

# **Unfinished Business**

**5-2-11**

# AMORY ENGINEERS, P.C.

WATER WORKS • WATER RESOURCES • CIVIL WORKS

25 DEPOT STREET, P.O. BOX 1768  
DUXBURY, MASSACHUSETTS 02331-1768

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## MEMORANDUM

**TO:** Mr. Charles Cristello, Town Manager

**FROM:** Richard S. Johnson, P.E.  
Amory Engineers, P.C.

**RE:** Water Management Act – Seasonal Water Use Restrictions

**DATE:** April 29, 2011

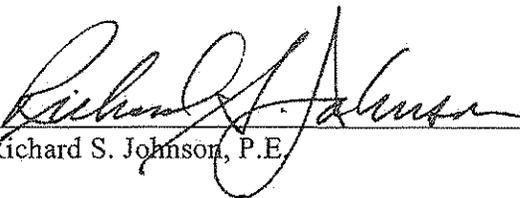
### SUMMARY:

This memo is to clarify my earlier memo on Seasonal Water Use Restrictions. The Town's existing WMA Permit includes a number of Special Conditions. Specifically, it contains Special Condition No. 7 Summer Limits on Withdrawals, which allows the Town to select either a calendar trigger or the stream flow trigger for implementing restrictions on non-essential outdoor water use between May 1 and September 30 of each year.

Historically, the calendar trigger has been used by the Town when implementing water use restrictions. Included with recent correspondence between the Town and MassDEP was Attachment A<sup>1</sup> which sets forth "Seasonal Limits on Non Essential Outdoor Water Use". These are minimum restrictions required by MassDEP under the Permit.

Attached is a revised "Mandatory Water Restriction" for action by the Board. The action includes continuing the practice of odd-even water restrictions and making slight modifications to the users who are subject to the limitations to match MassDEP requirements.

Please call me if you have any question.

  
Richard S. Johnson, P.E.

RSJ:vs

Enc

cc: Joseph Silva  
Andrew Bagas

---

<sup>1</sup> Copy attached.

ACTION: Adopt updated:

**Middleborough Summer Management Program**

**“Mandatory Water Restriction”**

From **May 1 through September 30, 2011** the Middleborough Summer Management Program restricts all nonessential outdoor water use for all water users. **The Summer Water Management Program allows odd-numbered properties to water outside on odd days and even-numbered properties to water outside on even days.**

Uses subject to this restriction include:

- ✓ Irrigation of lawns and landscaping via sprinklers or automatic irrigation systems;
- ✓ Washing of vehicles, except in a commercial car wash or as necessary for operator safety;
- ✓ Washing of exterior building surfaces, parking lots, driveways or sidewalks, except as necessary to apply surface treatments such as paint, preservatives, stucco, pavement or cement.

Uses allowed include:

- ✓ Irrigation to establish a new lawn and new plantings during the months of May and September;
- ✓ Irrigation of public parks and recreational fields by means of automatic sprinklers outside of the hours of 9 am to 5 pm;
- ✓ Watering of lawns, gardens, flowers and ornamental plants by means of a hand-held hose.

Uses NOT subject to this restriction include:

- ✓ Those for health or safety reasons;
- ✓ By regulation;
- ✓ For the production of food and fiber;
- ✓ For the maintenance of livestock;
- ✓ To meet the core functions of a business (for example, irrigation by golf courses as necessary to maintain tees, greens and limited fairway watering, or irrigation by plant nurseries as necessary to maintain stock.

Any person violating these water use restrictions shall be liable to a fine of \$50.00 for a first offense and \$100.00 for each subsequent offense.

This program is in accordance with the Middleborough Board of Selectmen Water Use Restriction By-Law. Any changes to this may be found on the Town Web site at [www.middleborough.com](http://www.middleborough.com).

Town of Middleborough  
 WMA Permit #9P425182.01  
 Amendment Application Transmittal # X234282

April 8, 2011

## ATTACHMENT A

### Seasonal Limits on Nonessential Outdoor Water Use

Middleborough shall limit nonessential outdoor water use through mandatory restrictions from May 1<sup>st</sup> through September 30<sup>th</sup> as outlined in Table 3 below.

The Town shall be responsible for tracking streamflows and drought advisories and recording when restrictions are implemented if streamflow triggered restrictions are implemented. See Accessing Streamflow and Drought Advisory Website Information in Table 4 for instructions. Middleborough shall document compliance with the seasonal limits on nonessential outdoor water use annually in its Annual Statistical Report (ASR), and indicate whether it anticipates implementing calendar triggered restrictions or streamflow triggered restrictions during the next year.

Nothing in this permit shall prevent the Town of Middleborough from implementing water use restrictions that are more restrictive than those set forth in this permit.

#### Water Uses Restrictions

Nonessential outdoor water uses that are subject to mandatory restrictions include:

- ✓ • irrigation of lawns and landscaping via sprinklers or automatic irrigation systems;
- washing of vehicles, except in a commercial car wash or as necessary for operator safety; and
- ✓ • washing of exterior building surfaces, parking lots, driveways or sidewalks, except as necessary to apply surface treatments such as paint, preservatives, stucco, pavement or cement.

The following uses may be allowed when mandatory restrictions are in place:

- ✓ • irrigation to establish a new lawn and new plantings during the months of May and September;
- ✓ • irrigation of public parks and recreational fields by means of automatic sprinklers outside the hours of 9 am to 5 pm; and
- ✓ • watering lawns, gardens, flowers and ornamental plants by means of a hand-held hose.

Water uses NOT subject to mandatory restrictions are those required:

- for health or safety reasons;
- by regulation;
- for the production of food and fiber;
- for the maintenance of livestock; or
- to meet the core functions of a business (for example, irrigation by golf courses as necessary to maintain tees, greens, and limited fairway watering, or irrigation by plant nurseries as necessary to maintain stock).



***Town of Middleborough***  
*Water Division – Department of Public Works*  
*48 Wareham Street*  
*Middleborough, MA 02346*  
*Phone 508-946-2482 Fax 508-946-2484*

*Joseph M. Silva*  
*Water Superintendent*

Date: April 29, 2011

To: Mr. Charles Cristello  
Town Manager

From: Joseph M. Silva  
Middleborough Water Superintendent

Re: Change orders Stantec - Update

Andy and I met with the Stantec engineers in regards to the original change order they presented to the town. The original change order was for \$75,450.00. Stantec was told that all operator safety issues and repairs that were in the change order will be addressed by the Middleboro Water Department personnel. Also the proximity switches that were recommended by Stantec for the chemical tanks will be replaced with high level switches only. Stantec's recommendation had the switches reading both high and low levels. DEP mandates only high level switches are needed. The original \$75,450.00 change order has been reduced to \$12,464.50.

Middleborough Water SCADA System Upgrade Change Order Status

Cost	Description	Status from Original
-\$9,841.00	1) Credit for not supplying stainless steel piping. Credit of \$9,841. Keep	SAME
\$1,206.31	4RR) Furnish and install a high level proximity switch for day tanks	MODIFIED AND REDUCED
\$10,674.14	5R) Furnish and install a second pH and chlorine analyzer at East Main Street site -- This well site differs from the others well sites due to each of the 2 wells being connected to the distribution system separately. Each well needs to be analyzed separately to meet the DEP chemical safety requirements. Other sites with 2 wells blend together before sampling. Cost of \$10,674.14. This is needed to comply. No record plans were available for the design so it was not known that this site's the piping exited into the distribution system in 2 locations, which is a different piping arrangement than the other site	SAME
\$2,157.12	7R) Insulate and heat 2 panels locate at the 2 tank sites not within original project scope -- Heating these 2 electrical boxes will prolong the life of the equipment and provide so the equipment does not malfunction. Cost of \$2,157.12. This is an enhancement which may be worth keeping in.	SAME
\$3,500.83	8R) Gas Tank changes at Spruce Street -- - revert to original design of underground tanks. This will have anti flotation concrete pads. Extend gas piping to the location of the tanks as we recommend moving the tanks from the original proposed location.	MODIFIED AND REDUCED
\$4,767.10	9R) Gas Tank changes at Miller Street - This can be reverted to the way it was designed in the bid documents as underground tanks. This will have anti flotation concrete pads. Extend gas piping to the location of the tanks as we recommend moving the tanks from the original proposed location. Silt fence and straw wattles will also need to be added.	MODIFIED AND REDUCED
\$0.00	10R) Switching from LP to Natural Gas at Cross Street. The heating units in the 2 buildings at Cross Street will need to be changed from a propane heater to natural gas heaters. This change is a no cost change. Project enhancements as a no cost change	SAME
\$12,464.50	Total Change Order	

- 2R) Replace 5 twin day tanks with larger single day tanks at 5 location -- This is a project enhancement and it was not in the scope to address this in the design. Leave as is
- 3) Adding plexiglass shields for KOH pumps. This was a project safety enhancement and not required by DEP.
- 6R) Repair 2 leaking KOH fill connections -- This is a maintenance enhancement and can be deleted from the change order. It was not in the original project scope to address this in the design or construction.
- 11) Fix corroded leg on KOH Bulk Tank at the Rock Well Site -- This is a maintenance enhancement and can be deleted from the change order. It was not in the original project scope to address this in the design or construction.

DELETED  
 DELETED  
 DELETED  
 DELETED

**HESS  
CHANGE OF WATER SERVICE  
BACKGROUND**

## MEMO

TO: Board of Selectmen  
FROM: Jackie Shanley  
DATE: 4/29/09  
RE: 28/30 Main Street - HESS Corporation - Change of Water Service Use

After researching minutes, files, and speaking with Town Counsel, please note the following as a follow-up to the note given to me by Selectwoman Duphily regarding request by Mr. Bernier:

Per telephone call from Town Counsel Dan Murray on 4/28/09, the reason Mr. Bernier never received vote of the Board of Selectmen for change of water service use re 28/30 Main Street is because Hess Corporation backed out of the deal, and therefore, an agreement was never reached or provided for the Board's signature. This was allegedly an economy-related decision.

The above information was provided by Attorney David Gay to Dan Murray. Attorney Gay represents Hess. Town Counsel added that Mr. Bernier should have been aware that Hess had backed out:

Mr. Bernier had come into the office a few times over the past two weeks. I was able to tell him that our records/Town Counsel's records indicate that we were waiting on Attorney Gay to provide an agreement for the Board's signature. He said he would follow-up with Attorney Gay. I have not heard from Mr. Bernier since.

Town Counsel advises that, as there is no agreement, Mr. Bernier will have to start the process over when/if he finds a new buyer.

cc: Town Manager

Attachments

Hess Corporation

Chairman Bond read aloud response letter from Town Counsel D. Murray as a follow up to the 3-17-08 vote re 28-30 Main Street, Lakeville – change of water service use. Attorney Gay had done what the Board had asked him to do and provided a draft approval agreement.

**Paragraph 5**

Upon motion by Selectwoman Brunelle and seconded by Selectman Rogers, Board

VOTED: To change language as recorded this evening, specifically, “and will be subject to any applicable conditions currently in effect or that may become part of a future IMA between Middleboro and Lakeville”.

Unanimous vote.

Upon motion by Selectwoman Brunelle and seconded by Selectman Spataro, Board

VOTED: To forward to Town Counsel to forward to Attorney David Gay for completion.

Unanimous vote.

*Tm / Lakeville  
water/sewer  
agreement*

**GAY, GAY & FIELD, P.C.**

73 Washington Street  
P.O. Box 988  
Taunton, Massachusetts 02780

Peter B. Gay  
Of Counsel

Tel. (508) 822-2071  
Fax (508) 880-2602

David T. Gay  
Thomas P. Gay  
Katherine A. Field  
Marguerite M. Mitchell  
John L. Holgeron

May 7, 2008

via fax 508-947-7147

Daniel Murray, Esquire  
Decas Murray & Decas  
132 No. Main Street  
Middleboro, MA 02346

**RE: Hess Corporation - Town of Middleborough**

Dear Dan:

Thank you for your fax of May 6. I will make the changes as you suggest and I will have the document signed as duplicate originals. As soon as I have those, I will forward them to you to be signed by the Chairman of the Board of Selectmen.

Kindly return one signed copy at that time and we will proceed with the Town of Lakeville. Thank you very much for your assistance.

Very truly yours,

Gay, Gay & Field, P.C.

*[Signature]*  
David T. Gay

DTG/jga

cc: Hess Corporation  
Attn: Andy Lautenbacher  
SITEC Environmental  
Attn: Alexander Trakimas

946-0058

**DECAS, MURRAY & DECAS** ATTORNEYS AT LAW  
132 NORTH MAIN STREET • MIDDLEBORO • MASSACHUSETTS 02346 • (508) 947-4433

GEORGE C. DECAS  
DANIEL F. MURRAY  
WILLIAM C. DECAS

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

WAREHAM OFFICE:  
219 MAIN STREET  
(508) 295-2115

May 6, 2008

David T. Gay, Esquire  
(via FAX#: 508-880-2602)

RE: Hess Corporation/Town of Middleborough approval of water service

Dear Dave:

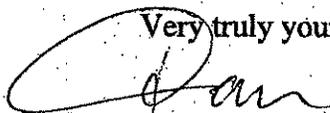
Please be advised that the draft Approval document is acceptable to the Town except that Paragraph #5 should be revised to be:

5. Both parties agree that the property is not a grandfathered use and will be subject to any applicable conditions currently in effect or that may become part of the future IMA between Middleborough and Lakeville.

Also, please note a typographical error in the first Whereas clause: "portable" should be "potable".

I suggest that you have your client sign duplicate originals of the revised document which you may send to me to obtain the signature of the Chairman of the Board of Selectmen.

Very truly yours,



Daniel F. Murray

DFM/s  
03-301

cc: Board of Selectmen (via FAX#: 508-946-0058)

**Middleborough Board of Selectmen  
Meeting Minutes**

**Monday, March 17, 2008**

*house +  
engineer/apl*

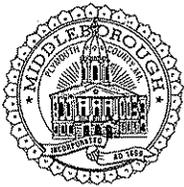
At 7:45 PM Board welcomed Attorney David T. Gay of Gay, Gay & Field, P.C. regarding Request by Hess Corporation for Change in Water Use to 28-30 Main Street, Lakeville. Attorney Gay stated that he is suggesting that if the Board is kind enough to approve this use (1200 gallons maximum), he would take the approval, subject to whatever the Board of Selectmen/Town of Middleborough negotiates with Town of Lakeville.

R. Tinkham indicated that the use is residential. He believes it would remain at equal use. Mr. Gay is proposing that this property not be considered grandfathered. Selectman Perkins asked to hear from Selectman Maksy from Lakeville regarding where we are with the IMA. He stated, for the record, that his Board has not taken a position on this project. He, however, is in favor of it as a project that will help both Middleborough and Lakeville. One of the properties being discussed has been, and is, in the commercial district (business zoned). Chairwoman thanked him for extending the olive branch in trying to get this IMA resolved as it's been going on for approximately five years. Selectman Maksy stated that we have to start thinking regionally instead of just Town to Town. Lakeville benefits from the MG&E with the best rates available. Bond concerned with the predatory type of development.

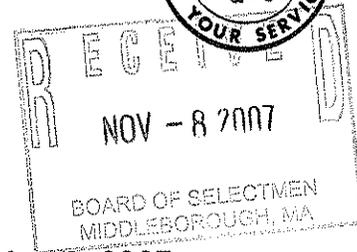
Upon motion by Selectman Bond and seconded by Selectman Rogers, Board

**VOTED:**

1. That the Board in granting this request, is specifically stating that it is granting the request on the special circumstances and facts of this matter and it will not be permitting it in the future until there is an IMA is put in place.
  2. Granted upon express representation by Hess and the proponent here that they will not run a car wash or change the water usage that they are currently proposing.
  3. That the proponent agrees that it will be subject to any and all legal conditions imposed by future IMA between the Town of Middleborough and the Town of Lakeville.
  4. That the proponents, will, in the future, if there is any sale, lease, or major transfer of the portion of the assets (over 50%), that such sale or transfer, before it is closed will be communicated, in writing, to the Board of Selectmen with a copy of this motion and the minutes accompanying it, so that any future Board of Selectmen can see what was voted.
  5. Proponents agree that this is not a grandfathered use. It is contingent upon an IMA. ✓
  6. That Attorney Gay will draft up what he believes the terms are to be accepted, and have it reviewed by Town Counsel.
- Four in favor. One opposed.



**Town of Middleboro**  
Water Division - Department of Public Works  
48 Wareham Street, Middleboro, Massachusetts  
508-946-2482  
Fax 508-946-2484



November 2, 2007

Richard E. Tinkham  
Water Superintendent/Chief Operator

Middleborough Board of Selectmen  
Attn: Marsha Brunelle, Chairwoman  
10 Nickerson Avenue  
Middleborough, MA 02346

Re: Request for Modification of Water Use - Lakeville

Dear Chairwoman Brunelle and Board Members;

I have received a request for a modification of water use from Gay, Gay, and Field, P. C., representing Hess Corporation for property located at 28-30 Main Street in Lakeville.

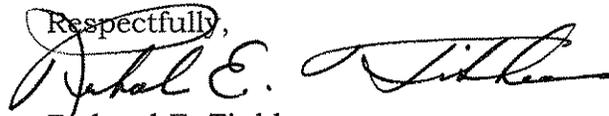
This property currently has a residential dwelling and is served by the Middleborough system.

As outlined in the letter, Hess Corporation proposes to build a gasoline service station and convenience store here, which would change the water use from residential domestic to commercial use. Commercial daily consumption is projected to be approximately 750 gallons per day.

I have spoken with both Attorney David Gay and Mr. Alexander Trakimas of Site Environmental Inc., the project engineer, and advised them that this proposal would be submitted to the Board for review.

If the Board wishes to meet with Attorney Gay and Mr. Trakimas, I will contact them.

I have attached a copy of the plans for the proposed project for the Board's review.

Respectfully,  
  
Richard E. Tinkham  
Water Superintendent

**GAY, GAY & FIELD, P.C.**

73 Washington Street

P.O. Box 988

Taunton, Massachusetts 02780

September 14, 2007

David T. Gay  
Thomas P. Gay  
Katherine A. Field  
Marguerite M. Mitchell  
John L. Holgerson

Peter B. Gay  
Of Counsel

Tel. (508) 822-2071  
Fax (508) 880-2602

Town of Middleborough  
Attn: Richard Tinkham, Supt. of Water Dept.  
48 Wareham Street  
Middleborough, MA 02346

**RE: Request for Water Service/Modification of Water Use  
Property at 28-30 Main Street/Bridge Street, Lakeville, MA**

Dear Mr. Tinkham:

To follow up on our recent telephone conference, I represent Hess Corporation and my clients are in the process of exercising an option to purchase property in Lakeville for the purposes of constructing a gasoline service station with convenience store.

The property is located on Main Street near the intersection of Bridge Street and is presently known as 28-30 Main Street. I believe that the property presently has a residential dwelling which has been used in the past for business purposes. In order to proceed to the Zoning Board of Appeals to obtain a permit for the gasoline service station and convenience store, it is required by the Town Zoning By-Law that the property be serviced by a municipal water service system. (See Section 4.1.2 of the Zoning By-Laws Town of Lakeville.)

It is our understanding that there is a water service available to this site, however, the use will be business and not domestic and/or office. I am advised that the typical Hess gasoline service station of the type shown on the plans that I have enclosed with this letter uses approximately 750 gallons of water per day.

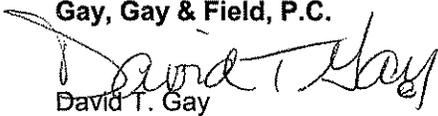
As we discussed, we would like very much to have the Town of Middleborough approve the change of use and water supply for this change of use. We need to go to the Board of Appeals with a letter certifying that we have a municipal water service approved for this location.

Would you kindly forward this letter and the enclosed plans to the Office of the Board of Selectmen and/or Town Manager as appropriate. It was my understanding that the request needs to be filed with the Board of Selectmen, however, it needed to be forwarded through your office as Superintendent of the Water Department.

If you need additional information concerning this matter, please feel free to call my office or you can call Alexander Trakimas at SITEC Environmental Inc., the engineering firm working on this particular project for Hess Corporation.

Very truly yours,

**Gay, Gay & Field, P.C.**

  
David T. Gay

DTG/jga

cc: SITEC Environmental, Inc.  
Attn: Alexander Trakimas  
Hess Corporation  
Attn: Russell Wells

Enclosures

Five (5) copies of plans

THE TOWN OF MIDDLEBOROUGH  
AND THE  
TOWN OF LAKEVILLE

PROPOSED INTER MUNICIPAL  
DRINKING WATER AGREEMENT

DRAFT

Revision  
OCTOBER 16, 2009

# MIDDLEBOROUGH - LAKEVILLE INTER MUNICIPAL AGREEMENT

## Purpose

The purpose of this agreement is to formalize the present arrangement of providing drinking water to various customers in the Town of Lakeville from the Town of Middleborough's and provide for the potential of adding future connections.

Item	Description	Page No.
Article 1	Agreement	
Article 2	Definitions	
Article 3	Terms of Agreement	
Article 4	Drinking Water	
Article 5	Existing and Proposed Water Works Systems	
Article 6	Impairment of Drinking Water System	
Article 7	Correspondence	
Article 8	Payments for Services	
Article 9	Rates and Fees	
Article 10	Miscellaneous Provisions	
Article 11	Signatures	

## Appendix

- A Middleborough Town Meeting Vote
- B Lakeville Town Meeting Vote
- C Existing Lakeville Customers
- D Water Department Rules, Regulations and Policies

## Article 1. AGREEMENT

THIS AGREEMENT entered into this day of JULY 1, 2010, (hereinafter called the "Agreement"), by and between the Town of Middleborough-Board of Selectmen acting as Water Commissioners, (hereinafter called 'Middleborough'), a municipal corporation within the County of Plymouth, and authorized by vote of Town Meeting, dated \_\_\_\_\_, (Appendix A) and the Town of Lakeville, a municipal corporation within the County of Plymouth, in the Commonwealth of Massachusetts, said State, acting by its Board of Selectman, (hereinafter called the "Lakeville") and authorized by vote of Town Meeting dated \_\_\_\_\_ (Appendix B). Whereas, Middleborough, through it's Board of Water Commissioners has the authority to sell and supply potable water to Lakeville under this inter municipal agreement which provides the terms and s of sale, for furnishing of water and payment for sale.

Whereas, Lakeville has the authority to purchase said potable water under the terms and conditions of this agreement.

Whereas, the Towns are authorized by Chapter 83 - Sewers and Chapter 40, section 38 -Public Water Supply - Purchase, Develop and Use to enter into this Inter municipal Agreement for the continued operations, establishment and construction of water distribution. Whereas, the Towns deem it to be in the public interest for Middleborough to supply and/or sell, and for Lakeville to receive or accept and pay for potable water for it's citizens and taxpayers and;

Whereas, both Towns have been authorized to enter into this agreement by votes of respective Town Meetings, as evidenced by certified copies of their respective votes, appended hereto; and

Now therefore, in consideration of the mutual promises and covenants set herein, and in order to secure the services described below, the parties hereto, each binding itself, its respective representatives, successors and assigns do mutually agree as follows:

### Article 2. DEFINITIONS:

#### a. DRINKING WATER and COMMON TERMS

Agreement - is referred to as the Inter municipal Agreement Between the Town of Middleborough and Town of Lakeville for the Sale and providing of Drinking Water.

DEP means the Commonwealth of Massachusetts - Executive Office of Environmental Affairs - Department of Environmental Protection.

Force Maieure Events means a consequence of any Acts of God, act of public enemy, laws, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, drought, washouts, arrests and restraints of rulers and people, civil disturbances, labor strikes, power failures, explosions, breakage or accident to machinery or lines of pipe, failure of water supply, regulatory requirement, restriction or

limitation, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not within the reasonable control of such party, and which act, omission or circumstances such party is unable to prevent or overcome by the exercise of due diligence.

Lakeville means the Town of Lakeville Board of Selectmen.

Middleborough means the Town of Middleborough - Board of Selectmen acting in it's capacity as the Board of Water Commissioners.

Person means any individual, firm, company, association, society, corporation, political subdivision, fire district or group.

Public Process means a legally convened meeting of the Board of Selectmen for determining concerning drinking water issues as outlined in Article 10 of this Agreement.

Water Department means the Town of Middleborough's Water Department.

Waterworks means facilities for collection, storage, supply, distribution, treatment, pumping, metering and transmission of water.

### **Article 3. TERMS OF AGREEMENT**

#### **a. Obligations**

Middleborough and Lakeville understand and agree to the following obligations, limitations and commitments, in consideration of Middleborough's agreement to permit connection to Middleborough's waterworks to supply Lakeville with drinking water in exchange for payment as outlined in the Town of Middleborough's rules, regulations and policies for water and wastewater and other considerations as specified in this agreement.

#### **b. Resolution of Disputes**

Any dispute under this Agreement, not solvable by the Towns representatives shall be decided by civil action initiated by either party, through a court of proper jurisdiction, or through the American Arbitration Association, if agreed upon by both parties in accordance with the rules of the American Arbitration Association. The costs of such arbitration shall be borne equally between the parties. The award of the arbitrator shall be deemed to be final and binding. The arbitrator will be without power, however, to add to, subtract or modify the terms of this agreement.

#### **c. Governing Law**

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, unless as otherwise noted.

d. Conformance to Law

1. Both Middleborough and Lakeville shall abide by all applicable laws, regulations, rules and bylaws of the United States, Commonwealth of Massachusetts, and any political subdivision having jurisdiction over the activities and obligations under this inter municipal agreement insofar as such compliance is not lawfully superceded by the terms of this agreement.

2. The Town of Middleborough shall provide Lakeville with a thirty (30) day notice of any proposed changes in its regulations that would impact Town of Lakeville customers.

3. In all cases, Lakeville customers shall be required to comply with the following bylaws and regulations.

- a. Middleborough's Water Use Restrictions By Law and Fine procedures for violations.
- b. Middleborough's By Law for Illegal Water Use and Fine procedures for violations.
- c. Middleborough's Cross Connection Control Regulations. Middleborough shall have access to conduct cross connection surveys as required.

e. Drinking Water Volumes

Middleborough shall determine the annual volume and connections that can be provided for either drinking water flow to or from Lakeville upon written request by Lakeville to Middleborough. All requests shall be provided in writing from Lakeville to Middleborough. The notification process is outlined in Article 10- Miscellaneous Provisions (a) Approval Process.

f. Wasteful Use of Drinking Water

1. Should Middleborough impose restrictions on water use on it's customers that have been approved by DEP, Lakeville shall conform to such and impose like restrictions within its service area, at the sole discretion of Middleborough.

2. Lakeville shall take all reasonable measures to minimize the wasteful use of drinking water within it's service area. The Town of Middleborough shall operate and maintain its waterworks connecting to that of Lakeville in accordance with customary practices and with the guidelines set forth:

3. Lakeville shall do all in its power to minimize the wasteful use of water within its service area. Should Middleborough impose restrictions on water use on its customers, including but not limited to sprinkler bans, odd even day watering, or other use limitations, Middleborough shall promptly notify Lakeville who will likewise impose such restrictions on its customers.

Nothing in this agreement shall prevent Lakeville from imposing its own restrictions above and beyond those imposed by Middleborough. Lakeville shall ensure that all users connected to the waterworks system, if approved by Middleborough, shall install suitable backflow prevention devices if required by state or federal law.

4. Middleborough will periodically perform leak detection surveys of water mains, and appurtenances in the Lakeville service area.

g. Owner of Systems

Middleborough is the owner of all of the existing water works system components. Service lines for drinking water from the water main and the dwelling shall be the responsibility of the customer. The customer shall repair the service line if notified by either Lakeville or Middleborough in a timely manner, or the service line will be shut off until repair is made to the satisfaction of the Middleborough Water Department. Middleborough may repair or alter flow to a customer's service line in an emergency, with all costs to be borne by the customer, if it so chooses. Middleborough may disconnect or shut off service to customers for non payment in accordance with Lakeville policies or by non payment as outlined in Section Article 8 - Payment for Services.

h. Lakeville Water and Wastewater System Components

Lakeville will be responsible for the maintenance and repair of the water components within their town boundaries. Lakeville agrees that this may best be accomplished by contracting annually with a private contractor.

i. Lakeville Water Department

In the event that Lakeville forms a Water Department, Lakeville will continue to assume repairs and maintenance of the water systems. Due notice of one hundred and eighty days (180 days) will be provided to Middleborough and this agreement will be modified, if necessary and determinations will made of the process of disconnection to the existing system(s).

In all cases, Middleborough's existing water main shall remain in place and use by the Middleborough Water Department and periodic or emergency maintenance shall be allowed by the Town of Lakeville.

**Article 4. DRINKING WATER**

a. Drinking Water Quality

Middleborough will provide a quality of water to Lakeville that will meet all state and federal regulations. However, the Town of Middleborough shall not be responsible or liable in any way for water quality that may, due to unforeseen circumstances, be of lesser quality.

b. Metering

1. All drinking water or wastewater collection system customers shall have a Middleborough approved water meter installed, that may be calibrated or replaced periodically, in accordance with American Water Works Association (AWWA) and the Town of Middleborough's Water Department standards and recommendations. Master meters, for either water or wastewater, which may be constructed for metering shall be required to be calibrated annually, in accordance with manufacturer's, AWWA or Town of Middleborough Water Department standards. Said calibration certification shall be submitted to Middleborough within one (1) week of calibration for review. Costs for calibration and/or repair to meet metering tolerances shall be borne by the Lakeville customer.

2. All installed meters shall be of the type specified, inspected and as approved by the Water Department and shall be subject to charges as outlined by the Middleborough's Water Department Rules and Regulations. Middleborough may change meters it deems to be out of calibration at any time.

3. Middleborough's Compound Meter Policy shall be utilized for meters 3 inches or larger.

c. Water Services - Water Mains - Appurtenances

1. No water service or water main shall be opened, closed or repaired without the specific approval of the Department, subject to any charges outlined in the Town's Water Department Rules and Regulations.

2. Middleborough shall not be responsible or liable in any way for the Acts of God, or any other act or acts beyond it's control which may, in any way, cause an interruption or discontinuance of the service provided for in this Agreement. Middleborough shall use its best efforts to restore service to Lakeville as soon as practicable.

3. All proposed connections to the water distribution system shall be reviewed, approved and accepted by the Town of Middleborough's Water Department. On site inspection will be provided, and approval obtained, prior to covering up piping and appurtenances. Any field changes or deviation from the originally accepted plan and specifications during construction shall be approved in writing by the town's Water Department. Certification of said acceptance of the construction work shall be made in writing and filed with the Town's Water Department.

4. Insurance payments from hydrants or other appurtenances damaged with known responsible parties, shall be paid directly to Middleborough.

e. Enforcement

Lakeville shall take all appropriate steps necessary under the Massachusetts General Laws to ensure that customers adhere to the policies of the Town of Middleborough Water Department.

## **Article 5 - EXISTING AND PROPOSED WATER WORKS SYSTEMS**

### Middleborough and Lakeville

1. Middleborough and Lakeville recognize that an existing drinking water system exists. Middleborough and Lakeville agree that new connections or expansions will be agreed upon, as outlined in Article 10 - Miscellaneous Provisions.

2. Middleborough presently delivers water to Lakeville along the following route:

The existing water distribution piping system that services Lakeville consists of a total of 7,758 lineal feet of 12-inch ductile iron water main that was installed in 1988.

The 12 - inch water main starts at a connection point in Middleborough at Prospect Street and proceeds down Route 105 or Main Street in Lakeville on the southerly side, to the intersection of Bridge Street and Main Street for a length of 2,352 lineal feet.

A former connection at Routes 105 and Route 79 has been disconnected. (what was it formerly connected to??

There are four hydrants located on this section of water main. A 12 by 8 inch tee was installed at the old Lakeville Hospital 'driveway' entrance and a 8-inch water main and meter pit extended down the driveway to the parking lot. The meter pit is located in the old parking area on the right, before the entrance to the former Lakeville Hospital.

The 12 inch watermain proceeds down Bridge Street, on the northerly side for a distance of 5,406 lineal feet where it connects to Middleborough's existing 12-inch watermain. There are seven (7) hydrants located on Bridge Street.

3. There shall be no extension of the existing water service area unless approved by Middleborough and Lakeville. A list of current customers is included in Appendix C.

4. Middleborough shall be responsible for operation, maintenance and repair or all facets of the water works distribution system with the exception of privately owned service lines, within the Town of Middleborough. Lakeville shall be responsible for the same, within the boundaries of the Town of Lakeville.

5. Lakeville agrees to allow access by Middleborough to read water meters and to do what is typical for the proper operation and maintenance of these infrastructure systems.

## Lakeville and Taunton

For the sake of clarity and understanding of separate drinking water systems, herein is a description of an existing drinking water distribution system that exists within Lakeville that is provided water by the City of Taunton.

1. In 1989, a water main was extended from the intersection of Route 18 and 79 down Rhode Island Road, via a "12 inch" water main to the intersection of Rhode Island Road and Route 105. This water main was extended into Lakeville's Development - Great Pond Industrial Park to provide Taunton drinking water to various businesses.

It is intended in the near future for an 500,000 gallon elevated water tank to be constructed within the Great Pond Industrial Park to improve water pressures and increase fire flows to this existing water main.

The water main was extended from the intersection of Rhode Island Road and Route 105 in a southerly direction and extended into Lakeville Corporate Park and dead ended in front of the now defunct 'Lakeville Hospital'. The water main provides Taunton drinking water to customers within the Lakeville Corporate Park.

2. A "12 inch," water main was extended from the City of Taunton water treatment facility down Precinct Street and crosses over Route 18 and is extended and dead ended to the Assawompsett Elementary School. The water main also tees off at the intersection of Route 18 and extends to an existing Lakeville Tennis club.

It is intended that a pumping station may be constructed near the water treatment facility or on the grounds of the Lakeville 'Ted Williams' Camp (across from the existing Town Highway Barn) for the purposes of boosting water pressure on this existing water main.

It is also intended that this water main will be teed off and extended easterly down Route 105/18 to the Lakeville Town Hall.

## Future Systems

Lakeville may develop a gravel packed well at the existing LeBaron Golf Course and form a water department in the immediate future.

## **Article 6. IMPAIRMENT OF DRINKING WATER SUPPLY DISTRIBUTION SYSTEM**

### a. Responsibility

The furnishing of water to Lakeville under this Agreement shall not be impaired except in the event of a force majeure which impacts customers within its geographic boundaries. Middleborough may not be compelled to furnish water to Lakeville continuously in the case of force majeure event.

b. Force Majeure Event

Neither Middleborough or Lakeville shall be liable in damages or otherwise for failure to perform any obligation under this agreement which failure is occasioned by a force majeure event. Such event affecting the performance of either Middleborough or Lakeville however, shall not relieve such other party of liability in the event of its negligence, intentional acts, or in the event of such party's failure to use due diligence to remedy the situation and remove the cause in an adequate manner and with all responsible dispatch.

c. Indemnification

Lakeville shall indemnify and save harmless Middleborough from all claims and demands which Middleborough is legally bound to pay, whether for injuries to persons or loss of life, or damage to property occurring within or about any of the connections exclusively supplying water to the buyer; excepting, however, such claims and demands, whether for injuries to persons or loss of life or damages to property, as shall be caused by any act or omission of Middleborough or its agents. The phrase 'claims and demands' includes court costs and expenses, legal fees and judgments.

d. Ownership of Water Distribution Piping and Appurtenances

Lakeville assumes responsibility for the maintenance of the existing or newly constructed water works appurtenances within their town boundaries. Middleborough's water works shall be operated and maintained by Middleborough. Costs for construction, repair or maintenance shall be assessed directly to Lakeville customers by Lakeville.

Article 7. CORRESPONDENCE

1. Any notice required to be given to Middleborough concerning any item in this agreement shall be sent to:

Board of Water Commissioners  
c/o Water Superintendent  
48 Wareham Street — Everett Street  
Middleborough, Mass. 02346 Middleborough, Mass. 02346

2. Any notice required to be given to Lakeville concerning any item in this agreement shall be sent to:

Board of Selectmen  
c/o Town Administrator  
Town Hall  
Lakeville, Mass. 02347

## Article 8. PAYMENTS FOR SERVICES

### a. Reading of Meters

1. Middleborough shall be responsible for reading of water meters for all customers which shall be used in determining and drinking water volumes for billing purposes.
2. All Lakeville customers shall have Middleborough water meters installed on their drinking water service lines.

### b. Water Rates

1. Middleborough shall establish from time to time, new rates for water as outlined in their Water Department Rules, Regulations and Policies.
2. Existing Lakeville drinking water customers shall pay the same water rate as Town of Plympton and the Town of Carver customers.
3. The drinking water rate for new direct connection Lakeville customers shall be that charged to the Town of Plympton and Town of Carver customers plus twenty percent (20%).
4. Lakeville agrees to be bound by any rate changes and the effective date thereof as established by Middleborough provided that sixty (60) days written notice of any proposed rate change is given.

### c. Billing

1. Middleborough shall read the meters monthly, quarterly or as required typically by Middleborough for its users and bill customers directly.
2. Lakeville shall establish a fund that will pay to Middleborough for all water sold from delinquent customers. Lakeville shall pay Middleborough a late charge of ten (10) percent for amounts past due more than thirty days (30) based on the amount of the account which is past due more than thirty (30) days.
3. For delinquent customers, Lakeville may lien the property as outlined under Massachusetts statutes. As long as Middleborough is paid for drinking water services and any applicable interest or other charges within ninety (90) days, Middleborough will not shut off service.
4. In case of missing or inaccurate flow records, due to faulty metering device(s) operation or other circumstances, an estimate of flow shall be made by Middleborough based on past records of a comparable period. The estimates shall be used by Middleborough to establish Lakeville's payments to Middleborough for the period of missing or inaccurate data.

#### d. Records, Accounts and Audits

Middleborough shall keep books of records and accounts in which complete and accurate entries shall be made of all its transactions with Lakeville, which may be subject to the inspection of any Lakeville Selectman or agent, provided that a seven (7) day written notice is provided to the Middleborough Water Department. Middleborough shall bill Lakeville for its share of costs determined under this Article on quarterly basis. Billings shall be rendered to Lakeville and become due and payable to the Town of Middleborough's Treasurer and Tax Collector within thirty (30) days of being rendered.

#### e. Delinquent Bills

1. If water bills remain unpaid for thirty (30) days after the same shall be due, then Middleborough's Tax Collector shall add thereto a penalty of one point five percent (1.5%) a month. If the bills continue to remain unpaid for two (2) months after they are due, the Tax Collector shall add interest charged on the original bill from its due date at the rate of two percent (2%) a month.

2. The Tax Collector may use her/his discretion on receiving a bill payment up to three (3) days late, on whether to impose the interest charge.

#### f. Bills over Six (6) Months

1. If Lakeville fails to pay Middleborough its bill for delinquent water customers within six (6) months from the billing of same, Middleborough may consider this Agreement void and terminate the sale of water to Lakeville upon thirty (30) days calendar days written notice.

2. Termination shall not relieve Lakeville of its responsibility to pay Middleborough for its delinquent customer payments.

3. Middleborough may terminate providing drinking water to various customers who are delinquent by shutting off the water connections, after consultation with Lakeville Board of Selectmen.

### Article 9. RATES AND FEES

1. Fees for connections to drinking water system shall be governed by the Department rules and regulations set forth by the Town of Middleborough which may change from time to time, based on a vote by the Middleborough Board of Water Commissioners at a duly advertised public meeting.

2. Middleborough is responsible for developing rates for drinking water that include operations, maintenance, indirect costs and any costs associated with improvements to the water works system.

3. New Lakeville customers shall pay the Town of Plympton and Carver customer rate times 1.2 for drinking water rates at one hundred percent (100%) of water use.

4. Cross connection fees for plan review shall be \$ 50.00 or any updated cost as outlined in the Middleborough Water Department fee structure as regularly updated by the Water Commissioners.

## Article 10. MISCELLANEOUS PROVISIONS

### a. Approval Process

1. Proposed connections to the drinking water system shall be processed in the following manner:

a. Proponent of service for drinking water shall request, in writing to Lakeville of desire to be provided drinking water service.

b. Lakeville through the public process at a regularly convened Board of Selectmen meeting shall determine if proponent meets zoning and other criteria and approve or deny service.

c. Lakeville shall provide to Middleborough in writing, a request to connect to either the water works along with flow demands, and other information required by Middleborough's Department Rules and Regulations and Policies.

d. Middleborough shall receive recommendations from the Water Department on approving or denying of proposed connection.

e. Middleborough through the public process shall approve or deny and notify Lakeville.

f. Lakeville will notify proponent of approval or denial. If approved Lakeville will ask that proponent provide directly to Middleborough plans, specifications, application, required fee payments, and construction schedule.

g. Middleborough shall provide oversight, inspection and approval of construction of water works components.

h. Proponent shall complete application fee and meet with Middleborough at a regularly scheduled convened Board of Selectmen meeting and be responsible for payment of all fees and charges directed by Middleborough prior to initiation of any work.

### b. Future Work

1. Future work and extensions of the existing waterworks system, if approved by Middleborough and Lakeville shall be within a recorded layout on a public way, with the exception of the water service lines, whenever possible. If required, the owner of private property off the public way shall be responsible for installation of a water meter pit at the edge of the property line, and for all maintenance requirements of the water distribution system.

2. Service lines and appurtenances shall be installed as outlined by Middleborough Water Rules and Regulations and Policies and good water works practice.

3. Future additions or connections to the existing water distribution system, which may include costs associated with engineering or planning evaluations, plans,

specifications, cost estimates, inspection fees, test borings, easements, legal fees, construction costs, administration, betterments, permits or other ancillary expenses shall be borne by Lakeville customers.

4. Lakeville or their designee shall be responsible for submitting all relevant documents to Middleborough for their review and approval prior to any construction activities, along with payment of the Middleborough Water Department fees, rates, charges and system development fees that are in place through Department regulations or by vote of Middleborough.

c. Severability

If any clause or provision of this Agreement or application thereof shall be held unlawful or invalid, no other clause or provision of this Agreement or its application shall be affected, and this Agreement shall be construed and enforced as if such unlawful or invalid clause or provision had not been contained herein.

d. Amendments

1. The provisions, terms and conditions of this Agreement shall be modified only by written amendments to this Agreement, executed with the same formality as this Agreement.

2. Amendments to this Agreement shall be approved at Lakeville and Middleborough Town Meetings in order to take affect.

e Third Parties

1. This Agreement may be amended from time to time by mutual consent of the parties and in accordance with the provisions of MGL c. 83 and c. 40, section 38.

2. Any such amendment to this shall be executed and authorized with the same formality as this Agreement.

f. Assignment

1. No assignment by Lakeville of its rights and duties under this Agreement shall be binding on Middleborough, unless Middleborough consents to such an assignment in writing with the same formality as employed in the execution of this Agreement.

2. Each one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, successors and assigns of the parties hereto.

g. Waiver

Failure of either party hereto to exercise any right hereunder shall not be deemed a waiver of such party to exercise at some future time said right or rights or

another right it may have hereunder.

h. Effective Date and Duration

This Agreement shall be effective as of the date first written. This Agreement shall be in full force and effect and shall be binding on Middleborough and Lakeville for ten years (10) from the effective date, as long as neither Middleborough or Lakeville shall be in default of their respective obligations hereunder.

i. Approvals

Before this Agreement becomes effective and binding upon the parties, the terms must be approved by vote of Middleborough and Lakeville, Board of Selectmen, at a duly convened public meeting.

j. Terminations

1. The Agreement may also be terminated in accordance with the procedures set forth in MGL c.40. s4A, if agreed to by both parties.
2. In the event of a material breach of this Agreement, either party may terminate this agreement by giving written notice thereof to the other party with an effective date of not less than two (2) years after receipt of the notice to terminate.
3. Middleborough shall have the right by written notice to Lakeville to terminate the Agreement on account of any of the following causes:
  - a. Lakeville fails to pay a bill for drinking water customers submitted by Middleborough in or within six (6) months after the bill is sent to Lakeville.
  - b. Lakeville authorizes or permits connections to the drinking water system beyond those authorized by Middleborough as outlined in Article 10.
  - c. In the event of a termination notice, No new connections to the water works system will be authorized by either Middleborough or Lakeville.

Article 11. SIGNATURES

IN WITNESS WHEREOF, the Town of Middleborough, acting through its Board of Selectmen and the Town of Lakeville, acting through it's Board of Selectmen have executed this Agreement on the \_\_\_\_\_(day), \_\_\_\_\_(month) and \_\_\_\_\_(year).

Town of Middleborough

Town of Lakeville

Board of Selectmen

Board of Selectmen

APPENDIX A

MIDDLEBOROUGH TOWN MEETING VOTE

A P P E N D I X B

LAKEVILLE TOWN MEETING VOTE

A P P E N D I X C

LAKEVILLE CUSTOMERS

<b>Account No.</b>	<b>Lakeville Name and Address</b>	<b>Status</b>
2 - 1006	Bridgewater Savings Bank 6 Main Street	Active
2- 1008	Richard & Nancy Aaron 8 Main Street	Active
2 - 1010 - 1	Jack Conway & Co. 10 Main Street	Active
2 - 1020	Virginia Carrier 20 Main Street	Active
2- 1022	James M. Black 22 Main Street	Active
2-1026	Stacey Kilburn & J. Cataloni 26 Main Street	Active
2-1027	Anne Higgins 26R Main Street	Active
2-1028	SFG Associates Inc. 28 Main Street	Active
2-1030	Darryl Bernier 30 Main Street	Active
2 2032	32 Main St. Realty LLC 32 Main Street	Demolished
2-1034	Joseph & Noreen Robeiro 34 Main Street	Demolished
2-1036	Diana Starr 36 Main Street	Active
2- 1038	Marilyn Quelle 38 Main street	Active
2 - 1103	Richard Inglese 3 Bridge Street	Active
2 - 1104	Leonard Vickery 4 Bridge Street	Active
2 - 1106	McCarron Development 6 Bridge Street	Active

2 - 1108	Richard Crowell 7 Bridge Street	Shut Off at Curb 10/21/04
2 - 1110	Jo-Ellen Kenney 10 Bridge Street	Active
2 - 1111	Donald Bowles 11 Bridge Street	Active
2 - 1112	Brian and Denise Manning 12 Bridge Street	Active
2 - 1113	Arthur and Susan McTernan 13 Bridge Street	Active
2 - 1114	Antonio Amamral 14 Bridge Street	Active
2 - 1115	Michael Sorrenti 18 Bridge Street	Active
2 - 1118	Glen Robbins 22 Bridge Street	Active
2 - 1126	Howard Bumpus 26 Bridge Street	Active
2 - 1140	Clifford Chausse 1 Old Bridge Street	Active
2 - 1141	Barry Standish 2 Old Bridge Street	Active

Total Number = 27

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A P P E N D I X D

TOWN OF MIDDLEBOROUGH

WATER DEPARTMENT

RULES - REGULATIONS - POLICIES