

32-1396-0-035

April 16, 2013

Mr. John Moynihan  
Town of Wayland  
41 Cochituate Rd  
Wayland, MA 01778

Re: **Engineering Services Proposal  
NPDES Permit Reapplication for WWTF**

Dear John:

In response to your request, we have prepared the following engineering services proposal for the NPDES Permit Reapplication for the Town's Wastewater Treatment Facility.

### **Background**

The WWMDC's most recent NPDES permit became effective on December 1, 2008. This permit was modified on October 9, 2009 via a minor modification process that was the result of a negotiated settlement with the Department of the Interior and several other parties. The Permit Reapplication must be submitted 180 days in advance of December 1, 2013 (no later than June 4, 2011).

Effluent limits tightened by the October, 2009 permit modification, coupled with failing infrastructure at the plant, resulted in an upgrade to the existing facility which was initiated in the spring of 2011. During the course of the upgrade, an adjacent developer applied for a DEP Sewer Connection Permit which the Department initially rejected on the grounds that the flow already allocated to potential users exceeded the permitted discharge volume of the facility. Through the negotiation of an Administrative Consent Order (ACO) with the Department, the WWMDC created a mechanism for the release of additional plant capacity to the adjacent developer and other unconnected users.

Two notable conditions of the ACO include: 1. A requirement for the WWMDC to permit a groundwater discharge facility to serve as an alternate means of effluent disposal should the plant exceed the capacity of the NPDES permit; and, 2. A requirement that the WWMDC construct the pre-permitted groundwater discharge facility in the event that average flows through the treatment facility exceed 80% of the NPDES permitted flow of 52,000 gpd.

In the event that the second condition outlined above is met, the WWMDC could be required to spend \$700,000 to \$1,000,000 for the construction of a relatively small amount of additional groundwater discharge capacity. Due to the potential rate payer impact of such a project, the WWMDC has elected to attempt to secure additional discharge capacity through the NPDES permit renewal process. In addition to the normal permit renewal application required under this process, we anticipate that additional effort will be required to demonstrate to MassDEP and EPA that the plant can handle increased flows.

Our approach to this project involves the following steps:

1. Complete forms required by MassDEP and EPA for a NPDES permit renewal as detailed below in the scope of work.

2. Conduct two meetings with MassDEP and EPA to discuss the permit application and a potential flow limit increase.
3. Confirm that the existing facility is capable of handling the increased flow proposed under the permit by coordinating with the membrane system manufacturer.

Additional detail is provided for each of these steps in the scope of work that follows.

### **Scope of Work**

Work associated with this project will include completing NPDES permit renewal forms, including NPDES Forms 1, 2A and 2S, and submitting transmittals to EPA and MassDEP. To facilitate the completion of this task, it is our understanding that the WWMDC will provide the following information:

1. An electronic copy (spreadsheet) of WWTF data for the previous five years (Available from Whitewater)
2. Whole effluent toxicity (WET) test results for the previous five years (Available from Whitewater)

Additional sampling may be required prior to application submittal pending EPA confirmation of pretreatment program requirements. In the event that additional sampling is required, Tighe & Bond will coordinate sample collection and preparation (in accordance with EPA protocols) with Whitewater. Laboratory analysis of samples is not part of this proposal.

Our proposal assumes attendance at two meetings with MassDEP, EPA and WWMDC representatives to coordinate the application submittal and discuss a potential flow increase.

Tighe & Bond will confirm the capacity of the recently installed treatment system based on observed influent strength and anticipated future flows. It is assumed that future flows will be based on the list of currently connected or promised users. We have assumed that the membrane system manufacturer, Ovivo, will provide the capacity confirmation using the process model that they created during design and the recent process data we plan to provide them.

### **Schedule**

We will complete this work in approximately four weeks from the Notice to Proceed. Assuming the Notice to Proceed is issued by May 1, 2013 we will submit the reapplication to EPA/MassDEP by June 1, 2013, in advance of the June 4, 2013 deadline.

### **Level of Effort**


Tighe & Bond will perform these services for a not to exceed fee of \$5,300. These services will be invoiced at the rate of the actual pay of the employee involved, multiplied by a factor of 3.0 to cover indirect costs, overhead, and profit. Services performed by subcontractors, materials purchased directly for this project, and permitting fees will be invoiced at cost plus ten percent. In the event that the scope of work is increased for any reason, the limiting fee to complete the work shall be mutually revised by written amendment. Our attached Terms and Conditions is part of this letter agreement.

If this proposal is acceptable please sign and return a copy for our files.

Please contact me at 508-471-9605 or [ibcatlow@tighebond.com](mailto:ibcatlow@tighebond.com) if you have any questions or need additional information.

Very truly yours,

**TIGHE & BOND, INC.**



Ian B. Catlow, P.E.  
Senior Project Manager/Associate

Enclosures  
Copy: Ira Montague, WWMD Clerk

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### **Acceptance**

On behalf of the Wayland Wastewater Management District Commission, the scope, fee, and terms of this proposal are hereby accepted.

\_\_\_\_\_  
Authorized Representative

\_\_\_\_\_  
Date

**"CLIENT" is defined in the acceptance line of the accompanying proposal letter or the name the proposal is issued to; Tighe & Bond, Inc. is hereby referenced as "ENGINEER".**

#### **1. SCHEDULE OF PAYMENTS**

**1.1** 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 ENGINEER shall be made on the basis of invoices submitted by ENGINEER and approved by CLIENT. If requested by CLIENT, monthly invoices may be supplemented with such supporting data as reasonably requested to substantiate them.

**1.2** In the event of a disagreement as to billing, the CLIENT shall pay the agreed portion.

**1.3** Interest will be added to accounts in arrears at the rate of one and one-half (1.5) percent per month (18 percent per annum) or the maximum rate allowed by law, whichever is less, of the outstanding balance. In the event counsel is retained to obtain payment of an outstanding balance, CLIENT will reimburse ENGINEER for all reasonable attorneys' fees and court costs.

**1.4** If CLIENT fails to make payment in full within 30 days of the date due for any undisputed billing, ENGINEER may, after giving seven days' written notice to CLIENT, suspend services and retain work product until paid in full, including interest. In the event of suspension of services, ENGINEER will have no liability to CLIENT for delays or damages caused by such suspension.

#### **2. SUCCESSORS AND ASSIGNS**

**2.1** CLIENT and ENGINEER each binds itself, its partners, successors, assigns and legal representatives to the other parties to this Agreement and to the partners, successors, assigns and legal representatives of such other parties with respect to all covenants of this Agreement. ENGINEER shall not assign, sublet or transfer its interest in this Agreement without the written consent of CLIENT, which consent shall not be unreasonably withheld.

**2.2** This Agreement represents the entire and integrated Agreement between CLIENT and ENGINEER and supersedes all prior negotiations, representations or Agreements, whether written or oral. This Agreement may be amended only by written instrument signed by both CLIENT and ENGINEER.

**2.3** Nothing contained in this Agreement shall create a contractual relationship or cause of action in favor of a third party against CLIENT or against ENGINEER.

#### **3. STANDARD OF CARE**

**3.1** In performing 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.

#### **4. TERMINATION**

**4.1** This Agreement may be terminated by either party upon seven 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, CLIENT may terminate this Agreement for its convenience at any time by giving written notice to ENGINEER. In the event of any termination, CLIENT will pay ENGINEER for all services rendered and reimbursable expenses incurred under the

Agreement to the date of termination and all services and expenses related to the orderly termination of this Agreement.

#### **5. RECORD RETENTION**

**5.1** ENGINEER will retain pertinent records relating to the services performed for the time required by law, during which period the records will be made available upon reasonable request and upon reimbursement for any applicable retrieval/copying charges.

**5.2** Samples - All soil, rock and water samples will be discarded 30 days after submission of ENGINEER's report, unless mutually agreed otherwise or unless ENGINEER's customary practice is to retain for a longer period of time for the specific type of services which ENGINEER has agreed to perform. Upon request and mutual agreement regarding applicable charges, ENGINEER will ship, deliver and/or store samples for CLIENT.

#### **6. OWNERSHIP OF DOCUMENTS**

**6.1** All reports, drawings, specifications, computer files, field data, notes, and other documents, whether in paper or electronic format or otherwise ("documents"), are instruments of service and shall remain the property of ENGINEER, which shall retain all common law, statutory and other reserved rights including, without limitation, the copyright thereto. CLIENT's payment to ENGINEER of the compensation set forth in the Agreement shall be a condition precedent to the CLIENT's right to use documents prepared by ENGINEER.

**6.2** Documents provided by ENGINEER are not intended or represented to be suitable for reuse by CLIENT or others on any extension or modification of this project or for any other projects or sites. Documents provided by ENGINEER on this project shall not, in whole or in part, be disseminated or conveyed to any other party, nor used by any other party, other than regulatory agencies, without the prior written consent of ENGINEER. Reuse of documents by CLIENT or others on extensions or modifications of this project or on other sites or use by others on this project, without ENGINEER's written permission and mutual agreement as to scope of use and as to compensation, if applicable, shall be at the user's sole risk, without liability on ENGINEER's part, and CLIENT agrees to indemnify and hold ENGINEER harmless from all claims, damages, and expenses, including attorney's fees, arising out of such unauthorized use or reuse.

**6.3** Electronic Documents - ENGINEER cannot guarantee the authenticity, integrity or completeness of data files supplied in electronic format. If ENGINEER provides documents in electronic format for CLIENT's convenience, CLIENT agrees to waive any and all claims against ENGINEER resulting in any way from the unauthorized use, alteration, misuse or reuse of the electronic documents, and to defend, indemnify, and hold ENGINEER harmless from any claims, losses, damages, or costs, including attorneys fees, arising out of the unauthorized use, alteration, misuse or reuse of any electronic documents provided to CLIENT.

**6.4** Electronic Data Bases - In the event that ENGINEER prepares electronic data bases, geographical information system (GIS) deliverables, or similar electronic documents, it is acknowledged by CLIENT and ENGINEER that such project deliverables will be used and perhaps modified by CLIENT and that ENGINEER's obligations are limited to the deliverables and not to any subsequent modifications thereof. Once CLIENT accepts the delivery of maps, databases, or similar documents developed by ENGINEER, ownership is passed to CLIENT. ENGINEER will retain the right to use the developed data and will archive the data for a period of three years from the date of project completion.

**7. INSURANCE**

**7.1** ENGINEER will retain Worker's Compensation Insurance, Professional Liability Insurance with respect to liabilities arising from negligent errors and omissions, Commercial General Liability Insurance, Excess Liability, and Automobile Liability during this project. ENGINEER will furnish certificates at CLIENT's request.

**7.2** Risk Allocation - For any claim, loss, damage, or liability resulting from error, omission, or other professional negligence in the performance of services, the liability of ENGINEER to all claimants with respect to this project will be limited to an aggregate sum not to exceed \$50,000 or ENGINEER's compensation for consulting services, whichever is greater.

**7.3** Damages - Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither CLIENT nor ENGINEER, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of certain damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation and any other consequential damages that may be incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both CLIENT and ENGINEER shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

**8. INDEMNIFICATION AND DISPUTE RESOLUTION**

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

**8.2** CLIENT agrees, to the fullest extent permitted by law, to indemnify and hold ENGINEER harmless from any damage, liability or cost to the extent caused by CLIENT's negligent acts, errors or omissions in the performance of this Agreement or anyone for whom CLIENT is legally liable. CLIENT is not obligated to indemnify ENGINEER in any manner whatsoever for ENGINEER's own negligence.

**8.3** CLIENT agrees that any and all limitations of ENGINEER's liability, waivers of damages by CLIENT to ENGINEER shall include and extend to those individuals and entities ENGINEER retains for performance of the services under this Agreement, including but not limited to ENGINEER's officers, partners, and employees and their heirs and assigns, as well as ENGINEER's subconsultants and their officers, employees, and heirs and assigns.

**8.4** In the event of a disagreement arising out of or relating to this Agreement or the services provided hereunder, CLIENT and ENGINEER agree to attempt to resolve any such disagreement through direct negotiations between senior, authorized representatives of each party. If any disagreement is not resolved by such direct negotiations, CLIENT and ENGINEER further agree to consider using mutually acceptable non-binding mediation service in order to resolve any disagreement without litigation.

**9. SITE ACCESS**

**9.1** Right of Entry - Unless otherwise agreed, CLIENT will furnish right-of-entry on the land for ENGINEER to make any surveys, borings, explorations, tests or similar field investigations. ENGINEER will take reasonable precautions to limit damage to the land from use of equipment, but the cost for restoration of any damage that may result from such field investigations is not included in the agreed compensation for ENGINEER. If restoration of the land is required to its former condition, upon mutual agreement this may be accomplished as a reimbursable additional service at cost plus ten percent.

**9.2** Damage to Underground Structures - Reasonable care will be exercised in locating underground structures in the vicinity of proposed subsurface explorations. This may include contact with the local agency coordinating subsurface utility information and/or a review of plans provided by CLIENT or CLIENT representatives for the site to be investigated. ENGINEER shall be entitled to rely upon any information or plans prepared or made available by others. In the absence of confirmed underground structure locations, CLIENT agrees to accept the risk of damage and costs associated with repair and restoration of damage resulting from the exploration work.

**10. OIL AND HAZARDOUS MATERIALS**

**10.1** If, at any time, evidence of the existence or possible existence of asbestos, oil, or other hazardous materials or substances is discovered, ENGINEER reserves the right to renegotiate the terms and conditions of this Agreement, the fees for ENGINEER's services and ENGINEER's continued involvement in the project. ENGINEER will notify CLIENT as soon as practical if evidence of the existence or possible existence of such hazardous materials or substances is discovered.

**10.2** The discovery of the existence or possible existence of hazardous materials or substances may make it necessary for ENGINEER to take accelerated action to protect human health and safety, and/or the environment. CLIENT agrees to compensate ENGINEER for the cost of any and all measures that in its professional opinion are appropriate to preserve and/or protect the health and safety of the public, the environment, and/or ENGINEER's personnel. To the full extent permitted by law, CLIENT waives any claims against ENGINEER and agrees to indemnify, defend and hold harmless ENGINEER from any and all claims, losses, damages, liability, and costs, including but not limited to cost of defense, arising out of or in any way connected with the existence or possible existence of such hazardous materials substances at the site.

**11. SUBSURFACE INVESTIGATIONS**

**11.1** In soils, groundwater, and other subsurface investigations, conditions 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 variability of conditions and the inherent uncertainties in subsurface evaluations, changed or unanticipated underground conditions may occur that may affect overall project costs and/or execution. These variable conditions and related impacts on cost and project execution are not the responsibility of ENGINEER.

**12. FEDERAL AND STATE REGULATORY AGENCY AUDITS**

**12.1** For certain services rendered by ENGINEER, documents filed with federal and state regulatory agencies may be audited after the date of filing. In the event that CLIENT's project is selected for an audit, CLIENT agrees to compensate

ENGINEER for time spent preparing for and complying with an agency request for information or interviews in conjunction with such audit. CLIENT will be notified at the time of any such request by an agency, and ENGINEER will invoice CLIENT based on its standard billing rates in effect at the time of the audit.

### 13. CLIENT'S RESPONSIBILITIES

**13.1** Unless otherwise stated in the Agreement, CLIENT will obtain, arrange, and pay for all notices, permits, and licenses required by local, state, or federal authorities; and CLIENT will make available the land, easements, rights-of-way, and access necessary for ENGINEER's services or project implementation.

**13.2** CLIENT will examine ENGINEER's studies, reports, sketches, drawings, specifications, proposals, and other documents and communicate promptly to ENGINEER in the event of disagreement regarding the contents of any of the foregoing. CLIENT, at its own cost, will obtain advice of an attorney, insurance counselor, accountant, auditor, bond and financial advisors, and other consultants as CLIENT deems appropriate; and render in writing decisions required by CLIENT in a timely manner.

### 14. OPINIONS OF COST, FINANCIAL ANALYSES, ECONOMIC FEASIBILITY PROJECTIONS, AND SCHEDULES

**14.1** ENGINEER has no control over cost or price of labor and materials required to implement CLIENT's project, 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, expressed or implied, that CLIENT's actual project costs, financial aspects, economic feasibility, or schedules will not vary from any opinions, analyses, projections, or estimates which may be provided by ENGINEER. If CLIENT wishes additional information as to any element of project cost, feasibility, or schedule, CLIENT at its own cost will employ an independent cost estimator, contractor, or other appropriate advisor.

### 15. CONSTRUCTION PHASE PROVISIONS

**15.1** CLIENT and Contractor - The presence of ENGINEER's personnel at a construction site, whether as onsite representatives or otherwise, does not make ENGINEER or ENGINEER's personnel in any way responsible for the obligations, duties, and responsibilities of the CLIENT and/or the construction contractors or other entities, and does not relieve the construction contractors or any other entity of their respective obligations, duties, and responsibilities, including, but not limited to, all construction methods, means, techniques, sequences, and procedures necessary for coordinating and completing all portions of the construction work in accordance with the construction contract documents and for providing and/or enforcing all health and safety precautions required for such construction work.

**15.2** Contractor Control - ENGINEER and ENGINEER's personnel have no authority or obligation to monitor, to inspect, to supervise, or to exercise any control over any construction contractor or other entity or their employees in connection with their work or the health and safety precautions for the construction work and have no duty for inspecting, noting, observing, correcting, or reporting on health or safety deficiencies of the construction contractor(s)

or other entity or any other persons at the site except ENGINEER's own personnel.

**15.3** On-site Responsibility - The presence of ENGINEER's personnel at a construction site is for the purpose of providing to CLIENT an increased degree of confidence that the completed construction work will conform generally to the construction documents and that the design concept as reflected in the construction documents generally has been implemented and preserved by the construction contractor(s). ENGINEER neither guarantees the performance of the construction contractor(s) nor assumes responsibility for construction contractor's failure to perform work in accordance with the construction documents.

**15.4** Payment Recommendations - Recommendations by ENGINEER to CLIENT for periodic construction progress payments to the construction contractor(s) are based on ENGINEER's knowledge, information, and belief from selective observation that the work has progressed to the point indicated. Such recommendations do not represent that continuous or detailed examinations have been made by ENGINEER to ascertain that the construction contractor(s) have completed the work in exact accordance with the construction documents; that the final work will be acceptable in all respects; that ENGINEER has made an examination to ascertain how or for what purpose the construction contractor(s) have used the moneys paid; that title to any of the work, materials, or equipment has passed to CLIENT free and clear of liens, claims, security interests, or encumbrances; or that there are not other matters at issue between CLIENT and the construction contractors that affect the amount that should be paid.

**15.5** Record Drawings - Record drawings, if required as part of ENGINEER's agreed scope of work, will be prepared, in part, on the basis of information compiled and furnished by others, and may not always represent the exact location, type of various components, or exact manner in which the project was finally constructed. ENGINEER is not responsible for any errors or omissions in the information from others that are incorporated into the record drawings.

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