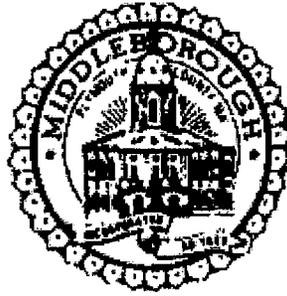


NEW BUSINESS

5-13-13



TOWN OF MIDDLEBOROUGH MASSACHUSETTS

We, the Board of Selectmen, representing the Citizens of Middleborough, wish to recognize Middleborough resident

Alfred P. Rullo, Jr.

On behalf of the Citizens of the Town of Middleborough, the Board of Selectmen recognizes and thanks Alfred P. Rullo, Jr. for his many years of service as a member, and as Chairman, of the Board of Selectmen.

You always held the interest of the Town and its Citizens above any personal agenda.

Thank you for your service and please know that Middleborough is a better place because you chose to get involved.

BOARD OF SELECTMEN

Stephen J. McKinnon, Chairman

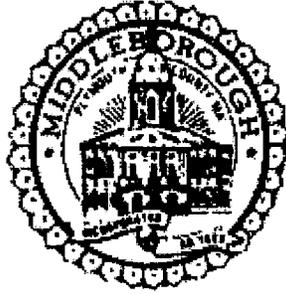
Allin Frawley, Vice Chairman

Ben Quelle

Leilani Dalpe

John M. Knowlton

May 13, 2013



TOWN OF MIDDLEBOROUGH MASSACHUSETTS

We, the Board of Selectmen, representing the Citizens of Middleborough, wish to recognize Middleborough resident

Steven P. Spataro

On behalf of the Citizens of the Town of Middleborough, the Board of Selectmen recognizes and thanks Steven P. Spataro for his many years of service as a member of the Board of Selectmen.

You always held the interest of the Town and its Citizens above any personal agenda.

Thank you for your service and please know that Middleborough is a better place because you chose to get involved.

BOARD OF SELECTMEN

Stephen J. McKinnon, Chairman

Allin Frawley, Vice Chairman

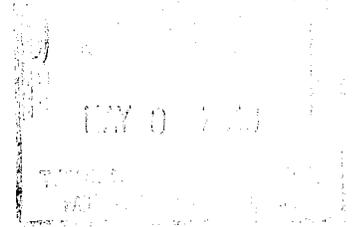
Ben Quelle

Leilani Dalpe

John M. Knowlton

May 13, 2013

Town of Middleborough Permanent Cable Committee



To: Board of Selectmen
From: Robert W. Silva, Cable Committee Chairman
Date: May 7, 2013
Re: Appointment to Permanent Cable Committee

Dear Board of Selectmen:

At the Permanent Cable Committee meeting on April 18, we discussed to request the Board of Selectmen appoint Paul Lazarovich, 58 Nestlenook Drive, Middleborough to this committee. Paul is a Professor at Wentworth Institute and a volunteer for Middleborough 20 years as the host Cranberry Country and many years announcing and hosting different town events and would be a valuable addition to the committee. Paul has already given his letter of interest to the Town Manager. We are down one position due to Kevin Francoza, retirement after 31 Year on the Cable Committee (original member). I am asking for Paul to complete Kevin term, which ends June 30, 2014. We are a nine (9) member committee and need to have all members available during the upcoming months.

Thanks

Town of Middleborough
Request for Qualifications (RFQ)
For Designer Services
Water Pollution Control Facility Upgrade

SAMPLE AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES

TABLE OF CONTENTS

Page

ARTICLE 1 – SERVICES OF ENGINEER.....	1
1.01 Scope.....	1
ARTICLE 2 – OWNER’S RESPONSIBILITIES.....	1
2.01 General.....	1
ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES.....	2
3.01 Commencement.....	2
3.02 Time for Completion.....	2
ARTICLE 4 – INVOICES AND PAYMENTS.....	2
4.01 Invoices.....	2
4.02 Payments.....	2
ARTICLE 5 – OPINIONS OF COST.....	3
5.01 Opinions of Probable Construction Cost.....	3
5.02 Designing to Construction Cost Limit.....	3
5.03 Opinions of Total Project Costs.....	3
ARTICLE 6 – GENERAL CONSIDERATIONS.....	3
6.01 Standards of Performance.....	3
6.02 Design With Limited Construction Phase Services.....	5
6.03 Use of Documents.....	5
6.04 Insurance.....	5
6.05 Suspension and Termination.....	6
6.06 Controlling Law.....	7
6.07 Successors, Assigns, and Beneficiaries.....	7
6.08 Dispute Resolution.....	8
6.09 Indemnification by Engineer.....	8
6.10 Miscellaneous Provisions.....	8
ARTICLE 7 – DEFINITIONS.....	10
7.01 Defined Terms.....	10
ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS.....	13
8.01 Exhibits Included:.....	13
8.02 Total Agreement:.....	13
8.03 Designated Representatives:.....	13
8.04 Engineer's Certifications:.....	14



ENGINEERS JOINT CONTRACT
DOCUMENTS COMMITTEE

**AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of April 9, 2013 ("Effective Date") between

Town of Middleborough, MA ("Owner") and

Designer ("Engineer").

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Upgrade to the Existing Water Pollution Control Facility (WPCF) ("Project").

Engineer's services under this Agreement are generally identified as follows:

Design Services for the upgrade to the existing WPCF during the Schematic Design phase, Design Development phase, and Final Design Documents phase.

Owner and Engineer further agree as follows:

ARTICLE 1 – SERVICES OF ENGINEER

1.01 *Scope*

- A. Engineer shall provide, or cause to be provided, the services set forth herein and in "Attachment A" to Request for Qualifications for Designer Services describing the Scope of Services.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

2.01 *General*

- A. Owner shall have the responsibilities set forth herein and in Exhibit B.
- B. Owner shall pay Engineer as set forth in Exhibit C.

- C. Owner shall be responsible for, and Engineer may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement.

ARTICLE 3 – SCHEDULE FOR RENDERING SERVICES

3.01 *Commencement*

- A. Engineer is authorized to begin rendering services as of the Effective Date.

3.02 *Time for Completion*

- A. Engineer shall complete its obligations within a reasonable time. Specific periods of time for rendering services are set forth or specific dates by which services are to be completed are provided in Exhibit A, and are hereby agreed to be reasonable.
- B. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably, by written agreement of the parties.
- C. If Owner authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably, by written agreement of the parties.
- D. Owner shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.
- E. If Engineer fails, through its own fault, to complete the performance required in this Agreement within the time set forth, as duly adjusted, then Owner shall be entitled, as its sole remedy, to the recovery of direct damages, if any, resulting from such failure.

ARTICLE 4 – INVOICES AND PAYMENTS

4.01 *Invoices*

- A. *Preparation and Submittal of Invoices:* Engineer shall prepare invoices in accordance with its standard invoicing practices and the terms of Exhibit C. Engineer shall submit its invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt.

4.02 *Payments*

- A. Owner shall pay Engineer the amounts due for services satisfactorily performed.
- B. *Disputed Invoices:* If Owner contests an invoice, Owner shall promptly advise Engineer of the specific basis for doing so, may withhold only that portion so contested, and must pay the undisputed portion.

ARTICLE 5 – OPINIONS OF COST

5.01 *Opinions of Probable Construction Cost*

- A. Engineer's opinions of probable Construction Cost 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 generally familiar with the construction industry. However, because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, 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 requires greater assurance as to probable Construction Cost, Owner must employ an independent cost estimator as provided in Exhibit B.

5.02 *Designing to Construction Cost Limit*

- A. If a Construction Cost limit is established between Owner and Engineer, such Construction Cost limit and a statement of Engineer's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit," to this Agreement.

5.03 *Opinions of Total Project Costs*

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Owner in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

ARTICLE 6 – GENERAL CONSIDERATIONS

6.01 *Standards of Performance*

- A. *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 the subject profession practicing under similar circumstances at the same general time and in the same general locality.
- B. *Technical Accuracy:* Owner shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Owner-furnished information.
- C. *Consultants:* Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to the prior approval of the Owner, which approval shall not be unreasonably withheld.
- D. *Reliance on Others:* Subject to the standard of care set forth in Paragraph 6.01.A, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

- E. Compliance with Laws and Regulations, and Policies and Procedures:
1. Engineer and Owner shall comply with applicable Laws and regulations that apply to the services to be performed under this contract.
 2. This Agreement is based on Laws and Regulations as of the Effective Date. Changes after the Effective Date to these Laws and Regulations may be the basis for modifications to Owner's responsibilities or to Engineer's scope of services, times of performance, or compensation, provided any such modification is the subject of a written agreement of the parties.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Owner agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition), unless the Owner provides the Engineer with its own set of General Conditions.
- H. Engineer shall not at any time supervise, direct, control, or have authority over any contractor work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Site, nor for any failure of a contractor to comply with Laws and Regulations applicable to such contractor's furnishing and performing of its work.
- I. Engineer neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- J. Engineer shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- K. Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor, or Supplier, or of any of their agents or employees or of any other persons (except Engineer's own agents, employees, and Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made regarding the Contract Documents, or any application, interpretation, or clarification, of the Contract Documents, other than those made by Engineer.
- L. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's and Owner's safety programs of which Engineer has been informed in writing.

6.02 *Design With Limited Construction Phase Services*

- A. Engineer shall be responsible for limited Construction Phase services. Responsibilities shall include Shop Drawing review, responses to requests for interpretation of the Contract Documents, assistance with review and response to Contractor claims, assistance with processing Change Orders, revisions to the Contract Documents during construction, and periodic construction observation and site visits. Limited Construction Phase services may be added to this agreement by amendment.

6.03 *Use of Documents*

- A. All Documents prepared by Engineer 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. Owner shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. Either party to this Agreement may rely on data or information that the party receives from the other party by mail, hand delivery, facsimile, or electronic media.
- C. 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 limited license to use the Documents on the Project, extensions of the Project, and for related uses of the 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, to the level required by this contract, or for use or reuse by Owner or others on extensions of the Project; (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 risk.
- D. If Engineer at Owner's request verifies the suitability of the Documents, completes them, or adapts them for extensions of the Project or for any other purpose, then Owner shall compensate Engineer at rates or in an amount to be agreed upon by Owner and Engineer.

6.04 *Insurance*

- A. Engineer shall procure and maintain insurance as set forth in Exhibit G, "Insurance." Engineer shall cause Owner to be listed as an additional insured on any applicable general liability insurance policy carried by Engineer. Limits shall match the insurance requirements set forth in Section III F. of the RFQ.
- B. Owner shall require Contractor to purchase and maintain policies of insurance covering workers' compensation, general liability, property damage (other than to the Work itself), motor vehicle damage and injuries, and other insurance necessary to protect Owner's and Engineer's interests in the Project. Owner shall require Contractor to cause Engineer and its Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.

- C. Engineer shall deliver certificates of insurance evidencing the coverages indicated in Exhibit G. Such certificates shall be furnished prior to commencement of Engineer's services and at renewals thereafter during the life of the Agreement.
- D. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and its Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds, additional insureds, or loss payees thereunder.
- E. All policies of insurance shall contain a provision or endorsement that the coverage afforded will not be canceled or reduced in limits by endorsement, and that renewal will not be refused, until at least 30 days prior written notice has been given to Owner and to each other additional insured (if any) to which a certificate of insurance has been issued.
- F. At any time, Owner may request that Engineer or its Consultants, at Owner's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by Owner, and if commercially available, Engineer shall obtain and shall require its Consultants to obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by Owner, and Exhibit G will be supplemented to incorporate these requirements.

6.05 *Suspension and Termination*

A. *Suspension:*

- 1. By Owner: Owner may suspend the Project for up to 90 days upon seven days written notice to Engineer.
- 2. By Engineer: Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement if Engineer's performance has been substantially delayed through no fault of Engineer.

B. *Termination:* The obligation to provide further services under this Agreement may be terminated:

- 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. By Engineer:
 - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

3) Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 6.05.B.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,

a. By Owner effective upon Engineer's receipt of notice from Owner.

C. *Effective Date of Termination:* The terminating party under Paragraph 6.05.B may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

D. *Payments Upon Termination:*

1. In the event of any termination under Paragraph 6.05, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Owner shall have the limited right to the use of Documents, at Owner's risk, subject to the provisions of Paragraph 6.03.

6.06 *Controlling Law*

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

6.07 *Successors, Assigns, and Beneficiaries*

A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.07.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or 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.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Contractor, Subcontractor, Supplier, other individual or entity, or to any surety for or employee of any of them.
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.
3. Owner agrees that the substance of the provisions of this Paragraph 6.07.C shall appear in the Contract Documents.

6.08 *Dispute Resolution*

- A. In the event of a dispute between the Owner and the Engineer, both parties agree that they will attempt to negotiate the dispute for a period of 30 days, after which time either party may file a claim against the other party in Plymouth County Superior Court with respect to the dispute.

6.09 *Indemnification by Engineer*

- A. *Indemnification by Engineer:* To the fullest extent permitted by law, Engineer shall indemnify, defend, and hold harmless Owner, and Owner's officers, directors, members, partners, agents, consultants, and employees from claims, costs, losses, and damages arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom, but only to the extent caused by any negligent act or omission of Engineer or Engineer's officers, directors, members, partners, agents, employees, or Consultants.

6.10 *Miscellaneous Provisions*

- A. *Notices:* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival:* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability:* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations by a court of competent jurisdiction shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Engineer, which 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.

- D. *Waiver:* A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.
- E. *Accrual of Claims:* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.
- F. The Engineer certifies that:
1. It has not given, offered or agreed to give any person, corporation or other entity any gift, contribution or offer of employment as an inducement for, or in connection with, the award of this Agreement.
 2. No consultant or sub-Consultant for the Engineer has given, offered or agreed to give any gift, contribution or offer of employment to the Engineer, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or sub-Consultant of a contract by the Engineer.
 3. No person, corporation or other entity, other than a bona fide full time employee of the Engineer, has been retained or hired by the Engineer to solicit for or in any way assist the Engineer in obtaining this Agreement upon an agreement or understanding that such person, corporation or other entity be paid a fee or other consideration contingent upon the award of this Agreement to the Engineer.
 4. It has internal accounting controls as required by M.G.L.c. 30, §39R and that the Engineer filed and will continue to file an audited financial statement as required by M.G.L.c. 30, §39R(d), if and to the extent required by law.
- G. Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then the Agreement shall be read as if such provision were included and correctly inserted.
- H. No employee or official of either the Awarding Authority or the Engineer shall assume any personal liability pursuant to this Agreement.
- I. Pursuant to M.G.L. c. 62C, §49A, the undersigned signatory for the Engineer, by signing this Agreement, certifies under the penalties of perjury that the Engineer has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors and withholding and remitting child support.

ARTICLE 7 – DEFINITIONS

7.01 *Defined Terms*

- A. Wherever used in this Agreement (including the Exhibits hereto) terms (including the singular and plural forms) printed with initial capital letters have the meanings indicated in the text above, in the exhibits, or in the following provisions:
1. *Additional Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 2 of Exhibit A of this Agreement.
 2. *Agreement* – This written contract for professional services between Owner and Engineer, including all exhibits identified in Paragraph 8.01 and any duly executed amendments.
 3. *Asbestos* – Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 4. *Basic Services* – The services to be performed for or furnished to Owner by Engineer in accordance with Part 1 of Exhibit A of this Agreement.
 5. *Construction Contract* – The entire and integrated written agreement between Owner and Contractor concerning the Work.
 6. *Construction Cost* – The cost to Owner of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants; cost of land or rights-of-way, or compensation for damages to properties; Owner's costs for legal, accounting, insurance counseling or auditing services; interest or financing charges incurred in connection with the Project; or the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.
 7. *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.
 8. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates and consultants; subcontractors; or vendors.

9. *Contract Documents* – Those items so designated in the Construction Contract, including the Drawings, Specifications, construction agreement, and general and supplementary conditions. Only printed or hard copies of the items listed in the Construction Contract are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
10. *Contractor* – The entity or individual with which Owner has entered into a Construction Contract.
11. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Owner pursuant to this Agreement.
12. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
13. *Effective Date* – The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, the date on which this Agreement is signed and delivered by the last of the parties to sign and deliver.
14. *Engineer* – The individual or entity named as such in this Agreement.
15. *Hazardous Waste* – The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
16. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
17. *Owner* – The individual or entity with which Engineer has entered into this Agreement and for which the Engineer's services are to be performed. Unless indicated otherwise, this is the same individual or entity that will enter into any Construction Contracts concerning the Project.
18. *PCBs* – Polychlorinated biphenyls.
19. *Petroleum* – Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-hazardous waste and crude oils.
20. *Project* – The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
21. *Radioactive Material* – Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.

22. *Record Drawings* – Drawings depicting the completed Project, prepared by Engineer as an Additional Service and based solely on Contractor's record copy of all Drawings, Specifications, addenda, change orders, work change directives, field orders, and written interpretations and clarifications, as delivered to Engineer and annotated by Contractor to show changes made during construction.
23. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
24. *Resident Project Representative* – The authorized representative of the Owner's Project Manager (OPM) assigned to assist OPM at the Site during the Construction Phase. As used herein, the term Resident Project Representative or "RPR" includes any assistants or field staff of Resident Project Representative agreed to by Owner.
25. *Samples* – Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
26. *Shop Drawings* – All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
27. *Site* – Lands or areas to be indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
28. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
29. *Subcontractor* – An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
30. *Substantial Completion* – The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer and the OPM, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
31. *Supplier* – A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
32. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for inclusion,

including but not limited to cost of land, rights-of-way, compensation for damages to properties, Owner's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner pursuant to Exhibit B of this Agreement.

33. *Work* – The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.

ARTICLE 8 – EXHIBITS AND SPECIAL PROVISIONS

8.01 *Exhibits Included:*

- A. Exhibit A, Engineer's Services.
- B. Exhibit B, Owner's Responsibilities.
- C. Exhibit C, Payments to Engineer for Services and Reimbursable Expenses.
- D. Exhibit D: Deleted.
- E. Exhibit E: Deleted.
- F. Exhibit F, Construction Cost Limit.
- G. Exhibit G, Insurance.
- H. Exhibit H: Deleted.
- I. Exhibit I: Deleted.
- J. Exhibit J, Special Provisions.
- K. Exhibit K, Amendment to Owner-Engineer Agreement.

8.02 *Total Agreement:*

- A. This Agreement, (together with the exhibits identified above) constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument based on the format of Exhibit K to this Agreement.

8.03 *Designated Representatives:*

- A. With the execution of this Agreement, Engineer and Owner shall designate specific individuals to act as Engineer's and Owner's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Owner under this Agreement. Such an individual

shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of the respective party whom the individual represents.

8.04 *Engineer's Certifications:*

- A. Engineer certifies that it has not engaged in corrupt, fraudulent, or coercive practices in competing for or in executing the Agreement. For the purposes of this Paragraph 8.04:
1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the selection process or in the Agreement execution;
 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the selection process or the execution of the Agreement to the detriment of Owner, or (b) to deprive Owner of the benefits of free and open competition;
 3. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the selection process or affect the execution of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner: Town of Middleborough

Engineer: Wright-Pierce

By: _____

By: John W. Braccio, PE

Title: Board of Selectmen

Title: Vice-President

Date _____

Date _____

Signed: _____

Signed: April 9, 2013

Engineer License or Firm's
Certificate No. 01-0228316
State of: MA

Address for giving notices:

Address for giving notices:

Middleborough Town Hall

Wright-Pierce

10 Nickerson Avenue,
Middleborough, MA 02346

40 Shattuck Road, Suite 305
Andover, MA 01876

Designated Representative: _____

Designated Representative (Paragraph 8.03.A):

Jon W. Hume, PE

Title: _____

Title: Senior Project Manager

Phone Number: _____

Phone Number: 978-416-8000

Facsimile Number: _____

Facsimile Number: 978-470-3558

E-Mail Address: _____

E-Mail Address: jon.hume@wright-pierce.com

This is **EXHIBIT A**, consisting of 8 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Engineer's Services

Article 1 of the Agreement is supplemented to include the following agreement of the parties.

Engineer shall provide Basic Services as set forth below.

PART 1 – BASIC SERVICES

Design Services. Designer Services are detailed in Attachment A of the RFQ for the following Tasks. Services shall be completed within twelve (12) months.

Task I: Design: Schematic Design Phase. Design Development Phase. Final Design Documents Phase

Task II: Permitting Assistance

The specific Scope of Services for the Part 1 – Basic Services as outlined above are detailed in the Engineer's proposal letter in the following pages of Exhibit A.

PART 2 – ADDITIONAL SERVICES

If authorized in writing by Owner, Engineer shall furnish Additional Services.

As agreed upon at the Engineer's April 9, 2013 meeting with the Town and the OPM, the following additional services will be provided as part of our Scope of Services:

- Wastewater Characterization Study
- Pilot Testing Program

The specific Scope of Services for the additional services are detailed in the Engineer's proposal letter included in the following pages of Exhibit A.

April 29, 2013
W-P Project No. T9793

Mr. Charles J. Cristello, Town Manager
Middleborough Town Hall
10 Nickerson Avenue
Middleborough, MA 02346

Draft

Subject: Agreement for Engineering Services
Middleborough Water Pollution Control Facility (WPCF)
Middleborough, Massachusetts

Dear Mr. Cristello:

As discussed, this is our proposal to provide design services for the proposed upgrade to the Middleborough Water Pollution Control Facility (WPCF). We have developed this proposal based on: our current understanding of the project as outlined in the Town's Request for Qualifications (RFQ) and the Water Pollution Control Facility Upgrade Draft Preliminary report prepared by Environmental Partners Group (EPG), as outlined in our Statement of Qualifications dated March 8, 2013, and based on subsequent input from EPG.

It is also our understanding that this proposal letter, when approved by the Town of Middleborough, will act as "Exhibit A, Engineer's Services" of the project Agreement.

Based on our project understanding described above, we propose to provide the following scope of services:

SCOPE OF SERVICES

Task I: Design

The design scope of services is organized into three phases as described herein. Each phase will include engineering and architectural services associated with the following disciplines:

- Civil (surveying, earthwork, geotechnical, utilities, landscaping, parking, paving)
- Process-Mechanical (treatment systems, piping, valves and pumping)
- Instrumentation & Controls (I&C) and SCADA
- Architectural
- Structural
- Electrical (including communications)
- Building Systems (Plumbing, Fire Protection, HVAC, Security)



The design phase will include meetings with the Client and OPM, preparation of deliverables (including construction cost estimates), review of deliverables and concepts with the Client and OPM, addressing Client's and OPM comments, and preparation of construction documents suitable for public bidding.

1. Schematic Design Phase

The goal of this Phase will be to obtain agreement on a single design concept. The deliverables for this task will include diagrams, sketches and preliminary drawings which will provide sufficient information for Client, OPM and agency review. Concepts developed at the end of this phase will be used for the Design Development phase. The following specific tasks shall be performed during the schematic design phase:

- Coordinate and attend one (1) two-day interactive workshop with Client and OPM. This workshop will serve as a kickoff for the design phase of the project. The goal of this workshop will be to review the critical design decisions of the Conceptual Design and identify areas to be finalized later.
- Confirm the site layout and access road details including parking, pavement, drainage, and landscaping requirements.
- Confirm the connectivity and layout of all site utilities (water, sewer, stormwater, electricity, gas, telephone, and cable).
- Prepare a preliminary layout of the modified treatment process using the recommended 5-Stage Bardenpho process, related modifications to the existing aeration basins, as described in the assessment report, and other recommended process improvements.
- Evaluate alternative process, piping and structural modifications that would allow for the "Option 2" process configuration which would convert the existing primary clarifiers to operate as secondary clarifiers. Review alternatives with Client and OPM to determine desired alternative to include into design.
- Complete a building code review.
- Confirm preliminary room sizes, adjacencies and functional requirements of each space, architectural theme for exterior of building, interior and exterior construction materials (including insulation rating), and roof system for each building.
- Prepare revised building layouts (hand sketches, sections, elevations, and equipment layouts) for the proposed addition (approx. 1500 s.f.) adjacent to the existing administration-control building.
- Complete the selection and size of all major process equipment from the screening building through to the effluent discharge including: screening, grit removal, clarifiers, aeration basins, filters, disinfection, sludge handling, odor control and all related tanks, pumps, blowers, piping, valving, and junction structures. Prepare preliminary hydraulic calculations.
- Prepare process control narratives for the operation and control of each treatment process.
- Confirm building ventilation and air conditioning requirements and systems.
- Confirm building heating and cooling requirements and systems. Confirm fire protection and sprinkler requirements with local Fire Department.
- Determine facility potable water, non-potable water, sanitary waste, floor drain, and natural gas concepts and details.
- Confirm building and facility structural requirements.

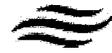


- Develop process and instrumentation diagrams (P&IDs) for each treatment process. Each P&ID will include: process configuration, flow streams, valve and gate locations (manual and powered), chemical additions points/types, process equipment location/type including packaged control panels and adjustable-speed drives, flow meters and other process control devices for measuring, transmitting, and recording information (e.g. analytical, pressure, level).
- Prepare a facility SCADA system schematic.
- Confirm preliminary facility electrical loads and voltages and modify the preliminary overall one-line diagram for proposed facilities, including power feeds, substation requirements, and standby power.
- Prepare a security plan and concept for the treatment facilities.
- Prepare a conceptual plan for radio and telephone communications for the facilities. Prepare an estimate of probable construction costs once the Schematic Design concepts complete.
- Prepare a Schematic Design report based on completing the above outlined tasks.
- Attend one (1) two-day value engineering workshop with the OPM to identify alternatives and cost savings, and review these with the Client and OPM. Refine the schematic design accordingly.
- Coordinate and attend a one-day workshop with the Client and OPM. The Client must agree on the Schematic Design concepts to allow the design to progress into the next phase.
- Revise the design report based on the workshop with the Client and the OPM.

2. Design Development Phase

This phase will result in the preparation of draft technical specifications and engineering plans which constitute the facility design to be approximately 50% complete. The purpose of this task is to utilize the decisions made in the previous phase and complete and finalize all preliminary calculations. The Design Development phase will consist of the following subtasks:

- Selection of main process-mechanical equipment. Finalize the selection and size of major process equipment including: screening, grit removal, clarifiers, aeration basins, filters, disinfection, sludge handling, odor control, and all related tanks, pumps, blowers, piping, valving, and junction structures. Finalize hydraulic calculations.
- Prepare mechanical drawings (plans, sections and elevations as necessary) for all process improvements.
- Complete a constructability and operability review.
- Prepare site plans that include facility layouts, site access, grading, drainage, and utilities.
- Coordinate with other disciplines on final room sizes and layouts. Prepare and develop building floor plans, elevations, and sections for all buildings.
- Finalize structural requirements for buildings and facilities. Prepare preliminary structural plans, sections, and details.
- Coordinate with electrical and building services on all interior utility routing.
- Finalize major and ancillary equipment sizing and line sizing calculations. Assemble catalog cut sheets and prepare equipment data sheets for all process equipment.
- Prepare sizing calculations for HVAC equipment based on energy code requirements and selected building construction materials. Prepare HVAC equipment data sheets and cut sheets.



- Prepare HVAC system block diagrams and confirm HVAC system control philosophy.
- Finalize P&IDs for all processes. Summarize I&C, SCADA, and other control interfaces and equipment requirements (including location, number, manufacturer, and size).
- Finalize facility security features and plans.
- Finalize the number and location of motor control centers (MCCs) to be provided and location of MCCs, and equipment to be powered from each MCC.
- Update one-line electrical diagrams and confirm all facility loads and power distribution.
- Develop infrastructure requirements and layout for telephone communications, data highways (LAN, WAN, SCADA), cable, and radio communications.
- Develop lighting concepts and layouts for facility interior and exterior lighting.
- Prepare a first draft of all facility technical specifications.
- Prepare an estimate of probable construction costs after completion of the Design Development Phase.
- Submit a design development report summarizing the key elements of this phase of work, including the basis of design for sizing and selecting all process equipment and building systems, and an updated construction cost estimate.
- Attend one (1) two-day value engineering workshop to identify alternatives and cost savings, and review these with the Client and OPM. Refine the Design Development work products based on the findings of the VE workshop and guidance from the Client and OPM.
- Attend one (1) two-day workshop to review the work products with the Client and OPM.

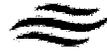
3. Final Design Documents Phase

The purpose of this task is to develop the final drawings, specifications, and schedules suitable for construction and competitive bidding. This phase will consist of the following key subtasks:

- Preparation of final calculations.
- Preparation of final construction drawings.
- Preparation of final technical specifications in Construction Specifications Institute (CSI) format (Div. 0-1-2...16).
- Preparation of an estimate of probable construction costs at 75% and 95% design completion.
- Submit progress submittals at the 75% and 95% design completion milestones to the Client and OPM for review.
- Coordination and attendance of two (2) one-day workshops to review the work products with the Client and OPM. Workshops to be scheduled at approximately 75% and 95% design completion.
- Incorporate workshop review comments into the final plans and specifications.

Task II: Permitting Assistance

Unless otherwise instructed by the Client, the Designer shall support the OPM to obtain permits required to implement the project design, other than standard building permits customarily obtained by the general contractor. Designer shall obtain prior approval from the Client regarding all permit applications, notices, and



accompanying documentation before filing them with the appropriate regulatory or governmental agency/entity. Designer shall provide the Client with a list of permits required to implement the design at the site, including a schedule for their implementation, at the completion of the Design Development Phase. Any permit application fees shall be paid directly by the Client.

Task III: Additional Services

There are additional tasks not described in the RFQ that will be included within the design scope of services, and which are described as follows:

1. **Wastewater Characterization Study** – It is our understanding that plant staff is currently performing additional sampling to supplement routine sampling data. Additional sampling and testing is required to help determine the specific wastewater characteristics for process modeling; and is to include soluble BOD/COD, nitrogen and phosphorus, and refractory nitrogen and phosphorus. This data is to be obtained for the plant influent, primary effluent, leachate, septage, and untreated and treated Ocean Spray wastewater. Our fee includes the following tasks:
 - Develop sampling protocols.
 - Work with plant staff in order for them to perform the sampling and delivery to the laboratory. We understand that the plant will utilize the influent automatic sampler for the influent sampling and we can provide a portable automatic sampler if needed for sampling the primary effluent. Plant staff will take all wastewater samples and send them to the laboratory for testing. In addition, plant staff will also obtain internal plant recycle samples for testing.
 - Laboratory testing fees.
 - Analysis of data.
2. **Pilot Testing** – In order to verify that the proposed filter cloth technology can achieve the pending stringent target total phosphorus (TP) discharge concentration of 0.15 mg/l, pilot testing will be performed. Our fee includes the following tasks:
 - Conduct a pilot testing kick-off meeting with plant staff.
 - Develop pilot test protocols.
 - Coordinate with two disc filter manufacturers to schedule the pilot test units. The disc filter manufacturers will be responsible to operate the pilot test daily including taking samples and sending them to the laboratory and for developing a pilot test report.
 - Work with plant staff to identify a location for the pilot test unit, and for the WPCF to provide the necessary utilities including water, power and drainage, and consumable chemicals (ferric chloride). The plant staff will assist the manufacturers with the set up/installation of the pilot units, which includes providing and installing additional hose lengths and/or piping as necessary for the suction/discharge piping. The Town will also be responsible for additional lengths of electric cables depending on where adequate power can be provided from.
 - The Town will provide the coagulant (i.e. Ferric Chloride) for the pilot testing program. The disc filter manufacturers will also supply two additional coagulants in order to evaluate their effectiveness for TP removal.
 - Perform periodic site visits during pilot testing to confirm that pilot testing is being performed in accordance with protocols.
 - Review pilot test data and performance reports which will become basis of final design, unless pilot testing determines that cloth filter technology will not be able to achieve required phosphorus discharge limit of 0.15 mg/l.
 - Develop a technical memorandum to summarize the pilot testing program.



LIST OF ASSUMPTIONS

Below is a summary of Wright-Pierce's assumptions in regards to our scope of services:

1. The Schematic Design Phase will include:
 - a. Discussions with Town and Environmental Partners Group (EPG/OPM) to determine/confirm the pending NPDES discharge permit limits. At this time it is assumed that the overall discharge permit limits will be:
 - Average Daily Flow – 2.16 mgd
 - Maximum Daily Flow – 7.1 mgd
 - Total Nitrogen Limit – 5.5 mg/l
 - Total Phosphorus Limit – 0.15 mg/l
 - b. Discussions with Town and OPM to determine/confirm that current permit flow limits are sufficient to handle projected future sewer growth, and projections for necessary or desired capacity for additional industrial, leachate, or septage flows. Our proposal does not include a detailed analysis of future flow projections.
 - c. Subcontract services including:
 - i. Topographical survey including wetlands delineation.
 - ii. Geotechnical evaluation including soil borings for new structures foundation design.
 - iii. Lead paint and asbestos testing.
 - iv. Environmental soil and groundwater sampling for new structures excavations.
 - v. Permitting assistance.We will attempt to utilize MBE and WBE subcontractors for these services in order to help achieve MBE/WBE participation requirements for potential SRF funding requirements.
 - d. Initial review of Ocean Spray untreated and treated wastewater testing data to determine possible impact to WPCF influent wastewater soluble carbon concentrations, which will impact the nitrogen removal process and need to provide supplemental carbon source. Our proposal does not include potential negotiations with Ocean Spray that may be needed to revise their industrial user agreement.
2. Our proposed scope and fee is based on Option #2 of the recommend plan as outlined in the *Water Pollution Control Facility Upgrade Draft Preliminary Report* prepared by Environmental Partners Group (EPG). This option includes retrofitting the WPCF's existing effluent sand filters with new disc filter treatment technology. We may need to modify our scope and fee if the pilot testing program demonstrates that the recommended disc filters are **not** able to meet the required level of phosphorus removal and a different treatment technology (i.e. ballasted clarifier) is necessary to be evaluated and designed.
3. The Scope of Services listed in the Request for Proposal (RFP) does not include a pilot testing program for the new disc filters. As outlined above, we believe that a pilot testing program should be considered to verify the performance of this technology. We have included pilot testing as part of our scope as a result of our meeting on April 9, 2013 with the Town/OPM.
4. Based on our meeting on April 9, 2013 with the Town/OPM, we understand that the new nutrient limits for total nitrogen is 5.5 mg/L and total phosphorus is 0.15 mg/L. We may need to revise our scope and fee should MassDEP issues stricter nutrient limits for nitrogen and phosphorus as part of the Town's NPDES permit, and depending on the results of the additional wastewater characterization testing.



5. The scope and fee currently does not include the effort to assemble the State Revolving Fund (SRF) Application or to complete any items associated with the zero-percent (0%) SRF application.
6. The scope and fee does not include the effort to develop a Comprehensive Wastewater Management Plan (CWMP) which would be needed to obtain the SRF funding zero-percent funding. It is our understanding that this will be addressed separately if the Town decides to pursue SRF funding. We can provide a separate proposal to complete a CWMP as requested by the Town.

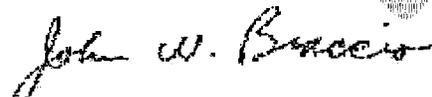
COMPENSATION

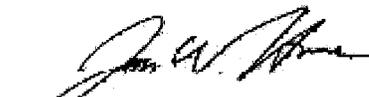
We propose to provide design engineering services as described above for the Middleborough WPCF Upgrade on a lump sum fee basis per the fee breakdowns presented in the attached tables, and as summarized below. The lump sum fee includes budget allowances for subcontract services, and the additional services for Wastewater Characterization Study and Pilot Testing.

TASK DESCRIPTION	FEE
Task I – Design Development	
• Schematic Design Development	\$ 409,046
• Design Development Phase	\$ 626,514
• Final Design Document Phase	\$ 793,689
• Subcontractor Services (Survey, Lead & Asbestos Testing, Geotechnical, Environmental Evaluations)	\$ 77,357
Task II – Permitting Assistance	\$ 37,501
Task III – Additional Services	
• Wastewater Characterization Study	\$ 24,412
• Pilot Testing	\$ 114,306
Total Lump Sum Engineering Fee =	\$ 2,082,825

We look forward to the opportunity to work with the Town of Middleborough on this very important project. Feel free to contact Jon Hume or me with any questions or comments at 978-416-8000.

Very truly yours,
WRIGHT-PIERCE


John W. Braccio, P.E.
Vice President


Jon W. Hume
Senior Project Manager

This is **EXHIBIT B**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Owner's Responsibilities

Article 2 of the Agreement is supplemented to include the following agreement of the parties.

B2.01 In addition to other responsibilities of Owner as set forth in this Agreement, Owner shall at its expense:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Owner will require to be included in the Drawings and Specifications; and furnish copies of Owner's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions relating to existing surface or subsurface structures at the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 - 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the

scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.

- E. Authorize Engineer to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Owner deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Place and pay for advertisement for Bids in appropriate publications.
- J. Advise Engineer of the identity and scope of services of any independent consultants employed by Owner to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- K. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- L. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment visits to the Project.
- M. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Owner, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- N. Provide Engineer with the findings and reports generated by the entities providing services to Owner pursuant to this paragraph.
- O. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to the Site.
- P. The Owner shall provide all services as outlined in the Engineer's Scope of Services proposal letter in Exhibit A.

SUGGESTED FORMAT
(for use with E-500, 2008 Edition)

This is **EXHIBIT C**, consisting of _____ pages, referred to in and part of the Agreement between Owner and Engineer for Professional Services dated _____, _____.

Payments to Engineer for Services and Reimbursable Expenses
COMPENSATION PACKET BC-1: Basic Services – Lump Sum

Article 2 of the Agreement is supplemented to include the following agreement of the parties:

ARTICLE 2 – OWNER’S RESPONSIBILITIES

C2.01 Compensation for Basic Services – Lump Sum Method of Payment

A. Owner shall pay Engineer for Basic Services set forth in Exhibit A, as follows:

1. A Lump Sum amount of \$2,082,824 based on the following estimated distribution of compensation:

a. Schematic Design Phase	\$ 409,046	e. Permitting Assistance	\$ 37,501
b. Design Development Phase	\$ 626,514	f. Wastewater Characterizations	\$ 24,412
c. Final Design Documents Phase	\$ 793,689	g. Pilot Testing	\$ 114,306
d. Subcontractor Services	\$ 77,357		

2. Engineer may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the Owner.

3. The Lump Sum includes compensation for Engineer’s services and services of Engineer’s Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.

4. The portion of the Lump Sum amount billed for Engineer’s services will be based upon Engineer’s estimate of the percentage of the total services actually completed during the billing period. The Engineer shall provide supporting evidence of progress including a summary of work completed during each billing period documenting the progress made on each phase and task.

B. *Period of Service:* The compensation amount stipulated is conditioned on a period of service not exceeding 12 months.

This is **EXHIBIT F**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____.

Construction Cost Limit

Paragraph 5.02 of the Agreement is supplemented to include the following agreement of the parties:

F5.02 *Designing to Construction Cost Limit*

- A. Owner and Engineer hereby agree to a Construction Cost limit in the amount of \$27 Million, including construction contingency.
- B. The acceptance by Owner at any time during Basic Services of a revised opinion of probable Construction Cost in excess of the then established Construction Cost limit will constitute a corresponding increase in the Construction Cost limit.
- C. Engineer will be permitted to determine what types and quality of materials, equipment and component systems are to be included in the Drawings and Specifications. Engineer may make reasonable adjustments in the scope, extent, and character of the Project to the extent consistent with the Project requirements and sound engineering practices, to bring the Project within the Construction Cost limit.
- D. If the Bidding or Negotiating Phase has not commenced within three months after completion of the Final Design Phase, or if industry-wide prices are changed because of unusual or unanticipated events affecting the general level of prices or times of delivery in the construction industry, the established Construction Cost limit will not be binding on Engineer. In such cases, Owner shall, subject to the availability of Town funding, consent to an adjustment in the Construction Cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or Bids are sought.
- E. If the lowest bona fide proposal or Bid exceeds the established Construction Cost limit, Owner shall (1) give written approval to increase such Construction Cost limit, or (2) authorize negotiating or rebidding the Project within a reasonable time, or (3) cooperate in revising the Project's scope, extent, or character to the extent consistent with the Project's requirements and with sound engineering practices. In the case of (3), Engineer shall modify the Contract Documents as necessary to bring the Construction Cost within the Construction Cost Limit, without additional compensation from the Owner. The providing of such services will be the limit of Engineer's responsibility in this regard and, having done so, Engineer shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost limit.

This is **EXHIBIT G**, consisting of 2 pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Insurance

Paragraph 6.04 of the Agreement is supplemented to include the following agreement of the parties.

G6.04 *Insurance*

A. The limits of liability for the insurance required by Paragraph 6.04.A and 6.04.B of the Agreement are as follows:

1. By Engineer:

- a. Workers' Compensation: Statutory
- b. Commercial General Liability --
 - 1) Each Occurrence (Bodily Injury and Property Damage): \$1,000,000
 - 2) General Aggregate: \$2,000,000
- c. Automobile Liability --Combined Single Limit (Bodily Injury and Property Damage):
 - Each Accident \$1,000,000
- d. Professional Liability --
 - 1) Each Claim Made \$2,000,000
 - 2) Annual Aggregate \$4,000,000
- e. Other (specify): \$ _____

B. *Additional Insureds:*

1. The following persons or entities are to be listed on Engineer's general liability policies of insurance as additional insureds, and on any applicable property insurance policy as loss payees, as provided in the contract:

Town of Middleborough

2. The Owner shall be listed on Engineer's general liability policy as provided in Paragraph 6.04.A.

This is **EXHIBIT J**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

Special Provisions

Paragraph(s) ___ of the Agreement is/are amended to include the following agreement(s) of the parties:

This is **EXHIBIT K**, consisting of _____ pages, referred to in and part of the **Agreement between Owner and Engineer for Professional Services** dated _____, _____.

AMENDMENT TO OWNER-ENGINEER AGREEMENT
Amendment No. _____

1. *Background Data:*

- a. Effective Date of Owner-Engineer Agreement: _____
- b. Owner: _____
- c. Engineer: _____
- d. Project: _____

2. *Description of Modifications:*

[NOTE TO USER: Include the following paragraphs that are appropriate and delete those not applicable to this amendment. Refer to paragraph numbers used in the Agreement or a previous amendment for clarity with respect to the modifications to be made. Use paragraph numbers in this document for ease of reference herein and in future correspondence or amendments.]

- a. Engineer shall perform or furnish the following Additional Services:
- b. The Scope of Services currently authorized to be performed by Engineer in accordance with the Agreement and previous amendments, if any, is modified as follows:
- c. The responsibilities of Owner are modified as follows:
- d. For the Additional Services or the modifications to services set forth above, Owner shall pay Engineer the following additional or modified compensation:
- e. The schedule for rendering services is modified as follows:
- f. Other portions of the Agreement (including previous amendments, if any) are modified as follows:

[List other Attachments, if any]

5. Agreement Summary (Reference only)

- a. Original Agreement amount: \$ _____
- b. Net change for prior amendments: \$ _____
- c. This amendment amount: \$ _____
- d. Adjusted Agreement amount: \$ _____

The foregoing Agreement Summary is for reference only and does not alter the terms of the Agreement, including those set forth in Exhibit C.

Owner and Engineer hereby agree to modify the above-referenced Agreement as set forth in this Amendment. All provisions of the Agreement not modified by this or previous Amendments remain in effect. The Effective Date of this Amendment is _____.

OWNER:

ENGINEER:

By: _____

By: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____



McMAHON ASSOCIATES
45 Bromfield Street | 6th Floor | Boston, MA 02108
p 617-556-0020 | f 617-556-0025
www.mcmtrans.com

April 29, 2013

Mr. Charles Cristello
Town of Middleborough
Town Hall
10 Nickerson Avenue
Middleborough, MA 02346

RE: Engineering Design Services
Middleborough Downtown Improvement Projects

PRINCIPALS

Joseph W. McMahon, P.E.
Rodney P. Plourde, Ph.D., P.E.
Joseph J. DeSantis, P.E., PTOE
John S. DePalma
William T. Steffens
Casey A. Moore, P.E.

ASSOCIATES

Gary R. McNaughton, P.E., PTOE
John J. Mitchell, P.E.
Christopher J. Williams, P.E.
John F. Yacapsin, P.E.
Thomas A. Hall
Mark A. Roth, P.E.

Dear Mr. Cristello:

McMahon Associates is pleased to submit this proposal for the design of the following improvements in Middleborough, MA:

- Geometric improvements to Everett Square
- Geometric improvements at the intersection of Center Street and Oak Street

This proposal consists of three tasks related to the above improvements. Tasks 1 and 2 include planning and design for improvements at Everett Square, which is the intersection of Everett Street, Centre Street, Center Avenue, High Street, and Station Street. Task 3 is the design of intersection improvements at Center and Oak Street, which are anticipated to include pedestrian access improvements, such as bump-outs and improved crosswalks, and associated drainage and utility structure adjustments. These tasks and the associated schedules are detailed below.

Task 1 – Everett Square Planning and Preliminary Design

The initial planning efforts for Everett Square were initiated under a prior contract. Those initial efforts included the development of conceptual plans and attendance at meetings with abutters. This earlier effort will serve as the basis for the services outlined below.

Scope of Services

- Conduct weekday morning (7-9 am) and evening (4-6 pm) peak period traffic counts for the Everett Square intersection. This data will be compared to previous count data and traffic analysis will be updated as appropriate.
- Identify proposed developments and anticipated background growth that will affect traffic volumes in Everett Square.
- Project future year traffic volumes for the project design year, as appropriate.

- Conduct analysis of existing and future no-build conditions for Everett Square.
- Conduct analysis for the future build condition for each design alternative.
- Revise prior conceptual designs to incorporate comments received to date from abutters.
- Attend one (1) meeting with the Town and/or abutters to present the selected conceptual design.

Task 2 – Everett Square Final Design

The scope of services for the final design of the Everett Square improvements will be based on the selected alternative resulting from the previous scope of work. If significant modifications of the selected alternative are necessary, we will notify the Town and revise this proposal and the proposed fee, if necessary.

Scope of Services

- Conduct ground survey of all visible surface features, including curb lines, surface utilities, pavement markings, signs, etc. Survey limits will include the immediate intersection and approximately 400 feet along each approach to allow for tie-in of proposed intersection improvements. Upon development and approval of the conceptual design plans, subsurface utility investigations will be performed within the survey limits, as necessary to accommodate the proposed design.
- Prepare final design plans in accordance with MassDOT and Town of Middleborough standards. Two final design plan submissions are anticipated for this project. One at approximately 75% design and a final, 100%, design submission that incorporates comments received on the 75% design submission. One meeting with Town Staff is included for each design submission to review the plans and any comments the Town may have.
- It is not anticipated that a traffic signal will be warranted at this time; however, conduit installation may be included in the design to accommodate a future signal. If a signal is included in the final design, an amendment to this proposal may be necessary to complete the signal design.
- Prepare final design plans and contract documents, including detailed geometry plans, pavement details, construction details, signage, pavement markings, specifications, and quantities, suitable for bidding and construction.
- This design is not anticipated to require significant modifications to existing utilities or drainage. Utility modifications included in this scope of work are limited to adjusting surface structures and catch basin relocation. Any modifications to the existing drainage trunk lines or subsurface utility modifications are beyond this scope of work and would require an addendum to this proposal.

Task 3 – Center and Oak Streets Intersection Design

Scope of Services

- Conduct ground survey of all visible surface features, including curb lines, surface utilities, pavement markings, signs, etc. Upon development and approval of the conceptual design plans, subsurface utility investigations will be performed for the immediate intersection area, as necessary to accommodate the proposed design.
- Prepare preliminary design plans, including proposed geometric changes in the immediate vicinity of the intersection. The proposed improvements are anticipated to include modifications to the existing curb lines and pedestrian ramps to accommodate bump-outs at the intersection corners, associated pavement marking and signage modifications, and adjustment of utility structures within the curb modification areas. The anticipated improvements are illustrated in the attached Intersection Layout Plan.
- Coordinate with the Town of Middleborough to incorporate review comments on the preliminary design alternative. As part of our work, McMahon will also attend one (1) meeting with the Town of Middleborough staff to review the preliminary design.
- Prepare final design plans in accordance with Town of Middleborough standards. Pavement markings, signage, and adjustment of utility structures are included in this task. We will review construction staging and provide standard detail plans to address traffic during construction, as necessary.
- The final design plans will include reconstructing the existing sidewalks along with the bump-out construction in the immediate vicinity of the intersection. Detailed grading information will be included in the design plans.
- Prepare final design plans and construction documents, including detailed geometry plans, pavement details, construction details, specifications, and quantities, suitable for bidding and construction.
- This design is not anticipated to require significant modifications to existing utilities or drainage. Utility modifications included in this scope of work are limited to adjusting surface structures and catch basin relocation. Any additions to the existing drainage system or subsurface utility modifications are beyond this scope of work and would require an addendum to this proposal.

Schedule

The following schedule is estimated based on the scope of work outlined above and available information and durations have been rounded to the nearest 1 week increment. The schedule assumes timely review of plans submitted to the Town. McMahon will work with the

Town to meet the needs of the project schedule as the project progresses. The individual Tasks can occur concurrently and Task 1 and 2 represents the critical path for the overall project.

Task 1 – Everett Square Planning & Preliminary Design

<u>Milestone</u>	<u>Duration</u>
Collect traffic count data and project future volumes	1 week
Update analysis and conceptual design and document findings	1 week
Attend meeting with Town and/or abutters	<u>1 week</u>
Total:	3 weeks

Task 2 – Everett Square Final Design

<u>Milestone</u>	<u>Duration</u>
Complete survey and electronic base plans	3 weeks
Prepare preliminary design plans based on updated base plans	4 weeks
Submit design plans for Town review and public meeting	3 weeks
Prepare final design plans and bid documents	<u>5 weeks</u>
Total:	15 weeks

Task 3 – Center and Oak Streets Intersection Design

<u>Milestone</u>	<u>Duration</u>
Complete electronic base plans and conceptual layout	2 weeks
Submit concept plans and meet with Middleboro staff	1 week
Prepare and submit design plans for review	2 weeks
Prepare final design plans and bid documents	<u>3 weeks</u>
Total:	8 weeks

Fee

The tasks on this project will be completed on a fixed-fee basis, exclusive of out-of-pocket expenses. The fee for each task is identified below:

<u>Task</u>	<u>Fee</u>
Task 1 – Everett Square Planning & Preliminary Design	\$5,000.00
Task 2 – Everett Square Final Design	\$39,800.00
Task 3 – Center and Oak Streets Intersection Design	\$14,500.00

Meetings

It is anticipated that attendance at meetings may be required to discuss the project-related design issues with the Town of Middleboro staff. For the purposes of this proposal, the above scope of services includes the meetings anticipated at this time. Should our attendance at additional meetings be requested, McMahon is available to participate in these meetings as requested, on a time and materials basis, in accordance with the attached Standard Provisions for Professional Services.

Conditions

The conditions of our agreement call for the execution of this contract in the space provided below with the understanding that invoices will be provided monthly and are payable within 30 days. If invoices are not paid within 90 days, the client will be notified and work on the project will be stopped until outstanding invoices have been paid. The fee quoted above is valid for a period of 90 days from the date of this contract. Any changes in the specific work program described above will result in an adjustment in the conditions and fees.

If you should have any further questions or require further information, please feel free to contact me. We appreciate the opportunity to submit a proposal on this project and look forward to continuing our work with the Town of Middleborough.

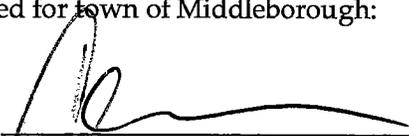
Very truly yours,



Gary R. McNaughton, P.E., PTOE
Vice President & General Manager

Attachment

Accepted for town of Middleborough:

By:  Title: Town Manager
(Signature of Authorized Representative)
Charles Cristello Date: 4/29/13
(Printed name)

MCMAHON ASSOCIATES, INC.
STANDARD PROVISIONS FOR PROFESSIONAL SERVICES
JANUARY 1, 2013

SERVICES

McMahon Associates, Inc. reserves the right to make adjustments for individuals within these classifications as may be desirable in its opinion by reason of promotion, demotion, or change in wage rates. Such adjustments will be limited to the manner in which charges are computed and billed and will not, unless so stated in writing, affect other terms of an agreement, such as estimated total cost. The following rates will apply to actual time devoted by McMahon Associates, Inc. staff to this project computed to the nearest one-half hour.

<u>PERSONNEL</u>	<u>HOURLY RATES</u>
Principal	\$250.00
Senior Associate	\$225.00
Senior Engineer/Planner VIII/Associate	\$200.00
Senior Engineer/Planner VII/Associate	\$195.00
Senior Engineer/Planner VI/Associate	\$185.00
Senior Engineer/Planner V/Associate	\$180.00
Senior Engineer/Planner IV/Associate	\$170.00
Senior Engineer/Planner III	\$155.00
Senior Engineer/Planner II	\$145.00
Senior Engineer/Planner I	\$135.00
Chief of Surveys	\$140.00
Traffic Control/Construction Specialist	\$130.00
Party Chief	\$110.00
Engineer VI	\$125.00
Engineer V	\$120.00
Engineer IV	\$115.00
Engineer III	\$110.00
Engineer II	\$100.00
Engineer I	\$ 95.00
Technician/Word Processor IV	\$ 90.00
Technician/Word Processor III	\$ 85.00
Technician/Word Processor II	\$ 80.00
Technician/Word Processor I	\$ 75.00
Survey Technician	\$ 70.00
Field Traffic Count Personnel	\$ 45.00

TERMS

1. **Invoices** - Invoices will be provided on a monthly basis and will be based upon percentage of completion or actual hours, plus expenses. Payment is due to McMahon Associates, Inc. within 30 days of the invoice date. Unpaid balances beyond 30 days are subject to interest at the rate of 1.5% per month. This is an annual percentage rate of 18%.
2. **Confidentiality** - Technical and pricing information in this proposal is the confidential and proprietary property of McMahon Associates, Inc. and is not to be disclosed or made available to third parties without the written consent of McMahon Associates, Inc.
3. **Commitments** - Fee and schedule commitments will be subject to renegotiation for delays caused by the client's failure to provide specified facilities or information, or any other unpredictable occurrences.
4. **Expenses** - Automatic Traffic Recorder equipment usage will be billed at \$25.00 per 24-hour count. Incidental expenses are reimbursable at cost, plus an administration fee of 10%. These include subconsultants, reproduction, postage, graphics, reimbursement of automobile usage at the IRS-approved rate, parking and tolls. Expenses which by company policy are not billed as reimbursable expenses to clients and therefore, will not be billed as part of this contract include the following: air travel, rental car, lodging, meals, and long distance phone charges between McMahon Associates offices. If it becomes necessary during the course of this project to travel elsewhere, those travel costs will be treated as reimbursable expenses. These expenses will be reflected in the monthly invoices.
5. **Attorney's Fees** - In connection with any litigation arising from the terms of this agreement, the prevailing party shall be entitled to all costs including reasonable attorney's fees at both the trial and appellate levels.
6. **Ownership and Use of Documents** - All original drawings and information are to remain the property of McMahon Associates, Inc. The client will be provided with copies of final drawings and/or reports for information and reference purposes.
7. **Insurance** - McMahon Associates, Inc. will maintain at its own expense Workman's Compensation Insurance, Comprehensive General Liability Insurance and Professional Liability Insurance and, upon request, will furnish the client a certificate to verify same.
8. **Termination** - This agreement may be terminated by the authorized representative effective immediately on receipt of written notice. Payment will be due for services rendered through the date written notice is received.
9. **Binding Status** - The client and McMahon Associates, Inc. bind themselves, their partners, successors, assigns, heirs, and/or legal representatives to the other party to this Agreement, and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Contract.

SECTION 4
NOTICE OF AWARD

TO: Gabriel Construction Co., Inc., R.J.
785 Bedford Street
Bridgewater, MA 02324

Project Description: **RIVER'S EDGE DRIVE AND EDGEWATER LANE SUBDIVISION IMPROVEMENTS, MIDDLEBOROUGH, MA**

The OWNER has considered the Bid submitted by you on April 30, 2013, for the above described Work in response to its Advertisement for Bid and Information for Bidders.

You are hereby notified that your Bid has been accepted for the **TOTAL SUM PRICE** of \$ 93,648.00

You are required by the Invitation for Bid to execute the Agreement and furnish the required CONTRACTOR'S Performance Bond, Labor and Materials Bonds and certificates of insurance within *ten (10)* business days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said Bonds within the *ten (10)* business days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your Bid as abandoned and as a forfeiture of your Bid Security. The OWNER will be entitled to such other rights as may be granted by law.

You are required to return an acknowledged ACCEPTANCE OF NOTICE to the OWNER.

Dated this 8th day of May, 2013.

FOR THE OWNER:

Town Manager
Middleborough, MA

SECTION 5
AGREEMENT

RIVER'S EDGE DRIVE AND EDGEWATER LANE
SUBDIVISION IMPROVEMENTS
MIDDLEBOROUGH, MASSACHUSETTS

THIS AGREEMENT, executed this 8th day of May in the year Two Thousand Thirteen (herein referred to as the "AGREEMENT") by and between the Town of Middleborough, MA acting by and through its Board of Selectmen, duly authorized therefor, which acts solely for said Town of Middleborough, MA without personal liability to its members, party of the first part, and

Gabriel Construction Co., Inc., R.J.
(Party of the second part)

785 Bedford Street, Bridgewater, MA 02324
(Legal address)

Party of the second part agrees to perform the following work under this contract which includes, but is not necessarily limited to the following: drainage structure repairs; water utility repairs ; pavement resurfacing; signing; landscape repairs and improvements; safety controls and signing for construction operations and all other incidental items necessary to complete the required work as illustrated on the plans.

This work shall be carried out in accordance with the following sections of this Agreement as listed in Agreement Table of Contents (Section 5, Page 2).

WITNESSETH, that the parties to these presents, each in consideration of the undertakings, promises, and agreements on the part of the other herein contained, have undertaken, promised, and agreed and do hereby undertake, promise, and agree, the party of the first part for itself, its successors and assigns, and the party of the second part for himself and his heirs, executors, administrators, successors and assigns, as follows:

TABLE OF CONTENTS

A1	DEFINITIONS
A2	THE CONTRACT DOCUMENTS
A3	OBLIGATIONS AND LIABILITY OF CONTRACTOR
A4	AUTHORITY OF THE ENGINEER
A5	SAFETY
A6	SUPERVISION OF WORK
A7	INSURANCE
A8	PATENTS
A9	COMPLIANCE WITH LAWS
A10	PROVISIONS REQUIRED BY LAW DEEMED INSERTED
A11	PERMITS
A12	NOT TO SUBLET OR ASSIGN
A13	DELAY BY OWNER
A14	TIME FOR COMPLETION
A15	LIQUIDATED DAMAGES
A16	NIGHT AND SUNDAY WORK
A17	EMPLOY COMPETENT PERSONS
A18	EMPLOY SUFFICIENT LABOR AND EQUIPMENT
A19	INTOXICATING CHEMICALS
A20	ACCESS TO WORK
A21	EXAMINATION OF WORK
A22	DEFECTIVE WORK
A23	PROTECTION AGAINST WATER, STORM OR ADVERSE WEATHER
A24	MISTAKES OF CONTRACTOR
A25	RIGHT TO MATERIALS
A26	CHANGES
A27	EXTRA WORK
A28	EXTENSION OF TIME ON ACCOUNT OF EXTRA WORK
A29	CHANGES NOT TO AFFECT BONDS
A30	CLAIMS FOR DAMAGES
A31	ABANDONMENT OF WORK OR OTHER DEFAULT
A32	PRICES FOR WORK
A33	MONEYS MAY BE RETAINED
A34	USE OR PARTIAL PAYMENT NOT ACCEPTANCE
A35	PERIODIC ESTIMATES
A36	FINAL ESTIMATE AND PAYMENT
A37	LIENS
A38	CLAIMS
A39	APPLICATION OF MONEYS RETAINED
A40	NO WAIVER
A41	LIABILITY OF OWNER
A42	GUARANTEE
A43	RETURN OF DRAWINGS
A44	LEGAL ADDRESS OF CONTRACTOR
A45	HEADINGS
A46	MODIFICATION OR TERMINATION
A47	LIMITATION OF LIABILITY OF ENGINEER
A48	NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY
A49	INDEMNIFICATION

A1 DEFINITIONS

Wherever the words hereinafter defined or pronouns used in their stead occur in the Contract Documents, they shall have the following meanings:

The word "Owner" shall mean the party of the first part above designated.

The word "Contractor" shall mean the party of the second part above designated.

The word "Engineer" shall mean that person duly appointed by the Owner to undertake the duties and powers herein assigned to the Engineer, acting either directly or through duly authorized representatives.

The word "Work" or "work" shall mean furnishing, installing, removing, altering and constructing roadway and appurtenances as shown or specified by the Drawings and Specifications.

The words "herein", "hereinafter", "hereunder" and words of like import shall be deemed to refer to the Contract Documents.

A2 THE CONTRACT DOCUMENTS

Contract Documents include all documents indicated, included or referred to in sections listed in the Contract Documents Table of Contents (Page TOC-1) of the Project Manual and collectively include Bidding Requirements, Contracting Requirements and Division 1 of this bound set, the Drawings, and all appendices, Addenda and amendments to any of the foregoing. The Contract Documents are sometimes herein referred to as the "Contract".

The Contract Documents are complementary, and what is called for by any one shall be as binding as if called for by all. In the event of any conflict or inconsistency between the provisions of the SPECIAL CONDITIONS and the provisions of any of the other Contract Documents, the provisions of the SPECIAL CONDITIONS shall prevail. In the event of conflict or inconsistency between the provisions of the AGREEMENT and the provisions of the Contract Documents other than the SPECIAL CONDITIONS, the provisions of the AGREEMENT shall prevail.

The Agreement shall be carried out and governed by the Contract Documents.

A3 OBLIGATIONS AND LIABILITY OF CONTRACTOR

The Contractor shall supervise and direct the work using his best skill and attention. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the work under the Contract.

The Contractor shall do all the work and perform and furnish all the labor, services, materials, equipment, plant, machinery, apparatus, appliances, tools, supplies and all other things (except as otherwise expressly provided herein) necessary and as herein specified for the proper performance and completion of the Work in the manner and within the time hereinafter specified, in strict accordance with the Contract Documents, in conformity with the directions and to the satisfaction of the Engineer, and at the prices herein agreed upon therefore.

All parts of the Work and all fixtures, equipment, apparatus and other items indicated on the Drawings and not mentioned in the Specifications, or vice versa, and all work and material usual and necessary to make the Work complete in all its parts, including all incidental work necessary to make it complete and satisfactory and ready for use and operation, whether or not they are indicated on the Drawings or mentioned in the Specifications, shall be furnished and executed the same as if they were called for both by the Drawings and by the Specifications.

The Contractor shall coordinate his operations with those of any other contractors who may be employed on other work of the Owner, shall avoid interference therewith, and shall cooperate in the arrangements for storage of materials and equipment.

The Contractor shall conduct his work so as to interfere as little as possible with residents and public travel. Wherever and whenever necessary or required, he shall maintain fences, furnish watchmen, maintain lights, and take such other precautions as may be necessary to protect life and property.

The Contractor shall have complete responsibility for the Work and the protection thereof, and for preventing injuries to persons and damage to the Work and property and utilities on or about the Work, until final completion and acceptance thereof. He shall in no way be relieved of his responsibility by any right of the Engineer to give permission or directions relating to any part of the Work, by any such permission or directions given, or by failure of the Engineer to give such permission or directions. The Contractor shall bear all costs, expenses, losses and damages on account of the quantity or character of the Work or the nature of the land (including but not limited to subsurface conditions) in or under or on which the Work is done being different from that indicated or shown in the Contract Documents or from what was estimated or expected, or on account of the weather, elements, or other causes. The Contractor shall indemnify and save harmless the Owner and the Engineer and their officers, agents and employees, from and against any and all claims, demands, suits, proceedings, liabilities, judgments, awards, losses, damages, costs and expenses, including attorneys' fees, of whatever kind, directly or indirectly arising out of, relating to or in connection with the Work, whether or not due or claimed to be due in whole or in part to the active, passive or concurrent negligence or fault of the Contractor, his officers, agents, Engineer or any of their respective officers, agents or employees and/or any other person or persons, and whether or not such claims, demands, suits or proceedings are just, unjust, groundless, false or fraudulent; and the Contractor shall and does hereby assume and agree to pay for the defense of all such claims, demands, suits and proceedings, including, if demanded in writing at any time by the Owner or Engineer, counsel chosen by the Owner or Engineer separate from the counsel chosen by the Contractor; provided, however, that the Contractor shall not be required to indemnify the Engineer, his officers, agents or employees, against any such damages occasioned solely by the negligence or fault of the Engineer; and provided further, that the Contractor shall not be required to indemnify the Owner, his officers, agents or employees, against any such damages occasioned solely by faults of the Owner.

The Contractor shall conduct his operations so as not to damage existing structures of work installed either by him or by other contractors. In case of any such damage resulting from his operations, he shall repair and make good as new the damaged portions at his own expense with the consent of the damaged party. In the event that consent is not given, the Contractor shall continue solely liable for the damage caused.

The Contractor shall be as fully responsible to the Owner for the acts and omissions of his subcontractors, their officers, agents and employees as he is for his own acts and omissions and those of his own officers, agents and employees.

Should the Contractor sustain any loss, damage or delay through any act or omission of any other contractor or any subcontractor of any such other contractor, the Contractor shall have no claim against the Owner or Engineer therefore, other than for an extension of time, but shall have recourse solely to such other contractor or subcontractor.

If any other contractor or any subcontractor of any such other contractor shall suffer or claim to have suffered loss, damage or delay by reason of the acts or omissions of the Contractor or of any of his subcontractors, the Contractor agrees to assume the defense against any such claim and to reimburse such other contractor or subcontractor for such loss or damage. The Contractor agrees to and does hereby indemnify and save harmless the Owner and Engineer from and against any and all claims by such other contractors or subcontractors alleging such loss, damage or delay and from and against any and all claims, demands, suits, proceedings, liabilities, judgments, awards, losses, damages, costs and expenses, including attorneys' fees, arising out of, relating to or resulting from such claims.

The Contractor shall promptly pay all federal, state and local taxes which may be assessed against him in connection with the Work or his operations under the AGREEMENT and/or the other Contract Documents, including, but not limited to, taxes attributable to the purchase of material and equipment, to the performance of services, and the employment of persons in the prosecution of the Work.

The Contractor shall not participate in or cooperate with an international boycott, as defined in Section 999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended, or engage in conduct declared to be unlawful by Section 2 of Chapter 151E of the Massachusetts General Laws.

A4 AUTHORITY OF THE ENGINEER

The Engineer shall be the sole judge of the intent and meaning of the Drawings and Specifications and his decisions thereon and his interpretation thereof shall be final, conclusive and binding on all parties. No party shall be entitled to rely on any such interpretation nor shall the Engineer be bound by any such interpretation except if it is in writing. The Engineer shall promptly, on the request of any affected party, put any such interpretation in writing.

The Engineer shall be the Owner's representative during the life of the Contract and he shall have all the rights of the Owner to observe the Work in progress. He shall have authority (1) to act on behalf of the Owner to the extent expressly provided in the Contract or otherwise in writing; and (2) to determine the amount, quality, acceptability and fitness of all work, materials and equipment required by the Contract.

The Contractor shall proceed without delay to perform the work as directed, instructed, determined or decided by the Engineer and shall comply promptly with such directions, instructions, determinations or decisions. If the Contractor has any objection thereto, he may require that any such direction, instruction, determination or decision be put in writing and within ten (10) days after receipt of any such writing he may file a written protest with the Owner stating clearly and in detail his objections, the reasons therefore, and the nature and amount of additional compensation, if any, to which he claims he will be entitled thereby. A copy of such protest shall be filed with the Engineer at the same time it is filed with the Owner. Unless the Contractor files such written protest with the Owner and Engineer within such ten (10) day period, he shall be deemed to have waived all grounds for protest of such direction, instruction, determination, or decision and all claims for additional compensation or damages occasioned thereby, and shall further be deemed to have accepted such direction, instruction, determination, or decision as being fair, reasonable, and finally determinative of his obligations and rights under the Contract.

The Engineer shall not be responsible for the construction means, controls, techniques, sequences, procedures, or safety procedures of the Contractor, his employees, subcontractors or suppliers.

A5 SAFETY

The Contractor shall be responsible for jobsite safety, including safety programs and safety procedures. Neither the Owner nor the Engineer assumes responsibility for such programs or procedures.

A6 SUPERVISION OF WORK

The Contractor shall give the work the constant attention necessary to ensure the expeditious and orderly progress thereof and shall cooperate with the Engineer in every possible way.

At all times, the Contractor shall have as his agent on the Work a competent superintendent capable of reading and thoroughly understanding the Drawings and Specifications, with full authority to execute the directions of the Engineer regarding the same without delay and to supply promptly such labor, services, materials, equipment, plant, apparatus, appliances, tools, supplies and other items as may be required.

A7 INSURANCE

Before starting and until final completion and acceptance of the Work and expiration of the guarantee period provided for in the AGREEMENT, the Contractor shall procure and maintain insurance of the types specified in paragraphs (a) to (d), inclusive, below, and to the limits for this insurance specified under SPECIAL CONDITIONS. All insurance shall be obtained from companies with an A.M. Best Co. rating of A.

Insurance shall be in such form as will protect the Contractor from all claims and liability for damages of any kind, which may arise from operations under the Contract, whether such operations be by himself, his subcontractors, or by any one directly or indirectly employed or engaged by him.

The following types of insurance shall be provided:

- (a) Workmen's Compensation and Employer's Liability Insurance.
- (b) General Liability Insurance including:
 - (i) Bodily Injury Liability (including Personal Injury) Insurance for Operations and Completed Operations and Contractor's Protective Bodily Injury Insurance.
 - (ii) Property Damage Liability Insurance (including Broad Form Property Damage Liability Coverage) for Operations and Completed Operations and Contractor's Protective Property Damage Insurance, each including coverage for injury to or destruction of wires, conduits, pipes, mains, tanks, tunnels, or any similar property, and the collapse of, or structural injury to, any building or structure except those on which work under the Contract is being done. Blasting and explosion coverage shall be obtained if there is a need for blasting under the Contract, and no blasting shall be performed until such insurance has been secured.

- (c) Insurance to cover liability for Bodily Injury and Property Damage resulting from the use of owned, non-owned, and hired motor vehicles while such vehicles are being operated in connection with the prosecution of the Work.
- (d) Contractual Liability Insurance covering the liability assumed by the Contractor under the subsection titled OBLIGATIONS AND LIABILITY OF CONTRACTOR of this AGREEMENT.

All policies shall be so written that 1) the Owner will be notified in writing of cancellation or restrictive amendment at least 30 days prior to the effective date of such cancellation or amendment, and 2) the Owner will be designated as an additional insured on the General Liability Policy.

Certificates from the Contractor's insurance carriers stating the coverages provided, the limits of liability, and expiration dates shall be filed in duplicate with the Owner before operations are begun.

Renewal certificates shall be furnished by the Contractor to the Owner at least thirty (30) days prior to the expiration date of any of the initial insurances.

The Contractor shall also furnish such other insurance as may be called for by the SPECIAL CONDITIONS.

No insurance required or furnished hereunder shall in any way relieve the Contractor of or diminish any of his responsibilities, obligations and liabilities under the Contract.

A8 PATENTS

The Contractor shall indemnify and save harmless the Owner and Engineer and all persons acting for or on behalf of the Owner and Engineer from all claims and liability of any nature or kind, and all damages, costs and expenses, including attorney's fees, arising from or occasioned by an infringement or alleged infringement of any patents or patent rights or any trademark or copyright or any alleged unfair competition relating to any invention, process, material, equipment, article, or apparatus, or any part thereof, furnished and installed by the Contractor, or arising from or occasioned by the use or manufacture thereof, including their use by the Owner.

A9 COMPLIANCE WITH LAWS

This Contract is governed by applicable provisions of Massachusetts General Laws and Regulations and/or the United States Code and Code of Federal Regulations. Any provision violation of the foregoing shall be deemed null, void and of no effect. Where conflict between Code of Federal Regulations and State Laws and Regulations exist, the more stringent requirements shall apply.

The Contractor shall keep himself fully informed of all applicable Federal, State and local laws, ordinances, rules and regulations affecting those engaged or employed on the Work, the materials and equipment used in the Work or the conduct of the Work, and of all orders, decrees and other requirements of bodies or tribunals having any jurisdiction or authority over the same. If any discrepancy or inconsistency is discovered in the Drawings, Specifications or other Contract Documents in relation to any such law, ordinance, rule, regulation, order, decree or other requirement, the Contractor shall forthwith report the same to the Engineer in writing. The Contractor shall at all times observe and comply with, and cause all his agents, employees and subcontractors to observe and comply with all such laws, ordinances, rules, regulations, orders,

decrees and other requirements, and he shall protect, indemnify and save harmless the Owner and Engineer, their officers, agents and employees, from and against any and all claims, demands, suits, proceedings, liabilities, judgments, penalties, losses, damages, costs, and expenses, including attorney's fees, arising from or based upon any violation or claimed violation of any such law, ordinance, rule, regulation, order, decree or other requirement, whether committed by the Contractor or any of his agents, employees or subcontractors.

A10 PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in the Contract shall be deemed to be inserted herein, the Contract shall be read and enforced as though they were included herein and such provision shall prevail over any inconsistent language herein. If through mistake or otherwise any such provision is not inserted then upon the application of either party, the Contract shall forthwith be physically amended to make such insertion.

A11 PERMITS

The Contractor shall, at his own expense, take out and maintain all necessary permits from the county, municipal, or other public authorities; shall give all notices required by law; and shall post all bonds and pay all fees and charges incident to the due and lawful prosecution of the Work.

A12 NOT TO SUBLET OR ASSIGN

The Contractor shall constantly give his personal attention to the faithful prosecution of the Work, shall keep the same under his personal control, shall not assign the Contract or sublet the Work or any part thereof without the previous written consent of the Owner, and shall not assign any of the moneys payable under the Contract, or his claim thereto, unless by and with the like written consent of the Owner and the Surety on the Contract Bonds. Any assignment or subletting in violation hereof shall be void and unenforceable.

A13 DELAY BY OWNER

The Owner may delay the beginning of the work or any part thereof if the necessary lands or rights-of-way for such work shall not have been obtained. The Contractor shall have no claim for additional compensation or damages on account of such delay, subject to Section 8 "SPECIAL CONDITIONS".

A14 TIME FOR COMPLETION

The rate of progress shall be such that the Work shall be performed and completed in accordance with the Contract before the expiration of the time limit stipulated under Section 2 "INSTRUCTIONS TO BIDDERS", except as otherwise expressly provided.

No extension of time will be given for ordinary or foreseeable delays, inclement weather, or accidents and the occurrence of such will not relieve the Contractor of completing the Work within the stipulated time limit. No extension of time will be given, or if given will be valid, unless based on a written application stating all grounds on which the Contractor relies and delivered to the Engineer promptly upon the occurrence of such grounds as the application states, and in any event prior to the stipulated time for completion of the Work.

If delays are caused by acts of God, acts of government, unavoidable strikes, extra work, or other causes or contingencies clearly beyond the control or responsibility of the Contractor, the Contractor shall be entitled to so much additional time to perform and complete the Work as the Engineer shall certify in writing to be just.¹ The Contractor agrees that he shall not have or assert any claim for, nor shall he be entitled to any additional compensation or damages on account of such delays.

The time in which the Work is to be performed and completed is of the essence of the AGREEMENT.

A15 LIQUIDATED DAMAGES

If the Contractor fails to complete the Work satisfactorily on or before the date of completion fixed herein or as duly extended by written certification of the Engineer, the Contractor agrees that the Owner shall deduct from the payments due the Contractor each month the sum set forth under Section 8, for each calendar day of delay which sum is agreed upon not as a penalty, but as fixed and liquidated damages for each day of such delay. If the payments due the Contractor are less than the amount of such liquidated damages, said damages shall be deducted from any other moneys due or to become due the Contractor, and, in case such damages shall exceed the amount of all moneys due or to become due the Contractor, the Contractor or his Surety shall pay the balance to the Owner.

A16 NIGHT AND SUNDAY WORK

No work shall be done at night or on Sunday except (1) usual protective work, (2) work done in case of emergency threatening injury to persons or property, or (3) if all of the conditions set forth in the next paragraph below are met.

No work other than that included in (1) and (2) above shall be done at night except when (a), in the sole judgment of the Engineer, the work will be of advantage to the Owner and can be performed satisfactorily at night, (b) the work will be done by a crew organized for regular and continuous night work, and (c) the Engineer has given written permission for such night work.

A17 EMPLOY COMPETENT PERSONS

The Contractor shall employ only competent persons on the Work and shall not employ persons or means which may cause strikes, work stoppages or any disturbances by working people employed by the Contractor, any subcontractor, the Owner, the Engineer or any other contractor.

A18 EMPLOY SUFFICIENT LABOR AND EQUIPMENT

If in the sole judgment of the Engineer the Contractor is not employing sufficient labor, plant, equipment or other means to complete the Work within the time specified, the Engineer may, after giving written notice, require the Contractor to employ such additional labor, plant, equipment and other means as the Engineer deems necessary to enable the Work to progress properly.

¹ This paragraph will be interpreted to include delays in receipt of equipment provided that the Contractor placed his order and submitted shop drawings for such equipment promptly after execution of the Contract, that he has shown due diligence in following the progress of the order, and that the time required for delivery is in accordance with conditions generally prevailing in the industry.

A19 INTOXICATING CHEMICALS

The Contractor shall not sell and shall neither permit nor suffer the introduction or use of intoxicating chemicals upon or about the Work.

A20 ACCESS TO WORK

The Owner, the Engineer, and their officers, agents, and employees may at any and all times and for any and all purposes, enter upon the Work and the site thereof and the premises used by the Contractor, and the Contractor shall at all times provide safe and proper facilities thereof.

A21 EXAMINATION OF WORK

The Engineer shall be furnished by the Contractor with every reasonable facility for examining and inspecting the Work and for ascertaining that the Work is being performed in accordance with the requirements and intent of the Contract, even to the extent of requiring the uncovering or taking down portions of finished work by the Contractor.

Should the work thus uncovered or taken down prove satisfactory, the cost of uncovering or taking down and the replacement thereof shall be considered as extra work unless the original work was done in violation of the Contract in point of time or in the absence of the Engineer or his inspector and without his written authorization, in which case said cost shall be borne by the Contractor. Should the work uncovered or taken down prove unsatisfactory, said cost shall likewise be borne by the Contractor.

A22 DEFECTIVE WORK

The inspection of the Work shall not relieve the Contractor of any of his obligations to perform and complete the Work as required by the Contract. Defective work shall be corrected and unsuitable materials, equipment, apparatus and other items shall be replaced by the Contractor, notwithstanding that such work, materials, equipment, apparatus and other items may have been previously overlooked or accepted or estimated for payment. If the Work or any part thereof shall be found defective at any time before the final acceptance of the Work, the Contractor shall forthwith make good such defect in a manner satisfactory to the Engineer; if any material, equipment, apparatus or other items brought upon the site for use or incorporation in the Work, or selected for the same, is condemned by the Engineer as unsuitable or not in conformity with the Specifications or any of the other Contract Documents, the Contractor shall forthwith remove such materials, equipment, apparatus and other items from the site of the Work and shall at his own cost and expense make good and replace the same and any material furnished by the Owner which shall be damaged or rendered defective by the handling or improper installation by the Contractor, his agents, employees or subcontractors.

A23 PROTECTION AGAINST WATER, STORM OR ADVERSE WEATHER

The Contractor shall take all precautions necessary to prevent damage to the Work by storms, by water entering the site of the Work directly or through the ground and by adverse weather. In case of damage by storm, water or adverse weather, the Contractor shall, at his own cost and expense, make such repairs or replacement or rebuild such parts of the Work as the Engineer may require in order that the finished Work may be completed as required by the Contract.

The Contractor shall provide for protection against weather in accordance with MGL C. 149, SS 44F and 44G.

A24 MISTAKES OF CONTRACTOR

The Contractor shall promptly correct and make good any and all defects, damages, omissions or mistakes for which he and/or his agents, employees or subcontractors are responsible, and he shall pay to the Owner all costs, expenses, losses, and damages resulting there from or by reason thereof as determined by the Engineer.

A25 RIGHT TO MATERIALS

Nothing in the Contract shall be construed as vesting in the Contractor any right of property in the materials, equipment, apparatus and other items furnished after they have been installed or incorporated in or attached or affixed to the Work or the site, but all such materials, equipment, apparatus and other items shall, upon being so installed, incorporated, attached or affixed, become the property of the Owner.

A26 CHANGES

The Owner may make changes in the Work and in the Drawings and Specifications therefore by making alterations therein, additions thereto or omissions there from. All work resulting from such changes shall be performed and furnished under and pursuant to the terms and conditions of the Contract. If such changes result in an increase or decrease in the Work to be done hereunder, or increase or decrease the quantities thereof, adjustment in compensation shall be made therefore at the unit prices stipulated in the Contract for such work, except that if unit prices are not stipulated for such work, compensation for additional or increased work shall be made as provided hereinafter under the subsection titled EXTRA WORK; and for eliminated or decreased work the Contractor shall allow the Owner a reasonable credit as determined by the Engineer. All decisions with respect to any such changes shall be made by the Engineer and shall be conclusive and binding upon the Contractor.

Except in an emergency endangering life or property, no change shall be made unless in pursuance of a written order from the Engineer authorizing the change, and no claim for additional compensation shall be valid unless the change is so ordered.

The Contractor agrees that he shall neither have nor assert any claim for or be entitled to any additional compensation for damages or for loss of anticipated profits on work that is eliminated.

A27 EXTRA WORK

The Contractor shall perform any extra work (work in connection with the Contract but not provided for herein) when and as ordered in writing by the Engineer, at the unit prices stipulated in the Contract for such work or, if none are so stipulated, either (a) at the price agreed upon before such work is commenced and named in the written order for such work, or (b) if the Engineer so elects, for the reasonable cost of such work, as determined by the Contractor and approved by the Engineer, plus a percentage of such cost, as set forth below. No extra work shall be paid for unless specifically ordered as such in writing by the Engineer.

The cost of extra work done under (b) above shall include the reasonable cost to the Contractor of materials used and equipment installed, common and skilled labor, and foremen, and the fair rental of all machinery and equipment used on the extra work for the period of such use.

At the request of the Engineer, the Contractor shall furnish itemized statements of the cost of the extra work ordered as above and give the Engineer access to all records, accounts, bills and vouchers and correspondence relating thereto.

The Contractor may include in the cost of extra work the amounts of additional premiums, if any, (other than premiums on bonds) paid on the required insurance on account of such extra work, of Social Security or other direct assessments under the Contractor's payroll by Federal or other properly authorized public agencies, and of other approved assessments when such assessments are not normally included in payments made by the Contractor directly to his employees, but in fact are, and are customarily recognized as, part of the cost of doing work.

The fair rental for all machinery and equipment shall be based upon the most recent edition of "Compilation of Rental Rates for Construction Equipment," published by the Associated Equipment Distributors, or a similar publication approved by the Engineer. Rental for machinery and equipment shall be based upon an appropriate fraction of the approved monthly rate schedule. If said extra work requires the use of machinery or equipment not already on the site of the Work the actual cost of transportation, not exceeding a distance of 100 miles, of such machinery or equipment to and from the Work shall be added to the fair monthly rental provided, however, that this shall not apply to machinery or equipment already required to be furnished under the terms of the Contract.

The Contractor shall not include in the cost of extra work any cost or rental of small tools, buildings, or any portion of the time of the Contractor, his superintendent, or his office and engineering staff.

To the cost of extra work done by the Contractor's own forces under (b) above (determined as stated above), the Contractor shall add 15 percent to cover his overhead, use of capital, the premium on the Bonds as assessed upon the amount of this extra work, and profit.

In the case of extra work done under (b) above by a subcontractor, the subcontractor shall compute, as above, his cost for the extra work, to which he shall add 15 percent as in the case of the Contractor, and the Contractor shall be allowed an additional 15 percent of the subcontractor's cost for the extra work to cover the costs of the Contractor's overhead, use of capital, and the premium on the Bonds as assessed upon the amount of this extra work, and profit. Said subcontractor's cost must be reasonable and approved by the Engineer.

If extra work is done under (b) above, the Contractor and/or subcontractor shall keep daily records of such extra work. The daily record shall include the names of persons employed, the nature of the work performed, and hours worked, materials and equipment used, if any, in the prosecution of such extra work. This daily record, to constitute verification that the work was done, must be signed by the Contractor's authorized representative. A separate daily record shall be submitted for each Extra Work Order.

A28 EXTENSION OF TIME ON ACCOUNT OF EXTRA WORK

When extra work is ordered at any time during the progress of the Work which in the sole judgment of the Engineer unavoidably increases the time for the completion of the Work, an extension of time shall be granted as hereinbefore provided under CONTRACT TIME.

A29 CHANGES NOT TO AFFECT BONDS

It is distinctly agreed and understood that any changes made in the Work or the Drawings or Specifications therefore (whether such changes increase or decrease the amount thereof or the time required for its performance) or any changes in the manner or time of payments made by the Owner to the Contractor, or any other modifications of the Contract, shall in no way annul, release, diminish or affect the liability of the Surety on the CONTRACT BONDS given by the Contractor, it being the intent hereof that notwithstanding such changes the liability of the Surety on said bonds continue and remain in full force and effect.

A30 CLAIMS FOR DAMAGES

If the Contractor makes claim for any damages alleged to have been sustained by breach of contract or otherwise, he shall, within ten (10) days after occurrence of the alleged breach or within ten (10) days after such damages are alleged to have been sustained, whichever date is the earlier, file with the Engineer a written, itemized statement in triplicate of the details and amount of the alleged damages. The Contractor agrees that unless such statement is made and filed as so required, his claim for damages shall be deemed waived, invalid and unenforceable, and that he shall not be entitled to any compensation for any such alleged damages. Within ten (10) days after the timely filing of such statement, the Engineer shall file with the Owner one copy of the statement, together with his recommendations for action by the Owner.

The Contractor shall not be entitled to claim any additional compensation for damages by reason of any direction, instruction, determination or decision of the Engineer, nor shall any such claims be considered, unless the Contractor shall have complied in all respects with the third paragraph of that subsection above of this AGREEMENT titled AUTHORITY OF THE ENGINEER including, but not limited to the filing of a written protest in the manner and within the time therein provided.

A31 ABANDONMENT OF WORK OR OTHER DEFAULT

If the Work shall be abandoned, or any part thereof shall be sublet without previous written consent of the Owner, or the Contract or any moneys payable hereunder shall be assigned otherwise than as herein specified, or if at any time the Engineer shall certify in writing that the conditions herein specified as to rate of progress are not being complied with or that the Work or any part thereof is being unnecessarily or unreasonably delayed or that the Contractor has violated or is in default under any of the provisions of the Contract, or if the Contractor becomes bankrupt or insolvent or goes or is put into liquidation or dissolution, either voluntarily, or petitions for an arrangement or reorganization under the Bankruptcy Act, or makes a general assignment for the benefit of creditors or otherwise acknowledges insolvency, the happening of any of which shall be and constitute a default under the Contract, the Owner may notify the Contractor in writing, with a copy of such notice mailed to the Surety, to discontinue all work or any part thereof; thereupon the Contractor shall discontinue such Work forthwith or such part thereof as the Owner may designate, and the Owner may, upon giving such notice, by contract or otherwise as it may determine, complete the Work or such part thereof and charge the entire cost and expense of so completing the Work or such part thereof to the Contractor. In addition to the said entire cost and expense of completing the Work the Owner shall be entitled to reimbursement from the Contractor and the Contractor agrees to pay to the Owner any losses, damages, costs and expenses, including attorney's fees, sustained or incurred by the Owner by reason of any of the foregoing causes. For the purposes of such completion the Owner may for

itself or for any contractors employed by the Owner take possession of and use or cause to be used any and all materials, equipment, plant, machinery, appliances, tools, supplies and such other items of every description that may be found or located at the site of the Work.

All costs, expenses, losses, damages, attorneys' fees and any and all other charges incurred by the Owner under this subsection shall be charged against the Contractor and deducted by the Owner out of any moneys due or payable or to become due or payable under the Contract to the Contractor; in computing the amounts chargeable to the Contractor, the Owner shall not be held to a basis of the lowest prices for which the completion of the Work or any part thereof might have been accomplished, but all sums actually paid or obligated therefore to effect its prompt completion shall be charged to and against the account of the Contractor. In case the costs, expenses, losses, damages, attorneys' fees and other charges, together with all payments theretofore made to or for the account of the Contractor, are less than the sum which would have been payable under the Contract if the Work had been properly performed and completed by the Contractor, the Contractor shall be entitled to receive the difference; in case such costs, expenses, losses, damages, attorneys' fees and other charges, together with all payments theretofore made to or for the account of the Contractor, shall exceed the said sum, the Contractor shall pay the amount of the excess to the Owner.

A32 PRICES FOR WORK

The Owner shall pay and the Contractor shall receive the prices stipulated in the BID FORM made a part hereof as full compensation for everything performed and furnished and for all risks and obligations undertaken by the Contractor under and as required by the Contract.

A33 MONEYS MAY BE RETAINED

The Owner may at any time retain from any moneys which would otherwise be payable hereunder so much thereof as the Owner may deem necessary to complete the Work hereunder and to reimburse it for all costs, expenses, losses, damage and damages chargeable to the Contractor hereunder.

A34 USE OR PARTIAL PAYMENT NOT ACCEPTANCE

It is agreed that this is an entire contract for one whole and complete Work or result and that neither the Owner's entrance upon or use of the Work, or any part thereof nor any partial payments by the Owner shall constitute an acceptance of the Work or any part thereof before its entire completion and final acceptance.

A35 PERIODIC ESTIMATES

Once a month, except as hereinafter provided, the Contractor shall make an estimate in writing to the Owner, in a format designated by the Engineer, of the total amount and value of the work done to the first of the month. The estimate shall be reviewed and recommended for payment by the Engineer before submittal to the Owner. Submittal without the Engineer's recommendation shall be considered not in the required form. The Owner shall retain a percentage of such estimated value, as set forth under SPECIAL CONDITIONS, as part security for fulfillment of the Contract by the Contractor and shall deduct from the balance all previous payments made to the Contractor, all sums chargeable against the Contractor and all sums to be retained under the provisions of the Contract. The Owner shall pay monthly to the Contractor the balance not deducted and/or retained as aforesaid, except that payment may be withheld at any time if, in the sole judgment of the Engineer, the Work is not proceeding in accordance with the Contract.

If the Owner deems it expedient to do so, it may cause estimates and payments to be made more frequently than once in each month. No periodic estimate or payment need be made when, in the sole judgment of the Engineer, the total value of the work done since the last estimate amounts to less than the amount set forth under SPECIAL CONDITIONS.

Estimates of lump-sum items shall be based on a schedule dividing each such item into its appropriate component parts together with a quantity and a unit price for each part so that the sum of the products of prices and quantities will equal the Contract price for the item. This schedule shall be submitted by the Contractor for and must have the approval of the Engineer before the first estimate becomes due.

If the Engineer determines that the progress of the Work will be benefited by the delivery to the site of certain materials and equipment, when available, in advance of actual requirement therefore and if such materials and equipment are delivered and properly stored and protected, the cost to the Contractor or subcontractor as established by invoices or other suitable vouchers satisfactory to the Engineer, less the retained percentages as above provided, may be included in the periodic estimates; provided always that there be duly executed and delivered by the Contractor to the Engineer at the same time a Bill of Sale in form satisfactory to the Owner, transferring and assigning to the Owner full ownership and title to such materials or equipment. Prior to the subsequent payment estimate, the Contractor shall demonstrate that suppliers of such materials and equipment have been properly paid.

A36 FINAL ESTIMATE AND PAYMENT

Within sixty-five days after (a) the Contractor fully completes the Work or substantially completes the Work so that the value of the work remaining to be done is, in the estimate of the Owner, less than one percent of the original contract price, or (b) the Contractor substantially completes the Work and the Owner takes possession for occupancy, whichever occurs first, the Owner shall pay the Contractor the entire balance due on the contract as determined by the Engineer less (1) a retention based on its estimate of the fair value of its claims against the Contractor and of the cost of completing the incomplete and unsatisfactory items of work and less (2) a retention for direct payments to subcontractors. The Engineer also shall fix the date of completion of the work and incorporate the same into the final estimate.

All quantities shown on periodic estimates and all prior payments shall be subject to correction in the final estimate and payment.

The Contractor's acceptance of such final payment shall constitute a waiver of all claims by the Contractor against the Owner, the Engineer and any agent, servant or employee of either, except for such claims as have previously been made in writing, and submitted to the Engineer.

A37 LIENS

If at any time any notices of lien are filed for labor performed or materials or equipment manufactured, furnished, or delivered to or for the Work, the Contractor shall, at its own cost and expense, promptly discharge, remove or otherwise dispose of the same, and until such discharge, removal or disposition, the Owner shall have the right to retain from any moneys payable hereunder an amount which, in its sole judgment, it deems necessary to satisfy such liens and pay the costs and expenses, including attorneys' fees, of defending any actions brought to enforce the same, or incurred in connection therewith or by reason thereof.

A38 CLAIMS

If at any time there be any evidence of any claims for which the Contractor is or may be liable or responsible hereunder, the Contractor shall promptly settle or otherwise dispose of the same, and until such claims are settled or disposed of, the Owner may retain from any moneys which would otherwise be payable hereunder so much thereof as, in its sole judgment, it may deem necessary to settle or otherwise dispose of such claims and to pay the costs and expenses, including attorneys' fees, of defending any actions brought to enforce such claims, or incurred in connection therewith or by reason thereof.

A39 APPLICATION OF MONEYS RETAINED

The Owner may apply any moneys retained hereunder to reimburse itself for any and all costs, expenses, losses, damage and damages, liabilities, suits, judgments and awards incurred, suffered or sustained by the Owner and chargeable to the Contractor hereunder or as determined hereunder.

A40 NO WAIVER

Neither the inspection by the Owner or the Engineer, nor any order, measurement, approval, determination or decision or certificate by the Engineer, nor any order by the Owner for the payment of money, nor any payment for or use, occupancy, possession or acceptance of the whole or any part of the Work by the Owner, nor any extension of time, nor any other act or omission of the Owner or of the Engineer shall constitute or be deemed to be an acceptance of any defective or improper work, materials, or equipment; nor operate as a waiver of any requirement or provision of the Contract, nor of any remedy, power or right herein reserved to the Owner, nor of any right to damages for breach of contract. Any and all rights and/or remedies provided for in the Contract are intended and shall be construed to be cumulative; and, in addition to each and every other right and remedy provided for herein or by law, the Owner shall be entitled as of right to an injunction against any breach or threatened breach of the Contract by the Contractor, by his subcontractors or by any other person or persons.

A41 LIABILITY OF OWNER

No person, firm or corporation, other than the Contractor, who signed this Contract as such, shall have any interest herein or right hereunder. No claim shall be made or be valid either against the Owner or any employee, servant or agent of the Owner or the Engineer and neither the Owner nor any employee, servant or agent of the Owner or the Engineer shall be liable for or be held to pay any money except as herein provided. The acceptance by the Contractor of the payment as fixed in the final estimate shall operate as and shall be a full and complete release of the Owner and of every employee, servant or agent of the Owner or the Engineer of and from any and all claims, demands, damages and liabilities of, by or to the Contractor for anything done or furnished for or arising out of or relating to or by reason of the Work except the claim against the Owner for the unpaid balance, if any there be, of the amounts retained as herein provided.

A42 GUARANTEE

The Contractor guarantees that the Work and services to be performed under the Contract, and all workmanship, materials and equipment performed, furnished, used or installed in the construction of the same, shall be free from defects and flaws, and shall be performed and furnished in strict accordance with the Drawings, Specifications, and other Contract Documents, that the strength of all parts of all manufactured equipment shall be adequate and as specified and that the performance test requirements of the Contract shall be fulfilled. This guarantee shall be

for a period of one year from and after the date of completion and acceptance of the Work as stated in the final estimate.

If part of the Work is accepted in accordance with that subsection of this Agreement titled "Partial Acceptance", the guarantee for that part of the Work shall be for a period of one year from the date fixed for such acceptance.

If at any time within the said period of guarantee, any part of the Work requires repairing, correction or replacement, the Owner may notify the Contractor in writing to make the required repairs, correction or replacements. If the Contractor neglects to commence making such repairs, corrections or replacements to the satisfaction of the Owner within ten (10) days from the date of receipt of such notice, or having commenced fails to prosecute such Work with diligence, the Owner may employ other persons to make said repairs, correction or replacements, including compensation for additional professional services, shall be paid by the Contractor.

Nothing contained in the Section shall be construed as a limitation as to any and all rights the Owner may have against the Contractor for any neglect or for any breach of this AGREEMENT.

A43 RETURN OF DRAWINGS

All Drawings furnished by the Owner or the Engineer to the Contractor may be used only in connection with the prosecution of the Work and shall be returned by the Contractor upon completion of the Work.

A44 LEGAL ADDRESS OF CONTRACTOR

The Contractor's business address is hereby designated as the place to which communications shall be delivered. The depositing of any letter notice, or other communication in a postpaid wrapper, directed to the Contractor's business address, in a post office box regularly maintained by the Post Office Department or the delivery at designated address of any letter, notice, or other communication by mail or otherwise shall be deemed sufficient service thereof upon the Contractor, and the date of such service shall be the date of receipt. The address may be changed at any time by an instrument in writing, executed and acknowledged by the Contractor, and delivered to the Engineer. Service of any notice, letter, or other communication upon the Contractor personally shall likewise be deemed sufficient service.

A45 HEADINGS

The headings or titles of any section, subsection, paragraph, provision, or part of the Contract Documents shall not be deemed to limit or restrict the content, meaning or effect of such section, subsection, paragraph, provision or part.

A46 MODIFICATION OR TERMINATION

Except as otherwise expressly provided herein, the Contract may not be modified or terminated except in writing signed by the parties hereto.

A47 LIMITATION OF LIABILITY OF ENGINEER

Neither the Engineer's authority to act under any section of this Agreement or under any other provision in the Contract Documents, nor any decision made by the Engineer to either exercise or not exercise such authority shall give rise to any duty or responsibility of the Engineer to the Contractor, to any subcontractor, manufacturer, fabricator, supplier, or distributor, or to any of their agents, employees, or any other person performing any of the work.

A48 NON-DISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY

Discriminatory employment practices by contractors, subcontractors and suppliers of goods and services based on race, color, religion, national origin, ancestry, age or sex are prohibited. Contractors and suppliers of goods and services shall give written notice of their commitment to non-discrimination to any labor union, association or brotherhood with which they have a collective bargaining or other agreement.

A49 INDEMNIFICATION

The Contractor shall indemnify, defend and hold the Owner harmless for any claim for damages of whatever description arising from the negligence of the Contractor or any of its employees and subcontractors in the performance of the work or arising from a breach of the Contractor's agreement with the Owner.

IN WITNESS HEREOF, the parties of this AGREEMENT have hereunto set their hands and seals as of the day and year first above written.

FOR THE TOWN OF MIDDLEBOROUGH, MA

By: _____

Board of Selectmen
(Party of the First Part)

and: Gabriel Construction Co., Inc., R.J.
(Party of the Second Part)

APPROVED AS TO FORM

Middleborough Town Counsel

Date

CERTIFICATE PURSUANT TO GL C44 & 31C

In accordance with M.G.L. C44, Section 31C, this is to certify that an appropriation in the amount of this contract is available therefore and that the Board of Selectmen has been authorized to execute the contract and approve all requisitions and change orders.

BY _____
Town Accountant

**COMMONWEALTH OF MASSACHUSETTS
CONTRACTOR AUTHORIZED SIGNATORY LISTING
FEMA-4097-DR-MA**

Issued May
2004



CONTRACTOR LEGAL NAME: Town of Middleborough
CONTRACTOR VENDOR/CUSTOMER CODE: VC6000191882

INSTRUCTIONS: Any Contractor (other than a sole-proprietor or an individual contractor) must provide a listing of individuals who are authorized as legal representatives of the Contractor who can sign contracts and other legally binding documents related to the contract on the Contractor's behalf. In addition to this listing, any state department may require additional proof of authority to sign contracts on behalf of the Contractor, or proof of authenticity of signature (a notarized signature that the Department can use to verify that the signature and date that appear on the Contract or other legal document was actually made by the Contractor's authorized signatory, and not by a representative, designee or other individual.)

NOTICE: *Acceptance of any payment under a Contract or Grant shall operate as a waiver of any defense by the Contractor challenging the existence of a valid Contract due to an alleged lack of actual authority to execute the document by the signatory.*

For privacy purposes **DO NOT ATTACH** any documentation containing personal information, such as bank account numbers, social security numbers, driver's licenses, home addresses, social security cards or any other personally identifiable information that you do not want released as part of a public record. The Commonwealth reserves the right to publish the names and titles of authorized signatories of contractors.

AUTHORIZED SIGNATORY NAME	TITLE

I certify that I am the President, Chief Executive Officer, Chief Fiscal Officer, Corporate Clerk or Legal Counsel for the Contractor and as an authorized officer of the Contractor I certify that the names of the individuals identified on this listing are current as of the date of execution below and that these individuals are authorized to sign contracts and other legally binding documents related to contracts with the Commonwealth of Massachusetts on behalf of the Contractor. I understand and agree that the Contractor has a duty to ensure that this listing is immediately updated and communicated to any state department with which the Contractor does business whenever the authorized signatories above retire, are otherwise terminated from the Contractor's employ, have their responsibilities changed resulting in their no longer being authorized to sign contracts with the Commonwealth or whenever new signatories are designated.

Signature

Date:

Title: Telephone:

Fax: Email:

[Listing can not be accepted without all of this information completed.]

A copy of this listing must be attached to the "record copy" of a contract filed with the department.

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



This form is jointly issued and published by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. Any changes to the official printed language of this form shall be void. Additional non-conflicting terms may be added by Attachment. Contractors may not require any additional agreements, engagement letters, contract forms or other additional terms as part of this Contract without prior Department approval. Click on hyperlinks for definitions, instructions and legal requirements that are incorporated by reference into this Contract. An electronic copy of this form is available at www.mass.gov/osc under [Guidance For Vendors - Forms](#) or www.mass.gov/osd under [OSD Forms](#).

PW-00030

CONTRACTOR LEGAL NAME: Town of Middleborough (and d/b/a):	COMMONWEALTH DEPARTMENT NAME: CDA Massachusetts Emergency Management Agency MMARS Department Code: CDA
Legal Address: (W-9, W-4,T&C): 20 Centre St., Middleborough, MA 02346	Business Mailing Address: 400 Worcester Road, Framingham, MA 01702
Contract Manager: Mr. Charles Cristello	Billing Address (if different):
E-Mail: ccristello@middleborough.com	Contract Manager: Paula Krumsiek, Contract Specialist
Phone: 508-947-0928 Fax: 508-946-2464	E-Mail: Paula.Krumsiek@state.ma.us
Contractor Vendor Code: VC6000191882	Phone: 508-820-1424 Fax: 508-820-1404
Vendor Code Address ID (e.g. "AD001"): AD ____ (Note: The Address Id Must be set up for EFT payments.)	MMARS Doc ID(s): CTFEMA4097MIDDL00030 RF/Procurement or Other ID Number: FEMA-4097-DR-MA Hurricane Sandy
<u> x </u> NEW CONTRACT	<u> </u> CONTRACT AMENDMENT
PROCUREMENT OR EXCEPTION TYPE: (Check one option only) <input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department) <input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget) <input type="checkbox"/> Department Procurement (includes State or Federal grants 815 CMR 2.00) (Attach RFR and Response or other procurement supporting documentation) <input type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget) <input type="checkbox"/> Contract Employee (Attach <u>Employment Status Form</u> , scope, budget) <input checked="" type="checkbox"/> Legislative/Legal or Other: (Attach authorizing language/justification, scope and budget)	Enter Current Contract End Date <u>Prior</u> to Amendment: _____, 20 ____ Enter Amendment Amount: \$ _____. (or "no change") AMENDMENT TYPE: (Check one option only. Attach details of Amendment changes.) <input type="checkbox"/> Amendment to Scope or Budget (Attach updated scope and budget) <input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated scope/budget) <input type="checkbox"/> Contract Employee (Attach any updates to scope or budget) <input type="checkbox"/> Legislative/Legal or Other: (Attach authorizing language/justification and updated scope and budget)
The following COMMONWEALTH TERMS AND CONDITIONS (T&C) has been executed, filed with CTR and is incorporated by reference into this Contract. <input checked="" type="checkbox"/> Commonwealth Terms and Conditions <input type="checkbox"/> Commonwealth Terms and Conditions For Human and Social Services	
COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00. <input type="checkbox"/> Rate Contract (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.) <input checked="" type="checkbox"/> Maximum Obligation Contract Enter Total Maximum Obligation for total duration of this Contract (or new Total if Contract is being amended). \$3,575.60	
PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days ___ % PPD; Payment issued within 15 days ___ % PPD; Payment issued within 20 days ___ % PPD; Payment issued within 30 days ___ % PPD. If PPD percentages are left blank, identify reason: ___ agree to standard 45 day cycle ___ statutory/legal or Ready Payments (G.L. c. 29, § 23A); <input checked="" type="checkbox"/> only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See <u>Prompt Pay Discounts Policy</u> .)	
BRIEF DESCRIPTION OF CONTRACT PERFORMANCE OR REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.) (Reference CFDA # 97.036) PW-00030 To reimburse for FEMA 4028 Tropical Storm Irene – The applicant took such actions as necessary to save lives, protect public health and safety and protect improved property Townwide. Assistance for emergency protective measures and debris removal under Category A&B under the FEMA Public Assistance Program	
ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations: <input type="checkbox"/> 1. may be incurred as of the <u>Effective Date</u> (latest signature date below) and no obligations have been incurred <u>prior</u> to the <u>Effective Date</u> . <input type="checkbox"/> 2. may be incurred as of _____, 20____, a date LATER than the <u>Effective Date</u> below and no obligations have been incurred <u>prior</u> to the <u>Effective Date</u> . <input checked="" type="checkbox"/> 3. were incurred as of <u>10/27/2012</u> , a date PRIOR to the <u>Effective Date</u> below, and the parties agree that payments for any obligations incurred prior to the <u>Effective Date</u> are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.	
CONTRACT END DATE: Contract performance shall terminate as of <u>6/30/2013</u> , with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.	
CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the " Effective Date " of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor makes all certifications required under the attached <u>Contractor Certifications</u> (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable <u>Commonwealth Terms and Conditions</u> , this Standard Contract Form including the <u>Instructions and Contractor Certifications</u> , the Request for Response (RFR) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in <u>801 CMR 21.07</u> , incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.	
AUTHORIZING SIGNATURE FOR THE CONTRACTOR: X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature) Print Name: _____ Print Title: _____	AUTHORIZING SIGNATURE FOR THE COMMONWEALTH: X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature) Print Name: <u>David Mahr</u> Print Title: <u>Chief Fiscal Officer</u>

COMMONWEALTH OF MASSACHUSETTS ~ STANDARD CONTRACT FORM



This form is jointly issued and published by the Executive Office for Administration and Finance (ANF), the Office of the Comptroller (CTR) and the Operational Services Division (OSD) as the default contract for all Commonwealth Departments when another form is not prescribed by regulation or policy. Any changes to the official printed language of this form shall be void. Additional non-conflicting terms may be added by Attachment. Contractors may not require any additional agreements, engagement letters, contract forms or other additional terms as part of this Contract without prior Department approval. Click on hyperlinks for definitions, instructions and legal requirements that are incorporated by reference into this Contract. An electronic copy of this form is available at www.mass.gov/osc under Guidance For Vendors - Forms or www.mass.gov/osd under OSD Forms.

PW-00024

CONTRACTOR LEGAL NAME: Town of Middleborough (and d/b/a):	COMMONWEALTH DEPARTMENT NAME: CDA Massachusetts Emergency Management Agency MMARS Department Code: CDA
Legal Address: (W-9, W-4, T&C): 20 Centre St., Middleborough, MA 02346	Business Mailing Address: 400 Worcester Road, Framingham, MA 01702
Contract Manager: Mr. Charles Cristello	Billing Address (if different):
E-Mail: ccristello@middleborough.com	Contract Manager: Paula Krumsiek, Contract Specialist
Phone: 508-947-0928 Fax: 508-946-2464	E-Mail: Paula.Krumsiek@state.ma.us
Contractor Vendor Code: VC6000191882	Phone: 508-820-1424 Fax: 508-820-1404
Vendor Code Address ID (e.g. "AD001"): AD (Note: The Address Id Must be set up for EFT payments.)	MMARS Doc ID(s): CTFEMA4097MIDDLE00024 RF/Procurement or Other ID Number: FEMA-4097-DR-MA Hurricane Sandy
<input checked="" type="checkbox"/> NEW CONTRACT PROCUREMENT OR EXCEPTION TYPE: (Check one option only) <input type="checkbox"/> Statewide Contract (OSD or an OSD-designated Department) <input type="checkbox"/> Collective Purchase (Attach OSD approval, scope, budget) <input type="checkbox"/> Department Procurement (includes State or Federal grants 815 CMR 2.00) (Attach RFR and Response or other procurement supporting documentation) <input type="checkbox"/> Emergency Contract (Attach justification for emergency, scope, budget) <input type="checkbox"/> Contract Employee (Attach <u>Employment Status Form</u> , scope, budget) <input checked="" type="checkbox"/> Legislative/Legal or Other: (Attach authorizing language/justification, scope and budget)	<input type="checkbox"/> CONTRACT AMENDMENT Enter Current Contract End Date <u>Prior</u> to Amendment: _____, 20____. Enter Amendment Amount: \$ _____, (or "no change") AMENDMENT TYPE: (Check one option only. Attach details of Amendment changes.) <input type="checkbox"/> Amendment to Scope or Budget (Attach updated scope and budget) <input type="checkbox"/> Interim Contract (Attach justification for Interim Contract and updated scope/budget) <input type="checkbox"/> Contract Employee (Attach any updates to scope or budget) <input type="checkbox"/> Legislative/Legal or Other: (Attach authorizing language/justification and updated scope and budget)
The following COMMONWEALTH TERMS AND CONDITIONS (T&C) has been executed, filed with CTR and is incorporated by reference into this Contract. <input checked="" type="checkbox"/> Commonwealth Terms and Conditions <input type="checkbox"/> Commonwealth Terms and Conditions For Human and Social Services	
COMPENSATION: (Check ONE option): The Department certifies that payments for authorized performance accepted in accordance with the terms of this Contract will be supported in the state accounting system by sufficient appropriations or other non-appropriated funds, subject to intercept for Commonwealth owed debts under 815 CMR 9.00. <input type="checkbox"/> Rate Contract (No Maximum Obligation. Attach details of all rates, units, calculations, conditions or terms and any changes if rates or terms are being amended.) <input checked="" type="checkbox"/> Maximum Obligation Contract Enter Total Maximum Obligation for total duration of this Contract (or new Total if Contract is being amended). \$20,869.81	
PROMPT PAYMENT DISCOUNTS (PPD): Commonwealth payments are issued through EFT 45 days from invoice receipt. Contractors requesting accelerated payments must identify a PPD as follows: Payment issued within 10 days ___% PPD; Payment issued within 15 days ___% PPD; Payment issued within 20 days ___% PPD; Payment issued within 30 days ___% PPD. If PPD percentages are left blank, identify reason: ___agree to standard 45 day cycle ___ statutory/legal or Ready Payments (G.L. c. 29, § 23A); <input checked="" type="checkbox"/> only initial payment (subsequent payments scheduled to support standard EFT 45 day payment cycle. See <u>Prompt Pay Discounts Policy</u> .)	
BRIEF DESCRIPTION OF CONTRACT PERFORMANCE or REASON FOR AMENDMENT: (Enter the Contract title, purpose, fiscal year(s) and a detailed description of the scope of performance or what is being amended for a Contract Amendment. Attach all supporting documentation and justifications.) (Reference CFDA # 97.036) PW-00024 To reimburse for FEMA 4028 Tropical Storm Irene – The applicant took such actions as necessary to save lives, protect public health and safety and protect improved property Townwide. Assistance for emergency protective measures and debris removal under Category A&B under the FEMA Public Assistance Program	
ANTICIPATED START DATE: (Complete ONE option only) The Department and Contractor certify for this Contract, or Contract Amendment, that Contract obligations: <input type="checkbox"/> 1. may be incurred as of the <u>Effective Date</u> (latest signature date below) and no obligations have been incurred prior to the <u>Effective Date</u> . <input type="checkbox"/> 2. may be incurred as of _____, 20____, a date LATER than the <u>Effective Date</u> below and no obligations have been incurred prior to the <u>Effective Date</u> . <input checked="" type="checkbox"/> 3. were incurred as of 10/27/2012 , a date PRIOR to the <u>Effective Date</u> below, and the parties agree that payments for any obligations incurred prior to the <u>Effective Date</u> are authorized to be made either as settlement payments or as authorized reimbursement payments, and that the details and circumstances of all obligations under this Contract are attached and incorporated into this Contract. Acceptance of payments forever releases the Commonwealth from further claims related to these obligations.	
CONTRACT END DATE: Contract performance shall terminate as of 6/30/2013 , with no new obligations being incurred after this date unless the Contract is properly amended, provided that the terms of this Contract and performance expectations and obligations shall survive its termination for the purpose of resolving any claim or dispute, for completing any negotiated terms and warranties, to allow any close out or transition performance, reporting, invoicing or final payments, or during any lapse between amendments.	
CERTIFICATIONS: Notwithstanding verbal or other representations by the parties, the " Effective Date " of this Contract or Amendment shall be the latest date that this Contract or Amendment has been executed by an authorized signatory of the Contractor, the Department, or a later Contract or Amendment Start Date specified above, subject to any required approvals. The Contractor makes all certifications required under the attached <u>Contractor Certifications</u> (incorporated by reference if not attached hereto) under the pains and penalties of perjury, agrees to provide any required documentation upon request to support compliance, and agrees that all terms governing performance of this Contract and doing business in Massachusetts are attached or incorporated by reference herein according to the following hierarchy of document precedence, the applicable <u>Commonwealth Terms and Conditions</u> , this Standard Contract Form including the <u>Instructions and Contractor Certifications</u> , the Request for Response (RFR) or other solicitation, the Contractor's Response, and additional negotiated terms, provided that additional negotiated terms will take precedence over the relevant terms in the RFR and the Contractor's Response only if made using the process outlined in <u>801 CMR 21.07</u> , incorporated herein, provided that any amended RFR or Response terms result in best value, lower costs, or a more cost effective Contract.	
AUTHORIZING SIGNATURE FOR THE CONTRACTOR: X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature) Print Name: _____ Print Title: _____	AUTHORIZING SIGNATURE FOR THE COMMONWEALTH: X: _____ Date: _____ (Signature and Date Must Be Handwritten At Time of Signature) Print Name: David Mahr Print Title: Chief Fiscal Officer

Incorporated 1669
344 Years of Progress



CRANBERRY CAPITAL
OF THE WORLD



Town of Middleborough
Massachusetts

CHARLES J. CRISTELLO
Town Manager

508-947-0928
FAX 508-946-2320

MEMORANDUM

TO: Board of Selectmen

FROM: Charles J. Cristello, Town Manager 

RE: New Title for the Confidential Secretary to the Board of Selectmen

DATE: May 9, 2013

Recently, the Board asked me to research a more appropriate title for the Board's Confidential Secretary. My recommendation is Executive Assistant to the Board of Selectmen, which is in use in other communities with similar positions, and which does not conflict with Chapter 41 Section 108N. Attached please find a job description with that change, and which removes the responsibility of hall rentals that are now performed by my assistant.

Please contact me if you have any questions.

EXECUTIVE ASSISTANT TO THE BOARD OF SELECTMEN

Definition

Responsible for routine to complex administrative work in providing support services to the office of the Board of Selectmen; all other related work as required.

Supervision

Works under the direct supervision of the Board of Selectmen; speaks on behalf of the Board of Selectmen on a daily basis. Receives general direction in writing and orally from the Board of Selectmen. Often works with little or no direct supervision. Plans, prioritizes and arranges own work.

Job Environment

Work is performed under typical office conditions, with constant interruptions from the general public and other department employees.

Operates computer and other standard office equipment.

Has constant contact with Town officials, Town employees, Town Counsel and the general public, requiring patience, tact and discretion.

Has regular access to a wide variety of confidential information, where utmost integrity is required to safeguard rapport in Town government affairs and administration, including personnel records, bid proposals, lawsuits, and personal information about citizens.

Errors could result in delay and confusion and could have direct legal repercussions; errors may also result in poor public relations.

Essential Functions

The essential functions or duties listed below are intended only as illustrations of the various types of work that may be performed. The omission of specific statements of duties does not exclude them from the position if the work is similar, related, or a logical assignment to the position.

Performs varied functions requiring comprehensive knowledge of departmental operations and the exercise of judgment in responding to inquiries, in dealing with the public, and in administering the functions of the office, in accordance with established departmental policies and standards. Acts as a liaison between all town departments, boards, committees, commissions, Town Counsel, Labor Counsel, and the general public with the Board of Selectmen.

Undertakes assignments, administrative tasks, and supervisory functions, as directed by the Board of

Selectmen; represents the Board of Selectmen and keeps them informed with regard to public requests and departmental administrative functions.

Assists and answers questions from the general public, public officials, department heads and staff, in person and by telephone; responds to correspondence from the general public requesting routine information about Middleborough; receives and responds to complaints; refers complaints to appropriate department heads or other entities for action.

Schedules, records and maintains calendar of appointments and meetings for the Board of Selectmen; maintains files for the Board of Selectmen's office; keeps the Board of Selectmen informed of all daily appointments; posts all the Board of Selectmen's meetings and executive sessions within legal time constraints; schedules and prepares weekly agenda for Board of Selectmen's meetings, prepares packets of information for Board of Selectmen and Press; attends all meetings of the Board of Selectmen, takes minutes and transcribes them; schedules and arranges various staff meetings. Maintains Selectmen's documents, including video tapes.

Researches, records and reports for Selectmen as directed.

Notarizes necessary paperwork for the Selectmen.

Notifies all Town Departments, Committees and commissions of all orders passed by the Board of Selectmen authorizing appropriations, assessments, appointments or abatements.

Notifies the Public of all orders passed by the Board of Selectmen authorizing appropriations, assessments, appointments or abatements, through the publication of legal ads.

Drafts, types, logs and files correspondence; routes correspondence to appropriate departments; maintains calendar of meetings of various boards and commissions; maintains confidential files; types Selectmen's meeting agendas.

Copies, collates, assembles and binds various reports; composes routine correspondence, memoranda and notices; takes dictation; opens, sorts, prioritizes and routes mail.

Maintains inventory of supplies; orders supplies as needed.

Receives all applications for licenses and permits issued by the Board of Selectmen; reviews applications for completeness, schedules public hearings, prepares legal notices for advertisement in the local newspaper, and prepares the necessary paperwork; prepares yearly reports for licenses/permits that are issued by the Board of Selectmen.

Collects, types and assembles Town Meeting motions and warrants. Consults with Town Counsel regarding wording and legality of Warrant Articles. Assists with the compilation and typing of the

Selectmen's annual budget.

Consults with Labor Counsel to insert updated Memorandums of Agreement into Town contracts.

Schedules all meeting rooms for all boards and committees who meet at the Town Hall, as needed; occasionally schedules meeting rooms at school or Police Department facilities. Schedules meetings and events to be held in the Selectmen's Meeting Room and the Town Hall Ballroom. Responsible for calculating and collecting payments for fees in connection with rentals.

Submits bills for payment. Keeps book of accounts.

Works with the Board of Selectmen and other department personnel on various special projects as required; performs similar or related work as required or as situation dictates.

Recommended Minimum Qualifications

Education and Experience

High school diploma and broad specialized training equal to two years of college. At least three years of progressively responsible experience in administrative work or office management; or an equivalent combination of education and experience.

Special Requirements

A Massachusetts motor vehicle operator's license is required.
Commission as a Massachusetts Notary Public is desired.

Knowledge, Ability and Skill

Knowledge. Thorough knowledge of various administrative functions of town government and Board of Selectmen's activities. Working knowledge of departmental operations and relationship with other town departments and offices. Working knowledge of office procedures and machines. Familiarity with office administration including licensing procedures, procurement laws, bylaws, accounting and budgeting process, etc.

Ability. Ability to maintain confidential information. Ability to maintain, manage and organize complex records. Ability to deal appropriately with Town employees, Town officials and the general public. Ability to work with little or no supervision in a fast-paced environment, with a high degree of accuracy.

Skill. Excellent communication and administrative skills. Skill in word processing and spreadsheet applications. Excellent customer service skills.

Physical Requirements

Minimal physical effort demanded when performing functions under typical office conditions. Ability to see, speak and hear well within normal ranges. Ability to operate a keyboard and to sit at a computer for long periods.

This job description does not constitute an employment agreement between the employer and employee and is subject to change by the employer as the needs of the employer and requirements of the job change.

Incorporated 1669
344 Years of Progress



CRANBERRY CAPITAL
OF THE WORLD



Town of Middleborough
Massachusetts

CHARLES J. CRISTELLO
Town Manager

508-947-0928
FAX 508-946-2320

May 6, 2013

Ms. Deborah Kirsch
99 Fuller Street
Middleborough, MA 02346

Dear Ms. Kirsch:

I am happy to appoint you to the Conservation Commission subject to the approval of the Board of Selectmen pursuant to Massachusetts General Laws Chapter 40, Section 8C. This appointment is for a three year term through June 30, 2016.

By copy of this letter, I am asking the Selectmen to approve your appointment at their meeting Monday, May 13, 2013.

In appointing you, I expect that you will make every effort to attend our Annual Town Meeting on the fourth Monday in April and our Special Town Meeting usually held in early October. Thank you for your willingness to serve the Town of Middleborough.

Very truly yours,

Charles J. Cristello
Town Manager

cc: Board of Selectmen
Allison Ferreira, Town Clerk
Conservation Commission

Incorporated 1669
344 Years of Progress



CRANBERRY CAPITAL
OF THE WORLD



Town of Middleborough
Massachusetts

CHARLES J. CRISTELLO
Town Manager

508-947-0928
FAX 508-946-2320

May 6, 2013

Ms. Janet Miller
1111 Blueberry Circle
Middleborough, MA 02346

Dear Ms. Miller:

I am happy to appoint you to the Conservation Commission subject to the approval of the Board of Selectmen pursuant to Massachusetts General Laws Chapter 40, Section 8C. This appointment is for a three year term through June 30, 2016.

By copy of this letter, I am asking the Selectmen to approve your appointment at their meeting Monday, May 13, 2013.

In appointing you, I expect that you will make every effort to attend our Annual Town Meeting on the fourth Monday in April and our Special Town Meeting usually held in early October. Thank you for your willingness to serve the Town of Middleborough.

Very truly yours,

Charles J. Cristello
Town Manager

cc: Board of Selectmen
Allison Ferreira, Town Clerk
Conservation Commission

Incorporated 1669
344 Years of Progress



CRANBERRY CAPITAL
OF THE WORLD



Town of Middleborough
Massachusetts

CHARLES J. CRISTELLO
Town Manager

508-947-0928
FAX 508-946-2320

May 6, 2013

Mr. Steven Ventresca
11 Leilo Drive
Middleborough, MA 02346

Dear Mr. Ventresca:

I am happy to appoint you to the Conservation Commission subject to the approval of the Board of Selectmen pursuant to Massachusetts General Laws Chapter 40, Section 8C. This appointment is for a three year term through June 30, 2016.

By copy of this letter, I am asking the Selectmen to approve your appointment at their meeting Monday, May 13, 2013.

In appointing you, I expect that you will make every effort to attend our Annual Town Meeting on the fourth Monday in April and our Special Town Meeting usually held in early October. Thank you for your willingness to serve the Town of Middleborough.

Very truly yours,

Charles J. Cristello
Town Manager

cc: Board of Selectmen
Allison Ferreira, Town Clerk
Conservation Commission

Incorporated 1669
344 Years of Progress



CRANBERRY CAPITAL
OF THE WORLD



Town of Middleborough
Massachusetts

CHARLES J. CRISTELLO
Town Manager

508-947-0928
FAX 508-946-2320

May 6, 2013

Mr. John Medeiros
34 Fernway
Middleborough, MA 02346

Dear Mr. Medeiros:

I am happy to appoint you to the Conservation Commission subject to the approval of the Board of Selectmen pursuant to Massachusetts General Laws Chapter 40, Section 8C. This appointment is for a three year term through June 30, 2016.

By copy of this letter, I am asking the Selectmen to approve your appointment at their meeting Monday, May 13, 2013.

In appointing you, I expect that you will make every effort to attend our Annual Town Meeting on the fourth Monday in April and our Special Town Meeting usually held in early October. Thank you for your willingness to serve the Town of Middleborough.

Very truly yours,

Charles J. Cristello
Town Manager

cc: Board of Selectmen
Allison Ferreira, Town Clerk
Conservation Commission