

**To:** Whitewater Township Board

**From:** Cheryl A. Goss, Clerk

**Date:** 08/18/2017

**Re:** Addendum to 08/17/2017 8380 Old M-72 Renovation-Addition Project Update

As has been reported several times previously, the contract between the township and Pressell Engineering needs to be signed. Mark Pressell declined to sign the Professional Engineer Agreement originally drawn up by our attorney, and instead submitted his own form of agreement entitled Agreement between Owner and Engineer for Construction Phase Services (attached). This document was sent to Attorney Chris Patterson, who made several changes, after which it was resubmitted to Pressell.

Finally today, I have been in phone contact with Mark Pressell. He will be here next week to conduct a site visit, and will stop by the township hall to sign the contract and approve the first two invoices from RCI. Pressell will also provide a dollar amount for his fee, which needs to be inserted in paragraph 6.0 Compensation.

To this point, the board has not authorized supervisor and clerk signatures on the engineering contract, but this should be accomplished at the 8/22 meeting.

**An appropriate motion would be:** Motion to authorize the supervisor and clerk to execute the Agreement between Owner and Engineer for Construction Phase Services.

###

# AGREEMENT BETWEEN OWNER AND ENGINEER FOR CONSTRUCTION PHASE SERVICES

AGREEMENT effective as of

\_\_\_\_\_, \_\_\_\_\_ (“Effective Date”)

BETWEEN ENGINEER’s Client, identified as “OWNER”

Whitewater Township 5777 Vinton Rd  
P.O. Box 159 Williamsburg, MI 49690

and the “ENGINEER”

Pressell Engineering & Design Mark A. Pressell Db  
8995 W. Kelly Rd.  
Lake City, MI 49651-8663

## 1.0 PROJECT PARAMETERS

Location:  
8380 Old M-72  
Williamsburg, MI 49690

Project Description:  
Renovate approximately 800 square foot of existing Fire/Ambulance Station and construct an approximately 1600 square foot addition (the “PROJECT”).

The PROJECT includes meeting/day rooms, new kitchen, two new full bathrooms, two new sleeping rooms, a new workout room, a new equipment bay, two new covered porches, new septic tanks and drain field, as more fully described in the Architectural Plans and Specifications dated as of May 15, 2017 and prepared by ENGINEER (“Architectural Plans and Specifications”).

Project Number:  
Direct Design File No: 15-215 dated 05/15/2017

## 2.0 ENGINEER’S RESPONSIBILITIES

The ENGINEER shall provide the professional services set forth in this Agreement consistent with the professional skill and care ordinarily provided by engineers practicing in the same or similar locality under the same or similar circumstances. The ENGINEER shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the PROJECT.

## 2.1 CONSTRUCTION PHASE SERVICES-GENERAL

The ENGINEER shall provide administration and supervision of the Contract between the OWNER and the Contractor, RCI Richter Construction, Inc. of 3760 N US Highway 31, Traverse City, Michigan 49684, as set forth below.

The ENGINEER shall advise and consult with the OWNER during the construction of the PROJECT (“Construction Phase Services”). This includes attending PROJECT meetings, communicating with the Contractor, and reporting progress to the OWNER each week. The ENGINEER shall have authority to act on behalf of the OWNER only to the extent provided in

this Agreement. The ENGINEER shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the ENGINEER be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Architectural Plans and Specifications. The ENGINEER shall be responsible for the ENGINEER's negligent acts or omissions, but shall not have control over or charge of and shall not be responsible for acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

ENGINEER's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the ENGINEER issues the final Certificate for Payment.

## 2.2 EVALUATIONS OF THE WORK

The ENGINEER shall visit the site at intervals appropriate to the stage of construction to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Architectural Plans and Specifications. The ENGINEER shall provide prompt written notice to the OWNER if the ENGINEER becomes aware of any error, omission or inconsistency in such services or any work on the PROJECT performed by the Contractor.

However, the ENGINEER shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work. On the basis of the site visits, the ENGINEER shall keep the OWNER reasonably informed about the progress and quality of the portion of the Work completed, and report to the OWNER known deviations from the Architectural Plans and Specifications and from the most recent construction schedule submitted by the Contractor, and defects and deficiencies observed in the Work.

The ENGINEER has the authority to reject Work that does not conform to the Architectural Plans and Specifications and has the authority to require inspection or testing of the Work.

The ENGINEER shall interpret and decide matters concerning performance under, and requirements of, the Architectural Plans and Specifications on written request of either the OWNER or Contractor. The ENGINEER's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

When making such interpretations and decisions, the ENGINEER shall endeavor to secure faithful performance by both OWNER and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith.

## 2.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

The ENGINEER shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The ENGINEER's certification for payment shall constitute a representation to the OWNER, based on the ENGINEER's evaluation of the Work and on the data comprising the Contractor's Application for Payment, that, to the best of the ENGINEER's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Architectural Plans and Specifications.

The issuance of a Certificate for Payment shall not be a representation that the ENGINEER has made exhaustive or continuous on site inspections to check the quality or quantity of the Work, reviewed construction means, methods, techniques, sequences or procedures, reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the OWNER to substantiate the Contractor's right to payment, or ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Price as agreed to between the OWNER and Contractor.

## 2.4 SUBMITTALS

The ENGINEER shall review and approve or take other appropriate action upon the Contractor's submittals, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Architectural Plans and Specifications. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The ENGINEER's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the ENGINEER, of any construction means, methods, techniques, sequences or procedures.

The ENGINEER shall review and respond to written requests for information about the Architectural Plans and Specifications. The ENGINEER's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness.

## 2.5 CHANGES IN THE WORK

The ENGINEER may authorize minor changes in the Work that are consistent with the intent of the Architectural Plans and Specifications and do not involve an adjustment in the Contract Price or an extension of the contract time impacting the agreement between the OWNER and the Contractor. Any increase in the Contract Price must be approved by OWNER via written Change Order as set forth in the agreement between the OWNER and the Contractor.

## 2.6 PROJECT COMPLETION

The ENGINEER shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the OWNER, for the OWNER's review and records, written warranties and related documents required by the Architectural Plans and Specifications or the agreement between the OWNER and the Contractor; and issue a final Certificate for payment based upon a final inspection indicating the Work complies with the requirements of the Architectural Plans and Specifications.

## 3.0 OWNER'S RESPONSIBILITIES

The OWNER shall provide full information about the objectives, schedule, constraints and existing conditions of the PROJECT. The OWNER shall provide decisions and furnish required information as expeditiously as necessary for the orderly progress of the PROJECT. The ENGINEER 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 ENGINEER, but required for the PROJECT, such as surveying, geotechnical engineering, inspection; and testing. The OWNER shall employ a Contractor, experienced in the type of PROJECT to be constructed, to perform the construction Work.

The OWNER shall endeavor to communicate with the Contractor and the ENGINEER about matters arising out of or relating to any agreements with the ENGINEER, Contractor, or Architectural Plans and Specifications. The OWNER shall promptly notify the ENGINEER of any direct communications that may affect the ENGINEER's services.

The OWNER shall provide the ENGINEER access to the PROJECT site prior to commencement of the Work and shall obligate the Contractor to provide the ENGINEER access to the Work wherever it is in preparation or progress.

#### 4.0 TERMINATION OR SUSPENSION

If the OWNER fails to make payments to the ENGINEER in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the ENGINEER's option, cause for suspension of performance of services under this Agreement. If the ENGINEER elects to suspend services, the ENGINEER shall give seven days' written notice to the OWNER before suspending services. In the event of a suspension of services, the ENGINEER shall have no liability to the OWNER for delay or damage caused the OWNER because of such suspension of services. Before resuming services, the ENGINEER shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the ENGINEER's services. The ENGINEER's fees for the remaining services and the time schedules shall be equitably adjusted.

#### 5.0 MISCELLANEOUS PROVISIONS

This Agreement shall be governed by the law of the place where the PROJECT is located,

The OWNER and ENGINEER, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the OWNER nor the ENGINEER shall assign this Agreement without the written consent of the other, except that the OWNER may assign this Agreement to a lender providing financing for the PROJECT if the lender agrees to assume the OWNER's rights and obligations under this Agreement

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 ENGINEER.

The ENGINEER shall have no responsibility for the discovery, presence, handling, removal or disposal of or exposure of persons to hazardous materials or toxic substances in any form at the PROJECT site.

#### 6.0 COMPENSATION

OWNER shall pay ENGINEER for Services an amount equal to the Total cumulative hours for each billing class charged to the PROJECT times the Standard Hourly Rate for each billing class plus reimbursable expenses. The provisions of this paragraph notwithstanding, the OWNER shall not be obligated to pay ENGINEER any more than \$\_\_\_\_\_, unless otherwise agreed to by the parties to this Contract.

Standard Hourly Rates include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-PROJECT operating costs, and operating margin or profit.

#### Standard Hourly Rates

ENGINEER	\$100.00/hour	
Engineering Tech (Dan Rudy)		\$ 50.00/hour
Support	\$ 20.00/hour	

Reimbursable Expenses are in addition to compensation for ENGINEER's services and include expenses incurred directly related to the PROJECT including the following categories:

Mileage	\$0.55/mile	
Printing & reproduction (submittals)		at cost
Postage, handling and delivery (submittals)		at cost
Other similar PROJECT related expenditures		at cost

#### 7.0 PAYMENTS TO THE ENGINEER

Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the ENGINEER's invoice.

Amounts unpaid forty five (45) days after the invoice date shall bear interest at the rate of 1% per month.

The OWNER shall not withhold amounts from the ENGINEER's compensation to impose a penalty or liquidated damages on the ENGINEER, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the ENGINEER agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be included with the ENGINEER's invoice(s), and available to the OWNER at mutually convenient times. Requests for payments for services not made within 60 days when the services are performed may be rejected by the OWNER.

#### 8.0 SCOPE OF THE AGREEMENT

This Agreement represents the entire and integrated agreement between the OWNER and the ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both OWNER and ENGINEER.

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

OWNER

ENGINEER

\_\_\_\_\_  
Ron Popp, Supervisor

\_\_\_\_\_  
Mark A. Pressell  
Pressell Engineering & Design

\_\_\_\_\_  
Cheryl A. Goss, Clerk