OWNER-ENGINEER AGREEMENT

THIS AGREEMENT made this 24th day of July in the year Two Thousand and Thirteen, between Milone & MacBroom, Inc., with a usual place of business at 99 Realty Drive, Cheshire, CT 06410, hereinafter called the ENGINEER, and the Town of Nantucket, acting by its Board of Selectmen, with a usual place of business at 16 Broad Street, Nantucket, MNA 02554, hereinafter called the OWNER.

The ENGINEER and the OWNER, for the consideration hereinafter named, agree as follows:

1. Scope of Work

The Engineer shall furnish all labor, materials, equipment and insurance to perform all work required for the project known as Professional Engineer Services Relating to the Sconset Beach/Baxter Road Area Improvements (the Project), in accordance with the Scope of Services set forth in Attachment A.

2. Contract Price

The Owner shall pay the Engineer for the performance of this Agreement, subject to any additions and deductions provided for herein, the amounts set forth in Attachment A. At the time of execution of this contract, the ENGINEER is only authorized to proceed with Task 1.0 in the amount of $8,500, and such portion of Task 3.0 (attendance at meetings) necessary to complete Task 1.0. The Town has established an upset limit of $15,000 for this initial work. The performance of Task 2.0 as set forth in Attachment A or any other additional services shall not be commenced by the Engineer until the Town issues a Notice to Proceed in the future.

3. Commencement and Completion of Work

A. The Engineer shall commence and prosecute the work under this Agreement in an expeditious fashion upon execution hereof.

B. Time as Essential Condition: It is understood and agreed that the commencement of and completion of the work are essential conditions of this Agreement. It is understood and agreed that the times for the completion of the work are reasonable, taking into consideration the average climatic range and usual industrial conditions prevailing in this locality.

C. Progress and Completion: Engineer shall commence work promptly upon execution of this Agreement and shall prosecute and complete the work regularly, diligently and uninterruptedly at such a rate of progress as will insure completion within the stipulated number of calendar days.

4. Performance of the Work

A. Direction of the Work: The Engineer shall supervise and direct the Work, using his best skills and attention, which shall not be less than such state of skill and attention generally rendered by the engineering/design profession for projects similar to the Project in scope, difficulty and location. The Engineer shall be solely responsible for coordinating all portions of the Work under the Agreement.

B. Responsibility for the Work:

(1) The Engineer shall be responsible to the Owner for the negligent acts and omissions of his employees, subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Engineer. Consistent with the standard of care referenced in paragraph A. above, the Engineer shall be responsible for the professional and technical accuracy and the coordination of all designs, drawings, specifications, estimates and other work or services furnished by him or his consultants and subcontractors. The Engineer shall perform his work under this Agreement in such a competent and professional manner that detail checking and reviewing by the Owner shall not be necessary.

(2) The Engineer shall not employ additional consultants not named in his proposal to the Owner, nor sublet, assign or transfer any part of his services or obligations under this Agreement without the prior approval and written consent of the Owner. Such written consent shall not in any way relieve the Engineer from his responsibility for the professional and technical accuracy and coordination of all data, designs, drawings, specifications, estimates and other work or services furnished under this Agreement.

(3) All consultants must be registered and licensed in their respective disciplines if registration and licensor are required under the applicable provisions of Massachusetts law.

(4) The Engineer and all consultants and subcontractors shall conform their work and services to any guidelines, standards and regulations of any governmental authority applicable to the type of work or services covered by this Agreement, including those of the Massachusetts Highway Department and the Department of Environmental Protection.

(5) The Engineer shall not be relieved from his obligations to perform the Work in accordance with the requirements of this Agreement either by

the activities or duties of the Owner in its administration of the Agreement, or by inspections, tests or approvals required or performed by persons other than the Engineer.

(6) Neither the Owner's review, approval or acceptance of, nor payment for any of the work or services performed shall be construed to operate as a waiver of any rights under the Agreement or any cause of action arising out of the performance of the Agreement.

C. Deliverables, Ownership of Documents: One (1) reproducible copy of all drawings, plans, specifications and other documents prepared by the Engineer shall become the property of the Owner upon payment in full therefor to the Engineer. Ownership of stamped drawings and specifications shall not include the Engineer's certification or stamp. Any re-use of such documents without the Engineer's written verification of suitability for the specific purpose intended shall be without liability or legal exposure to the Engineer or to the Engineer's independent professional associates, subcontractors or consultants. Distribution or submission to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as an act in derogation of the Engineer's rights under this Agreement.

D. Notices, Compliance With Laws:

(1) The Engineer shall give all notices and comply with all federal, state and local laws, ordinances, rules, regulations and lawful orders of any public authority relating to the performance of the Work. The Engineer shall provide the Owner with reproductions of all permits, licenses and receipts for any fees paid. The Owner represents that it has disclosed to the Engineer all orders and requirements known to the Owner of any public authority particular to this Agreement.

(2) If the Engineer observes that any of the Owner's design schemes, outlines or goals are at variance with applicable laws, statutes, codes and regulations in any respect, he shall promptly notify the Owner in writing, and any necessary changes shall be accomplished by appropriate modification by Engineer in the course of the design process to the extent the work is within the contract scope.

(3) In the performance of the Work, the Engineer shall comply with all applicable federal, state and local laws and regulations, including those relating to workplace and employee safety.

5. Site Information Not Guaranteed; Engineer's Investigation

Upon request of the Engineer, the Owner shall furnish to the Engineer available surveys, data and documents, if any, relating to the area which is the subject of the Scope of Work. All such information, including that relating to subsurface and other conditions, natural phenomena, existing pipes, and other structures is from sources at present available to the Owner. All such information is furnished only for the information and convenience of the Engineer and is not guaranteed. It is agreed and understood that the Owner does not warrant or guarantee that the subsurface or other conditions, natural phenomena, existing pipes, or other structures will be the same as those indicated in the information furnished, and the Engineer must satisfy himself as to the correctness of such information. If, in the opinion of the Engineer, such information is inadequate, the Engineer may request the Owner's approval to verify such information through the use of consultants or additional exploration. In no case shall the Engineer commence such work without the Owner's prior written consent. Such work shall be compensated as agreed upon by Owner and Engineer.

6. Payments to the Engineer

A. The Owner shall make payment to the Engineer, monthly, upon approval of the Engineer's requisitions therefor. All requisitions shall be in the same proportionate amount of the Contract Price as the proportion of the work completed to the total scope of work.

B. If there is a material change in the scope of work, the Owner and the Engineer shall mutually agree to an adjustment in the Contract Price.

C. If the Owner authorizes the Engineer to perform additional services, the Engineer shall be compensated in an amount mutually agreed upon, in advance, in writing. Except in the case of an emergency, the Engineer shall not perform any additional services until such compensation has been so established.

7. Reimbursement

Except as otherwise included in the Contract Price or otherwise provided for under this Agreement, the Engineer shall be reimbursed by the Owner: (a) at 1.1 times the actual cost to the Engineer of consultants retained to obtain information pursuant to Article 5 hereof or otherwise. No such reimbursement shall be made unless the rates of compensation have been approved, in advance, by the Owner; (b) at 1.1 times the actual cost of additional or specially authorized expense items, as approved by the Owner.

8. Final Payment, Effect

The acceptance of final payment by the Engineer shall constitute a waiver of all claims by the Engineer arising under the Agreement.

9. Terms Required By Law

This Agreement shall be considered to include all terms required to be included in it by the Massachusetts General Laws, and all other laws, as though such terms were set forth in full herein.

10. Indemnification

A. General Liability: The Engineer shall indemnify and hold harmless the Owner from and against any and all claims, damages, losses, and expenses, including attorney's fees, to the extent arising out of the negligent performance of this Agreement and to the extent the same relate to matters of general commercial liability, when such claims, damages, losses, and expenses are caused, in whole or in part, by the negligent acts or omissions of the Engineer or his employees, agents, subcontractors or representatives.

B. Professional Liability: The Engineer shall indemnify and hold harmless the Owner from and against any and all claims, damages, losses, and expenses, including attorney's fees, arising out of the performance of this Agreement when such claims, damages, losses, and expenses are caused, in whole or in part, by the negligent acts, negligent errors or omissions of the Engineer or his employees, agents, subcontractors or representatives.

C. No Limitation of Rights: The indemnification obligation of Engineer under this paragraph 10 is in addition to, and not in limitation of, any other rights and remedies available to the Owner under this Agreement, at law or in equity.

11. Insurance

A. The Engineer shall at his own expense obtain and maintain a Professional Liability Insurance policy for errors, omissions or negligent acts arising out of the performance of this Agreement in a minimum amount of $2,000,000.00.

B. The coverage shall be in force from the time of the agreement to the date when all construction work for the Project is completed and accepted by the Owner. If, however, the policy is a claims made policy, it shall remain in force for a period of six (6) years after completion.

Since this insurance is normally written on a year-to-year basis, the Engineer shall notify the Owner should coverage become unavailable.

C. The Engineer shall, before commencing performance of this Agreement, provide by insurance for the payment of compensation and the furnishing of other benefits in accordance with M.G.L. c.152, as amended, to all its employees and shall continue such insurance in full force and effect during the term of the Agreement.

D. The Engineer shall carry insurance in a sufficient amount to assure the restoration of any plans, drawings, computations, field notes or other similar data relating to the work covered by this Agreement in the event of loss or destruction until the final fee payment is made or all data are turned over to the Owner.

E. The Engineer shall also maintain public liability insurance, including property damage, bodily injury or death, and personal injury and motor vehicle liability insurance against claims for damages because of bodily injury or death of any person or damage to property.

F. Certificates and any and all renewals substantiating that required insurance coverage is in effect shall be filed with the Agreement. Any cancellation of insurance, whether by the insurers or by the insured, shall not be valid unless written notice thereof is given by the party proposing cancellation to the other party and to the Owner at least fifteen days prior to the intended effective date thereof, which date shall be expressed in said notice.

G. The Owner reserves the right to modify any conditions of this Article.

12. Notice

All notices required to be given hereunder shall be in writing and delivered to, or mailed first class to, the parties' respective addresses stated above. In the event that immediate notice is required, it may be given by telephone or facsimile, but shall, to the extent possible, be followed by notice in writing in the manner set forth above.

13. Termination

A. Each party shall have the right to terminate this Agreement in the event of a failure of the other party to comply with the terms of the Agreement. Such termination shall be effective upon seven days' notice to the party in default and the failure within that time of said party to cure its default.

B. The Owner shall have the right to terminate the Agreement without cause, upon ten (10) days' written notice to the Engineer. In the event that the Agreement is terminated pursuant to this subparagraph, the Engineer shall be reimbursed in accordance with the Agreement for all work performed up to the termination date.

14. Miscellaneous

A. Royalties and Patents: The Engineer shall pay all applicable royalties and license fees. He shall defend all suits or claims for infringement of any patent rights and shall save the Owner harmless from loss on account thereof, except that the Owner

shall be responsible for all such loss when a particular design, process or the product of a particular manufacturer or manufacturers is specified by the Owner, except that if the Engineer believes or has reason to believe that the design, process or product so specified is or may be an infringement of a patent, he shall be responsible for such loss unless he promptly gives such information to the Owner in writing, and thereafter the Owner insists in writing on the use of the design, process or product specified.

B. Assignment: The Engineer shall not assign or transfer any of its rights, duties or obligations under this Agreement without the advance written approval of the Owner, in its sole and absolute discretion.

C. Governing Law: This Agreement shall be governed by and construed in accordance with the law of the Commonwealth of Massachusetts.

D. Certification of Tax Compliance: By its execution of this Agreement, the Engineer certifies, pursuant to General Laws Chapter 62C, Section 49A and under the pains and penalties of perjury, that it has complied with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals, the Owner by its authorized representatives who, however, incur no personal liability by reason of the execution hereof or of anything herein contained, as of the day and year first above written.

ENGINEER:

By: _____
Name: Nicolle E. Burnham, P.E., CFM
Title: Principal, Milone & MacBroom, Inc.

OWNER:
By its:

_____

_____

_____

Engineering, Planning
Landscape Architecture
and Environmental Science

MILONE & MACBROOM®

ATTACHMENT A

July 18, 2013

Ms. Elizabeth Gibson
Town Manager
Town of Nantucket
16 Broad Street
Nantucket, MA 02554

RE: Agreement for Professional Engineering Services Relating to Sconset Beach/Baxter Road Area Improvements Nantucket, Massachusetts MMI #2967-11-0

Dear Ms. Gibson:

Milone & MacBroom, Inc. (MMI) is providing this proposal for professional services for the Baxter Road area. At this time, we understand the town would like to contract for the following:

1. Review the current shoreline stabilization plans presented by the Sconset Beach Preservation Fund (SBPF) that are currently under consideration by the Conservation Commission.
2. Evaluate alternatives and develop design plans to stabilize approximately 1,000 feet of Baxter Road in its existing location.
3. Review alternatives evaluated by the town for the future relocation of Baxter Road and develop "shovel ready" plans for the selected alternative (which will be determined at a future time based on consultation with town staff and elected officials).
4. Prepare for and attend up to 10 meetings with the Board of Selectmen, town staff, and/or the Conservation Commission.

Based on our telephone conversation of July 16, 2013, we understand the town would like to concurrently address stabilization of the existing Baxter Road location and design of a relocated roadway. At this time, developing a detailed scope of services for Items 2 and 3 would be challenging given our limited knowledge of current site conditions and past studies. Therefore, this scope of services outlines initial work phases for the Baxter Road evaluation. The product of this current scope of work will be an engineering report that recommends preferred alternatives and identifies future data collection (e.g., survey, geotechnical investigations, etc.) and regulatory requirements. In our opinion, such a preliminary effort will allow us to more effectively assist the town during the design process.

SCOPE OF SERVICES

Task 1.0 – Review of the Pending Sconset Beach Preservation Fund Application

1.1 Obtain a copy of the application package, permit drawings, and available documentation prepared by the applicant.

1.2 Perform a site walk to visually observe current existing conditions. While our engineers have observed the site as part of the previous application, site conditions have changed. This site walk will be performed concurrently with attendance at the Conservation Commission meeting of July 24, 2013.

1.3 Review the application package, project plans, and other documentation submitted by the applicant and interested parties and provide the commission comments and/or questions relative to that information. Review will be completed for consistency with sound engineering practices and consistency with applicable regulations and criteria. A comment letter will be prepared and submitted to the Conservation Commission for consideration.

1.4 Review any revisions to the application or supporting materials.

Note: Attendance at Conservation Commission meetings will be charged under meetings (Task 3.0).

Task 2.0 – Preliminary Engineering Evaluation of Baxter Road

2.1 Perform a site walk to visually observe current existing conditions along the roadway and the alternate routes evaluated by the town. This will be completed by a roadway design engineer and, if the town agrees, this site walk will be completed on July 24, 2013.

2.2 Obtain and review past studies, mapping, and reports conducted by others regarding the stability of the existing roadway and relocation alternatives. It is assumed that the Town of Nantucket will provide the Geographic Information System (GIS) mapping of the area for MMI's use.

2.3 Contact private local utility companies and request mapping and data of the horizontal and vertical location of utilities and services along the portion of Baxter Road under study. The location of public utilities will be obtained from the town.

2.4 Prepare an engineering report outlining alternatives for stabilizing Baxter Road and alternatives for relocating Baxter Road. The report will include the following:

2.4.1 Concept sketches of the alternatives evaluated. This fee proposal assumes analysis of two alternatives for relocation and two alternatives for stabilization of the existing road.
2.4.2 Evaluation of private property impacts associated with each alternative
2.4.3 Regulatory implications for each alternative
2.4.4 Preliminary engineer's opinion of construction cost for the alternatives
2.4.5 A decision matrix outlining the advantages and disadvantages of alternatives evaluated (e.g., cost, implementation schedule, etc.)
2.4.6 Recommended alternatives (one for relocation and one for stabilization) with an outline of steps required for implementation (i.e., design effort)

Task 3.0 – Meetings

3.1 Prepare for and attend up to 10 meetings. This may include meetings with the Conservation Commission, Board of Selectman, and/or town staff. For budgetary purposes, we assume that meetings will be attended by one person. If additional staff are required at meetings, this will be discussed with the town and the budget adjusted accordingly.

PROFESSIONAL FEES

The above services will be performed on an hourly basis at our preferred rates (copy attached) plus direct nonsalary expenses. For budgetary purposes, the following fees are proposed and will not be exceeded without prior authorization from the Town of Nantucket:

Task 1.0 – Review of the Pending Sconset Beach Preservation Fund Application.....$8,500
Task 2.0 – Preliminary Engineering Evaluation of Baxter Road.....$50,800
Task 3.0 – Meetings.....$25,000

Reimbursable expenses, including transportation and lodging costs, postage, and reproduction, will be billed as direct expenses. We anticipate $7,500 in reimbursable expenses.

TERMS AND CONDITIONS

Work will be performed in accordance with the Owner-Engineer Agreement between the Town of Nantucket and MMI.

EXCLUSIONS

The following work is not included in the above-referenced scope of services:

1. Geotechnical engineering
2. Design of improvements

3. Beach erosion or wave run-up modeling
4. Land survey
5. Preparation of permit applications

We look forward to a pleasant and rewarding association with you on this project.

Very truly yours,

MILONE & MACBROOM, INC.

Nicolle E. Burnham, P.E., CFM
Principal

Mark R. Arigoni, L.A., Principal
Massachusetts Regional Manager

Enclosure

cc: Kara Buzanoski, Public Works Director

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