

CITY OF OBERLIN, OHIO

ORDINANCE NO. 19-43 AC CMS

AN ORDINANCE AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH BURGESS & NIPLE, INC. OF AKRON, OHIO FOR PROFESSIONAL ENGINEERING DESIGN SERVICES FOR ANAEROBIC DIGESTION AND SOLIDS HANDLING PRELIMINARY ENGINEERING AT THE CITY OF OBERLIN WATER ENVIRONMENT PROTECTION FACILITY AND DECLARING AN EMERGENCY

BE IT ORDAINED by the Council of the City of Oberlin, County of Lorain, State of Ohio, not less than five-sevenths (5/7ths) of all members elected thereto concurring:

SECTION 1. That the City Manager is hereby authorized and directed to enter into a contract with Burgess & Niple, Inc. of Akron, Ohio for professional engineering design services for Anaerobic Digestion and Solids Handling Preliminary Engineering at the City of Oberlin Water Environment Protection Facility in an amount not to exceed \$92,400.00. A copy of the proposed contract is attached hereto and incorporated herein by reference.

SECTION 2. It is hereby found and determined that all formal actions of this Council concerning or relating to the adoption of this Ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and of any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

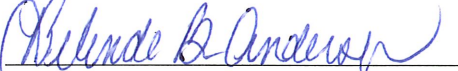
SECTION 3. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the citizens of the City of Oberlin, Ohio, or to provide for the usual daily operation of a municipal department, to wit: to proceed with planning and design as soon as possible to ensure the efficient operation of the Water Environment Protection Facility in accordance with its OEPA permit, and shall take effect immediately upon passage.

PASSED: 1st Reading: July 1, 2019 (E)

2nd Reading: _____

3rd Reading: _____

ATTEST:


BELINDA B. ANDERSON, MMC
CLERK OF COUNCIL


BRYAN BURGESS
PRESIDENT OF COUNCIL

POSTED: 07/01/2019

EFFECTIVE DATE: 07/01/2019

BURGESS & NIPLE

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

Mr. Jeff Baumann
Public Works Director
City of Oberlin
85 South Main Street
Oberlin, OH 44704

Re: Proposal for Professional Services
Water Environment Protection Facility
Anaerobic Digestion and Solids Handling
Preliminary Engineering

June 17, 2019

Dear Mr. Baumann:

Burgess & Niple (B&N) is pleased to submit this proposal to the City of Oberlin (City/Client) for assistance with completing a Preliminary Engineering Report (PER) for improvements to the Water Environment Protection Facility's (WEPF) Anaerobic Digestion process and Operations facilities (Project). As discussed, the improvements are anticipated to include the following:

Improvements to the existing anaerobic digester, including:

- Repair or rehabilitate and insulate the digester cover
- Replace the gas collection piping and waste gas flare
- Provide gas storage capability
- Replace the boiler/heat exchanger with a more efficient process, including potential co-generation of electric power utilizing the digester gas as a fuel source
- New mechanical mixing system
- Modify the system to provide thermophilic/mesophilic anaerobic treatment for potential Class A biosolids production (if feasible)

Waste activated sludge thickening and digested sludge dewatering facilities in a new thickening/dewatering building.

Sludge handling facilities as required, including dewatered sludge conveying to the existing sludge drying beds.

Preliminary costs and layout for a second anaerobic digester; and new Operations Center, to include Superintendent's and operators' offices, laboratory, lunch/training room, and locker room will be evaluated.

Supplemental goals of this project are understood to include:

- Optimize energy efficiency and potential energy recapture
- Produce a Class A sludge (if cost effective)
- Provide a design with operational simplicity and redundancy
- Operating and capital cost effectiveness

We can start the project immediately. This PER will provide a foundation for the detailed design, bidding and construction of the recommended improvements which will be provided in a separate proposal to the City.

SCOPE OF SERVICES

As authorized, B&N will provide the following services to develop the PER:

1. Request operational data and pertinent information regarding the current biosolids processes, to gain an understanding of the current biosolids treatment and handling processes. Conduct preliminary evaluations of process and equipment alternatives, prior to the first Workshop. Tasks to include:
 - a. Calculations to evaluate sizing of equipment and tanks
 - b. Contact vendors for equipment requirements and budgetary pricing
 - c. Conduct BioWin modeling on thermophilic/mesophilic digestion alternative for Class A
 - d. Conduct preliminary evaluation of feasibility of co-generation
2. Workshop No. 1 - Purpose will be to review preliminary findings for treatment processes and confirm which alternatives will be evaluated in more detail.
3. Conduct a detailed evaluation of alternatives selected in Workshop No. 1. Design capacities and contingencies for biosolids processing, when equipment or processes need to be taken out of service, will be formulated, including the preliminary cost of constructing a second anaerobic digester. Design capacity evaluation will include potential future food waste disposal at the WEPF. This task will also include detailed study of the following items:
 - a. Waste activate sludge thickening and digested sludge dewatering equipment
 - b. Anaerobic digester improvements
 - c. New boiler/heat exchanger and Co-Gen technology
 - d. Class A biosolids options
 - e. Evaluation, location, and layout of a second anaerobic digester
 - f. Evaluate the re-use of the 3 existing sludge holding tanks for potential use for: gravity sludge thickening; gas storage; or thermophilic digestion
 - g. Building layouts and appurtenances for Dewatering building and Operations building

Evaluation will include:

- a. Preparation of preliminary layout drawings for viable alternative(s)
 - b. Preparation of preliminary cost estimates for viable alternatives
 - c. Identification of O&M issues and life-cycle costs for viable alternatives
 - d. Identification of sequence of construction and constructability issues
 - e. Potential funding assistance and incentives including: Ohio EPA; Ohio Public Works; and the Ohio Water Development Authority
 - f. Development of preliminary project schedule
4. Workshop No. 2 – This Workshop will be used to present the findings from the evaluation process described in item 3. The goal of the workshop will be to confirm the basis of design, budget, and schedule for the anaerobic digestion and sludge handling project.
5. Write and submit a Draft PER, for City review, documenting findings and recommendations of the detailed evaluation. It is anticipated that this report can be used to amend and update the existing WEPF General Plan and be used as a Basis of Design Report for Ohio EPA review as part of plan approval process.
6. Submit a Final PER, incorporating City comments on the draft report.

- a. Deliverables
 - i. Four hard copies of the PER
 - ii. Digital copies of the PER in Microsoft WORD and PDF formats

PROJECT SCHEDULE

Anticipated milestones for the scope of services described above are:

Receive Authorization	July 8, 2019
Submit Request for Information	July 12, 2019
Workshop No. 1	August 15, 2019
Workshop No. 2	October 2, 2019
Complete Draft PER	October 25, 2019
Receive City Comments on Draft PER	November 8, 2019
Provide Final PER Documents to City	November 22, 2019

SERVICES TO BE PROVIDED BY THE CLIENT

It is agreed the Client will:

1. Provide prompt, written notice to B&N whenever the Client observes or otherwise becomes aware of a defect in the Project.
2. Furnish to B&N any other available information pertinent to the Project including reports and data relative to previous designs, construction, or investigation at or adjacent to the site, insofar as they are available or may be secured by the Client.
3. Make arrangements for B&N to have access to the property and all buildings on the site as needed for the Project, as well as provide contact names and phone numbers of individuals assigned to the Project.

COMPENSATION

The scope of services defined herein shall be performed for a not-to-exceed fee of \$92,400, based on authorization to proceed being received by July 31, 2019. Invoices will be monthly based on hourly rates plus reimbursable expenses and are due upon receipt.

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 Client 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. Pilot testing services are not included in the scope above, but could be provided as an additional service, if requested and authorized.

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 send a purchase order referencing this proposal and authorizing B&N to begin work on this project. B&N appreciates this opportunity to assist the City of Oberlin and awaits your authorization to proceed.

Sincerely,

BURGESS & NIPLE, INC.

CITY OF OBERLIN



Mark A. Hutson, PE
Vice President



Daniel R. Johnson, PE
Project Manager



Rob Hillard
City Manager

7.2.19
Date

FINANCIAL OFFICER CERTIFICATION

I hereby certify the availability of funds for the above work.
as noted in compensation section



Finance Director

DEM/DRJ
Enclosure
copy: File

Approved as to form:


Jon D. Clark
Law Director

7/2/19
Date

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 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.
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.

Attachment A

Terms and Conditions

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 31st 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, each party shall be responsible for its own legal costs, including any attorney fees 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.