

RESOLUTION R-2018-3

A RESOLUTION AUTHORIZING AN AGREEMENT FOR DESIGN PROFESSIONAL SERVICES AND CONSTRUCTION ADMINISTRATION WITH BURGESS & NIPLE AND DECLARING AN EMERGENCY

WHEREAS, the Council of the Village of Windham has previously determined that the Windham water plant and associated infrastructure requires various improvements, including but not limited to Center Street Water Line Replacement, Hydrant Replacements, and WTP and Well Improvements, all of which together are referred to as the Phase 2 Water Treatment Plant Improvements Project; and

WHEREAS, in order to pay for the Phase 2 Water Treatment Plant Improvements Project, the Village of Windham has applied for and received various grants and loans; and

WHEREAS, an engineering firm is needed to provide required design professional services and construction administration to the Village of Windham for the improvements of the Phase 2 Water Treatment Plant Improvements Project; and

WHEREAS, the Council of the Village of Windham has determined that the need to acquire a design professional and construction administration assistance to meet the Village's contractual obligations and accomplish the improvements set forth in Phase 2 Water Treatment Plant Improvements Project, all of which are matters of eminent concern and of an emergency nature.

NOW THEREFORE BE IT ORDAINED by the Council of the Village of Windham, County of Portage and State of Ohio, two thirds of the members thereto concurring that:

Section 1: The Mayor and the Fiscal Officer are hereby authorized to enter into a contract with Burgess & Niple for the professional design services and contract administration for the Phase 2 Water Treatment Plant Improvements Project in substantial conformity with the Exhibit attached hereto and marked for identification as Exhibit "A".

Section 2: This Resolution and action is declared to be an emergency measure to which Ohio Revised Code 153.71(B) applies. This is an emergency requiring immediate action for the reason that funding for the Phase 2 Water Treatment Plant Improvements Project will be lost if the construction of the improvements is not commenced by June 2018.

Section 3: It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were accepted in an open meeting of this Council, and that deliberations of this Council and any of its committees that resulted in such formal actions were in meetings open to the public, in compliance with Section 121.22 of the Ohio Revised Code.

Section 4: This Resolution is hereby declared to be an emergency measure, becoming effective immediately on passage by Council and approval by the Mayor, to protect the health, safety and general welfare of the Village.

Passed in Council as an emergency this 23rd day of January, 2018

Vote of Council: Ayes: 5
 Nays: 0

Attest:

Approved:

Village Fiscal Officer, Cheree Taylor

Mayor, Deborah Blewitt

Approved as to Legal Form:

Solicitor, Thomas Reitz

BURGESS & NIPLE

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

The Honorable Deborah Blewitt
Mayor
Village of Windham
9621 East Center Street
Windham, OH 44288

Re: Professional Services Proposal
Phase 2 Water Treatment Plant Improvements

January 12, 2018

Dear Mayor Blewitt:

Burgess & Niple (B&N) is pleased to provide the Village of Windham (Client) with this fee proposal for the design, bidding, and construction services for the referenced project. This project is to be funded by the Ohio Public Works Commission (OPWC) and the Ohio Water Development Authority (OWDA) as summarized in the following table.

Windham Phase 2 WTP Project Funding Summary			
Source	Amount	Interest Rate	Term
OPWC Grant	\$190,000.00	N/A	N/A
OPWC Loan	\$190,000.00	0%	25-year
OWDA Loan	\$570,000.00	*3.22%	25-year
Total (Design and Construction)	\$950,000.00		
*Interest rate as of 1/12/2018			

Below is our scope of services for this project.

SCOPE OF SERVICES

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

1. Prepare and submit an application to OWDA to obtain the matching funds required by OPWC and to cover total project costs (beyond funding from OPWC Grant and OPWC 0% Loan).
2. Attend and participate in a project kick-off meeting at the water treatment plant (WTP) to discuss the WTP improvements, the Center Street water line replacement, and hydrant replacements.
3. Center Street Water Line Replacement
 - a. Contact the Ohio Utilities Protection Services (OUPS) to mark existing underground utilities along Center Street.

- b. Perform a topographical survey of 1,000 feet in between the right-of-way along Center Street for the proposed water line replacement. This may be performed by a subconsultant.
- c. Prepare bid documents including waterline plans and profiles, waterline details, and technical specifications.

4. Hydrant Replacements

- a. Prepare an overall plan showing the locations of the 30 hydrants that need to be replaced.
- b. Perform a site visit to confirm the locations of the hydrants to be replaced and the functionality of watch valves in that area. We assume that Village personnel would operate watch valves, as needed, to confirm condition.
- c. Prepare final plan, hydrant details, and specifications for replacement of hydrants.

5. WTP and Well Improvements

- a. Contact equipment vendors to obtain budget pricing and equipment information.
- b. Process design for the following:
 - 1) Air scour blower replacement
 - 2) Filter and softener valve improvements
 - 3) Filter influent flow meters and differential pressure measurement instrumentation
 - 4) Chlorinator piping improvements
 - 5) Double entry door
- c. Electrical and instrumentation design for the following:
 - 1) Combination magnetic starters for the well pumps
 - 2) Motor starters for air scour blowers
 - 3) Magnetic flow meters for each filter
 - 4) Differential pressure transmitters for each filter
 - 5) Wiring to new instrumentation from PLC
 - 6) SCADA database reconfiguration for new instruments and actuators

- 6. Prepare an opinion of probable construction cost for the above improvements.
- 7. Meet with Village personnel to review cost estimate and final bid documents. We anticipate two meetings during the design phase in addition to the kick-off meeting.
- 8. Submit documents to the Portage County Building Department for plan approval.
- 9. Perform bidding services as follows:
 - a. Attend pre-bid meeting
 - b. Answer questions during bidding

- c. Prepare addenda to bid documents
- d. Attend bid opening
- e. Tabulate and evaluate bids and provide letter of summary

10. Perform services during construction as follows:

- a. Prepare contract documents
- b. Attend and participate in a preconstruction meeting
- c. Review shop drawings
- d. Review requests for information (RFIs) and change orders
- e. Review pay applications
- f. Conduct site visits and progress meetings (fee based on six visits)
- g. Prepare final closeout documents

PROJECT SCHEDULE

OPWC is requiring this Project to have a construction start date by June 2018. We will work with OPWC to honor the project schedule requirements. Design and bidding services (scope items 1-9 herein), shall be completed by June 30, 2018, unless mutually agreed upon with the Client and B&N and documented as a change of this Agreement.

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. By nature of the improvements on this Project, an OEPA Permit to Install should not be required. If an OEPA submittal is required, the Client shall pay the OEPA application and review fee.

COMPENSATION

The scope of services defined herein shall be performed for a total not-to-exceed fee of \$158,000, as detailed below. Invoices will be prepared based on hourly rates for employees and contract labor, plus reimbursable expenses and are due within 30 days. A finance charge of 1.0 percent per month will be added to any amount unpaid 45 days past the invoice date, which will not be reimbursable by any funding agency. This fee is firm provided there is no change in the scope of services and written authorization to proceed is received by January 29, 2018.

Design & Bidding	\$108,000	_____ Initial for Authorization
Construction Administration	\$50,000	_____ Initial for Authorization

ADDITIONAL SERVICES

A submittal to OEPA should not be required for this Project. Any items identified as being outside the scope or beyond the effort outlined herein shall be deemed as an additional service and can be provided under a separate scope, fee, and authorization.

TERMS AND CONDITIONS

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


SIGNATURES

If you are in accord with the terms of this proposal, please acknowledge by signing below and returning one executed original for our files or a purchase order authorizing B&N to begin work. Thank you for the opportunity to assist the Village of Windham with this important project. We look forward to working with you and your staff.

Respectfully,


BURGESS & NIPLE, INC.

VILLAGE OF WINDHAM



Zachary A. Held, PE
Project Manager

Deborah Blewitt
Mayor



Mark A. Hutson, PE
Vice President

Date

ZAH:kj
Enclosure
copy: Mr. Daniel R. Johnson, PE

I hereby certify as to the availability of funds
for the professional services mentioned herein:

Fiscal Officer

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 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, 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.

BURGESS & NIPLE

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

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Mayor
Village of Windham
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January 12, 2018

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PROJECT SCHEDULE

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Design & Bidding	\$108,000	_____ Initial for Authorization
Construction Administration	\$50,000	_____ Initial for Authorization

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Respectfully,

BURGESS & NIPLE, INC.

VILLAGE OF WINDHAM



Zachary A. Held, PE
Project Manager

Deborah Blewitt
Mayor



Mark A. Hutson, PE
Vice President

Date

ZAH:kj
Enclosure
copy: Mr. Daniel R. Johnson, PE

I hereby certify as to the availability of funds
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Fiscal Officer

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.
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President
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Attachment A

Terms and Conditions

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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 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, 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.