services.

**1.0 ENGINEER'S SERVICES**

**1.1 Study and Report Phase**

Upon this Agreement becoming effective, ENGINEER shall:

- 1.1.1 Consult with OWNER to clarify and define OWNER's requirements for the Project and review available data.
- 1.1.2 Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services which are not part of ENGINEER's Services, and assist OWNER in obtaining such data and services.
- 1.1.3 Identify and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project specified by ENGINEER with whom consultation is to be undertaken in connection with the Project.
- 1.1.4 Evaluate various alternate solutions available to OWNER as described herein, and, after consultation with OWNER, recommend to OWNER those solutions which in ENGINEER's judgment best meet OWNER's requirements for the Project.
- 1.1.5 Prepare a report or memorandum (the "Report") which will contain the statement of OWNER's requirements for the Project and, as appropriate, will contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the considerations involved and those alternate solutions available to OWNER which ENGINEER recommends. This Report will be accompanied by ENGINEER's opinion of Total Project Costs for each solution which is so recommended for the Project, including the following: opinion of probable Construction Cost, allowances for contingencies including costs of design professional and related services based on information furnished by OWNER for allowances and other items and services included within the definition of Total Project Costs.
- 1.1.6 Furnish the Report to and review it with OWNER.
- 1.1.7 Revise the Report in response to OWNER's comments, as appropriate, and furnish final copies of the Report in the number set forth herein.
- 1.1.8 Submit the Report within the stipulated period indicated herein.

- 1.1.9 ENGINEER's Services under the Study and Report Phase will be considered complete at the earlier of (1) the date when the Report has been accepted by OWNER or (2) thirty days after the date when such Report is delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities, if required, having jurisdiction to review the portions of the Project specified by ENGINEER, if such approval is to be obtained during the Study and Report Phase.

The duties and responsibilities of ENGINEER during the Study and Report Phase as set forth in this paragraph 1.1 are amended and supplemented as follows:

#### **Scope of Services**

**Town of Middleborough, Massachusetts**

**Water Pollution Control Facility Planning – Permit Limits and Process Alternatives**

**Evaluation**

**Addressing capacity issues and potential NPDES permit limit of 8 mg/L total nitrogen and 0.2 mg/L total phosphorus**

#### **Introduction**

The Town of Middleborough has an aging Wastewater Treatment Plant facing a potentially more stringent effluent permit. It is our intent to develop a proactive approach to addressing wastewater treatment issues facing the Town. We will collaborate to develop an approach that will allow for Middleborough's future growth while ensuring effluent water quality that will meet future permit requirements.

The attached Scope is divided into three tasks. The first task will focus on communication between the Town of Middleborough and the United States Environmental Protection Agency (EPA) and the Massachusetts Department of Environmental Protection (MassDEP). The purpose of Task 1 is to determine potential future NPDES permit limits and develop estimates of future influent flows and loads from residential, commercial or industrial growth. The purpose of Task 2 is to perform a detailed alternatives analysis to best determine the necessary upgrades and process changes associated with meeting increased future flows and more stringent treatment limits for nitrogen. Task 3 involves summarizing the results of evaluation process and recommendations for proceeding with project permitting.

#### **Task 1. WPCF Capacity and NPDES Permit Review**

The objective of Task 1 is to meet with EPA and MassDEP regarding the future NPDES permit and Middleborough WPCF permit limits.

A key component of this task will be meeting with MassDEP and/or EPA to discuss permit status and direction for future planning. It is estimated that this will involve up to two meetings with regulators. In addition to discussing future permit limit potential with regulators, recent regional NPDES permits will be considered to evaluate the potential direction of future permit limits. Discussions will be focused on identifying and confirming the future permit nutrient requirements to better streamline the planning purposes.

An assessment of the existing and future flows and loads will be conducted. Future flow and load values were estimated as part of a 'Summary Report' dated July 2008 and supplemented with a memorandum dated October 31, 2008. The flows and loads are assumed to be current and will be reviewed and updated as necessary.

The proposed flow evaluation will include a review of previously recommended Infiltration and Inflow (I/I) removal alternatives. It is assumed that these alternatives are adequate for meeting the desired I/I removal quantities

Historic flow and load data will be analyzed including WPCF records and discharge monitoring reports available. A memorandum will be developed summarizing the estimated future flows and loads, as well as applicable peaking factors, trends, and removal efficiencies through the treatment process. This memorandum will also address whether the existing WPCF has the capacity to handle and treat these future flows for discharge to the Nemasket River. It is not anticipated that an increase in capacity or an alternate discharge location (groundwater) is required.

The final step of Task 1 will be to develop a final summary memorandum regarding "the way forward" in regards to what nutrient or other potential discharge parameters need to be addressed to meet a potential future NPDES permit. This memorandum will identify potential technologies and process improvements needed to meet future flows and load and future NPDES limits. These improvements will not be compared or evaluated in detail, and a recommendation for specific improvements will not be made but planning information regarding "the way forward" will be presented, providing a foundation for initial discussions and detailed analysis to be completed in Task 2.

It is also assumed under this task that there will need to be periodic progress meetings with the Town throughout Tasks 1 and 2.

#### **Task 2. Evaluation of Nitrogen Removal Process Alternatives**

The objective of Task 2 is to use the planning criteria defined in Task 1 (NPDES limits and flow and load information) to evaluate secondary treatment process alternatives that can initially achieve an effluent total nitrogen of 8 mg/L, while also meeting an effluent total phosphorus of 0.2 mg/L and to be able to meet potential lower future permit limits. Treatment technologies and processes will be identified and evaluated in detail, including cost information and layouts.

Task 2 will also include a plant wide assessment of the condition of the WPCF facilities to identify areas where there are deficiencies with respect to age, current codes and industry practice.

Task 2 will result in the preparation of a recommended plan which will include cost and schedule information.

The detailed scope for Task 2 is anticipated to be developed following the completion of Task 1 through review and discussions with Town officials.

#### **Task 3. Summary Report**

The objective of this task is to summarize the technical memorandums and findings of Tasks 1 and 2 into a final report, suitable for distribution and review by EPA and MassDEP. The final report will include the technical memoranda, process alternative summaries, cost analyses, recommended plan, implementation plan, financial plan, and other project details.

The detailed scope for Task 3 is anticipated to be developed following the completion of Task 1 through review and discussions with Town officials.

## **2.0 OWNER'S RESPONSIBILITIES**

- 2.1 Furnish to ENGINEER, as requested by ENGINEER for performance of Services as required by the Contract Documents, the following:

- 2.1.1 Data prepared by or services of others, including without limitation explorations and tests of subsurface conditions at or contiguous to the site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site, or hydrographic surveys;
- 2.1.2 The services of an independent testing laboratory to perform all inspections, tests and approvals of samples, materials and equipment;
- 2.1.3 Appropriate professional interpretation of all of the foregoing;
- 2.1.4 Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the site and adjacent areas;
- 2.1.5 Field surveys for design purposes and property, boundary, easement, right-of-way, topographic and utility surveys or data, including relevant reference points;
- 2.1.6 Property descriptions;
- 2.1.7 Zoning, deed and other land use restrictions; and
- 2.1.8 Other special data or consultations not covered in Article 1.0.

OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all reports, data, and other information furnished pursuant to this paragraph. ENGINEER may use such reports, data, and information in performing or furnishing services under this Agreement.

- 2.2 Provide access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.
- 2.3 Provide labor and safety equipment to open and protect manholes and/or to operate valves and hydrants as required by the ENGINEER.
- 2.4 Provide, as may be required for the Project:
  - 2.4.1 Accounting, bond and financial advisory, independent cost estimating and insurance counseling services;
  - 2.4.2 Such legal services as OWNER may require or ENGINEER may reasonably request with regard to legal issues pertaining to the Project, including any that may be raised by Contractor; and
  - 2.4.3 Such auditing services as OWNER may require to ascertain how or for what purpose Contractor has used the moneys paid on account of the Contract Price.
- 2.5 Bear all costs incident to compliance with the requirements of the OWNER's Responsibilities.

The OWNER's responsibilities as set forth in this paragraph 2.0 are amended and supplemented as follows:

None

### 3.0 TIME PERIOD FOR PERFORMANCE

The time periods for the performance of ENGINEER's Services as set forth in Article 2 of said Agreement are as follows:

ENGINEER shall proceed with performance of the services described herein immediately upon authorization from OWNER and will complete the services identified above as Task 1 within two months of the executed date of this Agreement unless extended by agreement between OWNER and ENGINEER.

#### 4.0 METHOD OF PAYMENT

The method of payment for Services rendered by ENGINEER shall be as set forth below:

For work done by the ENGINEER, OWNER agrees to pay the salary cost of such services for employees plus 121 percent of salary cost for overhead and profit plus actual out-of-pocket expense costs. Salary costs are defined as the cost of salaries (including sick leave, vacation, and holiday pay applicable thereto) for time directly chargeable to the project; plus unemployment compensation insurance, retirement benefits, medical and other group insurance benefits.

Actual out-of-pocket expense costs are all costs other than salary costs that are incurred during the progress of the work. The actual out-of-pocket expense costs include air fare, automobile rental if required, mileage charges, parking, tolls, taxi, meals, lodging, telephone, printing, and reproduction costs, and other miscellaneous costs incurred specifically for this project. The charges for in-house computer program and word processor usage will be at the ENGINEER's regular rates. For work done by subcontract or consultants, charges will be made at the invoiced cost to the ENGINEER.

The ENGINEER is not responsible to provide services for Task 1, that costs of which if filled in accordance with the terms of this Agreement would exceed \$22,240 unless authorized by the OWNER in writing and an increase in funds is made available. In no event shall the ENGINEER bill in excess of the above figures without written authorization from the OWNER. Upper Limit associated with Tasks 2 and 3 to be determined upon completion of Task 1. Any changes to the scope of work for this project shall not be conducted until OWNER and ENGINEER have agreed to an Amendment to this Agreement.

The following presents a rate schedule for key project personnel applied to this project:

<u>Name</u>	<u>Project Role</u>	<u>Salary Cost</u>
Elizabeth Watson	Project Engineer	\$44.00
Eric Spargimino	Project Engineer	\$44.00
William Dana Green	Senior Project Manager	\$80.00
Bill McConnell	Process Specialist	\$95.00
Michael Kostur	Senior Technical Specialist	\$110.00

#### 5.0 SPECIAL PROVISIONS

The following special provisions and/or other considerations or requirements are applicable to their Agreement:

When circumstances arise which ENGINEER believes will delay the timely completion of its services, ENGINEER shall notify OWNER at the earliest possible time of such circumstances which may result in delay.