

**AGENDA**  
**REGULAR MEETING OF THE BOARD OF TRUSTEES OF THE VILLAGE OF MORTON, ILLINOIS**  
**7:00 P.M.**  
**MONDAY, FEBRUARY 19, 2024**  
**FREEDOM HALL, 349 W. BIRCHWOOD, MORTON, ILLINOIS**

- I. CALL TO ORDER**
- II. ROLL CALL**
- III. PLEDGE OF ALLEGIANCE TO THE FLAG**
- IV. PUBLIC HEARING**
- V. PRESENTATIONS AND SPECIAL REPORTS**
- VI. PUBLIC COMMENT**
  - A. Public Comments
  - B. Requests for Removal of Items from the Consent Agenda
- VII. CONSENT AGENDA**
  - A. Approval of Minutes
    - 1. Regular Meeting – February 5, 2024
  - B. Approval of Bills
- VIII. CONSIDERATION OF ITEMS REMOVED FROM THE CONSENT AGENDA**
- IX. VILLAGE PRESIDENT**
- X. VILLAGE CLERK**
- XI. VILLAGE ADMINISTRATOR**
- XII. CHIEF OF POLICE**
- XIII. CORPORATION COUNSEL**
- XIV. DIRECTOR OF FIRE AND EMERGENCY SERVICES**
- XV. DIRECTOR OF PUBLIC WORKS**
  - A. Permission to bid annual mill & overlay project
  - B. Permission to bid annual sealcoat & fog coat project
  - C. Permission to bid annual misc. concrete repairs project
  - D. Permission to bid crushing contract at S. Fourth St. yard
  - E. Resolution 24-24 - A Resolution Authorizing Professional Services Agreement with McMahon Associates, Inc. for Wastewater Treatment Facilities Improvements Plant #2 & Plant #3.
- XVI. ZONING AND CODE ENFORCEMENT OFFICER**
- XVII. VILLAGE TRUSTEES**
  - A. Trustee Blunier
  - B. Trustee Hilliard
  - C. Trustee Leitch
  - D. Trustee Menold
  - E. Trustee Newman
  - F. Trustee Parrott
- XVIII. CLOSED SESSIONS**
- XIX. CONSIDERATION OF MATTERS ARISING FROM CLOSED SESSIONS**
- XXIII. ADJOURNMENT**

**VILLAGE BOARD OF TRUSTEES  
REGULAR MEETING  
7:00 P.M., February 5, 2024**

After calling the meeting to order, the Pledge of Allegiance was recited before Clerk Evans called the roll, finding the following members present: Hilliard, Leitch, Menold, Newman, Parrott – 5.

**PUBLIC HEARING** – None.

**PRESENTATIONS** – None.

**PUBLIC COMMENT** – None.

**CONSENT AGENDA**

- A. Approval of Minutes.
  - 1. Regular Meeting – January 15, 2024
- B. Approval of Bills

Trustee Parrott moved to approve the Consent Agenda. Motion was seconded by Trustee Menold and approved with the following roll call vote:

Yes: Hilliard, Leitch, Menold, Newman, Parrott – 5.  
No: None – 0.  
Absent: Blunier – 1.  
Abstain: None – 0.

**VILLAGE PRESIDENT** – None.

**VILLAGE CLERK** – None.

**VILLAGE ADMINISTRATOR** – Administrator Smick presented An Ordinance Amending Title 8, Chapters 3 & 4, Multiple Sections of the Morton Municipal Code Regarding the Rates Charges to Users of the Water and Wastewater System. Trustee Newman moved to approve and it was seconded by Trustee Leitch before approval by the following vote:

Yes: Hilliard, Leitch, Menold, Newman, Parrott – 5.  
No: None – 0.  
Absent: Blunier – 1.  
Abstain: None – 0.

**CHIEF OF POLICE** – None.

**CORPORATION COUNSEL** – None.

**DIRECTOR OF FIRE AND EMERGENCY SERVICES** – None.

**DIRECTOR OF PUBLIC WORKS** – DPW Loudermilk presented the Annual Fuel Bid for approval. Trustee Hilliard moved to approve and it was seconded by Trustee Leitch before approval by the following roll call vote:

Yes: Hilliard, Leitch, Menold, Newman, Parrott – 5.

No: None – 0.

Absent: Blunier – 1.

Abstain: None – 0.

**ZONING AND CODE ENFORCEMENT OFFICER** – None.

**VILLAGE TRUSTEES**

Trustee Blunier – None.

Trustee Hilliard – None.

Trustee Leitch – None.

Trustee Menold – None.

Trustee Newman – None.

Trustee Parrott – None.

**CLOSED SESSIONS** – None.

**CONSIDERATION OF MATTERS ARISING FROM CLOSED SESSIONS** – None.

**ADJOURNMENT**

With no further business to come before the Board, Trustee Newman moved to adjourn. The motion was seconded by Trustee Hilliard and followed by unanimous voice vote of all present board members.

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PRESIDENT

ATTEST:

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VILLAGE CLERK

**RESOLUTION NO. 24-24**

**RESOLUTION AUTHORIZING PROFESSIONAL SERVICES AGREEMENT WITH MCMAHON ASSOCIATES, INC. FOR WASTEWATER TREATMENT PLANTS UPGRADES**

**WHEREAS**, McMahon Associates, Inc. is an engineering firm providing civil and environmental engineering services in the state of Illinois; and

**WHEREAS**, the Superintendent of Public Works is engaged in the planning stages for necessary improvements and upgrades to the Village of Morton's wastewater treatment plants; and

**WHEREAS**, the Superintendent of Public Works estimates that the construction costs for the proposed wastewater treatment plants improvements and upgrades will be approximately thirty six million dollars (\$36,000,000.00); and

**WHEREAS**, the Superintendent of Public Works recommends the Village of Morton enter into a Professional Services Agreement with McMahon Associates, Inc. for the provision of design engineering services in connection with the proposed wastewater treatment plants improvements and upgrades.

**NOW, THEREFORE, BE IT RESOLVED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF MORTON**, Tazewell County, Illinois, as follows:

1. The Superintendent of Public Works is authorized to enter into a Professional Services Agreement with McMahon Associates, Inc. for professional civil engineering services for design, bid and guidance engineering services in connection with the proposed wastewater treatment plants improvements and upgrades on a time and material basis for an amount not to exceed one million seven hundred forty thousand dollars

(\$1,740,000.00) with the form and substance of the Agreement for Professional Services attached hereto as Exhibit A.

**BE IT FURTHER RESOLVED** that this resolution shall be in full force and effect upon its passage and approval.

**PASSED AND APPROVED** at a regular meeting of the President and Board of Trustees of the Village of Morton, Tazewell County, Illinois, this \_\_\_\_\_ day of \_\_\_\_\_, 2024; and upon roll call the vote was as follows:

AYES:

NAYS:

ABSENT:

ABSTAINING:

**APPROVED** this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
**President**

**ATTEST:**

\_\_\_\_\_  
**Village Clerk**

# AGREEMENT FOR PROFESSIONAL SERVICES

## WASTEWATER TREATMENT FACILITIES IMPROVEMENTS PLANT #2 & PLANT #3 DESIGN PHASE SERVICES For the



PREPARED FOR

Craig Loudermilk, P.E., Director of Public Works  
VILLAGE OF MORTON

PREPARED BY  
McMahon Associates, Inc.

**January 30, 2024**

McM No. M0032-09-99-00001.00

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January 30, 2024

Village of Morton  
Attn: Craig M. Loudermilk, P.E., Director of Public Works  
120 North Main Street  
Morton, IL 61550

Re: Village of Morton  
Wastewater Treatment Facilities Improvements  
Plant #2 and Plant #3  
Design Phase Services  
Agreement for Professional Services  
McM No. M0032-09-99-00001.00

Dear Craig,

McMahon Associates, Inc. is pleased to submit our Proposal for Professional Engineering Design Services for proposed improvements at the Village of Morton's Wastewater Treatment Plant #2 and Wastewater Treatment Plant #3. Bidding and Construction Services will be provided later under a separate contract.

This Proposal Agreement includes our Project Description, Scope of Services, Items Not Included in the Scope of Services, Responsibilities of the Village of Morton, Special Terms, Compensation and Compensation Schedule.

We appreciate the opportunity to present this Proposal Agreement to the Village of Morton and look forward to working with you on this project. Please feel free to contact me with any questions you may have.

Respectfully,

McMahon Associates, Inc.

A handwritten signature in blue ink that reads "Chelsea Bullen".

Chelsea E. Bullen, P.E.  
Municipal / Water & Wastewater Design Engineer

A handwritten signature in black ink that reads "Donald J. Voogt".

Donald J. Voogt, P.E.  
Vice President / Senior Project Manager

DJV:jlh

Enclosure: Agreement for Professional Services

## PROJECT DESCRIPTION

The Village of Morton is a community of approximately 17,117 people, located in Tazewell County, Illinois, near the junction of I-74 and I-155, southeast of the City of Peoria. Wastewater treatment is provided by two Village-owned treatment plants, Plant #2 and Plant #3.

Plant #2 was originally constructed in 1976. The original facility consisted of influent pumping, screening, grit removal, two parallel package plants, filtration, and effluent discharge. The facility was later upgraded in 2008 to improve hydraulics, flow splitting, aeration, Return Activated Sludge (RAS) and Waste Activated Sludge (WAS) metering and pumping, and the clarifier drives were upgraded to center pier mounted hydraulic drives. The aeration blowers were replaced with positive displacement blowers with Variable Frequency Drives (VFDs) controlled by Dissolved Oxygen (D.O.) probes in the aeration tanks, and the diffusers were replaced with fine bubble diffusers. The 2008 plant upgrade also included integrating all pumping, flow, and aeration system data into the plant SCADA system. In 2015, Plant #2's effluent disinfection system was upgraded from chlorine disinfection to the use of peracetic acid. The Plant #2 facility includes the following features:

- Plant #2 has a design average flow of 2.4 MGD, and a design maximum flow of 6.0 MGD. Excess flow facilities are utilized when the main treatment facility is receiving flow exceed 4,167 gpm.
- Plant #2 primarily consists of influent screening, grit removal, primary clarification, extended aeration activated sludge secondary treatment, secondary clarification, rapid sand filtration tertiary treatment, peracetic acid disinfection, solids handling, and excess flow treatment.
- Biosolids are stabilized via aerobic digestion, stored in the lagoon, and then dewatered and landfilled via contract services. Biosolids are no longer disposed of by land application due to high arsenic levels.
- Plant #2 effluent is discharged by gravity to Prairie Creek, under NPDES Permit No. IL0030015.

Like Plant #2, Plant #3 was originally constructed in 1976. It was later expanded in 1987, and again in 2001. Following the 1987 expansion, influent raw wastewater arrived gravity to a "barminutor" and continued on to a activated sludge package plant followed by two secondary clarifiers. Secondary effluent was discharged to a series of aeration ditches, seasonally disinfected, and then discharged. Sludge was aerobically digested and stored in two sludge lagoons. The 2001 plant upgrade included construction of an anoxic tank, two closed loop reactors, two secondary clarifiers, and three additional aerobic digesters. In 2016, Plant #3's effluent disinfection system was upgraded from chlorine disinfection to the use of peracetic acid. The Plant #3 facility includes the following features:

- Plant #3 has a design average flow of 0.95 MGD, and a design maximum flow of 2.38 MGD.
- Influent raw wastewater arrives at Plant #3 by gravity to the influent box where it is screened and then continues on to the anoxic tank. The anoxic tank is followed by a splitter tank which feeds into the two closed loop reactors. Mixed liquor suspended solids from the closed loop reactors' then flows to the secondary clarifiers. Secondary effluent is discharged to the aeration ditches, and then seasonally disinfected from May through October before final discharge.
- Biosolids are stabilized via aerobic digestion and hauled to Plant #2 for further processing and disposal.
- Plant effluent is discharged by gravity to Ackerman Creek, under NPDES Permit No. IL0030007.



## PROJECT DESCRIPTION (continued)

Facilities Planning was initiated in 2017 to assess the current conditions of Plant #2 and Plant #3, identify needs at each facility, and develop a recommend plan for treatment facility improvements to:

- Addressing current needs at the treatment facility
- Extending the service life of each treatment facility
- Providing reserve capacity for future growth
- Maintaining compliance with effluent discharge limitations

The Facility Plan Recommended Plan for improvements to Plant #2 and Plant #3 is summarized as follows:

- Proposed Plant #2 Improvements
  - ▶ Headworks – Headworks improvements include new fine screen and screenings washing/compacting equipment upstream of influent pumping, relocation of the influent lift station to provide safer access for maintenance, and replacement of the grit removal equipment.
  - ▶ Secondary Treatment – Secondary treatment improvements include new a conventional activated sludge treatment system with biological nutrient removal in new concrete tanks. Three new secondary clarifiers, and a new RAS pump station utilizing submersible pumps are also proposed.
  - ▶ Tertiary Treatment – Tertiary treatment improvements include replacement of the existing gravity filters with a new disk filter system.
  - ▶ Solids Handling – Solids handling improvements include a new screw press solids dewatering system and a cake solids storage facility.
  - ▶ New Laboratory and Administration Building – A new building with a laboratory and administrative office and meeting space is also proposed for Plant #2.
- Proposed Plant #3 Improvements
  - ▶ Influent Screening – Improvements include replacement of fine screen and screenings washing/compacting equipment.
  - ▶ Secondary Treatment – Secondary treatment improvements include retrofitting the existing “Orbal” oxidation ditch disk aerators with bridge mounted mixer/aerators, as well as replacement of the air-lift RAS pumping system with submersible pumps.
  - ▶ Effluent Disinfection – Improvements to effluent disinfection include a new UV disinfection system.
  - ▶ Solids Handling – Biosolids will continue to be hauled to Plant #2 for further processing and disposal. There are no proposed solids handling improvements at Plant #3.

# SCOPE OF SERVICES

## A. GENERAL DESIGN SERVICES

General design services to be completed concurrently with Preliminary and Final Design Phases.

1. Conduct regular meetings (virtual and/or in-person) to review progress and gain Village input on preliminary layouts and equipment/materials selection.
2. Arrange for (and attend when appropriate) Wastewater Treatment Facility (WWTF) tours to observe and assess proposed equipment in operation if necessary.
3. Conduct plan reviews with the Village at 50% and 90% completion levels.
4. Document Preparation and Design Package Submittal
  - a. Prepare Bidding Documents using Engineers Joint Contract Documents Committee (EJCDC) C-700 - Standard General Conditions Of The Construction Contract, Technical Specifications and Drawings for proposed WWTF Improvements.
  - b. Review the Draft Bidding Documents with the Village and incorporate review comments, as appropriate.
  - c. Prepare a Pre-Bid Opinion of Probable Construction Cost for the project and review with the Village.
  - d. Submit Bidding Documents to IEPA for approval.
  - e. Respond to IEPA comments and assist the Village with obtaining approval for construction.

## B. PRELIMINARY DESIGN PHASE

Preliminary Design Phase services to be completed prior to formal IEPA acceptance of the Facility Plan.

1. Provide responses to IEPA comments and Facility Plan as necessary to obtain apparent approval of the Facility Plan for construction.
2. Conduct a Project Kick-Off Meeting with appropriate Village personnel to review the project scope, schedule, and deliverables.
3. Conduct features and topographic surveys of the Plant #2 and Plant #3 sites as required for design.
4. Prepare a Request For Quotations (RFQ) for Geotechnical Services on behalf of the Village, and assist the Village with obtaining necessary geotechnical services
5. Prepare preliminary Process and Instrumentation Diagrams (P&IDs) and Hydraulic Profiles incorporating proposed improvements at Plant #2 and Plant #3.
6. Establish a Basis of Design for proposed improvements including confirmation of design parameters, identification of preferred equipment, and building types.

## SCOPE OF SERVICES (continued)

### C. FINAL DESIGN PHASE

Final Design Phase services to be completed upon IEPA acceptance of the Facility Plan.

1. Process Mechanical Design Services
  - a. Prepare Process Mechanical equipment and piping plans, sections, details, P&IDs, hydraulic profile, and technical specifications for proposed improvements to Plant #2 and Plant #3 as included in the Facility Plan recommended plan and outlined in the Project Description section, above.
    - 1) Develop a construction sequencing plan which allows the existing facilities to remain in substantial operation during construction.
2. Civil/Site Design Services
  - a. Prepare Civil/Site plans and specifications which will generally include:
    - 1) Survey control
    - 2) Erosion control
    - 3) Stormwater management
    - 4) Site demolition
    - 5) Site grading and paving
    - 6) Existing and proposed site piping plans
    - 7) Electrical site plans
    - 8) Miscellaneous details
3. Architectural Design Services
  - a. Provide Architectural plans, section views, elevations, codes sheets, finish schedules, details, and specifications for proposed new buildings and improvements to existing buildings.
4. Structural Design Services
  - a. Prepare Structural plans, sections, details, and specifications including building and tank foundations, base slabs, walls, waterstop systems, expansion joints, and roof structures.
    - 1) Structural calculations based on International Building Code
    - 2) Tank design to be based on American Concrete Institute (ACI) 350 standards
5. Electrical Design Services
  - a. Prepare Electrical demolition plans, power and lighting plans, one-line diagrams, schedules, elementaries, details, field connection diagrams, and specifications.
    - 1) Includes design of process control, system integration, and supervisory control and data acquisition requirements.
6. Plumbing and HVAC Design Services
  - a. Prepare Plumbing and HVAC plans, schematics, details, and specifications for new buildings and modifications to existing building.

## ITEMS NOT INCLUDED IN THE SCOPE OF SERVICES

The following is not intended to be a comprehensive list. It is intended to highlight general areas not included in the Scope of Services.

- A. Modifications to the project documents as a result of Owner requested changes in project Scope or design requirements from those outlined in the previous sections of this Agreement and the Facility Plan.
- B. Bidding and Construction Phase Services. McMahon will provide a separate Agreement for these services.
- C. Control System Integration Services. This will be specified by McMahon and performed by the Electrical/Controls Contractor during construction.
- D. Geotechnical Services. McMahon will prepare Scope of Services and obtain quotes.
- E. Analytical Services.
- F. Equipment Pilot Testing.
- G. Fees associated with permitting and plan review agencies.
- H. Project funding application and administration. These services can be provided by McMahon under a separate scope and fee.

## CLIENT RESPONSIBILITIES

The Scope of Services and fee is based upon the understanding that the Village of Morton will provide the following:

- A. An individual authorized to act as the Village's representative to accept completed services and to provide appropriate liaison.
- B. Access to the WWTF site, and copies of all existing drawings, reports, and data.
- C. Procurement and costs associated with Geotechnical Services.
- D. Costs associated with Analytical Services, if applicable.
- E. Cost associated with Equipment Pilot Testing, if applicable.
- F. Fees associated with permitting and plan review agencies (if any).
- G. Formal acceptance of design concepts upon plan review at 50% completeness level.

## SPECIAL TERMS & CONDITIONS

### A. AGREEMENT CONFIDENTIALITY

The Village of Morton agrees that the Project Description, Scope of Services and Compensation sections contained in this Agreement, pertaining to this project or any addendum thereto, are considered confidential and proprietary, and shall not be released or otherwise made available to any third party, prior to the execution of this Agreement, without the expressed written consent of the McMahon Associates, Inc.

Refer also to the General Terms and Conditions, attached to this Agreement.

# COMPENSATION

McMahon Associates, Inc. agrees to provide the Scope of Services described above for the below not to exceed compensation, billed on a time and expense (T&E) basis.

- Preliminary Design Phase Services .....\$150,000
- Final Design Phase Services .....\$1,590,000
- TOTAL.....\$1,740,000

# COMPLETION SCHEDULE

McMahon Associates, Inc. agrees to complete this project as follows:

- Preliminary design phase services completed by May 31, 2024.
- 50% drawings completed by August 30, 2024. McMahon will submit to Morton for review of the 50% progress set.
- 90% drawings completed by December 31, 2024. McMahon will submit to Morton for review of the 90% progress set.
- Applicable design documents will be submitted to IEPA for approval for construction by January 15, 2025, contingent upon the IEPA ongoing review of the Facility Plan throughout the design process, and final acceptance of the Facility Plan by November 30, 2024.

# ACCEPTANCE

The General Terms & Conditions and the Scope of Services (defined in the above Agreement) are accepted, and McMahon Associates, Inc. is hereby authorized to proceed with the services. The Agreement fee is firm for acceptance within sixty days from date of this Agreement.

## VILLAGE OF MORTON

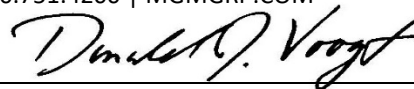
120 North Main Street  
Morton, IL 61550

\_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
Date

## McMAHON ASSOCIATES, INC.

1445 McMahon Drive | PO Box 1025  
Neenah, WI 54956 | 54957-1025  
920.751.4200 | MGMGRP.COM



\_\_\_\_\_  
Donald J. Voegt, P.E.  
Vice President / Senior Project Manager

\_\_\_\_\_  
Date



\_\_\_\_\_  
Anthony S. Kappell, P.E.  
Associate / Senior Water & Wastewater  
Project Manager

Attachments: General Terms and Conditions  
WP\AGREEMENTS\SF-AGREEMENTS (MCM)\2024\M0705-01-ASK.DOCX



**1. STANDARD OF CARE**

- 1.1 Services: McMahon Associates, Inc. (McMahon) shall perform services consistent with the professional skill and care ordinarily provided by engineers/architects practicing in the same or similar locality under the same or similar circumstances. McMahon shall provide its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.
- 1.2 Client's Representative: McMahon intends to serve as the Client's professional representative for those services, as defined in this Agreement, and to provide advice and consultation to the Client as a professional. Any opinions of probable project costs, approvals and other decisions made by McMahon for the Client are rendered based on experience and qualifications and represent our professional judgment. This Agreement does not create, nor does it intend to create a fiduciary relationship between the parties.
- 1.3 Warranty, Guarantees, Terms and Conditions: McMahon does not provide a warranty or guarantee, expressed or implied, for professional services. This Agreement or contract for services is not subject to the provisions of uniform commercial codes. Similarly, McMahon will not accept those terms and conditions offered by the Client in its purchase order, requisition or notice of authorization to proceed, except as set forth herein or expressly accepted in writing. Written acknowledgment of receipt, or the actual performance of services subsequent to receipt, of any such purchase order, requisition or notice of authorization to proceed is specifically deemed not to constitute acceptance of any terms or conditions contrary to those set forth herein.

**2. PAYMENT AND COMPENSATION**

- 2.1 Invoices: McMahon will bill the Client monthly with net payment due in 30-days. Past due balances shall be subject to an interest charge of 1.0% per month. Client is responsible for interest charges on past due invoices, collection agency fees and attorney fees incurred by McMahon to collect all monies due McMahon. Client is responsible for all taxes levied on professional services and on reimbursable expenses. McMahon and Client hereby acknowledge that McMahon has and may exercise lien rights on subject property.
- 2.2 Reimbursables: Expenses incurred by McMahon for the project including, but not limited to, equipment rental will be billed to the Client at cost plus 10% and sub-consultants at cost plus 12%. When McMahon, after execution of an Agreement, finds that specialized equipment must be purchased to provide special services, the cost of such equipment will be added to the agreed fee for professional services only after the Client has been notified and agrees to these costs.
- 2.3 Changes: The stated fees and Scope of Services constitute McMahon's professional opinion of probable cost of the fees and tasks required to perform the services as defined. For those projects involving conceptual or process development services, activities often cannot be fully defined during initial planning. As the project progresses, facts uncovered may reveal a change in direction, which may alter the Scope. Changes by the Client during design may necessitate re-design efforts. McMahon will promptly inform the Client in writing of such situations so changes in this Agreement can be negotiated, as required.
- 2.4 Delays and Uncontrollable Forces: Costs and schedule commitments shall be subject to re-negotiation for delays caused by the Client's failure to provide specified facilities or information, or for force majeure delays caused by unpredictable occurrences, including without limitation, fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults by suppliers of materials or services, process shutdowns, infectious diseases or pandemics, acts of God or the public enemy, or acts or regulations of any governmental agency. Temporary delay of services caused by any of the above, which results in additional costs beyond those outlined, may require re-negotiation of this Agreement.

**3. INSURANCE**

- 3.1 Limits: McMahon will maintain insurance coverage in the following amounts:

Worker's Compensation .....	Statutory
General Liability	
Bodily Injury - Per Incident/Annual Aggregate .....	\$1,000,000 / \$2,000,000
Automobile Liability	
Bodily Injury .....	\$1,000,000
Property Damage .....	\$1,000,000
Professional Liability Coverage .....	\$2,000,000

If the Client requires coverage or limits in addition to the above stated amounts, premiums for additional insurance shall be paid by the Client.

McMahon's liability to Client for any indemnity commitments, reimbursement of legal fees, or for any damages arising in any way out of performance of our contract or based on tort, breach of contract, or any other theory, is limited to ten (10) times McMahon's fee not to exceed to \$250,000.

- 3.2 Additional Insureds: To the extent permitted by law, McMahon shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Client as an additional insured for claims caused in whole or in part by McMahon's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Client's insurance policies and shall apply to both ongoing and completed operations.

To the extent permitted by law, Client shall cause the contractor, if any, to include McMahon as an additional insured on contractor's Commercial General Liability, Automobile Liability and Excess or Umbrella policies to include McMahon as an additional insured for claims caused in whole or in part by contractor's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of McMahon's insurance policies and shall apply to both ongoing and completed operations.

**4. CLAIMS AND DISPUTES**

- 4.1 General: In the event of a dispute between the Client and McMahon arising out of or related to this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. The Client and McMahon agree to first attempt to resolve the dispute by direct negotiation.
- 4.2 Mediation: If an agreement cannot be reached by the Client and McMahon unresolved disputes shall be submitted to mediation per the rules of the American Arbitration Association. The Client and McMahon shall share the mediator's fee and any filing fees equally.
- 4.3 Binding Dispute Resolution: If the parties do not resolve a dispute through mediation the method of binding dispute resolution shall be litigation in a court of competent jurisdiction.

## 5. TERMINATION OR SUSPENSION

- 5.1 Client: Termination of this Agreement by the Client shall be effective upon seven (7) day written notice to McMahan. The written notice shall include the reasons and details for termination; payment is due as stated in above Section 2.
- 5.2 McMahon: If the Client defaults in any of the Agreements entered into between McMahan and the Client, or if the Client fails to carry out any of the duties contained in these Terms & Conditions, McMahan may, upon seven (7) days written notice, suspend its services without further obligation or liability to the Client unless, within such seven (7) day period, the Client remedies such violation to the reasonable satisfaction of McMahan.
- 5.3 Suspension for Non-Payment: McMahan may, after giving 48-hours' notice, suspend service under any Agreement until the Client has paid in full all amounts due for services rendered and expenses incurred.

## 6. COPYRIGHTS AND LICENSES

- 6.1 Instruments of Service: McMahan and its subconsultants shall be deemed the author and owner of their respective Instruments of Service (IOS), including the Drawings, Specifications, reports, and any computer modeling (BIM, etc.), and shall retain all common law, statutory and other reserved rights, including copyrights.
- 6.2 Licenses: McMahan grants to the Client a nonexclusive license to use McMahan's IOS solely and exclusively for the purposes of constructing, using, and maintaining the project, provided that the Client substantially performs its obligations under this Agreement, including prompt payment of all sums due.
- 6.3 Re-use: Use of IOS pertaining to this project by the Client for extensions of this project or on any other project shall be at the Client's sole risk and the Client agrees to defend, indemnify, and hold harmless McMahan from all claims, damages and expenses, including attorneys' fees arising out of such re-use of the IOS by the Client or by others acting through the Client.

## 7. AGREEMENT CONDITIONS

- 7.1 The stipulated fee is firm for acceptance by the Client within 60-days from date of Agreement publication.
- 7.2 Modifications: This Agreement, upon execution by both parties hereto, can be amended only by written instrument signed by both parties.
- 7.3 Governing Law: This Agreement shall be governed by the law of the place where the project is located, excluding that jurisdiction's choice of law rules.
- 7.4 Mutual Non-Assignment: The Client and McMahan, respectively bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Client nor McMahan shall assign this Agreement without the written consent of the other.
- 7.5 Severability: The invalidity of any provision of this Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.
- 7.6 Third Party: Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action, in favor of a third party against McMahan.

## 8. MISCELLANEOUS PROVISIONS

- 8.1 Additional Client Services: The Client agrees to provide such legal, accounting and insurance counseling services as may be required for the project for the Client's purpose.
- 8.2 Means and Methods: McMahan is not responsible for direction or supervision of construction means, methods, techniques, sequence, or procedures of construction selected by contractors or subcontractors, or the safety precautions and programs incident to the work of the contractors or subcontractors.
- 8.3 Purchase Orders: In the event the Client issues a purchase order or other instrument related to McMahan's services, it is understood and agreed that such document is for Client's internal accounting purposes only and shall in no way modify, add to, or delete any of the terms and conditions of this Agreement. If the Client does issue a purchase order, or other similar instrument, it is understood and agreed that McMahan shall indicate the purchase order number on the invoice(s) sent to the Client.
- 8.4 Project Maintenance: The Client (or Owner if applicable) shall be responsible for maintenance of the structure, or portions of the structure, which have been completed and have been accepted for its intended use. All structures are subject to wear and tear, and environmental and man-made exposures. As a result, all structures require regular and frequent monitoring and maintenance to prevent damage and deterioration. Such monitoring and maintenance is the sole responsibility of the Client or Owner. McMahan shall have no responsibility for such issues or resulting damages.
- 8.5 Consequential Damages: Notwithstanding any other provision of the Agreement, neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the Client or the Design Professional, their employees, agents, subconsultants or subcontractors. Consequential damages include, but are not limited to, loss of use and loss of profit.
- 8.6 Corporate Protection: It is intended by the parties to this Agreement that McMahan's services in connection with the project shall not subject McMahan's individual employees, officers, or directors to any personal legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand, or suit shall be directed and/or asserted only against McMahan, a Wisconsin corporation, and not against any of McMahan's employees, officers, or directors.
- 8.7 Contingency: McMahan's professional services are not a warranty or guarantee. The project will evolve and be refined over time. The Client shall provide appropriate contingency for design and construction costs consistent with the reasonable progression of the project. The Client and McMahan agree that revisions due to design clarifications or omissions which result in changes in work during the construction phase which amount to 5% or less of construction costs shall be deemed within the contingency and consistent with the professional standard of care. The Client agrees to make no claim for costs related to changes in work within this threshold. Claims in excess of this threshold shall be resolved per the dispute resolution process.
- 8.8 Project Costs Associated with Agency Plan Review: McMahan will not be responsible for additional project costs due to changes to the design, construction documents, and specifications resulting from the agency plan review process. The project schedule shall either allow for the agency plan review process to occur prior to the Bid Phase or if this review occurs after the Bid Phase the Client agrees that any additional costs would be considered part of the project contingency.
- 8.9 Hazardous Materials: McMahan shall have no responsibility for the discovery, presence, handling, removal, or disposal of, or exposure of person to, hazardous materials or toxic substance in any form at the project site.
- 8.10 Climate: Design standards which exceed the minimum requirements within current codes and regulations are excluded. If requested by the Client, climate-related design services or evaluations can be provided for additional compensation.