



# Wauwatosa, WI

## Government Affairs Committee

### Meeting Agenda - Final

7725 W. North Avenue  
Wauwatosa, WI 53213

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Tuesday, March 4, 2025

6:30 PM

Council Chambers and Zoom:  
<https://servetosa.zoom.us/j/82923188685>,  
Meeting ID: 829 2318 8685

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#### Regular Meeting

#### HYBRID MEETING INFORMATION

Members of the public may observe and participate in the meeting in-person or via Zoom at the link above. To access the Zoom meeting via phone, call 1-312-626-6799 and enter the Meeting ID.

#### CALL TO ORDER

#### ROLL CALL

#### GOVERNMENT AFFAIRS COMMITTEE ITEMS

1. Consideration of proposal by McMahon Associates, Inc. for a Shared Service Review for the Cities of Wauwatosa and West Allis [25-0331](#)

#### ADJOURNMENT

#### NOTICE TO PERSONS WITH A DISABILITY

Persons with a disability who need assistance to participate in this meeting should call the City Clerk's office at (414) 479-8917 or send an email to [tclerk@wauwatosa.net](mailto:tclerk@wauwatosa.net), with as much advance notice as possible.



# Wauwatosa, WI

7725 W. North Avenue  
Wauwatosa, WI 53213

## Staff Report

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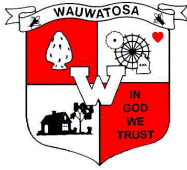
**File #:** 25-0331

**Agenda Date:** 3/4/2025

**Agenda #:** 1.

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Consideration of proposal by McMahon Associates, Inc. for a Shared Service Review for the Cities of Wauwatosa and West Allis



# WAUWATOSA FIRE DEPARTMENT MEMO

To: **Government Affairs Committee**

From: **James Case, Fire Chief**

Date: 3/1/2025

Subject: Joint Fire Department Review Proposal

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## **A. Background/Rationale**

Wauwatosa and West Allis administrations are exploring the concept of consolidated fire and EMS services. In order to understand the feasibility, advisability, and scope of a consolidation, we are recommending detailed review of this concept be completed. The attached proposal from McMahon consultants outlines the scope and details of the proposed review including associated costs. We are recommending this vendor specifically based on their background related to fire/EMS consolidations in other areas of the state including Green Bay.

The scope of this review will include a detailed analysis of all aspects of both organizations including financial, operational, legal, administrative, infrastructure, and political. If approved, this document will allow both municipalities to make an informed decision based on the details and recommendations provided.

The estimated timeline for completion of this review is 4 months.

## **B. Strategic Plan (Area of Focus)**

Safe Community  
Financial Resilience

## **C. Fiscal Impact**

The overall cost of the proposal is \$45,900. These costs will be split evenly between Wauwatosa and West Allis. Our portion of this review will be \$22,950. We intend to utilize \$15,000 which was budgeted in 2025 to study the fire department overtime budget. The remaining costs will be from the operating budget.

## **D. Requested Action**

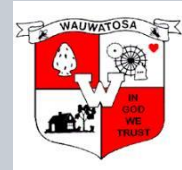
We are requesting that government affairs approve the proposal from McMahon and waive the competitive bid process which would otherwise require three quotes.

# PROPOSAL

FEBRUARY 26,  
2025

PUBLIC SAFETY & MUNICIPAL MANAGEMENT  
PROFESSIONAL CONSULTING SERVICES

## SHARED SERVICE REVIEW



## CITIES OF WAUWATOSA AND WEST ALLIS

MILWAUKEE COUNTY, WI

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### McMAHON. YOUR FULL-SERVICE DESIGN & CONSULTING FIRM

- Architecture
- Environment & Infrastructure
- Water & Wastewater
- Structures & Building Systems
- Public Safety & Municipal Management
- Industry

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February 26, 2025

Cities of Wauwatosa and West Allis

Attn: Jim Archambo, City Administrator  
Richard Pfaff, Interim Administrator  
Jim Case, Wauwatosa Fire Chief  
Jason Schaak, West Allis Interim Fire Chief

Re: Cities of Wauwatosa and West Allis  
Shared Fire-EMS Services Review

Dear Mr. Archambo, Mr. Pfaff, Fire Chief Case and Fire Chief Schaak,

We are pleased to submit a proposal for a Shared Service Review for the Cities of Wauwatosa and West Allis. Our teams' passion for Public Safety and working with Fire Departments provides the basis for our interest in submitting this proposal. Municipal Fire Consulting projects have become a major focus for McMahon Associates, Inc. (McMahon). Similar work in the past has included departments such as the Cities of Lake Elmo, and Wayzata, Minnesota, Villages of Mukwonago and Germantown, Wisconsin, and Cities of De Pere and Green Bay, Wisconsin.

McMahon's Public Safety & Municipal Management Group's focus is on national and international public management consulting services. Most of our clients are public sector entities: municipalities, counties, tribes, or special districts. Our team of consultants are all senior level staff and are either current or former municipal management practitioners. An important component of our approach is frequent communication with the Municipal Administrations.

Our extensive operational and strategic experience in the public safety area uniquely qualifies us for a project of this nature. The team has management, operational, technical, and consulting experience with all types of municipal and public safety operations experience.

Thank you for the opportunity to submit this proposal. If you have any questions or desire to schedule a meeting where we can present our proposal in more detail and answer any questions, please feel free to contact me at 920-540-1002 or by email at [jroemer@mcmgrp.com](mailto:jroemer@mcmgrp.com). We look forward to working with you on this important project!

Respectfully,  
McMahon Associates, Inc.



*Jeffrey Roemer*

Jeffrey Roemer  
PUBLIC SAFETY MANAGER



*Mark Rohloff*

Mark Rohloff  
DIVISION MANAGER

# FIRE SERVICE SHARED SERVICE REVIEW PROPOSAL

## QUALIFICATIONS

McMahon provides public management consulting that provides professional, high quality public management consulting, project management, and other related services to organizations throughout the United States and abroad. Our consultants have served the needs of numerous municipalities throughout the United States and remain very active with several public safety and government related organizations including:

- Wisconsin City/County Management Association
- International City/County Management Association
- Wisconsin State Fire Chiefs Association
- International Association of Fire Chiefs
- International Association of Police Chiefs
- Association of Public Safety Communications Officials
- Professional Ambulance Association of Wisconsin
- National Emergency Number Association
- National Police Protection Association
- Wisconsin Society of Certified Public Managers
- Wisconsin State Police Chiefs Association
- Wisconsin Association of Public Safety Communications Officials

Our consultants possess in-depth knowledge of relevant aspects of public service, which include administration, consolidations, communications, organization, labor relations, human resources, economics, and standards. This knowledge allows us to provide clients with an intellectual and objective analysis of the information received. This information is presented in an easily understood format, allowing policy boards to make knowledgeable and informed decisions.

Project progress is measured against an established work plan, timetables, budget, and list of deliverables. Project methodology includes frequently scheduled progress meetings to discuss progress as well as new or unanticipated issues. The work plans are focused, coordinated, and logical. Project team members are also available throughout the duration of the project.

## METHODOLOGY

Our approach to this project requires a clear understanding of the current fire and emergency medical services operations, staffing, and administration in the Cities of Wauwatosa and West Allis. The key elements of our methodology include:

- A clear understanding of the project background, complex issues involved, and the goals and objectives.
- A work plan that is comprehensive, well designed, practical, and provides ample opportunity for client input.
- Sufficient resources and a commitment to successfully completing the project within the desired time frame and at a reasonable cost.

### CLIENT INPUT

To develop a comprehensive Shared Service Review and make specific recommendations, it is critical that we receive quality information from officials, staff, and members of the fire department. Accordingly, our approach includes regular meetings with the fire department, along with other city departments and neighboring agencies that would have valuable information regarding the current status of fire and EMS services in the Cities of Wauwatosa and West Allis.

### PRACTICAL RECOMMENDATIONS

Our goal is to provide you with realistic recommendations for the evaluation of fire and emergency service shared delivery structures, cost savings, providing analysis on alternative organizational structures to improve efficiency and identify opportunities for collaboration that can result in improved sustainability of services. These recommendations need to be based on sound practical standards, economics, and operational effectiveness.

### PROJECT MANAGEMENT

A successful assessment and the provision of effective recommendations require a special effort to ensure that all levels of the project receive adequate attention, and those findings and recommendations are thoroughly coordinated. This is accomplished by the development and adherence to a project work plan, clear management team assignments, and frequent communications with city and fire department administrations.

## SCOPE OF WORK

### PROJECT KICKOFF

- Develop a project team of appropriate users and stakeholders to oversee and participate in the project. The project team will coordinate project schedules, evaluate findings and recommendations, and review and present the final documents.
- Prepare for and conduct Project Planning Meeting with McMahon Project Manager, the Project Team, and key project personnel. The purpose of the meeting will be to define scope and mission, discuss the work plans, establish liaison responsibilities, coordinate project schedules, and confirm other general arrangements.

### INITIAL ASSESSMENT AND OBSERVATIONS

- Obtain and review documentation pertaining to this project, such as existing fire department documentation, policies, and procedures, detailed call volume statistics, community development plans, service contracts, surveys, capital improvement plans, and previous studies. Data analysis will include review of call types, locations, date/times of calls, agencies responding to those specific calls, number of personnel responding to calls for service, and response times. This information will also be evaluated through our Geographical Information System mapping systems.

### CONTINUED ASSESSMENT AND DOCUMENTATION

- Assess the current Fire-EMS operations and shared services in order to begin to assess future needs. Methods include conducting interviews and on-site observations with representatives of the fire departments, city administration, and neighboring agencies. The interviews and observations will be held in both group and individual settings.

Interviews and observations will primarily focus on the following issues:

- ❖ Current fire-EMS operations, staffing, and levels of service.
  - ❖ Fire and EMS service workload call volume and activity.
  - ❖ Fire and EMS operations and service expectations.
  - ❖ Current and anticipated budget issues.
  - ❖ Major equipment needs.
  - ❖ Economic development plans.
  - ❖ Facilities.
  - ❖ Shared services.
  - ❖ GIS Station and response analysis
  - ❖ Long term sustainability
- Prepare for and facilitate a project status meeting to discuss the results of the interviews and on-site observations and to review the next steps of the project.

### ANALYSIS, PERFORMANCE REVIEW AND RECOMMENDATIONS

- Determine any changes, future trends, or public safety industry standards related to operational requirements. During the development of all recommendations, McMahon will consider many factors and standards as a basis for recommendations, including:
  - ❖ State of Wisconsin Statutes and Administrative Code



## SCOPE OF WORK

- ❖ National Highway Safety Traffic Administration (NHSTA)
  - ❖ Federal Emergency Management Agency (FEMA)
  - ❖ Local Related Ordinances
  - ❖ Commission on Fire Accreditation International (CFAI)
  - ❖ National Fire Protection Association (NFPA)
  - ❖ Commission on Accreditation of Ambulance Services (CAAS)
- Prepare for and facilitate a Recommendations Meeting to present preliminary findings and obtain feedback from the Project Team.
  - Develop a comprehensive, detailed Shared Service Review (Analysis), utilizing the information provided by the documentation and data received, the interviews, and on-site observations. The projected growth and level of service needs will be considered during the development of these recommendations to include:
    - ❖ Operational assessment of the fire departments, including recruitment, employee selection, staffing, training, National Incident Management System compliance, and management structure and practices.
    - ❖ Service demand level and ability to meet the demand.
    - ❖ Effectiveness and efficiency improvements.
    - ❖ Evaluation of coordinated fire and EMS operations.
    - ❖ Evaluation of shared services.
    - ❖ Long term sustainability.
    - ❖ Budgetary constraints.
    - ❖ Other issues identified during the analysis.

## DOCUMENT PREPARATION AND REVIEW

- List and describe the findings and recommendations with regards to administration, fire, and EMS operations. Equipment, staffing, and training will be included in the recommendations.
- Prepare budget impact estimates by implementation recommendations, identifying initial and recurring costs in a separate category for each resource.
- Assemble the Analysis document by performing a detailed quality assurance review of the document to ensure that the document meets the expectations of the Project Team and conforms to McMahon's standards.
- Prepare, produce, and deliver the draft Analysis to the Project Team for review. Facilitate a Report Delivery Meeting to review content as well as schedules and expectations for the remaining project steps.
- Facilitate an Analysis Review Meeting with the Project Team approximately one (1) week after initial delivery to answer questions regarding the content of the Analysis. Make any changes to the Analysis based on the discussions at the Analysis Review Meeting. Produce and deliver final document copies to the Project Team.
- Facilitate an Analysis Review Presentation to each of the City Councils.

## FEE SCHEDULE

### PROJECT FEE

McMahon Associates, Inc. proposes to provide the Scope of Services described in this Proposal for the Fire-EMS Service Analysis as follows:

*Lump sum:*      \$45,900

Upon acceptance of this Proposal, McMahon will prepare an Agreement incorporating the Scope of Services and terms outlined here. All services will be provided in accordance with our General Terms & Conditions, dated May 10, 2024, which will be incorporated into the Agreement for reference.

Payment will be as follows: Total of five payments - payment of 20% at the start of the project and 20% at the end of each month thereafter totaling no more than \$45,900.

### PROJECT SCHEDULE

McMahon has the staff available to begin this project immediately upon award. Based on our prior experience on similar projects, it is estimated that this analysis will take approximately four (4) months to complete. This timeline is contingent upon data being readily available and in a format that facilitates analysis.

### PROJECT CONTINUATION PHASES

The McMahon Project Team will be available to continue helping with the implementation of the Study recommendations if requested by both cities. The Management Counsel or implementation phase will be based on Time and Expenses with an estimated monthly cost of \$6,000 - \$8,000 per month based on actual hours spent on the project.

## McMAHON TEAM

Personnel assigned to this project are selected from McMahon Associates, Inc. (McMahon). The Project Manager supervises the project team and clerical personnel support the team. The combined resources ensure that the client receives the best possible combination of professional attention.

### JEFFREY R. ROEMER – PUBLIC SAFETY MANAGER

Jeff will serve as the Project Manager. He has over 40 years of experience in public safety and is currently Public Safety Manager of the Public Safety & Municipal Management Division for McMahon. Jeff is a certified public manager and has been providing full-time public safety management consulting for the last 25 years. He worked as a Fire Chief, Police Chief, EMS Director, and Emergency Management Director before moving into public management consulting. He has worked with over 300 public safety clients nationwide and internationally.

### TIMM SCHABELL – PUBLIC SAFETY SPECIALIST

Timm has nearly 40 years of service in the emergency services, including over 25 years as the executive chief of an internationally accredited fire department. As Fire Chief, he Initiated and led two (2) successful fire department mergers and transitioned from a traditional Township Fire Department to a Fire Territory that currently serves five (5) separate governmental entities. Timm holds a master's degree in organizational leadership and a bachelor's in fire service management. He also earned an Executive Certificate in Public Policy from Harvard's Kennedy School, completed the Executive Leaders Program at the U.S. Naval Postgraduate School, and attended Harvard's National Preparedness Leadership Initiative. In 2007, Schabbel was recognized as Indiana's first "Fire Chief of the Year" by the Indiana Fire Chiefs Association. Upon his retirement in the spring of 2024, Indiana Governor Eric Holcomb awarded Timm the Sagamore of the Wabash, the state's highest honor for distinguished Hoosiers.

### ED M. HENSCHL – PUBLIC MANAGEMENT SPECIALIST

Ed has 40 years of municipal management experience. Prior to joining McMahon, he served as a city manager for 30+ years, serving municipalities in Wisconsin and Michigan. Ed was the Executive Director of the Wisconsin City/County Management Association for 10 years. He also has 18 years of municipal consulting experience conducting municipal recruitments, consolidation studies, department operation reviews, and labor negotiations. As a consultant, he has specialized in shared service and consolidation studies as well as management reviews for a wide range of municipal departments. Ed worked on the establishment of the North Shore Fire Department and the Fox Valley Metro Police Department.

### DAN BURNS – SENIOR PUBLIC SAFETY SPECIALIST

Dan will assist the Project Team. Dan is a proven healthcare leader with an intense focus on helping organizations and leaders improve quality, ensure positive financial impact, increase productivity, and enrich the customer experience. Key strengths include optimizing processes, service line management, financial and strategic planning, developing, and nurturing new programs and business plans. He possesses a strong understanding of organizational structure and a proven ability to align various stakeholders to business objectives. Dan spent 30 plus years of his career in Emergency Medical Services as a provider, educator and administrator of hospital-based EMS and prehospital care organizations.

## McMAHON TEAM

### KEVIN I. BIERCE – SENIOR PUBLIC SAFETY SPECIALIST

Kevin will assist the Project Team with review of project specific information and processes as well as advise on findings and recommendations. Chief Bierce has been the Fire Chief for the City of Pewaukee Fire Department since 2008 where he oversees all emergency operations. Prior to becoming Chief, he worked in various positions including Assistant Chief, Division Chief of Prevention, Captain, and Lieutenant. As Division Chief of Inspections, Kevin worked to combine the building inspection department of two communities under the authority of the Fire Department to create the Building Services Division overseeing building, zoning, and plan review of all structures in the Village and City of Pewaukee. He is a licensed building official and serves by appointment of the Governor of Wisconsin on the Wisconsin Commercial Building Code Council, responsible for the oversight and review of the Wisconsin Building Codes.

### SAM POCIASK – BIOGRAPHICAL INFORMATION

Sam has been a GIS professional for 17 years, during this time he has worked in County Government, Electrical Transmission Utilities and for the last 13 years as GIS Team Lead with McMahon Associates. With McMahon Associates, he has supported the implementation and advancement of the use of GIS for numerous Municipalities, Tribal entities and utilities. Sam received his bachelor's degree in Environmental Biology and Chemistry along with a Master's Degree in Resource Analysis/GIS from St. Mary's University in Winona, MN.

### MARK A. ROHLOFF – DIVISION MANAGER

Mark is a successful, results oriented public manager with over 40 years of diverse experience in strategic planning, budgeting, finance, continuous improvement, personnel, public works and utilities, economic development, and intergovernmental relations. He has served as a manager and administrator for 3 different Wisconsin cities and towns, and has worked in cities ranging from 5,000 to 450,000 in population in Wisconsin, California, and Colorado. Mark has held leadership positions with the Wisconsin City-County Management Association, the League of Wisconsin Municipalities, and League Mutual Insurance, and has been a member of the adjunct faculty at UW Oshkosh.

## REFERENCES

### CITY OF LAKE ELMO

Fire Organizational Analysis  
 Kristina Handt, City Administrator  
 khandt@lakeelmo.org  
 3880 Laverne Avenue, Suite 100  
 Lake, Elmo, MN 55042  
 (651) 747-3905

### CITY OF WAYZATA

Fire Organizational Analysis  
 Kevin Klapprich, Fire Chief  
 600 Rice Street East  
 Wayzata, MN 55391  
 (952) 404-5338

### VILLAGE OF GERMANTOWN

Fire Management Counsel Services  
 Steven Kreklow, Village Administrator  
 skreklow@germantownwi.gov  
 N112W1701 Mequon Road  
 Germantown, WI 53022  
 (262) 250-4775

### CITY OF GREEN BAY

Interim Fire Chief Services  
 501 S. Washington St. Street  
 Green Bay, WI 54301  
 (920) 448-3279

### VILLAGE OF MUKWONAGO

Fire Organizational Analysis  
 440 River Crest Ct  
 Mukwonago, WI 53149  
 (262) 363-6420

### CITY OF DEPERE

Fire Department Organizational &  
 Consolidation Feasibility Analysis and Interim  
 Fire Chief Services  
 335 S. Broadway  
 De Pere, WI 54115  
 (920) 339-4044

### DOOR COUNTY

Interim Emergency Services Director  
 Ken Pabich, County Administrator  
 421 Nebraska Street  
 Sturgeon Bay, WI 54235  
 (920) 746-2552

### MILWAUKEE REGIONAL MEDICAL CENTER

Public Safety Consultant  
 Robert Simi, Executive Director  
[rsimi@mrmcfl.org](mailto:rsimi@mrmcfl.org)  
 8700 W. Watertown Plank Road #5  
 Milwaukee, WI 53226-3595  
 (414) 778-4570

### HOLMEN FIRE DISTRICT

Fire Department Sustainability and Fire  
 Management Counsel  
 710 South Main Street,  
 Holmen, WI 54636  
 (608) 526-9363

### VILLAGES OF MOUNT PLEASANT, STURTEVANT, AND CALEDONIA

Shared Fire/EMS Service Models  
 8811 Campus Drive  
 Mount Pleasant, WI 53406  
 (262) 664-7818

**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: Upon request and 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.