

RESOLUTION NO. 2019-18

**A RESOLUTION AUTHORIZING THE BOARD OF TRUSTEES FOR CONCORD TOWNSHIP TO ENTER INTO AN AGREEMENT WITH BURGESS & NIPLE FOR ARCHITECTURAL SERVICES.**

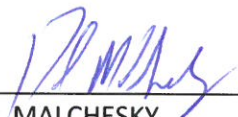
**NOW, THEREFORE, BE IT RESOLVED**, by the Concord Township Board of Trustees, Lake County, Ohio, as follows:


**Section 1.** That the Board of Trustees is hereby authorized to enter into a contract with Burgess & Niple for architectural services to study revisions to the Administrative Center for Concord Township, said contract must be approved by Concord Township's legal counsel, and to further authorize the Township Administrator, Andy Rose, to execute any and all documents necessary to complete the contract in accordance herewith, and said activity is not to exceed a fee of \$18,800.00.

**Section 2.** It is found and determined that all formal actions of the Board of Trustees of Concord Township concerning and relating to the adoption of this Resolution were taken in an open meeting of the Board of Trustees of Concord Township and that all deliberations of this Board that resulted in those formal actions were in a meeting open to the public, in compliance with all legal requirements, including Section 121.22 of the Ohio Revised Code.

NOW, THEREFORE, this Resolution shall be in full force and effect upon its passage and approval by the Board of Trustees and as further provided under Ohio law.

Adopted this 17<sup>th</sup> day of July, 2019.

  
\_\_\_\_\_  
PAUL MALCHESKY,  
Chairman

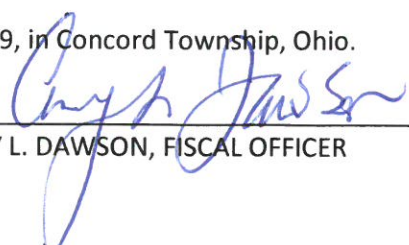
  
\_\_\_\_\_  
CAROLINE N. LUHTA  
Vice-Chairperson

  
\_\_\_\_\_  
CARL H. DONDORFER  
Trustee

**CERTIFICATION**

I, the undersigned Amy L. Dawson, Fiscal Officer and Clerk of the Board of Trustees for Concord Township, Lake County, Ohio, do hereby certify that the foregoing Resolution No. 2019-\_\_\_\_, is a true and accurate copy of the Resolution adopted by the Concord Township Board of Trustees at its meeting of July 17, 2019, and that I am duly authorized to execute this Certification.

Witness my hand this 17<sup>th</sup> day of July, 2019, in Concord Township, Ohio.

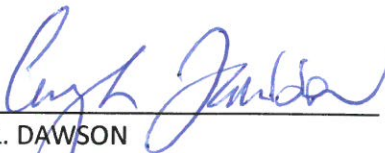
  
\_\_\_\_\_  
AMY L. DAWSON, FISCAL OFFICER

FISCAL OFFICER'S CERTIFICATE

The undersigned Fiscal Officer for the Township of Concord, County of Lake, State of Ohio, hereby certifies that the money required to meet the obligations of the Township under an Agreement with the Burgess & Niple, has been appropriated lawfully by the Concord Township Board of Trustees as the legislative authority for the Township and for that purpose and is in the treasury of the Township or is in the process of collection to the credit of an appropriate fund, free of any previous encumbrances, and is not appropriated for any other purpose.

This Certificate is given in compliance with Section 5705.41 and 5705.44 of the Ohio Revised Code.

7/17/19  
Date

  
\_\_\_\_\_  
AMY L. DAWSON  
CONCORD TOWNSHIP  
FISCAL OFFICER

# BURGESS & NIPLE

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100 West Erie Street | Painesville, OH 44077 | 440.354.9700

Mr. Andy Rose  
Administrator  
Concord Township  
7229 Ravenna Road  
Concord Township, OH 44077

Re: Administration Center  
Potential Expansion Study  
Proposal for Professional Services

July 3, 2019

Dear Mr. Rose:

Burgess & Niple (B&N) is pleased to respond to your request for architectural services to study a potential expansion of the Administrative Center (Project) for Concord Township (Client). Based upon discussions with you during a site visit on June 4, 2019, it is our understanding that the Client would like to explore adding an approximately 4,000-ft<sup>2</sup> of mixed use office space, concentrating to the north and east of the existing structure. The potential addition would be constructed to match the character of the existing facility utilizing similar materials of construction where appropriate, and with a priority concern of the space being ADA-compliant. This study will evaluate the existing Township Administration functions in the existing facility and define/confirm requirements for an addition.

## SCOPE OF SERVICES

As authorized by the Client, B&N agrees to provide the following professional services:

1. Conduct a site visit to confirm size and general layout of existing building and discuss program needs with a Client Representative.
2. Develop list of program spaces required.
3. Evaluate potential use of space in existing building to meet Administration needs. A detailed evaluation of the existing building and utilities is not included in this study.
4. Review 2 alternative locations for a nominal 4,000-ft<sup>2</sup> expansion of the existing building. The potential building expansion may be a 2-story addition.
5. Develop a Program Plan indicating basic layout and indicating access points to the addition.
6. Review ADA access to facility and incorporate ADA access and elevator in the planning.
7. Develop a schematic Site Plan showing location of new addition and relationship to adjacent structures and existing site.
8. Prepare a formal Report (Draft and Final) outlining findings on condition of existing building, program square footage required for Township Administration functions, size of addition required, proposed location, and impacts to the existing building and site.
9. Prepare a ROM (rough order of magnitude) Construction Cost Estimate for any potential addition.
10. Review the Draft Report with the Township Administrator.

### **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. Arrange 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.

### **ADDITIONAL SERVICES**

B&N is available on an as-requested basis to provide additional services beyond the scope of this Proposal. Services that could be provided to the Client may include:

1. Attend and assist public meetings.
2. Additional review meetings of the study as requested.
3. Provide 3-D color renderings of the potential addition.

Items identified as being outside the scope or beyond the effort outlined herein shall be deemed as an additional service and will be invoiced on an hourly not-to-exceed basis.

### **COMPENSATION**

Study services will be performed for a not-to-exceed fee of \$18,800. Invoices will be monthly, based on the percentage of project completion. This fee is firm provided there is no change in the scope of services and written authorization to proceed is received by August 31, 2019.

### **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.

July 3, 2019  
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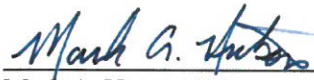
**SIGNATURES**

If these terms are acceptable, please acknowledge your acceptance by signing and returning one copy of this letter, or sending a purchase order referencing this proposal and authorizing B&N to begin work on this Project.

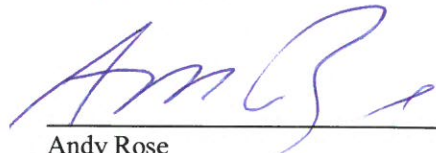
We look forward to working with you and your staff on this important project for Concord Township. If you have any questions or comments concerning this proposal, please contact us.

Sincerely,

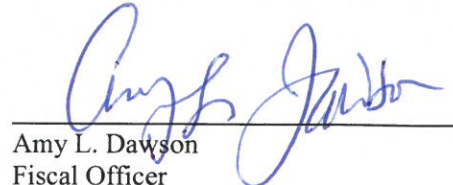
**BURGESS & NIPLE, INC.**

  
\_\_\_\_\_  
Mark A. Hutson, PE  
Vice President

**CONCORD TOWNSHIP**

  
\_\_\_\_\_  
Andy Rose  
Administrator  
7/18/2019  
\_\_\_\_\_  
Date

I hereby certify as to the availability of funds for the services described herein.

  
\_\_\_\_\_  
Amy L. Dawson  
Fiscal Officer

MAH  
Enclosures

## 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.