

**RESOLUTION R-2018-11**

**A RESOLUTION TO APPROVE A CONTRACT WITH BURGESS & NIPLE TO DEVELOP AN ASSET MANAGEMENT PLAN FOR THE VILLAGE OF WINDHAM WATER SYSTEM AND DECLARING AN EMERGENCY.**

**WHEREAS**, on October 6, 2017 the Ohio legislature amended Ohio Revised 6109.24 to authorize the unilateral imposition of an obligation to establish an Asset Management Plan on operators of a water system; and

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

**WHEREAS**, even though the Ohio legislature provided no funding to pay for the mandatory Asset Management Plan, the Village of Windham is still required to generate such a plan; and

**WHEREAS**, Burgess & Niple has presented its credentials and has been determined by this Council to be an appropriate choice to undertake the development of an Asset Management Plan for operation of the Village of Windham water system.

NOW, THEREFORE, BE IT ORDAINED 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 proposal to develop an Asset Management Plan, which proposal is marked for identification as Exhibit A and incorporated herein by reference.

**Section 2:** 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 Asset Management Plan to comply with an unfunded mandate from the Ohio legislature.

**Section 3:** 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 4, 2018.

Vote of Council:      Ayes: 4  
                                 Nays: 1

Attest:

Approved:

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

\_\_\_\_\_  
Mayor, Deborah Blewitt

Approved as to Legal Form:

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

# BURGESS & NIPLE

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Akron Centre Plaza | 50 South Main Street | Suite 600 | Akron, OH 44308 | 330.376.5778

Mr. Ryan Wagner  
Village Administrator  
Village of Windham  
9621 East Center Street  
Windham, OH 44288

Re: Proposal for Professional Services  
Water System Asset Management Plan  
Development Assistance

March 8, 2018

Dear Mr. Wagner:

Burgess & Niple (B&N) is pleased to submit this proposal to the Village of Windham (Village/Client) for assistance with developing an Asset Management Plan (AMP) for the Village's water system, as required by Ohio Senate Bill 2 (Bill). According to the Bill, all Public Drinking Water Systems (PDWS) in Ohio are covered by this rule and must demonstrate ongoing technical, financial, and managerial capability through implementation of an AMP. The written AMP must demonstrate how each PDWS will implement/has implemented elements of its AMP, including the following:

- Inventory and evaluation of all PDWS assets
- Operation and maintenance programs
- An emergency preparedness and contingency planning program
- Criteria and timelines for infrastructure rehabilitation and replacement
- Approved capacity projections and capital improvement planning
- A long-term funding strategy

The AMP is intended to be a dynamic document that is updated regularly. The first edition will be simple and will build on existing practices and available information. The first edition will likely include recommendations for additional implementation tasks (such as on-going condition assessment of assets). The AMP must be completed by October 1, 2018.

## SCOPE OF SERVICES

When authorized by the Client, B&N will provide the following:

- A. **Project Kick-Off Meeting.** B&N and Client will review the overall scope to be part of the data gathering process.
  1. Determine the Client's drivers for preparing the AMP.
  2. Determine the Client's priorities, as a PDWS to support future asset management activities that will align with the Client's overall goals as an organization.
- B. **Data Request and Review**
  1. B&N will review available information, including but not limited to:
    - a. Planning documents

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- b. Strategic plans
  - c. Master plans
  - d. Facility plan
  - e. Capital Improvement Plans (CIP)
  - f. Bulk water agreements
  - g. Annual reports
  - h. Water Distribution System maps and plans
  - i. Water Treatment Plant plans
  - j. Inventory lists
  - k. Financial records including:
    - 1) Pro-forma statements, 5 years previous and 5 years projected
    - 2) Income statement
    - 3) Balance sheet
    - 4) Statement of cash flow
    - 5) Amortization schedule for outstanding debt
    - 6) Capitalization terms of debt
    - 7) Current water rate ordinance and recent water rate evaluation(s)
    - 8) Billing records
    - 9) Bond or credit rating
  - l. Organizational charts
  - m. Operation and maintenance (O&M) manuals
  - n. Training records
  - o. Standard Operating Procedures (SOP)
  - p. Emergency and contingency plans
2. B&N will review available information and prepare data requests for any additional information needed. Facilitate 1 day of interviews with key Village PDWS staff responsible for:
- a. Utility management
  - b. Planning
  - c. Engineering
  - d. Maintenance
  - e. Operations
  - f. Information Technology (IT)
  - g. Regulatory compliance
  - h. Watershed/Source water protection
- C. **Prepare Summary of Findings.** Summarize interview and data review findings, and improvement recommendations in a document that will be made available to the Client for review.
- D. **Draft AMP.** Generate a draft AMP based on the information gathered and summarized in the above-referenced document, with the focus on documenting existing conditions and practices. A template AMP outline, shown below, is based on the Bill's requirements and will be adjusted to suit the Client's needs and any additional Client goals.

B&N will provide a draft report. The document will include the current status of the Client's AMP and recommended improvements necessary to meet the Ohio EPA criteria for demonstrating ongoing technical, managerial, and financial capability.

*AMP Content Requirements from Ohio EPA's Website*

To demonstrate managerial capability, the rules would call for the following information. Together, these items can give a water system information it needs to manage its system.

- A non-technical description of the water system, including major components, source, number of connections, etc.
- Ownership accountability and an operating plan containing a table of organization.
- Documentation of operator attended training.
- A written operation and maintenance plan.
- A written demonstration of procedures for addressing complaints, violations, etc.
- An inventory of contacts and purchasing procedures.

Technical capability would be demonstrated with the following:

- A map including location and name of major assets, such as water source, treatment, storage, and distribution.
- An inventory of assets with an evaluation of each asset. The initial plan will include a general evaluation of assets based on existing information and recommendations for ongoing condition assessment.
- O&M programs that include testing procedures and protocols.
- Criteria and a timeline for the rehabilitation and replacement of assets.
- CIP, including a project description, cost, and funding sources.
- Approved capacity projections, and emergency and contingency planning.
- Levels of service that are developed and tracked by the water system.
- Metrics will be pre-determined by the state, depending on the type of system. These will be tracked and reported by the water system.

The third major component of the AMP rules will be financial capability. The following will be required in an AMP:

- Pro-forma statements (5 years previous and 5 years projected).
- Income statement.
- Balance sheet.
- Statement of cash flow.
- Amortization schedule for outstanding debt.
- Capitalization terms of debt.
- Current water rate ordinance and triennial water rate evaluation. This can be used by the water system to evaluate when and by how much rates should be raised.
- Documentation of all customers billed per metered water usage.
- Information demonstrating bond or credit rating. Documentation that the Village has a bond or credit rating to assess their likelihood to pay back debt.

- E. Meet with the Client to review and discuss the AMP and receive Client comments.
- F. B&N will address the Client's review comments and provide the Client with one electronic copy and three written, bound copies of the final AMP.

### **PROJECT SCHEDULE**

It is scheduled the Client will have a finalized PDWS AMP by October 1, 2018.

### **SERVICES TO BE PROVIDED BY THE CLIENT**

It is agreed the Client will:

1. Provide B&N all available information, including water service accounts, AutoCAD files, GIS shapefiles, plans, and engineering reports, insofar as they are available or may be secured by the Client.

### **COMPENSATION**

The scope of services defined herein shall be performed for a not-to-exceed fee of \$25,000, based on authorization to proceed being received by March 31, 2018. Invoices will be monthly based on hourly rates as set forth on the attached schedule, for employees and contract labor, plus reimbursable expenses and are due upon receipt. We will not exceed this fee without prior written authorization from the Client.

### **ADDITIONAL SERVICES**

If the Client desires B&N to perform additional professional services not specifically described in the scope of work herein, or if the level of effort to meet Ohio EPA requirements is more than estimated in this proposal, B&N can provide the requested professional services for an additional fee, to be negotiated at that time. B&N will not proceed with any additional services without prior authorization from the Client.

### **TERMS AND CONDITIONS**

Terms and Conditions are attached to this proposal as Attachment A. Attachment A shall be incorporated into this proposal as if written herein and will become part of the Agreement when fully executed.

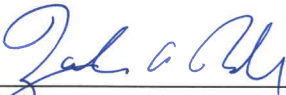
**SIGNATURES**

If you are in accord with the terms of this proposal, please acknowledge by signing below and returning one executed original for our files or a purchase order authorizing B&N to begin work on this Project. B&N appreciates this opportunity to assist the Village of Windham and awaits your authorization to proceed.


Sincerely,

**BURGESS & NIPLÉ, INC.**

**VILLAGE OF WINDHAM**

  
\_\_\_\_\_  
Zachary A. Held, PE  
Project Manager

\_\_\_\_\_  
Ryan Wagner  
Village Administrator

  
\_\_\_\_\_  
Daniel R. Johnson, PE  
Vice President

\_\_\_\_\_  
Date

**FINANCIAL OFFICER CERTIFICATION**

I hereby certify the availability of funds for the above work.

\_\_\_\_\_  
Cheree Taylor  
Finance Director

DRJ/ZAH:kj  
Enclosure  
copy: File

## Attachment A

### Terms and Conditions

1. Attachment. These Terms and Conditions are attached to and are part of the proposal, and will become part of the Agreement when fully executed.
2. Changes to Agreement. Services beyond those stated herein can be provided by B&N upon written authorization of an additional fee and associated scope of services.
3. Dispute Resolution. B&N and Client agree that they shall diligently pursue resolution of all disagreements within 45 days of either party's written notice prior to exercising their rights under law.
4. Force Majeure. Neither party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations results from any cause beyond its reasonable control and without its negligence.
5. Applicable Law. This Agreement shall be governed by the laws of Ohio. All disputes arising between the parties resulting in the filing of litigation shall be brought in state courts.
6. Severability. If any of the provisions of this Agreement shall be finally determined to be invalid or unenforceable in whole or in part, the remaining provisions hereof shall remain in full force and effect, and be binding upon the parties hereto. The parties agree to reform this Agreement to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.
7. Notices. Any notice or communication required by this Agreement shall be deemed sufficiently given if in writing and when delivered personally or 48 hours after deposit with the U.S. Postal Service as registered or certified mail, postage prepaid, and addressed as follows:

President  
Burgess & Niple, Inc.  
5085 Reed Road  
Columbus, OH 43220

Client shall give prompt, written notice to B&N whenever Client observes or otherwise becomes aware of: any development that affects the scope or time of performance of B&N's services; the presence at the site of any constituent of concern; or any relevant, material defect or nonconformance in (a) B&N's services, (b) the work, (c) the performance of any Contractor, or (d) Client's performance of its responsibilities under this Agreement.

8. Standard of Care. Services provided under this Agreement shall be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.
9. Technical Accuracy. Client shall not be responsible for discovering deficiencies in the technical accuracy of B&N's services. B&N shall correct deficiencies in technical accuracy without additional compensation, unless such corrective action is directly attributable to deficiencies in Client-furnished information.
10. B&N shall not be required to sign any document, no matter by whom requested, that would result in B&N having to certify, guarantee, or warrant the existence of conditions whose existence B&N cannot ascertain. Client agrees not to make resolution of any dispute with B&N or payment of any amount due to B&N in any way contingent upon B&N signing any such document.
11. Project Delivery. In the event B&N completes the scope of services and the product of those services is ready for delivery, and the Client has unpaid invoices more than 120 days from the invoice date; project delivery shall be delayed by B&N until such time as the unpaid invoices and interest are current per the terms of this Agreement. The Client waives any and all claims against B&N for any such suspension.

## Attachment A Terms and Conditions

12. Independent Contractor. It is expressly understood and agreed that in the performance of their services under this Agreement, B&N shall not be considered an agent, i.e., an employee of the Client, but shall be considered an independent contractor.
13. Compliance with Laws. B&N agrees to comply with applicable laws, rules, regulations, codes, ordinances and standards in force.
14. Schedule. The schedule shall be as stated in the proposal.
15. Suspension and Termination. In the event that a project is suspended or terminated by either party for either cause or convenience, an effective date of termination shall be agreed upon to allow B&N to demobilize personnel and equipment, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed tasks, and to assemble project materials in an orderly file. In the event of any termination, B&N will be entitled to invoice Client and receive full payment for all services performed or furnished through the effective date of termination. Client, at his sole risk, shall have the limited right to the use of documents.
16. Opinions of Cost. When included in B&N's scope of services, opinions or estimates of probable construction cost are prepared on the basis of B&N's experience and qualifications and represent B&N's judgment as a professional generally familiar with the industry. However, since B&N has no control over the cost of labor, materials, equipment or services furnished by others, over contractors' methods of determining prices, or over competitive bidding or market conditions, B&N cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from B&N's opinions or estimates of probable construction cost.

If the lowest bona fide proposal or bid exceeds the established construction cost limit, Client shall (a) give written approval to increase such construction cost limit, or (b) authorize negotiating or rebidding the project within a reasonable time, or (c) cooperate in revising the project's scope, extent, or character to the extent consistent with the project's requirements and with sound engineering practices. In the case of (c), B&N shall modify the construction contract documents as necessary to bring the construction cost within the construction cost limit. Client shall pay B&N's cost and profit to provide such modification services, including the costs of the services of its subconsultants, all overhead expenses reasonably related thereto, and reimbursable expenses. The providing of such services will be the limit of B&N's responsibility in this regard and, having done so, B&N shall be entitled to payment for services and expenses in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established construction cost limit.

17. Limitation of Liability. To the fullest extent permitted by laws and regulations, and notwithstanding any other provision of this Agreement, Client agrees that the total liability, in the aggregate, of B&N and B&N's officers, directors, members, partners, agents, employees, and subconsultants, to the Client, its subsidiary and/or affiliated companies and their respective officers, directors, employees, agents, and anyone claiming by, through, or under Client for any and all injuries, claims, losses, expenses, damages whatsoever arising out of, resulting from or in any way relating to B&N's services, this Agreement or any Addenda, from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability, breach of contract, indemnity obligations, or warranty express or implied of B&N or B&N's officers, directors, members, partners, agents, employees, or subconsultants, shall be limited to the total amount of compensation received by B&N.
18. Indemnification. B&N agrees, to the fullest extent permitted by law, to indemnify and hold harmless Client, its officers, directors and employees, against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs recoverable under applicable law, to the extent caused by B&N's negligent acts, errors or omissions in the performance of professional services under this Agreement and those of its subconsultants or anyone for whom B&N is legally liable.

The Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless B&N, its officers, directors, employees and subconsultants, against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, to the extent caused by the Client's negligent acts, errors or omissions and those of its contractors, subcontractors or consultants, or anyone for whom the Client is legally liable and arising from the project that is the subject of the Agreement.

Neither the Client nor B&N shall be obligated to indemnify the other party in any manner whatsoever for the other party's negligence.



## Attachment A Terms and Conditions

19. Resident Project Representative. Nothing in this proposal, with respect to the furnishing of resident project representation, shall be construed to make B&N responsible for, nor to have control of, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work; nor to make B&N responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents; nor to confer responsibility upon B&N for any acts or omissions of the Contractor, Subcontractor, or others performing the work.
20. Services During Construction. Nothing in this proposal, with respect to the furnishing of services during construction, shall be construed to make B&N responsible for, nor to have control of, construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the work; nor to make B&N responsible for the Contractor's failure to carry out the work in accordance with the Contract Documents; nor to confer responsibility upon B&N for any acts or omissions of the Contractor, Subcontractor, or others performing the work.
21. Construction Services without Project Representation. If B&N's services under this Agreement do not include Resident Project Representation, B&N shall have no responsibility for construction observation and review, and all other necessary construction-phase engineering and professional services, including the application and interpretation of the contract documents that arise from construction observation and review. The Client waives any claims against B&N that may be connected in any way thereto.
22. Design without Construction Services. If B&N's services under this Agreement do not include construction phase services or review of Contractor's performance, or any other construction phase services, then B&N's services under this Agreement shall be deemed complete no later than the end of bidding. B&N shall have no design or shop drawing review obligations during construction. The Client assumes all responsibility for the application and interpretation of the contract documents, contract administration, construction observation and review, and all other necessary construction phase engineering and professional services. The Client waives any claims against B&N that may be connected in any way thereto.
23. Ownership of Documents. All documents prepared or furnished by B&N to this Agreement are instruments of B&N's professional service, and B&N shall retain an ownership and property interest therein. B&N grants Client a license to use instruments of B&N's professional service for the purpose of constructing, occupying, and maintaining the Project. Reuse or modification of any such documents by Client, without B&N's written permission, shall be at Client's sole risk, and Client agrees to indemnify and hold B&N harmless from all claims, damages, and expenses, including attorneys' fees, arising out of such reuse by Client or by others acting through Client.
24. Insurance. B&N will maintain insurance coverage throughout the time of this Agreement. Certificates of Insurance will be provided upon request.
25. Payments to B&N. Invoices will be prepared monthly, or as agreed upon in the proposal, with payment due upon receipt. Any amounts due B&N past 30 days will be increased at the rate of 1 percent per month, beginning on the 31<sup>st</sup> day. The interest charges due, shall be additional fee unless otherwise agreed upon in writing.
26. B&N may, after giving 7 days' written notice to Client, suspend services under this Agreement until Client has paid in full all amounts due for services, expenses, and other related charges. Client waives any and all claims against B&N for any such suspension.
27. ~~Attorney Fees. Should there be any suit or action instituted to enforce any right granted in this Agreement, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party. The party that is awarded a net recovery against the other party shall be deemed the substantially prevailing party unless such other party has previously made a bona fide offer of payment in settlement and the amount of recovery is the same or less than the amount offered in a settlement. Reasonable attorney fees may be recovered regardless of the forum in which the dispute is heard, including an appeal.~~
28. Successors. B&N and the Client are hereby bound, and the successors, executors, administrators, and legal representatives of Client and B&N are hereby bound to the other party in this Agreement and to the successors, executors, administrators, and legal representatives of such other party, in respect of all covenants, contracts, and obligations of this Agreement.

**WATER SYSTEM ASSET MANAGEMENT PLAN  
VILLAGE OF WINDHAM, OHIO**

**2018 HOURLY RATE SCHEDULE**

Project efforts will be invoiced based on the following hourly rates:

<b>Classification</b>	<b>Rate</b>
Associate	\$ 246
Project Manager	\$ 166
Technician*	\$ 176
Engineer	\$ 117
Administrative/Clerical*	\$ 116

\*Non-exempt classifications are subject to the payment of overtime at the rate of 1.5 times the above-stated hourly rate.

If additional/new staff are required during 2018, or for any efforts after 2018,  
a new Rate Schedule will be submitted to the City for approval.

Expenses will be invoiced at cost.

**The above rates are confidential information and may not be disclosed to anyone without our written consent.**