

**AGREEMENT  
BETWEEN  
CUYAHOGA COUNTY, OHIO  
AND  
BURGESS & NIPLE  
FOR  
ENVIRONMENTAL SERVICES**

THIS AGREEMENT ("Agreement"), made and entered into this 15th day of July 2013 (the "Effective Date") by and between the County of Cuyahoga, Ohio (the "County"), a county and political subdivision of the state of Ohio, on behalf of the Department of Development ("DOD"), and Burgess & Niple ("Consultant"), an Ohio Corporation with principal offices located at 5085 Reed Road, Columbus, Ohio 43220.

**WITNESSETH:**

**WHEREAS**, the County currently manages and administers an environmental assessment program (the "Program"); and

**WHEREAS**, the purpose of the Program is to inventory, characterize, and assess parcels of real property throughout the County of Cuyahoga, Ohio which qualify as a "brownfield site" under the Comprehensive Environmental Response Compensation, and Liability Act of 1980, 42 U.S.C. Chapter 103 ("CERCLA"), as amended by the Small Business Liability Relief and Brownfields Revitalization Act, Public Law 107-118 (the "Act"; for purposes of this Agreement, including all subsequent amendments thereto and all regulations promulgated thereunder); and

**WHEREAS**, in order to accomplish its responsibilities in connection with the Program, the County requires the assistance of one or more environmental consultants; and

**WHEREAS**, the County is empowered by the constitution and laws of the state of Ohio and the Act to engage consultants for purposes of conducting the Services (as defined below) with respect to the real property located at 23700 St. Clair Avenue Euclid, Ohio 44117 and more particularly described or shown on Exhibit A attached hereto and made a part hereof (the "Facility"); and

**WHEREAS**, the Consultant previously responded to a request for qualifications issued by the County and in such responses represented that it possesses the relevant professional experience, competence and knowledge, as required under the laws of the state of Ohio and the Act, to render the services to be provided under this Agreement, and desires to render such services to the County with respect to the Facility; and

**WHEREAS**, the County has requested a scope of services to be provided with respect to the Facility, a copy of which is attached hereto as Exhibit B (the "Services"), and Consultant has provided and the County has accepted a proposal to perform the Services, a copy of which is attached as Exhibit C (the "Proposal"); and

**NOW, THEREFORE**, in consideration of the premises, covenants, and agreements hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and the Consultant, agree as follows:

**1. Scope of Services.**

A. The Consultant agrees to inventory, characterize, and assess the Facility in accordance with the Act, and to investigate, determine and analyze reasonably identifiable risks inherent in the existence of hazardous materials or wastes, petroleum products, toxic chemicals or substances, pollutants or contaminants, or any other material, chemical, waste, or substance, in any of their various forms ("hazardous substances"), which, in the Reasonable Judgment of the Consultant (as defined below), could give rise to liability or responsibility under any federal, state or local laws, statutes, regulations, ordinances, protocols, guidance or standards or under common law ("environmental laws"), including without limitation, the presence of hazardous substances in the soil, groundwater, or air associated with the Facility. For purposes of this Agreement, "Reasonable Judgment" means such skill, care and judgment normally exercised by recognized professional firms performing services of a similar nature in the State of Ohio in accordance with the laws of the State of Ohio and the Act.

B. Consultant shall perform the Services in accordance with the terms of this Agreement, the Requested Services, the Proposal, and the General Terms and Conditions, attached and incorporated herein as Exhibits B, C and D, respectively. Consultant acknowledges that Phase II service will commence **ONLY** upon approval of the SAP work plan by the County, and County has issued an authorization to proceed. County reserves the right, in its sole discretion, to terminate this Agreement upon completion of the Phase I Services. The terms and conditions in this Agreement shall prevail over any inconsistent terms in the Requested Services, General Terms and Conditions or the Proposal. Should any conflict exist between the Proposal and the Requested Services, the Requested Services shall govern.

**2. Quality of Services.**

A. The Consultant shall provide and direct any and all qualified personnel necessary to perform the Services required pursuant to the express and implied terms and conditions of this Agreement, with a degree of skill, care and judgment normally exercised by recognized professional firms performing services of a similar nature in the State of Ohio.

B. The Consultant shall assign the personnel identified in the Proposal to perform the Services, and shall not remove or replace those individuals without the prior written approval of the County, which approval shall not be unreasonably denied or withheld; the County's decision with respect to such removal or replacement shall be given in a timely manner so as not to delay Consultant's completion of the Services by the Completion Date. The Consultant represents and warrants that the identified personnel will be under the supervision or responsible charge of a person meeting the definition of environmental professional as defined in the Act and any current or proposed regulations thereunder.

C. Consultant represents that it has developed a generic Quality Assurance Project Plan ("QAPP") meeting the requirements in "Quality Assurance Guidance for Conducting Brownfields Site Assessment", as outlined by current U.S. EPA guideline for Cuyahoga County Department of Developments Community Assessment Program. This generic QAPP will be submitted and approved by USEPA, Region V for approval prior to conducting any and all Phase II Environmental Assessment work for Cuyahoga County Department of Development. Consultant acknowledges and agrees it shall not receive compensation for any associated work in regards to the creation, preparation, and approval of the generic QAPP. Consultant shall customize its generic QAPP to create a site-specific Sampling and Analysis (SAP) workplan for the Facility, which includes Phase II environmental investigation for the Cuyahoga County Department of Development. Costs to customize the QAPP to the Facility shall be compensated under this Agreement.

### **3. Compensation.**

A. In consideration of Consultant's faithful performance of the Services, as directed by the County, Consultant shall receive compensation in an amount not to exceed \$4,390.00.

B. Compensation for Phase II Services, if any, shall be documented in accordance with paragraph 1 above, and shall be computed for each quarter of an hour incurred in connection with the Phase II Services at the hourly rates set forth in Section I of the rate schedule ("Rate Schedule") entitled "Fees for Professional Services of the General Terms and Conditions," attached hereto including all present, state, federal and local sales, use, excise, business and occupation and transportation taxes. Phase II Services, such as sub-surface investigation or other Services which may become necessary due to unforeseen circumstances shall only be performed by the Consultant upon prior written approval of the County, and at the rates set forth under Section I of the Rate Schedule plus reimbursable expenses calculated in accordance with Section II of the Rate Schedule.

C. In the event that Consultant encounters issues which would require additional time or expense, Consultant shall immediately notify the County and shall not proceed until the County has approved such additional time or expenses in writing.

D. Invoices. Detail on all invoices to County will follow the format specified in the budget attached to the Proposal. All invoices shall include copies of all subcontractor invoices. Markup on subcontractor costs in excess of 5% will be disallowed.

### **4. Term and Time of Performance.**

A. The term of this Agreement shall begin on the Effective Date and shall expire, unless sooner terminated under the terms of this Agreement or extended by a written Amendment to this Agreement, on January 13, 2014.

B. The Consultant will initiate the Services within one week of receipt of a written authorization to proceed from DOD. Upon completion of the Services, Consultant shall provide the County with a written report or reports, as described in the Section 5, below.

5. **Report.** Any reports prepared by Consultant pursuant to the Agreement shall first be prepared and submitted, with all supporting information, to the County in draft form for initial review; the County reserves the right to request that such draft report and supporting information be submitted in electronic (e.g., Word or Adobe Acrobat) and/or non-electronic form. All final reports will be delivered to the county and/or designated recipients in format specified by county on a project by project basis. Not to exceed three electronic versions and one possible non-electronic (paper version) per report.

6. **Intellectual Property Rights.** All reports, documents, drawings, drafts, notes and /or other deliverables produced in response to this Agreement will be the sole property of Cuyahoga County and shall be delivered to the Cuyahoga County at the conclusion of the project. Consultant agrees that any and all works of authorship created or products developed by Consultant under this Agreement, either individually or jointly with others, in the course of the rendition of the services contemplated herein, shall be the exclusive property of Cuyahoga County.

7. **Termination.** Either the County or the Consultant may suspend the performance by the Consultant of all or any part of the Services to be provided under this Agreement or terminate for convenience all or any part of this Agreement, in either case, by written notice sent by certified mail, return receipt requested to a non-terminating party. Such suspension or termination shall be effective two (2) business days after receipt of the written notice. In the event of termination, the Consultant shall be entitled to compensation, for work completed up to the date of termination, in accordance with Section I of the Rate Schedule, together with its reimbursable expenses calculated as provided in Section II of the Rate Schedule and shall submit a final invoice to the County within thirty (30) days after the effective date of such termination. Upon request by the County, the Consultant will promptly furnish the County with a written report based upon the data and information collected by the Consultant as of the date of termination of this Agreement, the cost of which shall be paid for in accordance with Section I of the Rate Schedule.

8. **Representations and Warranties.** The Consultant represents and warrants that:

A. The Consultant shall have obtained and shall maintain any and all licenses and permits required by environmental laws for the performance of its Services pursuant to this Agreement;

B. The Consultant shall comply with all applicable environmental laws in performing the Services hereunder, and shall comply with directives of governmental agencies and the County relating to safety, security, traffic or other like matters relating to the Facility; and

C. The Consultant's professional Services will be performed, its findings obtained and its recommendations prepared in accordance with generally and currently accepted scientific and engineering principles and practices and in accordance with industry standards of care exercised by recognized Burgess & Niple performing Services in Ohio, as established at the time the Services hereunder are to be performed.

9. **Indemnity.** The Consultant shall defend, hold harmless and indemnify the County from and against all claims, actions, suits, liabilities, damages and expenses (including attorney's fees) for personal injury (including death), property damage or other claims and liabilities arising out of, related to, or in connection with the Consultant's Services pursuant to this Agreement, including any Services performed by any subcontractor or agent of the Consultant, excepting only such claims, actions, suits, liabilities, damages and expenses arising directly out of the County's willful misconduct or gross negligence. Consultant acknowledges that as an Ohio political subdivision, the County is prohibited by law from agreeing to indemnify any person or entity, and agrees that no provision of this Contract or any other contract or agreement between Consultant and the County may be interpreted to obligate the County to indemnify or defend Consultant or any other party.

10. **Insurance.** Consultant agrees to maintain at all times during the life of this Agreement worker's compensation, commercial general liability, comprehensive business automobile, professional liability (in particular covering errors and omissions), and umbrella liability insurances. Commercial General Liability, Contractors Pollution Legal Liability & Professional Liability, (in particular covering errors and omissions), shall be in an amount not less than Five Million Dollars (\$5,000,000) while the comprehensive business automobile, and umbrella liability insurances shall be in an amount not less than One Million Dollars (\$1,000,000).

Each of the Insurance Policies shall state that the issuing company thereof shall have no right of recovery or subrogation against the County or its agents, directors, officers, employees, representatives or insurers, and that the County shall in no way be held responsible for the payment or satisfaction of any deductible thereunder.

Consultant shall name the County and its employees as an additional insured on each of the Insurance Policies, up to the amounts specified herein, and shall furnish the County with Certificates of Insurance stating to that effect.

Should any one of the Insurance Policies terminate or be cancelled, refused, or for any other reason no longer be of effect, the Consultant and Insurance Carrier shall immediately furnish written notice to the County of the fact. At such time such notice is received by the County, this Agreement shall be held null and void and no longer enforceable or of effect; provided, however, that if the Consultant is able to obtain coverage from another insurer within five (5) business days of the loss of coverage, this Agreement shall continue to be in full force and effect and shall remain binding on the parties hereto.

All Insurance Policies required hereunder shall cover and include the specific work contemplated by the terms hereof. If such policies do not cover such work, then Consultant shall not be in conformity with the terms hereof, unless Consultant obtains written permission from the County to not be in conformity with such terms

11. **Independent Contractor.** The Consultant is acting and shall perform its Services under this Agreement as an independent contractor. Nothing contained in this Agreement or in the relationship between the County and the Consultant shall be deemed to constitute a partnership, joint venture, or any other relationship among them, and the Consultant's authority is strictly limited to performing the Services set forth herein in accordance with the terms and conditions hereof. The Consultant shall have no authority to execute any

contracts, subcontracts or agreements for or on behalf of the County, nor to assume or create any obligation or liability or make any representation, covenant, agreement or warranty, express or implied, on the County or the County's behalf, or to bind the County in any manner whatsoever, without, in each case, written consent, approval, or instructions having been given or provided by the County. Any and all subcontracts shall be submitted to and approved by the County prior to execution and delivery.

12. **Audits.** The Consultant by his, her or its acceptance of the monies granted hereunder agrees to cooperate in all regards with any audit of the Grants and distributions therefrom, where such audit is performed by any governmental entity or agency duly authorized and empowered to undertake such audit by the Act, whether such entity or agency be from the County of Cuyahoga, State of Ohio or Federal Government (the "Auditor"). Consultant agrees to present information in such format as reasonably requested by the Auditor, and to comply in all regards with all requirements and procedures as may be reasonably formulated by the Auditor from time to time.

13. **Assignment, Transfer or Delegation.** Neither this Agreement nor any of the rights, interests or obligations of the Consultant hereunder may be assigned, transferred or delegated in whole or in part by the Consultant without the prior written consent of the County, which consent may be denied, withheld or granted in the sole discretion of the County.

14. **Notices: Entire Agreement.** Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if and when personally delivered or on the second business day after being deposited in United States registered or certified mail, postage prepaid, and addressed to the County or the Consultant, as the case may be, at the address set forth on the signature page of this Agreement or to such other address as the County or the Consultant may have designated in accordance herewith. The terms and conditions of this Agreement, including all exhibits and the Rate Schedule attached hereto, constitute the final written expression of the agreement between the parties and are a complete and exclusive statement of the terms and conditions of this Agreement and may not be amended except in a writing signed by the parties hereto. Any amendments or modifications to this Agreement shall be valid only when executed by the parties in a written instrument with the same formality as this Agreement. Any consents, approvals or instructions which may be required of the County under this Agreement may be given only by the County Development Director or the Deputy Development Director. All other notices or other communications required or permitted hereunder may be given by an authorized representative of the County.

15. **Confidentiality & Public Records.** The Consultant, its officers, agents and employees shall perform the Services in a discrete, confidential manner and shall not disclose any information or materials and reports gathered pursuant to this Agreement, or discuss such information or materials with anyone, other than authorized County representatives, without the prior written permission of the County; provided, however, that the Consultant is expressly authorized and permitted to disclose, where relevant, any such information or materials to any third parties who are required under the terms of this Agreement to be contacted by Consultant in connection with its Services hereunder or who may be entitled to such information as a matter of law or pursuant to court order. All such information, materials and reports shall belong to the County.

Notwithstanding the foregoing, Consultant acknowledges that County is a political subdivision in the State of Ohio and as such is subject the Ohio Revised Code and other law related to the keeping and access to Public Records, including any and all applicable Sunshine Laws, open meeting requirements, and retention schedules effecting any and all manner of communication with the County and any and all documents in any format or media.

16. **Governing Law & Forum.** This Agreement shall be governed by the laws of the State of Ohio. Any suit, action, or proceeding brought under this Contract shall be in a state or federal court of competent jurisdiction located in Cleveland, Ohio, and the parties agree to the exclusive jurisdiction and venue of such court to resolve same.

17. **Applicable Ordinances:** This Agreement shall be subject to all applicable County ordinances, including, but not limited to: i) the Cuyahoga County Ethics Ordinance, ii) the Cuyahoga County Inspector General Ordinance, and iii) the Cuyahoga County Board of Control, Contracting and Purchasing Ordinance (the "County Ordinances"). Consultant shall comply with all County Ordinances as an integral part of this Agreement. . Copies of all County Ordinances are available on the County Council's web site at <http://council.cuyahogacounty.us/>.

18. **Force Majeure.** The time for performance or observance of any of the covenants and agreements to be performed or observed by Consultants under this Agreement shall be extended for delays caused by Force Majeure. For the purposes hereof, the term Force Majeure shall mean and include: (i) delays in the performance of the work by reasons for strikes, lockouts, accidents, acts of God or other causes beyond the Consultant's reasonable control, (ii) the failure by the County to furnish necessary information required under this Agreement, (iii) the failure by the County to approve or disapprove the Consultant's work as and when required under this Agreement, (iv) delays resulting from late, slow or faulty performance by the County, other contractors or consultants of the County, or by government agencies whose performance of work is precedent to or concurrent with the performance of the Consultant's work under this Agreement.

19. **Disputes.** Any dispute between Consultant and the County arising out of or relating to this Agreement, except for disputes relating to right of either party to terminate this Agreement in accordance with Article 7, shall be subject to mediation as an express condition precedent to the institution of any legal or equitable proceedings by either the Consultant or the County. The parties shall endeavor to resolve any such dispute through mediation conducted pursuant to the Construction Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party and with the American Arbitration Association. The prevailing party shall be entitled to reimbursement of the mediator's fee and the filing fees paid by such party. In addition, all costs and expenses incurred by either party in connection with the mediation shall be borne and paid by the unsuccessful party. The mediation shall be held in the County of Cuyahoga (in a place selected by County), unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

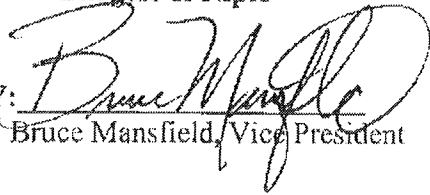
20. **Electronic Signature.** By entering into this Agreement, I agree on behalf of the contracting business entity, its officers, employees, subcontractors, subgrantees, agents or

assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by the County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document. I also agree on behalf of the aforementioned entities and persons, to be bound by the provisions of Chapters 304 and 1306 of the Ohio Revised Code as they pertain to electronic transactions, and to comply with electronic signature policy of Cuyahoga County.

**IN WITNESS WHEREOF**, the parties have hereto executed this Agreement as of the Effective Date.

**Burgess & Niple**

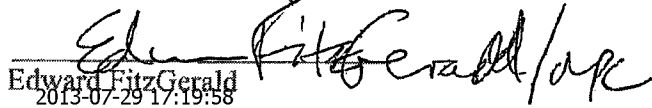
BY:

  
Bruce Mansfield, Vice President

**Cuyahoga County Executive**

Edward FitzGerald, County Executive

BY:

  
Edward FitzGerald  
2013-07-29 17:19:58



## **EXHIBIT A**

### **DESCRIPTION OF FACILITY**

The Keene Building Acquisition of the MM & R Property Site ("Facility") is located at 23700 St. Clair Avenue, Euclid, Ohio 44117.

The Facility is located at Parcels: 647-13-004 & 647-10-002.

The Facility is bounded by St Clair Avenue to the North, and Rail Road lines to the South.

The Facility consists of a 10-11 buildings comprised of 110,000 Square feet of buildings.

The Facility is zoned for small shops land uses.

The 2 parcel encompasses approximately 8 acres.

## **EXHIBIT B**

### **REQUESTED SERVICES LIST**

1. Phase I Property Assessment(s) as:  

(☒) ASTM E1527-05 "Standard Practice for Environmental Site Assessment: Phase I Environmental Site Assessment Process" meeting the requirements for "all appropriate inquiries" under the Act and any regulations promulgated thereunder, 40 C.F.R. Part 312; or

(☐) Ohio EPA Voluntary Action Program Phase I Property Assessment in accordance with Ohio Revised Code § 3746.04 (B)(3) and Ohio Administrative Code §3745-300-06, including a VAP Eligibility Analysis in accordance with Ohio Administrative Code §3745-300-02; provided however, such preliminary assessment of the Facility shall meet and be performed in accordance with the criteria and requirements set forth in Title II, Subtitle A, Section 223 (2) (B) of the Act [42 U.S.C. 9601 (35)] or any current or proposed regulations promulgated thereunder.
2. \_\_\_ Regulatory File Review, as requested.
3. \_\_\_ Ohio EPA Voluntary Action Program Phase II Property Assessment under O.R.C. 3746.04 (B)(4) and AS MORE CLEARLY DESCRIBED IN ATTACHED PROPOSAL (Exhibit C)..
4. \_\_\_ Site-specific Sampling and Analysis Plan meeting the requirements set forth in the generic Quality Assurance Project Plan, and under O.R.C. 3746.04(B)(4) and O.A.C. 3745-300-07 for VAP; and under 40 C.F.R. 31.45, and EPA DQO and QA/QC Guidance Documents for Non-VAP
5. \_\_\_ Bureau of Underground Storage Tank Regulations Closure Assessment and/or 3-Tier Evaluation under O.A.C. 1301:7-19-12 and -13
6. \_\_\_ Asbestos Survey under O.R.C. 3710; O.A.C 3745-20-02 – O.A.C. 3745-20-04; 40 C.F.R. 763.86 or equivalent; 40 C.F.R. 61 subpart M
7. \_\_\_ Lead Paint Inspection (to determine the presence of lead-based paint) under O.R.C. 3742 .
8. \_\_\_ Risk Assessment and Report for Voluntary Action Program projects conducted in accordance with O.R.C. 3746 and O.A.C. 3745-300-08 (Generic) and/or O.A.C. 3745-300-09 (Site-Specific), or for leaking USTs regulated by BUSTR conducted in accordance with BUSTR's Site Feature Scoring System (Generic) or 4-Tier (Site-Specific) risk assessment documents.
9. \_\_\_ Remedial Action Plan and Operation and Maintenance Plan under O.R.C. 3746 and O.A.C. 3745300-15 for Voluntary Action Program projects, or O.A.C. 1301:7-9-13 for leaking USTs regulated by BUSTR.
10. \_\_\_ Urban Setting Designation and/or Groundwater Feasibility Study conducted in accordance with O.R.C. 3746 and O.A.C. 3745-300-10(D).

**Exhibit C**

**Consultant's Proposal**

# BURGESS & NIPLE

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

Ms. Janise Bayne  
Cuyahoga County Department of Development  
1701 East 12<sup>th</sup> Street  
Reserve Square 1<sup>st</sup> Floor  
Cleveland, OH 44114

Re: Proposal No. 13-1113  
ASTM Phase I ESA  
MM & R  
23700 St. Clair Avenue  
Euclid, Ohio 44117

June 12, 2013

Dear Ms. Bayne:

Burgess & Niple, Inc. (B&N) is pleased to present this Proposal to the Cuyahoga County Department of Development (Client), in response to your request for the professional services necessary to complete an American Society for Testing and Materials (ASTM) Phase I Environmental Site Assessment (ESA) for the MM&R property located at 23700 St. Clair Avenue, Euclid, Ohio 44117. The property consists of two parcels (Parcel Nos. 647-10-002 and 647-13-004) totaling 8.0 acres of land containing one building.

## I. SCOPE OF SERVICES

Upon receipt of written authorization to proceed from the Client, B&N will complete the following services:

- A. Provide a Phase I ESA that will include a site walkabout, environmental records review, review of available aerial photography, evaluation of hazardous materials and disposal practices, and preparation of a Phase I ESA Report. The Phase I ESA will be conducted following ASTM guidelines, ASTM 1527-05 for Phase I ESAs. The Phase I ESA will be completed as outlined in the Standard Scope of Services listed in Attachment 1 and the outline of the report in Attachment 2. Attachment 3 is the ASTM-1527-05 User Questionnaire, which must be completed by the User prior to completion of the Phase I ESA. This questionnaire is to be completed by the Client and is used to assist the Environmental Professional (EP) in establishing the depth of knowledge that the Client knows about the property. This information is typically used to support the *Landowner Liability Protections (LLPs)* determination and reduces the potential occurrence of the EP identifying a data gap in their review. B&N requests that the Client complete this questionnaire to assist us in the development of the historical information and operations on or at the property.

## II. PROFESSIONAL FEES

We propose to complete these services listed above for a lump sum fee of \$4,390.

Invoices will be issued monthly and are payable upon receipt. A finance charge of 1.5 percent per month will be added to any amount unpaid 30 days past the invoice date. B&N may cease work or withhold delivery of final product if payment is not current. If work is halted due to nonpayment, additional costs incurred for restaffing the project will be billed as an additional fee.

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**B&N**  
burgessniple.com

If after the Effective Date any governmental entity takes a legislative action that imposes taxes, fees, or charges on Engineer's services or compensation under this Agreement, then the Engineer may invoice such new taxes, fees, or charges as a Reimbursable Expense to which a factor of 1.0 shall be applied. Owner shall reimburse Engineer for the cost of such invoiced new taxes, fees, and charges; such reimbursement shall be in addition to the compensation to which Engineer is entitled.

### **III. ADDITIONAL SERVICES**

Additional services not described in this Proposal will be performed pursuant to an agreed upon Scope of Services and professional fee. Examples of Additional Services not described in this Proposal include, but are not limited to, soil or water testing, lead-based paint evaluation, asbestos surveys, additional site visits, or detailed wetland delineation.

### **IV. CLIENT RESPONSIBILITY**

Client agrees to provide access to the property including any buildings on the property along with a contact name and phone number of someone with knowledge of the current operations and past uses. The Client will make available any previous environmental reports that have been prepared for the property.

### **V. STANDARD OF PERFORMANCE**

#### **A. Professional Services**

B&N shall perform its services in accordance with the standards for such professional services which prevail in the area in which, and at the time that, those services are rendered. No warranty, guarantee, or representation, either express or implied, is included or intended in any materials, plans, specifications, designs, reports, or other services provided by B&N.

#### **B. Insurance**

The insurance maintained by B&N is summarized below:

1. B&N shall comply with all Workers' Compensation laws and, if required, provide certificates of coverage in connection with this Agreement.
2. During the term of this Agreement B&N will maintain in full force and effect the following insurance coverages and will provide to the Client certificates confirming such coverage, upon request:
  - a. Public liability and automobile liability insurance in an amount not less than \$1,000,000 on account of any one accident or occurrence.
  - b. Property damage liability insurance in an amount not less than \$1,000,000 for damages on account of any one accident or occurrence.
  - c. Excess Liability Umbrella form for bodily injury and property damage in an amount not less than \$15,000,000.
  - d. Professional liability insurance in an amount not less than \$10,000,000 for damages on account of any claims for negligent acts, errors, or omissions.

C. Client Responsibility

The Client will indemnify B&N and their consultants, agents, and employees against all claims, damages, losses and expenses, direct and indirect, or consequential damages (including but not limited to fees and charges of attorneys and court and arbitration costs) arising out of or resulting from any acts or omissions of, or any information provided by the Client, its agents, or contractors, including without limitation:

1. the actual, alleged, or threatened discharge, dispersal, or escape of pollutants, environmental contamination, hazardous materials, or waste (collectively, "pollutants") by the Client;
2. any governmental or regulatory directive or request that B&N or anyone acting under B&N's direction or control test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize pollutants on or from property owned by the Client;
3. specification by the Client or its agents of any product, material, or process containing asbestos;
4. installation, modification, abatement, replacement, or removal by the Client or its contractors of any product, material, or process containing asbestos.

The foregoing indemnification by the Client will not apply to the extent that any claims or damages arise out of any negligent act or omission of B&N.

VI. VALIDITY AND RESPONSE

This Proposal is valid if authorized on or before July 12, 2013.


We appreciate the opportunity to submit this Proposal and look forward to working with you on this project. If you are in accord with the preceding outline, please acknowledge by signing below and returning one copy as our authorization to proceed.

Respectfully,

BURGESS & NIPLE, INC.

CUYAHOGA COUNTY  
DEPARTMENT OF DEVELOPMENT

  
Melissa G. Haney, Project Manager

  
Vice President

RGP:cmc  
Attachments

\_\_\_\_\_  
Date

**ATTACHMENT 1**  
**PHASE I STANDARD SCOPE OF SERVICES**  
**E 1527-05**

1. **Property Inspection.** Perform walkabout of the Property with particular attention to environmental issues:
  - Inspect interior and exterior of buildings thereon.
  - Evaluate presence and use of hazardous materials.
  - Detect evidence of spills or other environmental problems.
  - General observation of adjoining properties from the Property boundary.
2. **Vicinity Tour.** Complete driving tour of Property vicinity. Identify any nearby environmental risks which may affect the environmental condition of the Property.
3. **User Information.** Request and review information obtained from the user including:
  - Environmental liens against the property.
  - Activity use limitations (AULs) on the property such as deed restrictions, engineering controls, or future use restrictions.
  - Specialized user knowledge of processes or operations occurring or which may have occurred on the property.
  - Purchase price (deviations from fair market value).
  - User knowledge of site history, chemical storage, spills, past removal or remediation activities, or other knowledge indicative of environmental risks.
4. **Interviews.** Complete discussions with individuals with knowledge of the Property (including, if available, current and previous owners, neighbors and employees) regarding the Property's history, utilities, operations, management, waste management practices, and other environmental considerations. In addition, reasonable attempts will be made to contact a staff member of any one of the following State and/or local agencies:
  - Fire Department.
  - Health Department.
  - Hazardous Waste Coordinator.
  - Permit Issuing Agencies.

If Property is abandoned, interviews with owners/occupants of nearby properties shall be conducted.
5. **Historical Use Information.** If deemed appropriate or reasonably ascertainable, the following documents will be reviewed for historical Property use information.
  - Aerial Photographs.
  - Fire Insurance Maps.
  - Property Tax Files.
  - Recorded Land Title Records.
  - Topographical Mapping.
  - Local Street Directories.
  - Building Department Records.
  - Zoning/Land Use Records.
  - Others as needed.
6. **Review of Physical Setting Sources.** Review of U.S. Geological Survey (USGS) 7.5-Minute Topographic Map as well as the following sources as deemed necessary:
  - Groundwater Mapping.
  - Bedrock/Surficial Geology Mapping.

- Soil Survey Maps
- National Wetland Inventory Mapping
- Flood Insurance Rate Maps

7. **Records and Lists.** Perform inquiries about the Property and surrounding properties to appropriate federal, state, tribal, and local agencies. Review the following standard Environmental Record Sources where available:

- Federal National Priority List (NPL) site list
- Federal Delisted NPL site list
- Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) list
- CERCLIS No Further Remedial Action Planned (NFRAP)
- NFRAP site list
- CORRACTS facilities
- Non-CORRACTS TSD Facilities
- Resource Conservation and Recovery Act (RCRA) generators list
- Federal institutional control registries
- Federal Emergency Response Notification System (ERNS) list
- State and tribal equivalent NPL
- State and tribal equivalent CERCLIS
- State and tribal landfill and/or solid waste disposal site list
- State and tribal leaking underground storage tank (LUST) list
- State and tribal registered underground storage tank (UST) list
- State and tribal institutional control registries
- State and tribal voluntary cleanup sites
- State and tribal Brownfield sites.

Additional records may be reviewed by the environmental professional if reasonably ascertainable, useful, and accurate.

8. **Permits.** Review permit and compliance history of owners and operators of the Property, where appropriate.

9. **Environmental Status.** Perform activities deemed appropriate to evaluate the environmental status of the Property. These activities may include evaluation of the following:

- Presence of fill material on the Property as evidence of previous landfill or waste disposal.
- Presence of suspected asbestos-containing materials on the Property, including the location, nature, condition, and extent of such materials.
- Location and condition of transformers or other electrical equipment on the Property and adjacent properties.
- Location, registration, and records on condition of underground storage tanks on the Property.
- Documented soil or groundwater contamination.
- Evidence of wetland conditions.
- Property subject to litigation or administrative action or any environmental liens placed on the Property.

10. **Data Gaps.** Identify and comment on significant data gaps encountered during the Phase I Environmental Site Assessment that affect the ability of the environmental professional to identify recognized environmental conditions (RECs).



**ATTACHMENT 2**  
**PHASE I STANDARD SCOPE OF SERVICES**  
**ASTM FORMAT E1527-05**

**RECOMMENDED TABLE OF CONTENTS AND REPORT FORMAT**

**X2.1 Summary**

**X2.2 Introduction**

- X2.2.1 Purpose
- X2.2.2 Detailed Scope of Services
- X2.2.3 Significant Assumptions
- X2.2.4 Limitations and Exceptions
- X2.2.5 Special Terms and Conditions
- X2.2.6 User Reliance

**X2.8 Findings**

**X2.9 Opinion**

**X2.10 Conclusions**

**X2.11 Deviations**

**X2.12 Additional Services**

**X2.13 References**

**X2.14 Signature(s) of Environmental Professional(s)**

**X2.15 Qualification(s) of Environmental Professional(s)**

**X2.16 Appendices**

- X2.16.1 Site (Vicinity) Map
- X2.16.2 Site Plan
- X2.16.3 Site Photographs
- X2.16.4 Historical Research Documentation (aerial photographs, fire insurance maps, historical topographical maps, etc.)
- X2.16.5 Regulatory Records Documentation
- X2.16.6 Interview Documentation
- X2.16.7 Special Contractual Conditions between User and Environmental Professional
- X2.16.8 Qualification(s) of the Environmental Professional(s)

**X2.3 Site Description**

- X2.3.1 Location and Legal Description
- X2.3.2 Site and Vicinity General Characteristics
- X2.3.3 Current Uses of the Property
- X2.3.4 Descriptions of Structures, Roads, Other Improvements on the Site (including heating/cooling system, sewage disposal, source of potable water)
- X2.3.5 Current Uses of the Adjoining Properties

**X2.4 User Provided Information**

- X2.4.1 Title Records
- X2.4.2 Environmental Liens or Activity and Use Limitations
- X2.4.3 Specialized Knowledge
- X2.4.4 Commonly Known or Reasonably Ascertained Information
- X2.4.5 Valuation Reduction for Environmental Issues
- X2.4.6 Owner, Property Manager, and Occupant Information
- X2.4.7 Reason for Performing Phase I
- X2.4.8 Other

**X2.5 Records Review**

- X2.5.1 Standard Environmental Record Sources
- X2.5.2 Additional Environmental Record Sources
- X2.5.3 Physical Setting Source(s)
- X2.5.4 Historical Use Information on the Property
- X2.5.5 Historical Use Information on Adjoining Properties

**X2.6 Site Reconnaissance**

- X2.6.1 Methodology and Limiting Conditions
- X2.6.2 General Site Setting
- X2.6.3 Exterior Observations
- X2.6.4 Interior Observations

**X2.7 Interviews**

- X2.7.1 Interview with Owner
- X2.7.2 Interview with Site Manager
- X2.7.3 Interviews with Occupants
- X2.7.4 Interviews with Local Government Officials
- X2.7.5 Interviews with Others

## **Exhibit D**

### **GENERAL TERMS AND CONDITIONS**

#### **I. Fees for Professional Services**

The fees for professional services will include all amounts as specified in the June, 12, 2013 dated proposal for all employees/subcontractors listed on said proposal. All time including travel hours spent on the project by professional, technical, and clerical personnel will be invoiced. Unless otherwise stated, the foregoing rates shall apply to both Phase I Services and Phase II Services set forth in the Agreement to which these terms and conditions are attached, it being understood that, unless otherwise provided in the Agreement, the compensation payable to the Consultant is lesser of the actually incurred amount utilizing the foregoing rate schedule and the maximum amount set forth in the Agreement and that the Agreement does not provide for a fixed lump-sum price. If it is apparent that the maximum amount is insufficient to complete the project satisfactorily, the County will be advised as soon as practicable.

#### **II. Reimbursable Expenses**

The sum of \$4,390.00 for the scope of services set forth by Burgess & Niple in the June, 12, 2013 document "Proposal No. 13-1113 ASTM Phase I ESA MM& R 23700 St. Clair Avenue, Euclid, Ohio 44117" submitted by Burgess & Niple, to the County will be the maximum amount of compensation payable to the Consultant for expenses incurred.

#### **III. Invoices and Payments**

Consultant shall be paid monthly on the basis of invoices submitted. The invoices submitted will be for the portion of the agreed upon compensation earned by the Consultant during that month. Consultant shall be paid for all such invoices within thirty (30) days of submittal. In the event the County disputes any invoice or any portion thereof, the undisputed portion shall be paid to Consultant in accordance with the Agreement. Invoices not in dispute and unpaid after thirty (30) days shall accrue interest at the rate of one and one-half percent per month (or the maximum percentage allowed by law, whichever is the lesser). **Payment shall be made to the Consultant, as follows: "Burgess & Niple 5085 Reed Road, Columbus, Ohio 43220".** Additional support documentation, if requested by the County shall be furnished at an additional administrative charge as required to compile the documentation.

#### **IV. Insurance**

The Consultant is covered by worker's compensation insurance, employers' liability insurance, commercial general liability insurance covering bodily injury (including death) and property damage, automobile liability insurance covering bodily injury (including death) and property damage, professional consultants liability insurance, contractor's pollution legal liability and Umbrella/Excess Liability Insurance as follows:

Worker's Compensation	Minimum Statutory Amount
Employers' Liability Insurance	Minimum Statutory Amount
Commercial General Liability Insurance	\$ 2 million
Professional Errors and Omissions Liability Insurance	\$ 5 million
Automobile Liability Insurance	\$ 1 million
Contractors Pollution Legal Liability Insurance	\$ 2 million
Umbrella/Excess Liability Insurance	\$ 5 million

Consultant shall deliver certificates evidencing such insurance coverage to the County before commencing work under this proposal. Each such policy shall provide that such coverage will not be changed or canceled without at least 30 days' prior written notice to the County. The Consultant shall require any and all of its subcontractors to procure, maintain, and pay premiums for the insurance coverage and limits of liability outlined above with respect to products, services, work and/or operations performed in connection with this Contract.

**Exhibit E**

**Rate Schedule**

# Proposal for Cuyahoga County Assessment Project

Project Name:		MM&R Property Phase I ESA by ASTM Standards	
Site Location:		23700 St. Clair Avenue, Euclid, OH	
Date of Proposal:		12-Jun-13	
Task #- Phase I ESA			
Sub categories: site inspections, file reviews; Report preparation;			
Labor Charges by Classification	Units	Rate	Total Cost
ie- Certified Professional			
Geologist			
Environmental Scientist	4	\$149	\$596
Project Manager			
Environmental Technician	39	\$79.57	\$3,103
Clerical			
EXPENSES (postage Supplies, materials etc.)		detailed (postage, supplies materials, etc)	
Mileage	300	\$0.51	\$153
Database Report	1	\$538.00	\$538
SUBCONTRACTORS			
SubTotal of Task			\$4,390
PROJECT TOTAL			
			\$4,390

DBE Percentages	%/Total	\$ Amount
MBE Contractor	0	\$0
WBE Contractor	0	\$0