

**MINUTES OF THE MEETING OF THE
OSG EXECUTIVE COMMITTEE
HELD ON MAY 21, 2015**

ROLL CALL

The meeting was called to order by Chairperson Chuck Hornung at 1:00 p.m. at the offices of Edgerton, St. Peter, Petak & Rosenfeldt. Present were Executive Committee members Giese, Hornung, Kolell, Miller and Schmitz. Also present were Ron Cunzenheim, Nick Leonard, John St. Peter and Bill Gius. Open meeting notice was confirmed.

**APPROVAL OF
MINUTES**

Motion and second with unanimous approval of the March 19, 2015 Executive Committee meeting minutes.

TSC UPDATE

Messrs. Leonard and Cunzenheim reported on the following:

- Phosphorus Update. City staff has kept the OSG representatives fully informed of negotiations with the DNR and the EPA. Representatives of the City of Fond du Lac and the City of Oshkosh will be meeting soon both with the DNR and EPA to discuss modifications to the calculation of the TMDL. Of particular interest is excluding what is referred to as “legacy phosphorus.”
- Treatment Plant. City staff reported that the generators are providing almost all of the necessary power to operate the treatment plant. The plant has new management. Messrs. Leonard and Cunzenheim have been pleased with the level of information being shared by City staff. Relations between the OSG and the City remain strong.
- Sewer Televising. Mr. Leonard reported that the digital information from the televising projects has been received by the Village and is being integrated into the Village’s GIS. In the meantime, reports from the televising contractor have been sent to all of the contracting OSG members. The interpretation of the information will be a subject at the annual meeting.
- Plant Capacity. Messrs. Cunzenheim and Leonard reported that the City is conferring with DNR on increasing the plant capacity from 9 million gallons per day to 12 to 15 million gallons per day. The Executive Committee supports this initiative.

**J.E. ARTHUR &
ASSOCIATES**

Attached is a copy of the consulting contract with J.E. Arthur & Associates. The Executive Committee representatives confirmed that they interviewed Eric Otte and were satisfied with his ability to provide the necessary services to the OSG. The contracts have been signed and distributed. Mr. Otte will be attending both the Technical Standards Committee meetings and the OSG meetings.

TRUE-UP

The true-up billing statements have been issued to the OSG members during the first quarter of 2015. Baker Tilly will provide its comments on the true-up data.

**AMENDING
MASTER SEWER
AGREEMENT**

Mr. St. Peter distributed a list of the parties that have not yet signed the amendment to the Master Sewer Agreement. His office will follow up with the parties who have not yet signed.

**ANNUAL
MEETING**

The annual meeting will be held at the Regional Wastewater Facility (not at North Fond du Lac) on September 17, 2015. The Executive Committee meeting will be at 5:30 p.m. followed by the membership meeting at 6:00 p.m. The two topics for the annual meeting will be presentations by the City of Fond du Lac staff on the Regional Wastewater Treatment Facility and a presentation by Nick Leonard on sewer televising.

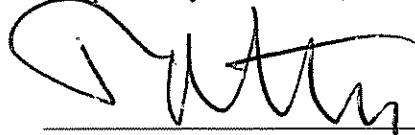
NEXT MEETING

The next meeting of the Executive Committee will be held on July 16, 2015 at 1:00 p.m. at the offices of Edgarton, St. Peter, Petak & Rosenfeldt.

ADJOURNMENT

No other business coming before the Executive Committee, the meeting was adjourned.

Respectfully submitted,



John A. St. Peter, Recording Secretary

J.E. Arthur and Associates, Inc.

Proposal

*Provide Professional/Technical Services and Engineering
Representation for Fond du Lac Outlying Sewer Group*

Prepared for:
Fond du Lac Outlying Sewer Group
Attn: Chuck Hornung, Chair
16 Garfield Street
North Fond du Lac, WI 54937

Prepared by: Eric R. Otte, P.E., P.L.S.
April 6, 2015
Revised April 13, 2015

J.E. Arthur and Associates, Inc.
548 Prairie Road
Fond du Lac, WI 54935
920.922.5703

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J. E. ARTHUR AND ASSOCIATES, INC.

ENGINEERS • SURVEYORS

548 Prairie Road
Fond du Lac WI 54935

Phone: 920/922-5703

FAX No: 920/922-5731

April 6, 2015

Fond du Lac Outlying Sewer Group
Chuck Hornung, Chair
16 Garfield Street
North Fond du Lac, WI 54937

Re: Provide Professional/Technical Services and Engineering Representation for Fond du Lac Outlying Sewer Group

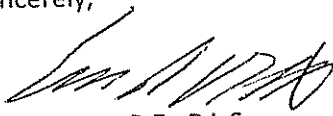
Dear Mr. Hornung:

J.E. Arthur and Associates, Inc. appreciate this opportunity to submit the attached proposal to work with Fond du Lac Outlying Sewer Group (OSG). It is understood that OSG is soliciting basic professional/technical representation on certain committees.

This proposal includes a general scope of services. This proposal is written as a time and material contract, and covers a range of services for which OSG may want to engage J.E. Arthur. If more specific services become eminent, fee estimates and proposals for those services can be generated at that time.

If there is any additional information that we can provide for your review, or if you have any questions regarding this proposal, please contact this office at your convenience.

Sincerely,



Eric R. Otte, P.E., P.L.S.
President
J. E. Arthur and Associates, Inc.

SCOPE OF SERVICES

- Attend monthly Technical Standards Committee meetings and bi-monthly Executive Committee meetings, one of which being the Annual OSG Meeting, including any required preparatory work for presentation or discussion at said meetings.
- Provide periodic and/or ongoing technical assistance to OSG.
- Update and/or maintain records as directed by OSG.
- Provide detailed scope of services and/or proposals for Professional Engineering services on projects with larger scope, such as requests for proposals or bidding documents for construction contracts.

FEE SCHEDULE

The fee for the services listed in the Scope of Services section will be based on our standard hourly rates (see attached schedule, Appendix A). In addition to our fees, all reimbursable expenses such as reproductions, direct project expenses, and review and approval fees required by the various agencies will be billed at actual cost.

Any additional services required due to changes, additions, or alterations beyond the original scope of the above services or beyond our control will be based on our standard hourly rates. If any such conditions arise, we will notify you of same.

The ownership of all original field notes, computer files and tracings shall be with J.E. Arthur & Associates, Inc. If desired, duplicate originals will be furnished at cost with the necessary liability disclaimer. It is agreed that invoices for the above services will be generated at the beginning of each month for the previous month's services and that payment will be due upon receipt of invoice.

Your signatures below will indicate your acceptance of this proposal.

Accepted:

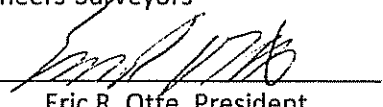
Sincerely,

FOND DU LAC OSG

J.E. ARTHUR AND ASSOCIATES, INC.

Engineers-Surveyors

By: 
Chuck Hornung, Chairman

By: 
Eric R. Otte, President

Date: 5/1/15

Date: 4/6/15

By: 
Authorized Signature

Date: 5-21-15

APPENDIX A

Hourly Rate Schedule

HOURLY RATE FEE SCHEDULE

effective January 1, 2015

Principal	\$90.00 - \$100.00
Registered Personnel	\$75.00 - \$90.00
Senior Technician/Inspector	\$55.00 - \$75.00
Crew Chief/Surveyor	\$45.00 - \$60.00
Field Assistant	\$30.00 - \$45.00
Computer/CAD Technician	\$30.00 - \$41.00
Secretarial	\$30.00 - \$40.00
Total Station/GPS Equipment	\$20.00/hour
Mileage	\$0.80/mile

APPENDIX B

General Conditions

General Conditions of Service

These General Conditions of Service, including any Supplemental Conditions of Service which are or may become applicable to the services described in J.E. Arthur and Associates, Inc. (JEAAA) Proposal, are incorporated by reference into the foregoing Proposal and shall also be incorporated by reference into any Agreement under which services are to be performed by JEAAA for the Client. No agreement or understanding, oral or written, which in any way modifies or waives these General Conditions of Service, shall be binding on JEAAA (whether contained in the Client's purchase forms or otherwise) unless hereafter made in writing and executed by JEAAA's authorized representative.

Section 1: Scope of Work

- a. The scope of work and the time schedules defined in the Proposal are based on the information provided by the Client and shall be subject to the provisions of this agreement. If this information is incomplete or inaccurate, or if site conditions are encountered which materially vary from those indicated by the Client, or if the Client directs JEAAA to change the original scope of work established by the Proposal, a written amendment to the Agreement equitably adjusting the costs, performance time, and/or terms and conditions thereunder, shall be executed by the Client and JEAAA as soon as practicable. JEAAA, at its discretion, may suspend performance of its services until such an Amendment has been executed and, if such an Amendment is not agreed to within a reasonable time, JEAAA may terminate this Agreement. In the event this Agreement is terminated pursuant to this Section, the Client shall pay JEAAA for all services performed prior to termination and termination expenses as set forth in Section 15c of these General Conditions of Service.

Section 2: Billings and Payments

- a. Payments for services and reimbursable expenses will be made on the basis set forth in the attached proposal. JEAAA shall periodically submit invoices for services performed and expenses incurred and not previously billed. Payment is due upon receipt. For all amounts unpaid after 30 days from the invoice date, as set forth on JEAAA's invoice form, the Client agrees to pay a finance charge of one and one-half percent (1-1/2%) per month, eighteen percent (18%) annually. The fees described in this agreement may be adjusted annually on the anniversary date of the effective date of this agreement.
- b. The Client shall provide JEAAA with a clear written statement within fifteen (15) days after receipt of the invoice of any objections to the invoice or any portion or element thereof. Failure to provide such a written statement shall constitute a waiver of any such objections and acceptance of the invoice as submitted.
- c. The Client's obligation to pay for the services performed by JEAAA under this Agreement shall not be reduced or in any way impaired by or because of the Client's inability to obtain financing, zoning, approval of governmental or regulatory agencies, or any other cause, reason, or contingency. Reasonable dispute resolution costs shall be awarded as determined by the adjudicator.

Section 3: Right of Access

- a. If services to be provided under this Agreement require the agents, employees, or contractors of JEAAA to enter onto the Project site, Client shall provide right-of-access to the site to JEAAA, its employees, agents and contractors, to conduct the planned field observations or services.
- b. If the scope of services includes, or is amended to include, the performance of exploratory borings or test pit excavations, Client will furnish to JEAAA all diagrams, and other information in its possession or reasonably attainable by Client indicating the location and boundaries of the site and subsurface structures (pipes, tanks, cables, sewers, other utilities, etc.) in such detail as to permit identifying, in the field, boring/test pit locations which will avoid interferences with any subsurface structures.
- c. JEAAA reserves the right to deviate a reasonable distance from prescribed or selected exploratory boring or test pit locations.
- d. JEAAA shall take reasonable precautions to minimize damage to the site due to its operations. At the Client's request, JEAAA will, to the extent reasonably practicable, restore the site to conditions substantially similar to those existing prior to JEAAA's operations.

Section 4: Safety

- a. It is understood and agreed that, with respect to Project site health and safety, JEAAA is responsible solely for the safe performance by its field personnel of their activities in performance of the required services. It is expressly agreed that JEAAA's professional services hereunder do not involve any responsibility for the protection and safety of persons on and about the Project nor is JEAAA to review the adequacy of job safety on the Project. It is further understood and agreed, and not in limitation of the foregoing, that JEAAA shall not be in charge of, and shall have no control or responsibility over any aspect of the erection, construction or use of any scaffolds, hoists, cranes, stays, ladders, supports, or other similar mechanical contrivances or safety devices as defined and interpreted under any structural work act or other statute, regulation, or ordinance relating in any way to Project safety.
- b. Both parties agree to comply with applicable federal, state and local laws, ordinances and regulations.
- c. Current regulations promulgated by the Occupational Safety and Health Administration (OSHA) require that a "competent person" conduct inspections of excavations and review any supporting system if workers are to enter the excavations. See OSHA 29 CFR Part 1926 (Subpart P). Under the scope of work incorporated in this Agreement, JEAAA does not provide and has not assumed any duties of inspection and/or monitoring of excavations required of the "competent person" under OSHA 29 CFR Part 1926 (Subpart P). JEAAA has neither been assigned nor assumed the authority required of the "competent person" under OSHA 29 CFR Part 1926 (Subpart P).

Section 5: Samples

- a Unless otherwise specifically provided in this Agreement or amendments thereto, JEAAA reserves the right to discard samples immediately after testing. Upon request, the samples will be shipped (shipping charges collected) or stored at the rate indicated in the proposal.

Section 6: Reports and Ownership of Documents

- a JEAAA shall furnish up to two (2) copies of each deliverable item to the Client. Additional copies shall be furnished as a reimbursable expense plus 10 percent. With the exception of JEAAA reports to Client, all documents, including field data, field notes, laboratory test data, calculations, and estimates are and remain the property of JEAAA. The Client may request a copy of any data used in the preparation of documents but the information will be provided on a time and expense basis in excess of the contract value. Any information used by the Client or others shall be at the Client's risk and not subject to damage claims from JEAAA. The Client agrees that all reports and other work product furnished to the Client not paid for in full will be returned upon demand and will not be used for any purpose, including, but not limited to design, construction, permits, or licensing.

Section 7: Standard of Care

- a JEAAA represents that it will perform its services under this Agreement in conformance with the care and skill ordinarily exercised by reputable members of the professional engineering community practicing under similar conditions at the same time in the same or similar locality.
- b NO OTHER WARRANTY OF ANY KIND, EXPRESSED OR IMPLIED, AT COMMON LAW OR CREATED BY STATUTE, IS EXTENDED, MADE, OR INTENDED BY THE RENDITION OF CONSULTING SERVICES OR BY FURNISHING ORAL OR WRITTEN REPORTS OF THE FINDINGS MADE.
- c Any exploration, testing, surveys, and analysis associated with the work will be performed by JEAAA for the Client's sole use to fulfill the purpose of this Agreement and JEAAA is not responsible for interpretation by others of the information developed. The Client recognizes that subsurface conditions beneath the Project site may vary from those encountered in borings, surveys, or explorations and the information and recommendations developed by JEAAA are based solely on the information available.
- d JEAAA is not responsible for supervising, directing, controlling, or otherwise being in charge of the construction activities at the Project site; or supervising, directing, controlling or otherwise being in charge of the actual work of the contractor, its subcontractors, or other materialmen or service providers not engaged by JEAAA.

Section 8: Hazardous Substances

- a Upon entering into this Agreement, the Client shall notify JEAAA of all such hazardous substances which it knows or which it reasonably suspects are or may be present at or contiguous to the Project site or which may otherwise affect the services to be provided. Thereafter, such notification to JEAAA shall be required as soon as practicable after the Client discovers either the presence of hazardous substances which were not previously disclosed, increased concentrations of previously disclosed hazardous substances, or facts or information which cause the Client to reasonably suspect the presence of any such hazardous substances. Hazardous substances shall include, but not be limited to, any substance which poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample and whether it exists in a solid, liquid, semi-solid, or gaseous form.
- b If all or any part of the scope of work is to be performed in the general vicinity of a facility or in an area where asbestos, dust, fumes, gas, noise, vibrations, or other particulate or nonparticulate matter is in the atmosphere where it raises a potential health hazard or nuisance to those working in the area of such conditions, Client shall immediately notify JEAAA of such conditions, potential health hazard, or nuisance which it knows, should know, or reasonably suspects exists and, thereafter, JEAAA is authorized by the Client to take all reasonable measures JEAAA deems necessary to protect its employees against such possible health hazards or nuisance.
- c Following any disclosure as set forth in the preceding paragraphs, or if any hazardous substances or conditions are discovered or reasonably suspected by JEAAA after its services are undertaken, JEAAA may, at its discretion, suspend its services until reasonable measures have been taken at the Client's expense to protect JEAAA's employees from such hazardous substances or conditions. Whether or not JEAAA suspends its services in whole or in part, the Client and JEAAA agree that the scope of services, terms, and conditions, schedule, and the estimated fee or budget shall be adjusted in accordance with the disclosed information or condition, or JEAAA may, at its discretion, terminate the Agreement. In the event that this Agreement is terminated pursuant to this Section, the Client shall pay JEAAA for all services rendered prior to termination and all termination expenses as set forth in Section 15 of these General Conditions of Service.
- d In the event that services under this Agreement may involve or relate to hazardous substances, or constituents, including hazardous waste (as defined by federal, state, or local statutes, regulations or ordinances), whether or not involvement or relationship was contemplated at the time this Agreement was made or when services by JEAAA began under this Agreement, the following conditions shall also be incorporated into the Agreement and be made applicable thereto:
- d 1. In the event that samples collected by or received by JEAAA on behalf of the Client contain hazardous substances or constituents, including hazardous waste, JEAAA will, after completion of testing and, at Client's expense, (1) return such samples to Client, or (2) upon written request and using a manifest signed by the Client as generator, release such samples to a carrier selected by the Client to be transported to a location selected by the Client for final disposal. The Client agrees to

pay all costs associated with the storage, transport, and disposal of samples. The Client recognizes and agrees that JEAAA is acting as a bailee and at no time assumes title to said samples or substances

- d 2. All laboratory and field equipment contaminated in performing services under this Agreement which cannot be reasonably decontaminated shall become the property and responsibility of the Client. All such equipment shall be delivered to the Client or disposed of in a manner similar to that indicated for hazardous samples above. The Client agrees to pay the fair market value of any such equipment which cannot reasonably be decontaminated and all other costs associated with the storage, transport, and disposal of such equipment

Section 9: Construction Monitoring Services

- a. "Construction Monitoring Services" is defined as services, furnished by JEAAA to the Client, which are performed for the purpose of evaluating and/or documenting general conformance of construction operations or completed work with Project specifications, plans, and/or specific reports of the Project. Such services may include taking of tests or collecting samples of natural or manmade materials at various locations on a project site, and making visual observations related to earthwork, foundations, and/or materials. If the services to be provided by JEAAA under this agreement include or are amended to include Construction Monitoring Services, the provisions of this Section 9 shall be an integral part of this agreement and applicable thereto.
- b. The presence of JEAAA field personnel will be for the purpose of providing the client with a professional service based on observations and testing of the work which is performed by a contractor, subcontractor, or other materialmen or service provider. Such services will only be those specifically requested by the Client and agreed to by JEAAA. Discrepancies between construction operations or completed work and project requirements which are noted by JEAAA field personnel will be referred to the Client, or the Client's representative, as designated prior to JEAAA's involvement in the project.
- c. It is understood and agreed by the Client that the observation and testing of natural and/or man-made materials by JEAAA in no way implies a guarantee or warranty of the work of the contractor, subcontractor, or other materialmen or service providers, and the services rendered by JEAAA will in no way excuse such contractor, subcontractor, or other materialmen or service providers from liability in the event of subsequently discovered defects, omissions, errors or other deficiencies in their work. The presence or absence of JEAAA on the Project site will not affect any obligation of any contractor, subcontractor, or other materialmen or service providers to perform in accordance with the specifications and plans of the Project. The Client further understands that JEAAA is not a quality assurance representative for any contractor, subcontractor, or other materialman or service provider on the Project.
- d. The Client agrees to supply JEAAA with specifications, plans, and other necessary material for the Project pertinent to providing its services.
- e. Due to the nature of its services, observing and field testing the work of contractors, subcontractors, or materialmen or service providers on the Project, JEAAA cannot always be responsible for the schedule or length of time its field personnel remain on the Project site. The time JEAAA's field personnel spend on the Project site is dependent upon the schedule of the contractor, subcontractor or materialman, or service provider whose work they are observing and/or testing. JEAAA shall make reasonable effort to utilize its time on the Project site judiciously, but the Client understands and agrees that any delays, cancellations, rescheduling, overtime or other construction activities that may alter the anticipated number of hours and the anticipated costs of JEAAA on the Project site and that are beyond the control of JEAAA field personnel are legitimate and chargeable time and will be invoiced at the rates designated in the attached fee schedules if applicable.
- f. Part-time work is defined as Construction Monitoring Services provided by JEAAA where its field personnel are on the Project less than five (5) working days per week or less than forty (40) hours per week, or both. It is agreed that the Client will furnish JEAAA with a minimum of one working day's notice, or twenty-four (24) hours notice, whichever is greater, on any part-time work of JEAAA if field personnel are requested. JEAAA shall make reasonable effort to provide field personnel on all projects, but reserves the right to schedule its field personnel as it deems appropriate, including the scheduling of different field personnel from day to day on any given part-time project of JEAAA. The Client agrees to inform JEAAA of the anticipated services required by JEAAA field personnel on any day, including but not restricted to the kind and number of tests to be required and the anticipated amount of time the field personnel will be required on the Project site.
- g. All field personnel charges will be made on a portal-to-portal basis. Mileage to and from the Project site will be billed at the rate designated in the attached fee schedules as will any office engineering time needed to review, evaluate or analyze the field data. All calls made by the Client or the Client's representative to cancel requested part-time JEAAA field personnel must be received by JEAAA in time for JEAAA to notify field personnel before they leave for the Project site. JEAAA will make reasonable effort to contact its field personnel as quickly as possible, but reserves the right to bill the Client for the actual time spent in the event JEAAA received a cancellation call too late for it to intercept the field personnel enroute to the Project site.

Section 10: Opinions of Cost

- a. JEAAA's opinions of probable total Project costs and Project construction costs, if any, provided as part of the services under this Agreement are made on the basis of JEAAA's knowledge, experience, and qualifications and represent JEAAA's judgment as an experienced and qualified professional engineer, familiar with the construction industry; but JEAAA cannot and does not guarantee that proposals, bids, or actual total Project costs or Project construction costs will not vary from opinions of probable cost provided by JEAAA

Section 11: Shop Drawings

- a. In the event that the scope of services includes review and approval of Shop Drawings or other data which contractor(s) are required to submit, JEAAA's review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Project plans and specifications and shall not extend to means, methods, techniques, sequences, or procedures of construction, or to safety precautions or programs incident thereto.
- b. JEAAA's review and approval of Shop Drawings or other data shall not relieve the contractor(s) from responsibility for any variation from the requirements of the plans and specifications unless the contractor(s) has, in writing, called JEAAA's attention to each such variation at the time of submission and JEAAA has given written approval of each such variation by a specific written notation incorporated into or accompanying the Shop Drawing or other data. Approval by JEAAA will not relieve the contractor(s) from responsibility for errors or omissions in the Shop Drawings or other data
- c. JEAAA will accept Shop Drawings or other data submittals only from the contractor(s) required by the Project contract documents to furnish the Shop Drawings or data. JEAAA will reasonably promptly review and approve, or take other appropriate action in regard to, Shop Drawings or data properly submitted to JEAAA.

Section 12: Allocation of Risk

- a. Documents, including but not limited to, technical reports, field data, field notes, laboratory test data, calculations, and estimates furnished to the Client or its agents pursuant to this Agreement are not intended or represented to be suitable for reuse by the Client or others on extensions of the Project or on any other project. Any reuse without JEAAA's written consent will be at Client's sole risk and without liability or legal exposure to JEAAA or to JEAAA's contractor(s) and Client shall indemnify and hold harmless JEAAA and JEAAA's contractor(s) from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.
- b. Under no circumstances shall JEAAA be liable for extra work or other consequences due to changed conditions or for costs related to failure of the construction contractor or materialmen or service providers to install work in accordance with the plans and specifications.
- c. JEAAA shall not be responsible for the discovery, presence, handling, removal, disposal of, or exposure of persons to, hazardous materials at the Project Site, including but not limited to asbestos products, mold, polychlorinated biphenyl (PCB) or other toxic substances.

Section 13: Liability Insurance

- a. JEAAA represents that it and its agents, and consultants employed by it, is and are protected by Worker's Compensation insurance and that JEAAA has coverage under liability insurance policies which JEAAA deems reasonable and adequate. Upon request, JEAAA shall furnish certificates of insurance to the Client evidencing the risks insured against, and the limits of liability thereunder. In the event the Client requires specific inclusions of coverage in addition to that obtained by JEAAA, or increased limits of liability in JEAAA's liability policies, the cost of such inclusions or increased limits shall be borne by the Client. JEAAA shall not be responsible for claims, damages, losses and expenses arising out of or resulting from acts and/or omissions of the Client, its employees, agents, staff, consultants, contractors or subcontractors employed by it or by any other entity.

Section 14: Dispute Resolution

- a. All claims, disputes, controversies or matters in question arising out of, or relating to this Agreement or any breach thereof, including but not limited to disputes arising out of alleged design defects, breaches of contract, errors, omissions, or acts of professional negligence (collectively "disputes") shall be submitted to mediation before and as a condition precedent to any other remedy. Upon written request by either party to this Agreement for mediation of any dispute, Client and JEAAA shall select by mutual agreement a neutral mediator. Such selection shall be made within ten (10) calendar days of the date of receipt by the other party of the written request for mediation. In the event of failure to reach such agreement or in any instance when the selected mediator is unable or unwilling to serve and a replacement mediator cannot be agreed upon by Client and JEAAA within ten (10) calendar days, a mediator shall be chosen as specified in the Construction Industry Mediation Rules of the American Arbitration Association then in effect.
- b. All mediation or arbitration shall take place in Appleton, Wisconsin unless Client and JEAAA agree otherwise. The fees of the mediator or arbitrator(s) and the costs of transcription and other costs incurred by the mediator or arbitrator(s) shall be apportioned equally between the parties.

Section 15: Termination

- a This Agreement may be terminated by either party upon at least seven (7) days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Such termination shall not be effective if that substantial failure has been remedied before expiration of the period specified in the written notice. The only exceptions to this seven-day written notice condition are JEAAA's rights to terminate this Agreement as set forth in Sections 1, 4 and 8 of the Agreement.
- b In addition, JEAAA may terminate this Agreement if the Client suspends JEAAA's services for more than sixty (60) consecutive days through no fault of JEAAA.
- c In the event of a termination for convenience, JEAAA shall be entitled to payment for the services satisfactorily performed prior to termination, plus reasonable termination settlement costs.

Section 16: Employment

- a Client agrees that, prior to the completion of JEAAA's services on the Project, Client and its officers, agents or employees shall neither (1) offer employment to JEAAA's employees, (2) advise JEAAA's employees of employment opportunities with Client, Client's parent or affiliate organization(s), if any, nor (3) inquire into employment satisfaction of JEAAA's employees.

Section 17: Independent Contractor

- a The relationship between the Client and JEAAA created under this Agreement is that of principal and independent contractor. Neither the terms of this Agreement nor the performance thereof is intended to directly or indirectly benefit any person or entity not a party hereto and no such person or entity is intended to be or shall be construed as being, a third-party beneficiary of this Agreement unless specified by name herein or in an Amendment hereto, executed by JEAAA's authorized representative.

Section 18: Severability

- a In the event that any provision herein shall be deemed invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and binding upon the parties hereto.

Section 19: Section Headings

- a The heading or title of a section is provided for convenience and information and shall not serve to alter or affect the provisions included herein.

Section 20: Survival

- a All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the Client and JEAAA shall survive the completion of services and the termination of this Agreement.

Section 21: Assigns

- a Neither the Client nor JEAAA may delegate, assign, sublet or transfer its duties, responsibilities or interests in this Agreement without the written consent of the other party.

Section 22: Choice Of Law

- a This Agreement shall be governed by the law of the State of Wisconsin.

Section 23: Written Notice

- a Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail to the last business address known to the party giving notice.