

 **AIA**® Document B105™ – 2007

Standard Form of Agreement Between Owner and Architect for a Residential or Small Commercial Project

AGREEMENT made as of the 9th day of May in the year 2014
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Menasha
140 Main Street
Menasha, WI 54952-3190

and the Architect:
(Name, legal status, address and other information)

McMAHON Associates, Inc.
1445 McMahan Drive
Neenah, WI 54956

for the following Project:
(Name, location and detailed description)

Menasha Senior Center Addition
116 Main Street
Menasha, WI54952-3190

The project includes a 1442 S.F. addition to the existing Senior Center, with the associated site work along with minor modifications to the existing building interior as indicated on preliminary design drawings by McMAHON Dated 7-9-13

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

State or local law may impose requirements on contracts for home improvements. If this document will be used for Work on the Owner's residence, the Owner should consult local authorities or an attorney to verify requirements applicable to this Agreement.

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ARTICLE 1 ARCHITECT'S RESPONSIBILITIES

The Architect shall provide architectural services for the Project as described in this Agreement in a manner consistent with locally accepted standards for professional skill and care. The Architect shall assist the Owner in determining consulting services required for the Project. The Architect's services include the following consulting services, if any:

See Exhibit A "Project Approach"

During the Design Phase, the Architect shall review the Owner's scope of work, budget and schedule and reach an understanding with the Owner of the Project requirements. Based on the approved Project requirements, the Architect shall develop a design. Upon the Owner's approval of the design, the Architect shall prepare Construction Documents indicating requirements for construction of the Project and shall coordinate its services with any consulting services the Owner provides. The Architect shall assist the Owner in filing documents required for the approval of governmental authorities, in obtaining proposals and in awarding contracts for construction.

During the Construction Phase, the Architect shall provide one site visit to author the "Compliance Statement" as required by the State of Wisconsin.

ARTICLE 2 OWNER'S RESPONSIBILITIES

The Owner shall provide full information about the objectives, schedule, constraints and existing conditions of the Project, and shall establish a budget that includes reasonable contingencies and meets the Project requirements. The Owner shall provide decisions and furnish required information as expeditiously as necessary for the orderly progress of the Project. The Architect shall be entitled to rely on the accuracy and completeness of the Owner's information. The Owner shall furnish consulting services not provided by the Architect, but required for the Project, such as surveying, which shall include property boundaries, topography, utilities, and wetlands information; geotechnical engineering; and environmental testing services. The Owner shall employ a Contractor, experienced in the type of Project to be constructed, to perform the construction Work and to provide price information.

ARTICLE 3 USE OF DOCUMENTS

Drawings, specifications and other documents prepared by the Architect are instruments of the Architect's service and are for the Owner's use solely with respect to this Project. The Architect shall retain all common law, statutory and other reserved rights, including the copyright. Upon completion of the Project or termination of this Agreement, the Owner's right to use the instruments of service shall cease, with the exception that for compliance with requirements of open records laws, the owner may share copies of the documents.

ARTICLE 4 TERMINATION, SUSPENSION OR ABANDONMENT

In the event of termination, suspension or abandonment of the Project by the Owner, the Architect shall be compensated for services performed. The Owner's failure to make payments in accordance with this Agreement shall be considered substantial nonperformance and sufficient cause for the Architect to suspend or terminate services. Either the Architect or the Owner may terminate this Agreement after giving no less than seven days' written notice if the Project is suspended for more than 90 days, or if the other party substantially fails to perform in accordance with the terms of this Agreement.

ARTICLE 5 MISCELLANEOUS PROVISIONS

This Agreement shall be governed by the law of the place where the Project is located. Terms in this Agreement shall have the same meaning as those in AIA Document A105-2007, Standard Form of Agreement Between Owner and Contractor for a Residential or Small Commercial Project. Neither party to this Agreement shall assign the contract as a whole without written consent of the other.

Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or the Architect.

The Architect and Architect's consultants shall have no responsibility for the identification, discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials in any form at the Project site.

ARTICLE 6 PAYMENTS AND COMPENSATION TO THE ARCHITECT

The Architect's Compensation shall be:

Sixteen Thousand Seven Hundred Fifty Dollars (\$16,750.00)

The Owner shall pay the Architect an initial payment of zero (\$ 0) as a minimum payment under this Agreement. The initial payment shall be credited to the final invoice.

Payments are due and payable upon receipt of the Architect's monthly invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest from the date payment is due at the rate of one percent (1.0 %) per month , or in the absence thereof, at the legal rate prevailing at the principal place of business of the Architect.

At the request of the Owner, the Architect shall provide services not included in Article 1 for additional compensation. Such services may include providing or coordinating services of consultants not identified in Article 1; revisions due to changes in the scope, quality or budget; evaluating changes in the Work and Contractors' requests for substitutions of materials or systems; and services not completed within twelve (12) months of the date of this Agreement through no fault of the Architect.

ARTICLE 7 OTHER PROVISIONS

(Insert descriptions of other services and modifications to the terms of this Agreement.)

See Exhibit B "Proposed Fee" for further fee description and McMAHON "General Terms & Conditions" included as part of this Agreement.

This Agreement entered into as of the day and year first written above.

OWNER – CITY OF MENASHA

ARCHITECT – McMAHON ASSOCIATES, INC.

(Signature)

(Signature)

(Printed name and title)

)
Michael J. McMahon, A.I.A., NCARB
Vice President

(Row deleted)

w:\Agree\A&E Owner\McMahon\M0032-640008\Menasha Senior Center-MJM (tlw)

Exhibit A - Project Approach

The project scope is to develop architectural plans and budget for the Menasha Senior Center per the McMAHON concept from last year.

Scope of Services:

- Site Plan
 - Site plans will be prepared in conformance with Section 13-1-12 of the City of Menasha Municipal Code which includes but is not limited to:
 - Property boundaries using site information provided by City of Menasha
 - Location of building footprint and driveways.
 - Location of existing and proposed sidewalks and bike rack.
 - Locate trash and recycling enclosure.
 - Develop drainage plan – our assumption is that storm water management is not going to be required.
 - Lighting and landscaping for City of Menasha requirements.

- Architectural Plans
 - Construction documents including, to scale: floor plans, elevations, wall sections, roof plan, door and finish schedule and critical details.
 - State of Wisconsin submittal.

- Structural Plans
 - Framing plans, foundation plan and details.

- Mechanical Plans
 - HVAC plans with duct work locations and plant modifications/enhancement.

- Electrical Plans
 - Electrical plans indicating outlet locations, lighting and circuits.
 - We do not anticipate data or phone as part of Scope of Services.

- Budget Estimate
 - Provide construction estimate broken down by division of work.

- Project Manual
 - Specifications for each area of work and Instruction to Bidders. Specifications anticipated to include applicable sections of the following divisions of work:
 - Division 0 – Procurement and Contracting requirements
 - Division I – General Requirements

Project Approach (continued)

- Division 2 – Existing Conditions
- Division 3 – Concrete
- Division 4 – Masonry
- Division 5 – Metals
- Division 6 – Wood, Plastics and Composites
- Division 7 – Thermal and Moisture Protection
- Division 8 – Openings
- Division 9 – Finishes
- Division 10 – Specialties
- Division 22 – Plumbing
- Division 23 – Heating, Ventilating and Air Conditioning
- Division 26 – Electrical
- Division 31 – Earthwork
- Division 32 – Exterior Improvements
- Division 33 – Utilities

Tasks:

Task #1

Architect to meeting with committee to review concept and scope.

Task #2

Design team to tour building and document existing conditions.

Task #3

Review construction drawings with design team and have recommendations for finish materials. This is at 50% completion.

Task #4

Review final construction documents with committee. Final material selections will be completed at this time. Review final estimate with committee.

Task #5

Present final documents to common council

NOTE: Scope of Services based on affected areas of work only.



Exhibit B - Proposed Fee

Basic Services:

McMAHON proposes to provide the scope of services represented in the response for the following fee:

Design Services: Lump Sum	\$16,000.00
Reimbursable Expenses: Lump Sum	\$750.00
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Total Lump Sum Fee:	\$16,750.00

Reimbursables:

Reimbursables expenses are included in the above lump sum fee and include State submittal fees, mileage, copies, photographs and production of final report. Reproduction expenses for construction documents (drawings and specifications) are not included and are customarily a direct expense to the owner and contractors.

Scope of Services Not Included:

- 3-D Rendering
- Overall Building Analysis including HVAC, Plumbing and Electrical Systems
- Site Survey
- Subsurface Investigation
- Material and/or Invasive Testing
- GIS Mapping
- Construction Services (required one (1) site visit during construction; included in fee)
- On-line Surveys
- Bidding services. The construction documents will be turned over to the city, who will be responsible to issue the documents for bidding, respond to contractor questions during the bid phase via addenda, receive bids, review and negotiate final bids, and author contracts for the construction.

NOTE: In the event the City of Menasha is interested in services not included in the Scope of Services, McMAHON will be glad to provide a fee proposal for those services.

McMAHON McMAHON

ENGINEERS ARCHITECTS GENERAL TERMS & CONDITIONS

1. McMAHON will bill the Owner monthly with net payment due in 30-days. Past due balances shall be subject to a service charge at a rate of 1.0% per month. In addition, McMAHON may, after giving 48-hours notice, suspend service under any Agreement until the Owner has paid in full all amounts due for services rendered and expenses incurred. These expenses include service charges on past due invoices, collection agency fees and attorney fees incurred by McMAHON to collect all monies due McMAHON. McMAHON and Owner hereby acknowledge that McMAHON has and may exercise lien rights on subject property.
 2. The stated fees and Scope Of Services constitute our best estimate of the fees and tasks required to perform the services as defined. This Agreement, upon execution by both parties hereto, can be amended only by written instrument signed by both parties. 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. McMAHON will promptly inform the Owner in writing of such situations so changes in this Agreement can be negotiated, as required.
 3. The stipulated fee is firm for acceptance by the Owner for 60-days from date of Agreement publication.
 4. Costs and schedule commitments shall be subject to re-negotiation for delays caused by the Owner's failure to provide specified facilities or information, or for 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, 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.
 5. Reimbursable expenses incurred by McMAHON in the interest of the project including, but not limited to, equipment rental will be billed to the Owner at cost plus 10% and sub-consultants at cost plus 12%. When McMAHON, subsequent to 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 Owner has been notified and agrees to these costs.
 6. 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 Owner requires coverage or limits in addition to the above stated amounts, premiums for additional insurance shall be paid by the Owner. McMAHON's liability to Owner for any indemnity commitments, reimbursement of legal fees, or for any damages arising in any way out of performance of our contract is limited to \$1,000,000.
7. The Owner agrees to provide such legal, accounting and insurance counseling services as may be required for the project for the Owner's purpose. All unresolved claims, disputes and other matters in question between the Owner and McMAHON shall be submitted to mediation, if an agreement cannot be reached by Owner and McMAHON.
 8. Termination of this Agreement by the Owner or McMAHON shall be effective upon 7-days written notice to the other party. The written notice shall include the reasons and details for termination; payment is due as stated in paragraph 1. If the Owner defaults in any of the Agreements entered into between McMAHON and the Owner, or if the Owner fails to carry out any of the duties contained in these terms and conditions, McMAHON may, upon 7-days written notice, suspend its services without further obligation or liability to the Owner unless, within such 7-day period, the Owner remedies such violation to the reasonable satisfaction of McMAHON.
 9. Re-use of any documents or AutoCAD representations pertaining to this project by the Owner for extensions of this project or on any other project shall be at the Owner's risk and the Owner agrees to defend, indemnify and hold harmless McMAHON from all claims, damages and expenses, including attorneys' fees arising out of such re-use of the documents or AutoCAD representations by the Owner or by others acting through the Owner.
 10. Purchase Orders - In the event the Owner issues a purchase order or other instrument related to the Engineer's services, it is understood and agreed that such document is for Owner'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 Owner does issue a purchase order, or other similar instrument, it is understood and agreed that the Engineer shall indicate the purchase order number on the invoice(s) sent to the Owner.
 11. McMAHON will provide all services in accordance with generally accepted professional practices. McMAHON will not provide or offer to provide services inconsistent with or contrary to such practices nor make any other warranty or guarantee, expressed or implied, nor to have any Agreement or contract for services subject to the provisions of any uniform commercial code. Similarly, McMAHON will not accept those terms and conditions offered by the Owner 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.
 12. McMAHON intends to serve as the Owner's professional representative for those services, as defined in this Agreement, and to provide advice and consultation to the Owner as a professional. Any opinions of probable project costs, approvals and other decisions made by McMAHON for the Owner are rendered on the basis of experience and qualifications, and represent our professional judgment.
 13. This Agreement shall not be construed as giving McMAHON the responsibility or authority to direct or supervise 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.
 14. The Owner 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 by the Owner. 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 Owner. McMAHON shall have no responsibility for such issues or resulting damages.

