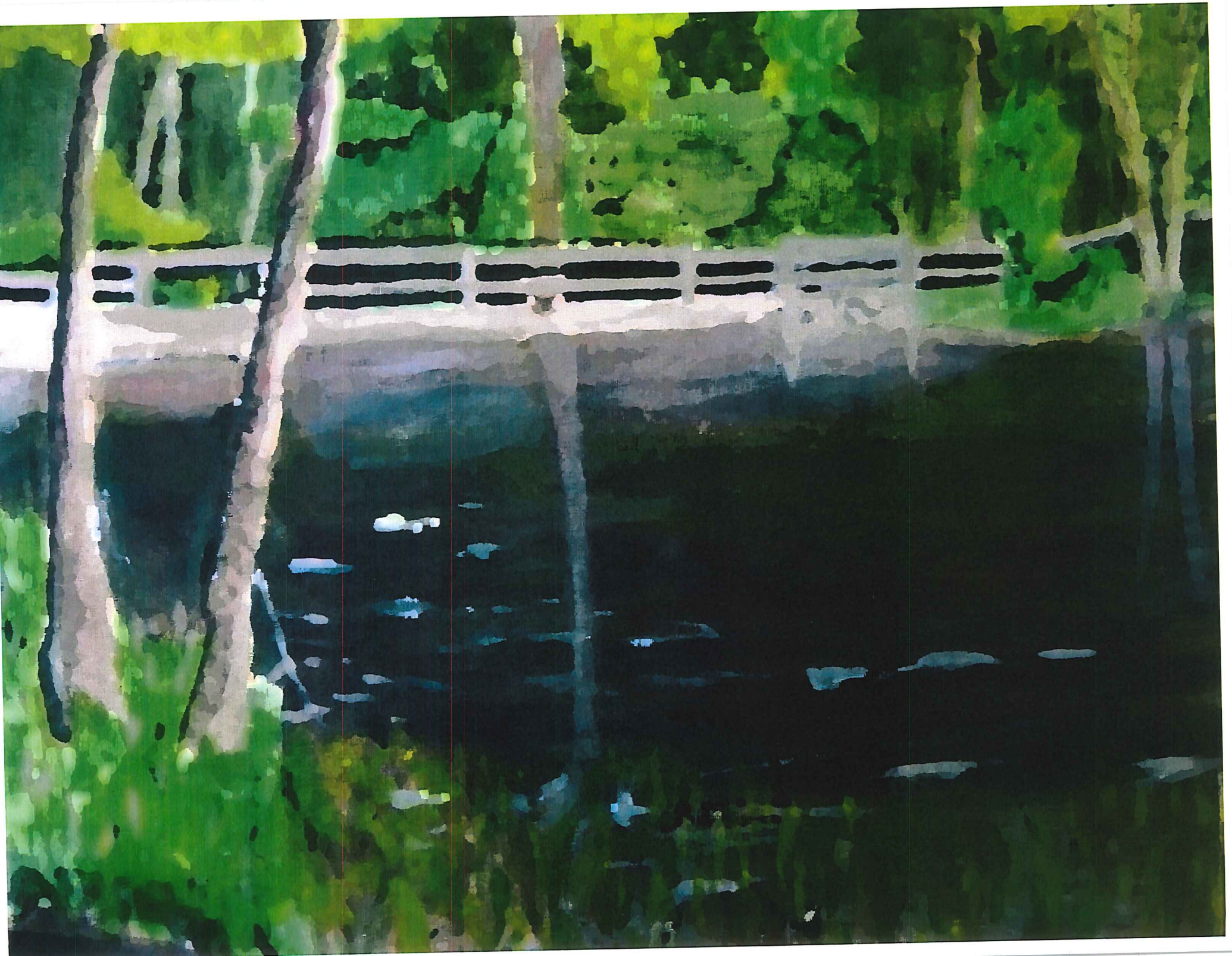
NEW BUSINESS

4/11/16



the YMCA

FOR YOUTH DEVELOPMENT
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

March 25, 2016

Board of Selectman
Middleboro Town Hall
Middleboro, MA 02346

Dear Sir or Madam,

We are requesting to run a road race on Saturday, June 4, 2016 and a Triathlon on Saturday, July 17, 2016. The course for the road race will begin at Camp Yomechas and run along Rt. 28 and will loop back to conclude at the camp. The course for the triathlon will be similar to the road race for the run and the bike route would be twice around Tispaquin Pond.

Please let me know about any special instructions regarding maintenance, Police Detail, etc.

Thank you for your consideration.

Sincerely,

Matt Pilla
Health, Wellness & Sports Director

OLD COLONY YMCA – MIDDLEBORO BRANCH
61 East Grove Street, Middleboro, MA 02346
P 508 947 1390 **F** 508 947 4934 www.oldcolonyymca.org

Town of Middleborough
Board of Selectmen
10 Nickerson Avenue
Middleborough, MA 02346
(508) 946-2405 fax 508-946-2413

March 31, 2016

Board of Selectmen
10 Nickerson Avenue
Middleborough, MA 02346

Honorable Board Members:

The Office of Economic and Community Development is in possession of the following items that are obsolete.

1 Dell OptiPlex 360 CPU Unit
2 Dell OptiPlex 170L CPU Units
1 Hewlett Packard Office Jet Pro L7580 Printer
1 Brother MXC-7440N Laser Printer Power/450VA

The above items were purchase for the OECD by the Commonwealth of MA. Attached is attached a copy of an email giving the Middleborough Office of Economic and Community Development possession of these items.

This office is also in the possession of the following three items.

1 Brother copier/printer MFC-7440N
1 Fellows Battery Backup
1 Battery Backup Surge Protector – Back-UPS-E7 (7 - 2 – 5)

I respectfully request the Board vote to have all the above items declared as surplus/obsolete, so that they may be disposed of.

Thank you for your consideration in this matter.

Respectfully,

Jane Kudcey

Jane M. Kudcey
Director

Enc. 1

AMORY ENGINEERS, P.C.

WATER WORKS • WATER RESOURCES • CIVIL WORKS

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

TEL.: 781-934-0178 • FAX: 781-934-6499
WWW.AMORYENGINEERS.COM

March 23, 2016

Mr. Robert G. Nunes, Town Manager
Town Hall, 10 Nickerson Avenue
Middleborough, MA 02346

Subject: **Proposal for Engineering Services for Replacement of Fire Tower Elevated Tank**

Dear Mr. Nunes:

In response to Mr. Silva's request, we are pleased to submit this proposal for engineering services in connection with a proposed elevated tank to replace the existing Fire Tower elevated tank. The existing tank has reached the end of its useful life and will be replaced with a new elevated 1.5 mil. gal. tank. Funding for the project was approved at the recent Fall Special Town Meeting. By letter of September 1, 2015 we provided relevant background on the existing tank and the proposed replacement tank.

Description of Work

The proposed replacement tank is to be constructed adjacent to the existing tank on Town-owned property. The tank would have the same overflow (full tank level as the Barden Hill Tank) elevation of 337.7. Depending on location, the new tank height would be approximately 178 to 183 ft. high (to overflow); with a 40 to 42 ft. bowl height, 84 to 86 ft. bowl diameter and column/pedestal diameter of 60 ft.

The new elevated tank will be a composite elevated (concrete pedestal and steel bowl) tank erected on a reinforced concrete foundation. The tank will be designed in accordance with AWWA and MA DEP requirements. Included in the base of the tank will be a room housing SCADA and electrical equipment. Ancillary building services, including lights, heating and ventilation will be provided. Standby power will be provided by a liquid propane fueled emergency generator. The existing tank supports various agency antennas that will require relocation to the replacement tank. Site work will include construction of a gravel access road from Terrace Road/gravel access road between Tiger Nichols Drive and Sachem Street. The tank will be connected to the distribution system by 16-in. ductile iron main. The new tank will be enclosed by fencing.

The new tank is to be competitively bid Fall 2016 and constructed and painted in 2016/2017. The existing Fire Tower elevated tank will remain in service until the replacement tank is constructed and on-line and cleaning and painting of the Barden Hill Standpipe is completed in 2017/2018.

Scope of Services

Our engineering services will include two construction contracts, one for the construction of the new elevated tank and one for all demolition and disposal of the existing tank. We propose to provide the following engineering services:

Scope of Engineering Services

A. Preliminary Design

1. Meet with the Water Department/Department of Public Works to review tank options for the Town's selection of design details.
2. Meet with agencies owning antennas currently mounted on the existing tank, review proposed tank antenna mounting details as appropriate.
3. Perform field survey of the tank site and prepare plan with contours at 1-ft. intervals, based on USGS datum, furnished by the Town.
4. Prepare a preliminary plan of the site showing tank location and access and renderings showing tank elevations from two locations[1] for review and approval by the Town.
5. Geotechnical investigation including soil borings to define subsurface conditions, grain size analyses and geotechnical report. Five soil borings are anticipated. Additional work may be required depending on conditions encountered. Rock corings are not anticipated and no allowance has been made in the budget for such work. Welti Associates, Inc. will perform geotechnical investigation under subcontract to Amory Engineers.
6. Direct subsurface investigation work and evaluate results of soil borings to determine adequacy of soil conditions to support the tank.
7. Submit a MESA Project Review Checklist to the Natural Heritage and Endangered Species Program (NHESP).

B. Final Design

1. Perform hydraulic analysis to determine the need for an altitude valve at the new tank.
2. Prepare plans and specifications for the tank, site work, watermain, altitude valve/chamber and submit to the Town for review and comment. If an altitude valve/chamber is required, it will be constructed under the tank construction contract.
3. Prepare specifications for demolition and disposal of the old elevated tank and site restoration. Demolition will be performed under a separate contract after construction of the replacement elevated tank and painting of the existing Barden Hill Tank.
4. Prepare permit application for a Federal Aviation Administration (FAA) permit for the tank.
5. Assist the Town in obtaining the necessary permits and variances from Town agencies for construction of the tank.

[1] One view from Wood Street near Sachem Street and one view from adjacent to the Nichols Middle School..

6. Submit final design to MA DEP for technical approval.
7. Submit twenty sets of final contract documents (plans and specifications) for bidding and construction of the work.

Compensation

Our fees for the above scope of engineering services will be on a lump sum basis in accordance with the following table.

Task	Amount
Preliminary Design	$ 40,000
Design	60,000
Total Fee	$100,000

Assistance from the Town

We assume that the Town will:

1. Provide information available in Town files relating to the project.
2. Provide test pits as necessary.
3. Identify location of existing mains.
4. Advertise for construction bids.

We appreciate the opportunity to submit this proposal and look forward to working with you on the project.

Please call if you have any question.

Very truly yours,

AMORY ENGINEERS, P.C.

By:

Richard S. Johnson, P.E.

RSJ

cc: Mr. Joseph Silva
Mr. Christopher Peck

MEMORANDUM

Tighe&Bond

Proprietary Specification for East Main Street WTP Procurement

TO: Christopher Peck, DPW Director, Town of Middleborough

FROM: Benjamin Levesque, P.E.

COPY: Joseph Silva, Water Superintendent, Town of Middleborough and Thomas Mahanna, P.E., Tighe & Bond

DATE: March 9, 2016

The purpose of this memorandum is to summarize the reasons that the Town of Middleborough is utilizing a proprietary specification for the iron and manganese treatment process at the proposed East Main Street water treatment plant (WTP). This memorandum fulfills the documentation requirements of Mass. G.L. Ch. 30, Sec 39M, paragraph (b), which states that specifications normally must "provide for full competition for each item of material to be furnished under the contract", except in cases where the specifications are "otherwise written for sound reasons in the public interest stated in writing in the records of the awarding authority".

Project Background

The Town of Middleborough's water system provides drinking water throughout the Town utilizing a combination of 11 groundwater sources. The East Main Street site currently has two groundwater supply wells that are treated to adjust pH for corrosion control and adds chlorine for disinfection.

Dating back to 2005, the Middleborough Water Department has considered iron and manganese removal at the East Main Street wells. At this site, iron and manganese have exceeded the Secondary Maximum Contaminant Levels (SMCLs) of 0.3 mg/L and 0.05 mg/L respectively. There is currently no regulatory requirement for iron and manganese removal; however these constituents are problematic from an aesthetic standpoint.

In 2006, Weston & Sampson Engineers, Inc. (WSE) prepared a study on behalf of the Town of Middleborough for treatment options at the East Main Street wells. The study compared three adsorptive pressure filtration options and a fourth option of the Infilco Degremont Inc. (IDI) biological treatment technology. IDI conducted pilot testing from April through June of 2005. The pilot program evaluated the performance, effectiveness, and suitability of the biological treatment technology with the Town's well supply. Based on the results of the piloting program, WSE recommended the IDI biological process for implementation in the large scale final design for the East Main Street wells. Concurrently to the work conducted at East Main Street, Tighe & Bond oversaw a pilot project at the Town of Middleborough's Tispaquin well site. This pilot utilized the same biological processes and became the foundation of future full scale design for treatment plants at both the East Main Street and Tispaquin sites.

In December 2008, Tighe & Bond submitted a BRP WS 23 permit application which included design plans to construct a full-scale biological iron and manganese WTP to treat water from the East Main Street well site and a second WTP at the Tispaquin well site. The treatment plant design at the East Main Street well site incorporated the two-stage IDI Ferazur® and Mangazur® pressure filtration process. Although WSE recommended a full scale Mangazur®

Pressure filtration system, Tighe & Bond designed a double vessel Ferazur® and single vessel Mangazur® Pressure filtration system. Tighe & Bond pilot studies at the Tispaquin well in addition to other pilot studies indicated a need for both stages of treatment if both iron and manganese are present in significant concentrations. The respective bacterial cultures thrive under different cultivation condition, if high affinity treatment is required, it is best to have monoculture vessels rather than culture both iron and manganese oxidizers within a Mangazur® Pressure filtration system. Manganese oxidizers prefer higher pH and dissolved oxygen (DO) conditions than iron oxidizers. Allowing for independent cultures to thrive produces the maximum possible contaminant removal.

MassDEP approved construction of these 2 similar water treatment plants (East Main St. and Tispaquin), to remove iron and manganese evident in the drinking water obtained from the respective wells. The construction of new treatment buildings, installation of a packaged biological filtration systems, new site piping, and associated building utilities were all approved as shown in MassDEP approval letter to construct new Water Treatment Plant dated October 1st, 2009. The plants were not constructed as money was not appropriated for construction at that time.

Since the approval of the biological filtration process for removal of iron and manganese, the East Main Street WTP project has been on hold. Recently, the Town has decided to move forward with the construction of the water treatment paint at the East Main Street site. An updated Pilot Study Proposal was prepared & MassDEP approval of this Pilot Proposal was received in 2014.

Blueleaf Incorporated ran the pilot system in 2014 specifically for the anticipated process needed in Middleborough, MA. The pilot test at the East Main Street well site further served to confirm the effectiveness of the IDI Ferazur® Mangazur® process. Blueleaf installed the pilot-scale biological treatment system at the site and operated the process from March 31st through May 22nd 2014. The study demonstrated the effectiveness of the process to remove iron and manganese from a raw water source and confirmed the design filter loading rates, run times, finished water quality, and backwash water characterization.

In order to draw parallels from the pilot to a conceptual full scale system, it was necessary to identify influent water iron and manganese concentrations and compare to historical data. Raw water iron and manganese concentrations were similar to values reported historically. Note that Tighe & Bond's MassDEP Design Review Submittal, dated December 2008 listed the maximum raw water iron concentration to be <3.0 mg/L and the maximum raw water manganese concentration to be < 0.5 mg/L. Both historical and present iron and manganese concentrations are below the maximum design conditions included in the 2008 design documentation.

The Ferazur® biological iron and Mangazur® manganese filtration process met the effluent iron and manganese SMCLs when operating under the conditions included in Tighe & Bond's 2008 design. Operating the Ferazur® with an influent dissolved oxygen concentration greater than 4.5 parts per million reduced the iron concentration to levels of approximately 0.15 mg/L. The Ferazur® filter met the SMCL goal of 0.3 mg/L after approximately 72 hours of operation. The filter then operated 130 hours with consistently low iron concentrations after which the operator backwashed the filter and resumed operation for an additional 22 hours.

IDI Ferazur®/Mangazur® Process

The Infilco Degremont Inc. (IDI) Ferazur®/Mangazur® biological filtration process is a relatively new technology application for the United States. The process works in two stages, with the Ferazur® filter first removing dissolved iron, followed by the Mangazur® filter which removes dissolved manganese. It should be noted that the biological filtration process will not effectively remove particulate iron or manganese should a water supply naturally contain these parameters in oxidized form. The process does not use chemicals to achieve oxidation, with iron and manganese removed solely through the use of biological and filtration processes.

Ferazur® and Mangazur® are filter media, which aid in the removal of iron and manganese metals from groundwater. These metals serve as a source of food for bacteria that naturally occur in groundwater. Ferazur® media has an effective particle size of 1.35mm, and Mangazur® media has an effective particle size of 0.095 mm. The process media in both cases is ANSI/NSF standard 61 approved gravel. During treatment, iron bacteria that naturally occur in well water mediate the removal of iron and manganese from the process water. These bacteria attach themselves to the filter media forming a biofilm. Under conditions of limited oxidation, these bacteria bio-assimilate the iron and manganese, die and became part of the biomass to be wasted. This biological process results in the contaminant level reduction of iron and manganese in the product water. Figure 1 shows a schematic of the Ferazur® and Mangazur® treatment process.

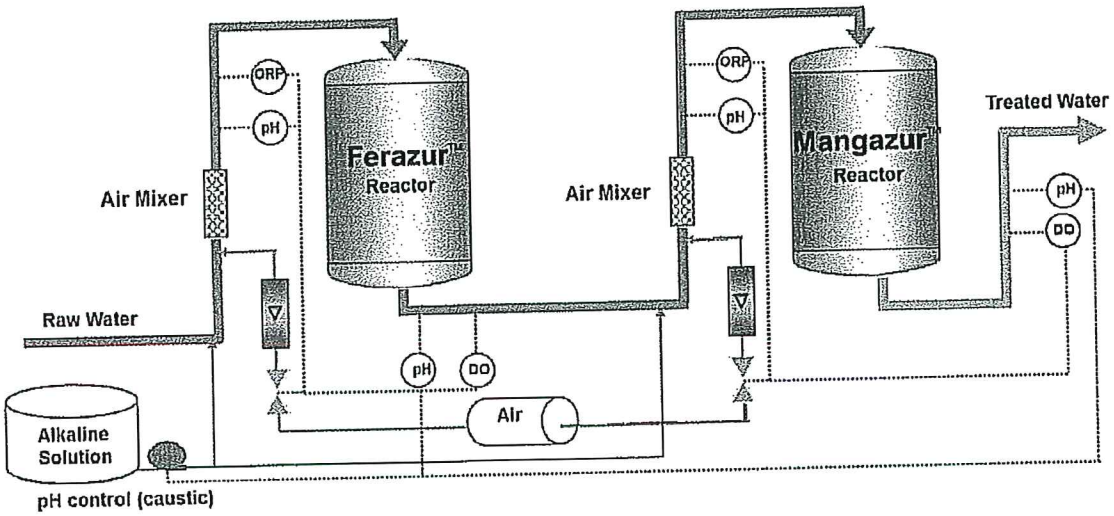


Figure 1: The Ferazur® & Mangazur® Biological Water Treatment Process

The Ferazur® & Mangazur® Filter media technology used for iron and manganese removal was approved by MassDEP, which issued a New Technology Approval letter dated August 4, 2006.

Justification for Proprietary Specification

The Town of Middleborough considers the specifying of the IDI Ferazur®/Mangazur® treatment process as in the best public interest for the following reasons:

1. The Town of Middleborough needs to implement treatment for the East Main Street wells for the removal of iron and manganese from the existing supply wells. Based

on a series of pilot testing in Middleborough, the IDI Ferazur®/Mangazur® process was originally recommended and confirms for providing the treatment needed at the East Main Street wells.

2. The East Main Street site represents unique challenges for operation of a water treatment plant. In particular is the need to minimize residuals production at the site. The use of the IDI Ferazur®/Mangazur® process produces less waste stream and sludge volume than other iron and manganese removal processes. The site does not have access to the municipal sewer collection system nor available space for on-site disposal. The residuals will be stored and pumped into trucks for disposal at the Town of Middleborough's wastewater treatment plant. The reduced residuals volume allows for a smaller storage tank and less operation and maintenance costs associated with residuals transport and disposal.

3. Budgetary quotes for the system IDI Ferazur®/Mangazur® treatment process are comparable to other technologies that provide iron and manganese removal from groundwater.

4. The bidding documents will provide for full competition in all other aspects of this water treatment plant project. Numerous general contractors and suppliers are available for the construction of the overall facility and for providing all other components associated with a water treatment plant.

In the 2005 manual entitled "Designing and Constructing Public Facilities", the Massachusetts Inspector General stated the following (page 45):

If you use proprietary specifications for one or more items, the specifications for those items must include an "or equal" clause: that is, a provision allowing bidders to furnish items that are equal to the specified items. Under the law, an item is considered equal if:

- *It is at least equal in quality, durability, appearance, strength and design;*
- *It will perform the intended function at least equally; and*
- *It conforms substantially, even with deviations, to the detailed requirements contained in the specifications.*

The awarding authority makes the determination as to whether a bid item is equal to the item named in the specification.

The bidding documents will comply with this requirement by virtue of wording in Article 6.05A of Section 00700, General Conditions, and wording in Section 11200, Package Water Treatment System.

Christopher Peck

From: decas.murray.decas@verizon.net
Sent: Tuesday, February 23, 2016 9:47 AM
To: Christopher Peck
Subject: proprietary specs

February 23, 2016

Chris Peck, Director of Public Works ***(via email)***

RE: iron/manganese treatment process – East Main Street Water Treatment Plant - proprietary specification for bid proposal

Chris:

You asked what should be done with respect to the above. I recommend:

(1) That a final memorandum by the engineer should be submitted to the Board of Selectmen for its review and vote that it is in the public interest to require proprietary specifications for the East Main Street water treatment plant's iron/manganese treatment process, with respect to specifications in a request for bids for same, for the reasons set forth in the Memorandum of Benjamin Levesque, P.E. dated _____ ,2016 which memorandum is to be on file with the minutes of the Board meeting at which this motion was acted upon.

The memorandum should be included with the minutes of the Board meeting which approves the use of proprietary specifications.

(2) The specifications should identify that the specifications for the iron/manganese water treatment process identified in the specifications are proprietary specifications and that the awarding authority (Board of Selectmen) made the decision to use the proprietary specifications after investigation for the reasons set forth in the Memorandum of Benjamin Levesque on file with the minutes of the Board of Selectmen's meeting on _____, 2016.

I make no determination whether proprietary specifications may be used in this case.

Very truly yours,

Daniel F. Murray

Town Counsel

DFM/s

88-299

AGREEMENT

FOR

ENGINEERING SERVICES FOR

REPLACEMENT OF FIRE TOWER ELEVATED TANK

BOARD OF SELECTMEN

TOWN OF MIDDLEBOROUGH, MASSACHUSETTS

THIS AGREEMENT made this _____ day of _____, 2016, by and between the Town of Middleborough, Massachusetts, hereinafter designated as the "TOWN", a municipal corporation duly established by law in the County of Plymouth and the Commonwealth of Massachusetts, as represented by its Board of Selectmen, and Amory Engineers, P.C., a professional corporation incorporated under the laws of Massachusetts, and having its office in the Town of Duxbury, Massachusetts, hereinafter designated as the "ENGINEER".

WHEREAS, the TOWN desires engineering services relative to the replacement of the Fire Tower Elevated Tank and watermain connection to the TOWN's drinking water system in Middleborough, MA, (hereinafter designated as the "PROJECT"), and

WHEREAS, the TOWN has coordinated funding for the PROJECT, and WHEREAS, the TOWN requires engineering services to conduct the PROJECT, NOW THEREFORE, the TOWN and the ENGINEER, for the consideration hereinafter named, agree as follows:

SECTION 1 - SCOPE OF WORK

A. The professional engineering services which are specifically included in this AGREEMENT are detailed in Attachment A – ***"ENGINEER's March 23, 2016 Proposal for Engineering Services for Replacement of Fire Tower Elevated Tank "***, attached hereto and made a part hereof. ENGINEER's responsibility is as a consultant to the TOWN and shall provide services under the TOWN's directions and not of any other

party that may have involvement in this PROJECT.

B. TOWN may make or approve changes within the general Scope of Services in this AGREEMENT. If such changes affect ENGINEER's cost of or time required for performance of the services, an equitable adjustment will be made through an amendment to this AGREEMENT.

C. The Scope of Services does not include costs of ENGINEER for required or requested assistance to support, prepare, document, bring, defend, or assist in litigation undertaken or defended by TOWN. All such Services required or requested of ENGINEER by TOWN, except for suits or claims between the parties to this AGREEMENT, will be reimbursed as mutually agreed.

SECTION 2 - COMPENSATION

The TOWN agrees to pay and the ENGINEER agrees to accept as full compensation for all services provided and completed under the terms of this AGREEMENT, fees and charges as follows:

A. The services described in Section 1 - Scope of Work, as detailed in Attachment A – "ENGINEER's March 23, 2016 Proposal for Engineering Services for Replacement of Fire Tower Elevated Tank ", shall be provided on a lump sum fee basis in the not to exceed lump sum amounts of $40,000 for Preliminary Design and $60,000 for Final Design. The total of all charges billed by the ENGINEER under this AGREEMENT shall not exceed $100,000 without prior written approval from the TOWN.

B. In the event that the TOWN requests additional services or changes to the original scope of services, and the ENGINEER agrees to provide the requested additional services or agrees to the changes in the original scope of services, the parties will execute a written amendment to this agreement to provide for such additional services and/or changes, such amendment to include payment by the TOWN to the ENGINEER of additional compensation in an amount or at a rate agreed upon by the parties.

SECTION 3 - SCHEDULE OF PAYMENTS

A. Invoices will generally be submitted once a month for services performed during the previous month. Payment will be due within 30 days of invoice date. Monthly payments to the ENGINEER shall be made on the basis of statements submitted by the ENGINEER and approved by the TOWN. The monthly statements shall be supplemented with such supporting data as may be reasonably required to substantiate the statements. It is understood and agreed that the ENGINEER will be paid only for services rendered by its employees and expenses under this AGREEMENT. All services rendered by TOWN employees will be at no cost to the ENGINEER and it will receive no payment therefore.

B. Each monthly invoice shall include detailed breakdown of the work for each task during the billing.

C. In the event of a disputed billing, only the disputed portion will be withheld from payment, and TOWN shall pay the undisputed portion. TOWN will exercise reasonableness in disputing any bill or portion thereof.

D. If TOWN fails to make payment in full within 30 days of the date due for any undisputed billing, ENGINEER may, after giving 7 days' written notice to TOWN, suspend services under this AGREEMENT until paid in full, including interest. In the event of suspension of services, ENGINEER will have no liability to TOWN for delays or damages caused by TOWN because of such suspension.

SECTION 4 - PROJECT SCHEDULE

A. The ENGINEER shall proceed with the services under this AGREEMENT within five (5) days after receiving a written authorization to proceed, and shall diligently and faithfully prosecute the work to completion in accordance with the applicable engineering standards. Work to design, permit, and bid replacement tank shall be completed within 150 days of notice to proceed.

SECTION 5 - THE SUCCESSORS AND ASSIGNS

A. The TOWN and the ENGINEER each binds itself, its partners, successors, assigns, and legal representatives to the other party to this AGREEMENT and to the partners, successors, assigns and legal representatives of such other parties. Neither the TOWN nor the ENGINEER shall assign, sublet or transfer its interest in this AGREEMENT without the written consent of the other.

B. This AGREEMENT represents the entire integrated Agreement between the TOWN and the ENGINEER for engineering services related to design phase and supersedes all prior negotiations, representations, or Agreements, either written or oral. This AGREEMENT may be amended only by written instrument signed by both the TOWN and the ENGINEER.

SECTION 6 — INSURANCE COVERAGE AND LIMITATION OF LIABILITY

A. The ENGINEER shall provide and maintain insurance at its own expense until the completion and acceptance of its services under this AGREEMENT, for General Liability, Worker's Compensation, Automobile Liability, Valuable Papers and Records, and Professional Liability Insurance, as set forth below:

- Worker's Compensation Insurance, including Employer's Liability Insurance in accordance with the laws of the state(s) in which the ENGINEER may be required to pay compensation.
- General Liability Insurance, with an individual limit of at least $1,000,000 and a total limit for any one accident of at least $1,000,000.
- Automobile Bodily Injury and Property Liability with a combined limit per accident of at least $1,000,000.
- Umbrella Liability with a combined limit per accident of at least $1,000,000.
- The ENGINEER shall maintain at all times during the performance of services under this AGREEMENT Professional Liability Insurance coverage for errors, omissions, and negligent acts arising out of the performance of this AGREEMENT in an amount of $1,000,000. Such insurance shall extend to the ENGINEER and to its legal representatives in the event of death, dissolution, or bankruptcy, and shall

cover the errors, omissions, or negligent acts of the ENGINEER's agents and employees. Such insurance shall extend to any negligent act, error, or omission in the performance of services under this AGREEMENT committed by the ENGINEER or any person for whom the ENGINEER is legally responsible.

B. OWNER agrees that ENGINEER will not be liable for any loss, damage or liability arising out of this AGREEMENT beyond the limits of available insurance coverage.

C. The ENGINEER shall furnish to the OWNER a Certificate(s) of Insurance showing coverage as set forth herein.

D. To the maximum extent permitted by law, the TOWN agrees to limit the ENGINEER's liability for the TOWN's damages to amount of ENGINEER's available insurance. This limitation shall apply regardless of the cause of action or legal theory pled or asserted. Except for claims related to pollutants or asbestos, ENGINEER is protected against most risks of liability exposure by Workmen's Compensation Insurance, Professional Liability Insurance with respect to liabilities arising from negligent errors and omissions, and by Standard Public Liability Insurance. Attachment B contains insurance certificates. ENGINEER will not be responsible for any loss, damage or liability beyond the amounts, limits, exclusions and conditions of such insurance. ENGINEER will not be responsible for any loss, damage or liability arising from TOWN's negligent acts, errors or omissions and those by TOWN's staff, consultants, contractors and agents or from those of any person for whose conduct ENGINEER is not legally responsible.

SECTION '7 — INDEMNIFICATION AND DISPUTE RESOLUTION

A. The ENGINEER agrees, to the fullest extent permitted by law, to indemnify and hold the TOWN harmless from any damage, liability or cost to the extent caused by the ENGINEER's negligent acts, errors or omissions in the performance of professional services under this AGREEMENT and those of its sub consultants or anyone for whom the ENGINEER is legally liable. The ENGINEER is not obligated to indemnify the TOWN in any manner whatsoever for damage, liability or cost solely caused by the TOWN's own negligence.

B. The TOWN agrees, to the fullest extent permitted by law, to indemnify and hold the

ENGINEER harmless from any damage, liability or cost to the extent caused by the TOWN's negligent acts, errors or omissions in the performance of this AGREEMENT or anyone for whom the TOWN is legally liable. The TOWN is not obligated to indemnify the ENGINEER in any manner whatsoever for damage, liability or cost solely caused by the ENGINEER's own negligence.

C. In the event of a dispute arising out of or relating to this AGREEMENT or the services to be rendered hereunder, the TOWN and the ENGINEER agree to attempt to resolve such disputes in the following manner:

- First, the parties agree to attempt to resolve such dispute through direct negotiations between the appropriate representatives of each party.
- Second, if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining dispute by formal nonbinding mediation conducted in accordance with rules and procedures to be agreed upon by the parties.
- Third, if the dispute or any issues remain unresolved after the above steps, the parties may enter into litigation to resolve dispute.

SECTION 8- MISCELLANEOUS as applicable

A. Nothing contained in this AGREEMENT shall create a contractual relationship or cause of action in favor of a third party against either the TOWN or the ENGINEER.

B. Right of Entry - Unless otherwise agreed, TOWN will furnish right-of-entry on the land for ENGINEER to survey, perform field tests or other actions required for the design of the facilities. ENGINEER will take reasonable precautions to minimize damage to the land from use of equipment, but have not included in our fee the cost for restoration of damages that may result from ENGINEER operations. This provision does not apply to damages caused by negligence of the ENGINEER or its Subcontractor.

C. Damage to Latent Underground Structures - Reasonable care will be exercised in locating underground structures in the vicinity of proposed subsurface explorations. This will include contact with the local agency coordinating subsurface utility information and a review of plans provided by TOWN or TOWN representatives for the site to be investigated. ENGINEER shall be entitled to rely upon any plans provided. If the

locations of underground structures are not known or cannot be confirmed, then there will be a degree of risk to TOWN associated with conducting the explorations. In the absence of confirmed underground structure locations, TOWN agrees to accept the risk of damage and possible costs associated with repair and restoration of damage resulting from the exploration work, except for damage and/or costs caused by the negligence of the ENGINEER and/or its subcontractors

D. Samples - All soil, rock and water samples will be discarded 30 days after submission of ENGINEER's report, unless TOWN advises ENGINEER otherwise. Upon request, ENGINEER will ship or deliver the samples, charges collect, or will store them for TOWN for an agreed storage charge.

E. Ownership of Documents - All reports, field data and notes, laboratory test data, calculations, estimates, and other documents which ENGINEER prepares, as instruments of service, shall be TOWN's property.

F. Reports and other materials resulting from ENGINEER's efforts on this PROJECT or site are not intended or represented to be suitable for reuse by TOWN or others on extensions or modification of this PROJECT or for any other projects or sites. Reuse of reports or other materials by TOWN or others on extensions or modifications, of this PROJECT or on other sites, without ENGINEER's written permission or adaptation for the specific purpose intended shall be at the user's sole risk, without liability on ENGINEER's part, and TOWN agrees to indemnify and hold ENGINEER harmless from all claims, damages, and expenses, including reasonable attorney's fees, arising out of such unauthorized reuse.

G. If ENGINEER provides documents in electronic format to TOWN, TOWN agrees to waive any and all claims against ENGINEER resulting in any way from the unauthorized alteration, misuse or reuse of the electronic documents, and to defend, indemnify, and hold ENGINEER harmless for any claims, losses, damages, or costs, including reasonable attorneys fees, arising out of the alteration, misuse or reuse of any electronic documents.

H. Standard of Care - In accepting ENGINEER's AGREEMENT, TOWN acknowledges the inherent risks associated with consulting engineering services. In performing ENGINEER's professional services, ENGINEER will use that degree of care and skill

ordinarily exercised, under similar circumstances by members of the profession practicing in the same or similar locality.

I. In providing opinions of cost and schedules for the PROJECT, ENGINEER has no control over cost or price of labor and materials; unknown or latent conditions of existing equipment or structures that may affect operation or maintenance costs; competitive bidding procedures and market conditions; time or quality of performance by operating personnel or third parties; and other economic and operational factors that may materially affect the ultimate PROJECT cost or schedule. Therefore, ENGINEER makes no warranty that TOWN's actual PROJECT costs, financial aspects, economic feasibility, or schedules will not vary from ENGINEER's opinions, analyses, projections, or estimates. If TOWN wishes greater assurance as to any element of PROJECT cost, feasibility, or schedule, TOWN will employ an independent cost estimator, contractor, or other appropriate advisor.

J. In soils, foundation, groundwater, and other subsurface investigations, the actual characteristics may vary significantly between successive test points and sample intervals and at locations other than where observations, exploration, and investigations have been made. Because of the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that could affect total PROJECT cost and/or execution. These conditions and cost/execution effects are not the responsibility of ENGINEER.

K. TOWN will examine ENGINEER's sketches, drawings, specifications, and other documents; obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as TOWN deems appropriate; and render in writing decisions required by TOWN in a timely manner.

L. This AGREEMENT may be terminated by either party upon ten 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. In addition, TOWN may terminate this AGREEMENT for its convenience at any time by giving written notice to the ENGINEER. In the event of any termination, ENGINEER will be paid for all services rendered and reimbursable expenses incurred under the AGREEMENT to the date of termination.

M. Non-Collusion and Massachusetts Tax Certification: Attachment A contains an executed non-collusion form and tax certification form.

IN WITNESS WHEREOF, TOWN has caused these presents to be signed by its duly authorized agent for the purpose, and ENGINEER has caused these presents to be signed by its duly authorized representative on the day and year first written above.

BOARD OF SELECTMEN

TOWN OF MIDDLEBOROUGH

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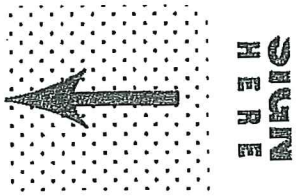

Approved as to Form:

Daniel F. Murray

Town Counsel

Availability of Funds:

_____

Town Accountant

AMORY ENGINEERS, P.C.

Richard S. Johnson

Richard S. Johnson, P.E.

Attachment A

Proposal for Engineering Services for Replacement of Fire Tower Elevated Tank, dated March 23, 2016

Insurance Certificates (awaiting issuance by Insurance Companies)

Non-Collusion Form and Tax Compliance Form

Certificate of Authority

NON-COLLUSION FORM AND TAX COMPLIANCE FORM

CERTIFICATE OF NON-COLLUSION

The undersigned certifies and certifies under penalties of perjury that this bid or proposal has been made in good faith and without collusion or fraud with any other person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club or other organization, entity or group of individuals.

Signature of person submitting bid or proposal

Amory Engineers, P.C.
Name of Business

TAX COMPLIANCE CERTIFICATION

I certify under the penalties of perjury that, to the best of my knowledge and belief Pursuant to M.G.L. c. 62C, Section 49A, Amory Engineers, P.C. (Name of Business) is in compliance with all laws of the Commonwealth of Massachusetts relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

Signature of person submitting bid or proposal*

Amory Engineers, P.C.
Name of business

04-2682525
**Social Security Number (Individual) or
Federal Identification Number (Business)

CERTIFICATE OF AUTHORITY

At a meeting of the Board of Directors of Amory Engineers, P.C.
(Name of Corporation)

duly called and held on February 23, 2016 at which a quorum was
(Date)
present, and acting throughout, the following vote was duly adopted:

VOTED: That Richard S. Johnson
(Name of Individual)

a Principal of the Corporation, hereby is authorized to affix the
(Title)

Corporate Seal, sign and deliver in the name and on behalf of the Corporation, bids, proposals, contracts, bills of sale, conditional sale agreements, chattel mortgages, leases, bonds, applications, affidavits and certificates and any other similar documents required in connection with the sale of the Corporation's products to any purchases, including assignments and satisfactions of any such documents.

Any and all applications, affidavits, statements, certificates and similar documents required by law in connection with the licensing of the Corporation or its representatives for the sale, distribution and servicing of its commercial products.

The authority is hereby delegated and shall be exercised by the aforesaid person in connection with his/her duties as

Principal of Amory Engineers, P.C. and not otherwise.
(Title) (Corporation)

ATTEST Cathy A. Bowman Date March 15, 2016
(Clerk of Corporation)

Corporate Seal