

**RESOLUTION R-2020-6**

**A RESOLUTION TO APPROVE AN AGREEMENT WITH BILL PENNINGTON TO BE THE CERTIFIED PUBLIC WATER SUPPLY OPERATOR FOR THE VILLAGE OF WINDHAM WATER SYSTEM AND DECLARING AN EMERGENCY.**

**WHEREAS**, the Village of Windham operates a water system; and

**WHEREAS**, to operate the Village water system an individual holding an Ohio EPA Class 1 License as a public water supply operator is required; and

**WHEREAS**, the Village is encouraging a current employee to obtain the necessary certification, but time is needed by that individual to complete the course of study; and

**WHEREAS**, Bill Pennington is presently employed by the Village Utility Department and also holds a current Ohio EPA Class 1 Water Operator; and

**WHEREAS**, Bill Pennington is willing to undertake increased responsibility to serve the Village as a Class 1 Water Operator so that the Village is in compliance with Ohio EPA regulations on a temporary basis to allow others to pursue the required course of study.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the Village of Windham, Portage County, Ohio at least two-thirds (2/3) of all members elected thereto concurring:

**Section 1:** The Village Council of Windham, Portage County, Ohio, hereby authorizes the Mayor and the Fiscal Officer to execute an agreement in substantial conformity with the attached Temporary Employment Contract for Water System Operator for Operation of Public Water Supply Certified Water System Operator Contract for Contractual Operation of the Public Water Supply marked for identification as Exhibit A and incorporated herein by reference.

**Section 2:** The employment authorized in the attached Contract is for services to be performed at the Village Water Plant, and the Fiscal Officer is directed to allocate the compensation authorized in the attached Contact to the compensation authorized for the Water Superintendent under the Village Pay Ordinance.

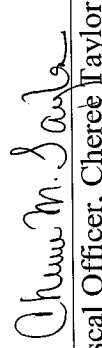
**Section 3:** This Resolution is hereby declared to be an emergency measure, becoming effective immediately on passage by Council and approval by the Mayor, necessary to protect the health, safety, morals and general welfare of the community, and for the further reason that the Village of Windham is presently in need of an Ohio EPA Class 1 Water Operator.

**Section 4:** It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were accepted in an open meeting of this Council, and that deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with Section 121.22 of the Ohio Revised Code.

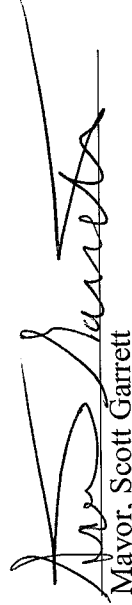
Passed as an Emergency on April 28, 2020

Vote of Council:      Ayes: 5  
                                     Nays: 0  
                                     Abstained: 1

Attest:

  
Fiscal Officer, Chereé Taylor

Approved:

  
Mayor, Scott Garrett

Approved as to Legal Form:



A handwritten signature in black ink, appearing to read 'Thomas Reitz', is written over a horizontal line.

Solicitor, Thomas Reitz

**INDEPENDENT CONTRACTOR AGREEMENT**  
**FOR WATER SYSTEM OPERATOR AND WASTEWATER SYSTEM OPERATOR**  
**FOR OPERATION OF PUBLIC WATER SUPPLY**

WHEREAS, the Village of Windham, Ohio, needs to employ a certified water plant operator and wastewater operator; and

WHEREAS, Bill Pennington, Operator Number OH WW2-1105920-14, of Windham Ohio, (hereinafter Pennington) is licensed to perform and capable of performing the duties required of a certified water system operator and wastewater operator in the State of Ohio.

This agreement (hereinafter Agreement) is made between the Parties effective on May 1, 2020.

**1. Parties to the Agreement.**

Name of Water Supply: Windham Water Department  
System ID #: 6704812  
Name of Owner: Village of Windham  
Name of System Contact: Deborah Blewitt, Village Administrator  
Mailing Address: 9083 N. Main Street, Windham, Ohio  
Phone: System Contact: 330 326-2622 Ext. 224  
Emergency Contact: Deborah Blewitt, 330 631-9437  
Email: administrator@windhamvillage.com

Name of Certified Operator: Bill Pennington  
Operator ID Number: OH WW2-1105920-14  
Mailing Address: 9230 N. Main Street, Windham, Ohio  
Phone and Emergency Contact: 330 352-2513  
Email: billmpennington85@yahoo.com

**2. The Duties and Responsibilities of each Party.**

**Village Responsibilities.**

- A. Provide all needed manpower and equipment required to maintain proper day-to-day operation of the Windham Water Plant and the Windham Wastewater Treatment Plant.
- B. Provide labor and materials for correcting any maintenance and/or operational problems.
- C. Provide necessary monetary funds to cover the costs of requirements outlined in A and B.
- D. Ensure that all projects requiring construction and operating permits meet regulatory requirements.
- E. Ensure that all NPDES permit effluents meet applicable regulations.

- F. Provide manpower for daily equipment checks.
- G. Maintain copies of all pertinent reports and records at the treatment plant or other system facility site.
- H. Maintain and implement an up-to-date Emergency Operating Plan (EOP).
- I. Provide manpower to perform preventative maintenance on equipment as recommended by the manufacturer.

**Pennington Duties and Responsibilities as Water Treatment Plant Operator.**

**Pennington shall perform duties as identified in Chapter 3745-7 of the Ohio Revised Code and in accordance with the Rule 3745-7-09 of the Ohio Administrative Code, including, but not limited to:**

- A. Pennington shall be responsible for operations of the Windham Water Plant in accordance with the rules and regulations of the Ohio Environmental Protection Agency and the U.S. Environmental Protection Agency.
- A. Pennington shall be on-site at the Windham Water Plant at least one half (1/2) hour three days per week in compliance with the minimum required hours per Ohio EPA Class 1 plant requirements. Pennington shall work additional hours as required for Ohio EPA compliance and plant operation.
- B. Pennington shall document his performance and plant compliance with the requirements set forth in paragraphs A. and B. of this section, demonstrating compliance by the Windham Water Plant with all Ohio EPA Class 1 plant requirements.
- C. Maintaining proper records of the required visits.
- D. Accomplish the collection of all required samples and submission of these samples to a certified laboratory for analysis.
- E. Submit in a timely manner to the Ohio EPA all required operating records and reports. These records and reports include, but are not limited to:
  - Consumer Confidence Report
  - Drinking Water Compliance Monitoring Reports
  - Monthly Operating Reports
- F. In addition to the specified visits, Pennington must also ensure a means of communication between the Windham Water Plant and regulatory agencies in the event of routine or emergency operational problems.
- G. Ensure by personal action or by directive to system personnel that system is being operated in a manner that provides for a safe and proper production and distribution of potable water.
- H. Ensure by personal action and by directives to system personnel that all necessary and required routine operational control testing is being performed.
- I. Issues boil orders (when required). This duty includes notification of affected water system customers, the Ohio Environmental Protection Agency Compliance Assurance Section, and local and/or county public health department, and if required to the Ohio Dept. of Public Health.
- J. Response to all regulatory agency or regulatory body requests for information, site visits, or any other requested data.

- K. Identify and assure compliance with the Ohio Environmental Protection Agency with all rules and regulations of the Ohio Environmental Protection Agency.

**Pennington Duties and Responsibilities as Wastewater Treatment Plant Operator.**

- A. Pennington shall be responsible for operations of the Windham Wastewater Treatment Plant in accordance with the rules and regulations of the Ohio Environmental Protection Agency and the U.S. Environmental Protection Agency.
- B. Pennington shall be on-site at the Windham Wastewater Treatment Plant at least twenty (20) hours per week, in compliance with the minimum required hours per Ohio EPA plant requirements. Pennington shall work additional hours as required for Ohio EPA compliance and plant operation.
- C. Pennington shall document his performance and plant compliance with the requirements set forth in paragraphs A. and B. of this section, demonstrating compliance at the Windham Wastewater Treatment Plant with all Ohio EPA plant requirements.
- D. Maintain proper records of the required visits.
- E. Collect all required samples and submit these samples to a certified laboratory for analysis.
- F. Manage biosolids disposal and treatment.
- G. Inspect equipment on a regular basis.
- H. Monitor operating conditions, meters, and gauges.
- I. Record meter and gauge readings and operational data.
- J. Document and report test results to regulatory agencies.
- K. Clean and maintain equipment, tanks, filter beds, and other work areas.
- L. Ensure safety standards are met.
- M. Address emergency situations and notify the Village of Windham and Ohio EPA of all emergency situations.
- N. Identify and assure compliance with the Ohio Environmental Protection Agency with all rules and regulations of the Ohio Environmental Protection Agency.

**3. Contractual Relationship.**

In performing its obligations under this Contract, Pennington shall operate and have the status of an independent contractor and shall not act as or be an agent, servant, or employee of the Village of Windham nor shall the Village of Windham or any of its employees or agents be the agents or employees of Pennington.

**4. Term.**

- 4.1 Initial and Subsequent Term(s). The initial term (“Initial Term”) of this Agreement shall commence on May 1, 2020 (the “Commencement Date”) and extend for a period of three (3) months from the Commencement Date of this Agreement. Thereafter, this Agreement shall automatically be extended for additional renewal

terms of one (1) month each (a "Renewal Term") until terminated by either party at least 45 days prior to the end of the Initial Term or then current Renewal Term.

4.2 Cancellation. After the Initial Term, either party hereto may cancel this agreement for any reason upon 30 days written notice of such cancellation to the other.

## **5. Compensation.**

5.1 Compensation. The Village of Windham shall pay to Pennington the sum of \$3,000.00 per month. This pay is as an independent contractor, and as such is not subject to any of the rights or responsibilities accorded to all employees of the Village of Windham.

5.2 Taxes. The parties agree that the Village will not withhold taxes or other payment from the compensation herein provided and that Contractor shall be responsible for all applicable federal, state, and local taxes, FICA, unemployment, disability benefits and workers' compensation obligation that may arise in connection with the Services provided by Pennington pursuant to this Agreement.

## **6. Billing and Payment.**

6.1 Billing. Beginning thirty (30) days after the Commencement Date and each month thereafter, Pennington shall submit invoices to the Village of Windham for the Services provided under this Agreement.

6.2 Payment Terms. All invoices shall be due and payable net thirty (30) days from date of invoice.

## **7. Insurance.**

As an independent contractor, Pennington shall, solely at his own election and expense, be responsible for any and all of his own insurance. As a result the Village of Windham shall not provide to Pennington insurance of any nature

## **8. Release from Liability**

**The Pennington shall release, hold harmless, and defend the Village of Windham from and against all liabilities, losses, costs, expenses, including attorney's fees, claims, actions and causes of action that result directly or indirectly from Pennington's breach of his duties as defined in this Agreement.**

## **9. Force Majeure.**

Any failure, in whole or in part, by either party to timely perform any obligation it may have under this Agreement (except the obligation to pay monies when due) shall be excused to the extent that such failure is caused by any circumstance which is not within the reasonable control of the party whose performance is prevented, restricted or otherwise

interfered with, including without limitation, by an act of God, flood, fire, explosion, labor difficulty (regardless of the reasonableness of the demands of labor or the power of the party concerned to concede), riot, civil disorder, transportation facilities, failure of or interference with normal sources of supply, accident or by any other circumstances outside the parties' reasonable control (such circumstance being hereinafter referred to as a "Force Majeure Occurrence"). The party affected by any Force Majeure Occurrence shall give prompt written notice of such prevention, restriction or interference to the other party. The time for performance for the party affected by the Force Majeure Occurrence shall be extended by the number of working days which such party, acting with all due diligence and dispatch, is prevented from performing hereunder. In the event of any failure by either party to perform as a result of a Force Majeure Occurrence, there shall be a pro rata reduction (based upon number of days) in the compensation applicable for the month(s) during which services were not rendered in accordance with this agreement. Notwithstanding the foregoing, if either party is unable to perform a material obligation for ninety (90) days or more due to a Force Majeure Occurrence, either party may, at its option by giving written notice, cancel this Agreement in accordance with the terms and provisions of Paragraph 4.2 of the Agreement.

#### **10. Governing Law.**

This Agreement is made with reference to and shall be governed by and construed in accordance with the laws of the State of Ohio

#### **11. Partial Invalidity.**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue to full force without being impaired or invalidated in any way; provided, however, the absence of the eliminated provision is not contrary to the original intention of the parties, in which case the entire Agreement shall be terminated as of the effective date of the aforesaid adjudication.

#### **12. Entire Agreement.**

This Agreement supersedes any and all other agreements, whether oral or in writing, between the parties hereto, and contains all of the covenants and agreements between the parties. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, have been made by any party or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing signed by both parties.

#### **13. Notices.**

Any notices to be given hereunder by either party to the other may be given either by personal delivery in writing, telecopy (receipt confirmed) or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties

at the addresses set forth on the first page of this Agreement, but each party may change its address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three (3) days after mailing.

#### **14. Default.**

13.1. General. A default under this Agreement shall be deemed to have occurred when one of the parties has materially breached a provision of this Agreement and, such party having first received written notice setting forth the nature of the alleged breach (except in the case of a default specified in Paragraph 13(b) below), has not cured said breach within thirty (30) days after notification thereof.

13.2 Failure to Pay. Failure of Village of Windham to make payment under Paragraph 6.2 of this Agreement within thirty (30) days of the date due shall be considered a default under this Agreement, without need for notice on the part of Provider or for an additional thirty (30) days to pass, as otherwise required by Paragraph 13(a) above.

13.3 Either Party's Remedy. In the event of a material uncured breach of this Agreement by one party, the remedy for which breach has not been addressed elsewhere in this Agreement, the other party shall, subject to other provisions of this Agreement, have the right to immediately cancel this Agreement.

#### **15. Headings.**

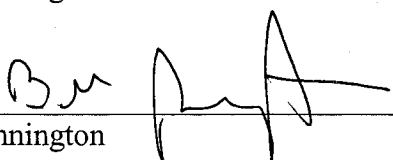
The article, paragraph and exhibit headings in these Standard Terms and Conditions and this Agreement are for convenience only and shall not be utilized in any interpretation of this Agreement.

#### **16. Assignment.**

This Agreement may not be assigned by either party.


Executed this the 28<sup>th</sup> day of April, 2020.

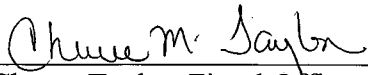
Bill Pennington

  
\_\_\_\_\_  
Bill Pennington



VILLAGE OF WINDHAM

  
\_\_\_\_\_  
Scott Garrett, Mayor

  
\_\_\_\_\_  
Cheree Taylor, Fiscal Officer

Approved as to legal form:

  
\_\_\_\_\_  
Thomas Reitz, Village Solicitor

