

WHITEWATER TOWNSHIP BOARD
Agenda for Special Meeting on Monday, April 3, 2017
7:00 p.m. at the Whitewater Township Hall
5777 Vinton Road, Williamsburg, MI 49690
Phone 231-267-5141/Fax 231-267-9020

At this time, the Board invites everyone to silence their electronic devices.

A. Call to Order

B. Roll Call of Board Members

C. Set/Adjust Meeting Agenda

D. Declaration of Conflict of Interest

E. Public Comment

Any person shall be permitted to address a meeting of the township board. Public comment shall be carried out in accordance with the following board rules and procedures:

1. Comments shall be directed to the board, with questions directed to the chair.
2. Any person wishing to address the board shall speak from the lectern and state his or her name and address.
3. Persons may address the board on matters that are relevant to township government issues.
4. No person shall be allowed to speak more than once on the same matter, excluding the time needed to answer board members' questions. The chair shall control the amount of time each person shall be allowed to speak, which shall not exceed five (5) minutes.

F. Agenda Items

1. Emergency Services Building Renovation/Addition Project

G. Board Comments/Discussion

H. Public Comment

I. Adjournment

Whitewater Township will provide necessary reasonable auxiliary aids and services to individuals with disabilities who are planning to attend. Contact the township clerk at 231-267-5141 or the TDD at 800-649-3777.

To: Whitewater Township Board
From: Cheryl A. Goss, Clerk
Date: 03/31/2017
Re: **8380 Old M-72 Renovation/Addition Project**

Following up on updates I provided to the board at the March 28th meeting, please be advised as follows:

1. With respect to builders risk insurance recommended by Paul Olson and mentioned in the Construction Agreement as being the responsibility of Whitewater Township, a quote has been provided. See e-mail from Paul Olson elsewhere in this packet. It would be my recommendation that we add this insurance at the point the project goes out for bids.
2. An engineer contract was provided on 3/25 by Attorney Chris Patterson pursuant to our request. This document is attached.
3. Due to the need for an engineer contract, Attorney Patterson also revised the Construction Agreement. This new document is attached. I did a reply e-mail to him inquiring what he thought of our preference that "Construction Manager and Principal Contractor" be changed to "General Contractor." As evidenced by our e-mail discussion attached, he had no problem with it. I made those changes to the document he provided on 3/25, as well as a couple other revisions the board discussed on 3/21 for the paragraph describing the project.
4. We had requested that sealed drawings be provided by 3/29. They have not been received. A polite request was sent to Engineer Mark Pressel via e-mail today inquiring when we can expect to receive sealed drawings suitable for bidding out this project. Hopefully, by the time of our 4/3 meeting, a reply will have been received with some indication.
5. Pursuant to discussion at the 3/21 meeting, the cover sheet with instructions to bidders was revised. This document is attached.
6. Pursuant to discussion at the 3/21 meeting, the legal notice of invitation to bid was revised. This document is attached.
7. As was reported to the board at the 3/28 meeting, logger Charlie Kitchen advised that a tree company with an aerial bucket will be needed to remove the trees behind the fire station. With no place to drop the tall trees, they will need to be taken down in sections. I believe the cost of taking those trees out may exceed \$20,000, in which case the sealed bid procedure would need to be utilized.

I would propose that the tree inventory I did a few weeks ago be supplied to Attorney Patterson, with instructions that we need an agreement drawn up to govern a contract with a tree company to take down all trees on the south and west sides of the building at 8380 Old M-72, as well as off-site removal of all logs, limbs, brush and debris, and that this work be put out for bid ASAP.

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Cheryl A. Goss

From: Paul Olson [REDACTED]
Sent: Wednesday, March 29, 2017 9:21 AM
To: Cheryl A. Goss
Subject: Fire Hall Builders risk

Cheryl, To add the builders risk for one year to the firehall would cost \$1,139.00. This is based on a value of 487,962.00. We also charge for the existing building value.

Paul Olson

Municipal Underwriters of West MI
4171 Wolverine Drive
Williamsburg, MI 49690

Phones:
Toll Free: 888-883-6391
Local: 231-421-5008
Fax: 231-421-3509

PROFESSIONAL ENGINEER AGREEMENT

This "Professional Engineer Agreement" (hereinafter "Agreement"), is made and entered into as of this ____ day of _____, 2017, by and between Whitewater Township, whose address is, for purposes of this Agreement, 5777 Vinton Rd, Williamsburg MI 49690 (hereinafter "Owner") and Pressell Engineering, a Michigan corporation, whose address is, for purposes of this Agreement, 8995 W. Kelly Road, Lake City, Michigan 49651 (hereinafter "Engineer").

Owner's property is located at 8380 Old M-72, Williamsburg, MI 49690, where Owner intends to renovate an approximate 800 square foot portion of the existing Fire/Ambulance Station and construct an approximate 20' x 80' addition to the Fire/Ambulance Station (the "Project"). The scope of this Project is as set forth in Architectural Plans and Specifications dated as of August 9, 2016 and prepared by Direct Designs and signed by the Engineer. The Renovation/Addition of the Fire/Ambulance Station will contain a meeting/day room, new kitchen, two new full bathrooms, two new bedrooms, a new workout room, a new equipment bay, two new covered porches, new septic tanks and drain field, and new parking lot, all as more fully described in the Architectural Plans and Specifications.

Owner desires to retain the services of Engineer to assist in preparation of the Construction Documents and to ensure that the Construction Manager and Principal Contractor construct the Project in conformance with the Architectural Plans and Specifications, as modified from time to time by the Owner.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements as herein contained, it is hereby agreed by and between the parties hereto as follows:

ARTICLE 1 – ENGINEER'S RESPONSIBILITIES

§ 1.1 The Engineer shall provide professional engineering services for the Project as described in a manner consistent with locally accepted standards for professional skill and care. The Engineer shall assist the Owner in determining consulting services required for the Project. The Engineer's services include the following consulting services:

A. Engineer shall prepare Construction Documents indicating requirements for the construction of the Project, conforming to the project budget and scope attached. Engineer shall coordinate its services with any consulting services the Owner provides. The Engineer shall assist the Owner in filing documents required for the approval of governmental authorities, in obtaining proposals and in awarding contracts for construction.

B. During the Project, the Engineer shall act as the Owner's representative and provide direct supervision of the Project and the materials used. The Engineer shall consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner. Generally, the Engineer's services during construction include interpreting the Architectural Plans and Specifications, reviewing Construction Manager's submittals, reviewing materials used, visiting the site, reviewing and certifying payments, reviewing

completed phases of construction, and rejecting nonconforming Work. The Engineer's services shall also include usual and customary structural, mechanical, and electrical engineering services. 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 information.

§ 1.4 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 (1) known deviations from the Architectural Plans and Specifications and from the most recent construction schedule submitted by the Construction Manager, and (2) defects and deficiencies observed in the Work.

§ 1.5 The Engineer has the authority to reject Work that does not conform to the Architectural Plans and Specifications. Whenever the Engineer considers it necessary or advisable, the Engineer shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Architectural Plans and Specifications, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Engineer nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Engineer to the Construction Manager, subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 1.6 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 Construction Manager. The Engineer's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 1.7 Except with the Owner's knowledge and consent, the Engineer shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Engineer's professional judgment with respect to this Project.

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 Engineer shall be entitled to rely on the accuracy and completeness of the Owner's information based on his or her reasonable judgment. The Owner shall furnish consulting services not provided by the Engineer, but required for the Project, such as surveying. The Owner shall employ a Construction Manager, experienced in the type of Project to be constructed, to perform the construction Work and to provide price information.

ARTICLE 3 – PAYMENTS AND COMPENSATION TO THE ENGINEER

§ 3.1 The Engineer's Compensation shall be: **One Hundred Dollars (\$100.00) per hour, not to exceed \$_____.** Engineer may also contract with Dan Rudy of Direct Designs for assistance

during site visits of the Project. Compensation for assistance by Direct Designs shall be **One Hundred Dollars (\$100.00) per hour, not to exceed \$_____.**

§ 3.2 The Owner shall pay the Engineer an initial payment of **Zero (\$0.00)** as a minimum payment under this Agreement. The initial payment shall be credited to the final invoice.

§ 3.3 The Owner shall reimburse the Engineer for expenses incurred in the interest of the Project. Mileage for required travel shall be reimbursed at a rate of **55 cents per mile.**

§ 3.4 Payments are due and payable upon receipt of the Engineer's monthly invoice. Amounts unpaid **Forty-Five (45)** days after the invoice date shall bear interest from the date payment is due at the rate of Twelve (12%) per annum, or in the absence thereof, at the legal rate prevailing at the principal place of business of the Engineer.

§ 3.5 At the request of the Owner, the Engineer shall provide services not included in Article 1 for additional compensation. Such services may include providing or coordinating services of consultants not identifies in Article 1; revisions due to changes in the scope, quality or budget; evaluating changes in the Work and Construction Manager's requests for substitutions of materials or systems; and services not completed within **Thirty-Six (36)** months of the date of this Agreement through no fault of the Engineer.

ARTICLE 4 – TERMINATION, SUSPENSION OR ABANDONMENT

In the event of termination, suspension or abandonment of the Project by the Owner, the Engineer 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 Engineer to suspend or terminate services. Either the Engineer 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 – INSURANCE

The Engineer shall maintain the following insurance for the duration of this Agreement, unless otherwise agreed to by the parties:

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

A. General Liability:

Liability Limits \$1,000,000/\$2,000,000

Umbrella Limits \$1,000,000 each occurrence/ \$1,000,000 aggregate

B. Automobile Liability:

Liability Limits \$1,000,000/\$2,000,000

Umbrella Limits \$1,000,000 each occurrence/ \$1,000,000 aggregate

C. Professional Liability:

\$1,000,000 per claim/\$2,000,000 aggregate

ARTICLE 6 – MISCELLANEOUS PROVISIONS

§ 6.1 This Agreement shall be governed by the laws of the State of Michigan.

§ 6.2 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.

§ 6.3 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 Engineer.

§ 6.4 The Engineer shall have no responsibility for the identification, discovery, presence, handling, removal or disposal of, or exposure of person to, hazardous materials in any form at the Project site.

§ 6.5 To the extent damages are covered by property insurance, the Owner and Engineer waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages. The Owner or the Engineer, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 6.6 The Engineer waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement.

§ 6.7 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

Whitewater Township

Pressell Engineering

By: Ron Popp
Its: Supervisor

By:
Its:

By: Cheryl A. Goss

Its: Clerk

CONSTRUCTION AGREEMENT

This "Construction Agreement" (hereinafter "Agreement"), is made and entered into as of this ____ day of _____, 2017, by and between **Whitewater Township**, whose address is, for purposes of this Agreement, **5777 Vinton Rd, Williamsburg MI 49690** (hereinafter "OWNER") and _____, a **Michigan Corporation**, whose address is, for purposes of this Agreement, _____, **Michigan** _____ (hereinafter "GENERAL CONTRACTOR").

OWNER'S property is located at 8380 Old M-72, Williamsburg, MI 49690, where OWNER intends to renovate an approximate 800 square foot portion of the existing Fire/Ambulance Station AND construct an approximate 20' x 80' addition to the Fire/Ambulance Station (the "PROJECT"). The scope of this PROJECT is as set forth in **Architectural Plans and Specifications** dated as of **August 9, 2016** and prepared by Direct Designs and signed by Mark A. Pressell, Licensed Professional Engineer. The **Renovation/Addition of the Fire/Ambulance Station** will contain meeting/day rooms, new kitchen, two new full bathrooms, two new bedrooms, a new workout room, a new equipment bay, two new covered porches, new septic tanks and drain field, all as more fully described in the **Architectural Plans and Specifications**.

OWNER desires to retain the services of _____ to act as the General Contractor for the PROJECT and _____ desires to provide General Contractor services, as hereinafter provided.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements as herein contained, it is hereby agreed by and between the parties hereto as follows:

1. **Engagement of General Contractor.** OWNER does hereby engage _____ as the GENERAL CONTRACTOR, and GENERAL CONTRACTOR does hereby accept said engagement to act as the GENERAL CONTRACTOR on the PROJECT, all pursuant to and in accordance with the provisions of this Agreement. GENERAL CONTRACTOR acknowledges that OWNER will need to obtain from the local as well as other governmental agencies and utility companies various consents, approvals, variances and/or waivers so as to allow construction of the PROJECT, as designed and intended. In connection therewith, in the event that OWNER doesn't receive necessary consents, approvals, variances and/or waivers, or should the PROJECT not proceed, for any reason, then this Agreement shall be deemed null and void and of no further effect, and OWNER shall reimburse GENERAL CONTRACTOR for any and all expenses and time incurred by GENERAL CONTRACTOR, including expenses and time incurred to cancel and close the job in furtherance of this Agreement.

2. **Services to Be Provided.** A. GENERAL CONTRACTOR shall provide all "General Contractor" services and oversight (as that term is normally understood in the industry) relative to the construction of the PROJECT, including those services defined herein, from commencement through completion, in accordance with and pursuant to the **Architectural Plans and Specifications**, which are attached to this Agreement as Appendix A and incorporated by reference. The services shall include, but not be limited to: 1) acting as the Principal Contractor;

2) oversight of the PROJECT, 3) coordination and obtaining all necessary licenses and permits and approvals that are not the responsibility of the OWNER, such as building permits, 4) coordination of all site work to construct and complete the PROJECT, including utility installation, obtaining bids from subcontractors, and the hiring of all subcontractors involved to construct and complete the PROJECT, 5) coordination and obtaining of all waivers of liens from suppliers, subcontractors, and materialmen, 6) preparation and submission of any and all Sworn Statements, 7) attendance, as necessary at any local hearings and the coordination, attendance and obtaining of any other approvals, permits and inspections necessary from any state, county or local municipality or agency relative to the PROJECT, 8) the maintenance of records related to the construction of the PROJECT as hereinafter more fully delineated, 9) all administrative coordination, accounting, payment disbursements and any other administrative requirements, and 10) provide insurance in accordance with paragraph 9 hereinafter. Costs and items not included within the scope of this work are the cost of utility company connections, transformers and associated equipment.

B. GENERAL CONTRACTOR will use its best efforts in obtaining competitive bids from all subcontractors and material suppliers, taking into consideration the experience and competency of all such entities. GENERAL CONTRACTOR shall advise OWNER on the hiring of all subcontractors, materialmen, and suppliers. GENERAL CONTRACTOR shall cooperate with the OWNER to terminate any subcontractors, materialmen and suppliers which it determines are not performing to OWNER's satisfaction (or to satisfaction of the supervising Professional Architect or Professional Engineer) or in accordance with the **Architectural Plans and Specifications**. GENERAL CONTRACTOR shall require all subcontractors, materialmen and suppliers to comply with the requirements set forth in the **Architectural Plans and Specifications** imposed upon GENERAL CONTRACTOR and as set forth in this Agreement.

C. GENERAL CONTRACTOR will be working with the architectural and/or engineering services as necessary to construct the PROJECT in accordance with the **Architectural Plans and Specifications**. GENERAL CONTRACTOR shall build the PROJECT in accordance with the **Architectural Plans and Specifications**. The **Architectural Plans and Specifications** may be modified from time to time by OWNER provided that they are contained in a Change Order reflecting the change and any cost changes associated with the Change Order. GENERAL CONTRACTOR shall cooperate with OWNER, architects and engineers in the best interests of the PROJECT.

3. **FEES FOR SERVICES.** The compensation to be paid to GENERAL CONTRACTOR for the services set forth above shall be the Guaranteed Maximum Price of \$ _____.

- A. Retainer payment to start work of \$7,500.00 upon execution of this Agreement.
- B. Progress Payments as costs are incurred.

The Guaranteed Maximum Price as defined below shall be based upon the following costs: General Conditions, Utilities, Permits, Subcontractors, Site Work, Testing, Labor, Site Supervision, Review by a Professional Architect or Engineer, Materials, Equipment and Supplies, which shall be paid by the OWNER upon presentment of proper and complete

invoicing for the cost item. This Agreement shall be liberally construed and interpreted to accomplish that intent.

GENERAL CONTRACTOR shall build the PROJECT in accordance with the **Architectural Plans and Specifications**. The **Architectural Plans and Specifications** may be modified from time to time by OWNER. CONSTRUCTION MANAGER shall cooperate with OWNER, architects and engineers in the best interests of the PROJECT and will process change orders as required if additional work is added by OWNER or due to local code changes, at a rate of Cost plus 10%.

4. **Payment of Construction Costs.** GENERAL CONTRACTOR will act as the Construction Manager and Principal Contractor for the PROJECT, and shall be reimbursed for all costs and expenses incurred in connection with the development and construction of the PROJECT up to the Guaranteed Maximum Price as modified from time to time due to Change Orders. GENERAL CONTRACTOR shall process all payments and oversee the payment of any and all direct and indirect costs associated with the actual construction of the PROJECT, including all labor, materials, licenses and permits associated therewith. The parties shall agree upon the manner and the mechanisms pursuant to which funding for the payment of these costs shall occur. GENERAL CONTRACTOR shall not pay any subcontractor or material supplier without first obtaining appropriate Waivers of Liens.

GENERAL CONTRACTOR shall require that all subcontractors, materialmen and suppliers agree to a payment schedule consistent with the payment schedule as may be required of OWNER by its lending institution. In addition, GENERAL CONTRACTOR and all subcontractors shall be required to agree to a “hold-back” of not less than ten percent (10%) of the total amount of the contract sums due under this Agreement. Accounting for and management of all subcontractors’ “hold-backs,” including the determination that each subcontractor has properly and timely performed its contractual obligations on the PROJECT, shall be the responsibility of GENERAL CONTRACTOR. OWNER shall be responsible for releasing GENERAL CONTRACTOR’S “hold-back,” including the determination that GENERAL CONTRACTOR has properly and timely performed its contractual obligations under this Agreement.

5. **Guaranteed Maximum Price.** GENERAL CONTRACTOR guarantees that the Contract Sum for the building to be renovated and constructed pursuant to the **Architectural Plans and Specifications**, including any time to manage the PROJECT, shall not exceed the Guaranteed Maximum Price, which shall be \$_____, unless amended by the parties. To the extent the cost of the work on the PROJECT under the terms and conditions set forth in the **Architectural Plans and Specifications** exceeds the Guaranteed Maximum Price, GENERAL CONTRACTOR shall bear such costs in excess of the Guaranteed Maximum Price without reimbursement or additional compensation from the OWNER.

The Guaranteed Maximum Price is subject to additions and deductions by Change Order as provided in this Agreement. The OWNER may order changes in the PROJECT within the general scope of this Agreement consisting of additions, deletions, or other revisions. Such

changes shall be in writing and shall include an agreed upon adjustment to the Guaranteed Maximum Price, if necessary.

6. **General Contractor Employees.** GENERAL CONTRACTOR will be reimbursed for all such employee time actually worked at the job site, including site supervision, based on standard trade division rates. Such reimbursement shall be subject to the Guaranteed Maximum Price.

7. **Tools of the Trade; Equipment.** GENERAL CONTRACTOR and its employees have their own tools of their trade, and OWNER shall not be billed for the use or replacement thereof. OWNER shall pay for all utilities and telephone services provided to the construction trailer. Any and all equipment necessary to be rented for use at the PROJECT shall be paid by GENERAL CONTRACTOR as provided in paragraph 4, subject to the Guaranteed Maximum Price.

8. **Mechanics Liens, Sworn Statements.** GENERAL CONTRACTOR shall be responsible for preparation, obtaining and submission of all "Sworn Statements", "Partial Conditional Waiver of Mechanics Lien" or "Full Waiver of Mechanics Lien," in such form and containing such substance as required by OWNER. All such Sworn Statements and Waivers of Liens shall include any and all subcontractors and/or materialmen performing work and/or supplying material to, for, or on behalf of the PROJECT. Any payment of any contractor or subcontractor shall be subject to submission of such documents in a form satisfactory to GENERAL CONTRACTOR and OWNER.

9. **Insurance.** GENERAL CONTRACTOR shall at all times maintain, at GENERAL CONTRACTOR'S cost (except as herein provided to the contrary), such insurance coverages (general liability and others) in such amounts and with such limits as shall be required by OWNER. GENERAL CONTRACTOR shall supply OWNER, within three (3) days after request therefor, proof of such insurance from GENERAL CONTRACTOR'S insurance carrier, which proof shall document that such insurance is paid in full through the time contemplated for completion of work by GENERAL CONTRACTOR on the PROJECT. Such proof of insurance shall also require that the same may not be canceled by GENERAL CONTRACTOR'S insurance carrier(s) except upon 30 days' written notice to OWNER. OWNER shall carry builders risk and general property damage policy, at OWNER's costs, covering the structures from damage due to fire, wind, vandalism, theft, and related causes. All subcontractors will provide insurance coverage to OWNER with such limits as shall be required by OWNER and shall list GENERAL CONTRACTOR and OWNER as an additional insured. Such coverages shall be evidenced by providing the actual policy of insurance. Certificates of Insurance are not acceptable.

10. **Cooperation with Lending Institution.** GENERAL CONTRACTOR acknowledges that OWNER may be obtaining financing from a lending institution of its choosing. In connection therewith, GENERAL CONTRACTOR agrees to cooperate and comply with any and all requirements that may be imposed by such lending institution, including, but not limited to payment and disbursements to GENERAL CONTRACTOR, subcontractors and material suppliers and requirements imposed by any title insurance company.

11. **Time of Performance.** Time is of the essence of this Agreement. GENERAL CONTRACTOR will immediately commence work on the PROJECT and diligently pursue it through completion. It is the obligation of GENERAL CONTRACTOR that the PROJECT be completed as expeditiously as possible, acts of God, weather conditions and circumstances beyond its control permitting.

12. **Default.** The failure of GENERAL CONTRACTOR to perform in accordance with the requirements of this Agreement, including the **Architectural Plans and Specifications** and time of performance, and upon not less than seven (7) days' written notice to GENERAL CONTRACTOR, shall be a material breach/default hereunder entitling OWNER to take any or all of the following steps: 1) terminate this Agreement, 2) hold GENERAL CONTRACTOR responsible for any and all damages incurred by OWNER as a result of such breach and/or defaults, 3) obtain reimbursement from GENERAL CONTRACTOR of all costs, damages and other expenses incurred by OWNER in correcting or otherwise remedying any such breach or default, 4) hold GENERAL CONTRACTOR responsible for any and all actual legal costs associated with enforcement of this Agreement or in exercising OWNER's remedies upon default/breach, (5) take any other action and avail itself of any other remedies allowed by law. The foregoing remedies are mutually exclusive, and OWNER may avail itself of any or all of such remedies.

The failure of OWNER to make timely payments to GENERAL CONTRACTOR, either of the sums due pursuant to paragraph 3 or reimbursement of GENERAL CONTRACTOR for costs incurred pursuant to paragraphs 4 & 5 shall be deemed a material default of OWNER. Upon such default, and after seven (7) days' written notice to OWNER, GENERAL CONTRACTOR may 1) terminate this Agreement, 2) hold OWNER responsible for any and all costs and expenses incurred by GENERAL CONTRACTOR, 3) hold OWNER responsible for any and all damages incurred by GENERAL CONTRACTOR as a result of such breach and/or default, 4) hold OWNER responsible for any and all actual legal costs associated with enforcement of this Agreement or in exercising GENERAL CONTRACTOR's remedies upon default/breach, 5) take any other action and avail itself of any other remedies allowed by law.

13. **Assignment.** This Agreement is not assignable without the written consent of the parties. Performance of those aspects of the PROJECT, as set forth in the **Architectural Plans and Specifications**, are subject to subcontract or assignment in fulfillment of GENERAL CONTRACTOR's obligations under this Agreement. GENERAL CONTRACTOR shall hold the right to assign the performance of portions of its obligations under this Agreement to any other person, company or entity without the express written consent of OWNER. Any such assignment, in whole or in part, shall not relieve GENERAL CONTRACTOR of its responsibilities and/or obligations hereunder, and GENERAL CONTRACTOR shall remain liable for the performance of this Agreement regardless of any such assignment.

14. **Mutual Cooperation; Best Efforts.** GENERAL CONTRACTOR will use its best efforts in obtaining the lowest possible prices/costs in the obtaining/providing of all supplies, materials and labor. OWNER will participate in the review of bids from subcontractors. All parties agree to consult with the other in connection with the foregoing. Each party will cooperate with the other in making sure that communication is possible and exists on a regular basis between them

so as to permit this PROJECT to proceed on the schedule intended, and to keep OWNER fully informed in connection therewith.

15. **Records.** GENERAL CONTRACTOR will maintain an independent set of records relative to the PROJECT itemizing all costs, expenses and expenditures relative to the PROJECT. Such records shall at all times be open and subject to review and audit by OWNER. GENERAL CONTRACTOR shall be responsible for the preparation and submission of any and all Sworn Statements required by any lending institution and/or title company.

16. **Indemnification of Owner.** GENERAL CONTRACTOR agrees to indemnify OWNER and to hold OWNER free and harmless from and against any and all liabilities, costs, expenses, damages, claims, and losses of every kind and nature whatsoever arising out of or related to 1) the performance by GENERAL CONTRACTOR of its obligations under this Agreement, 2) any breach or default by GENERAL CONTRACTOR under this Agreement or of any obligations of GENERAL CONTRACTOR imposed by law, or 3) any negligent or otherwise tortious act or omission of GENERAL CONTRACTOR, its agents or employees. The foregoing indemnity includes, but is not limited to, injuries, death, and property damage suffered by any person except to the extent caused by the negligence or willful acts of OWNER. GENERAL CONTRACTOR shall, at GENERAL CONTRACTOR's sole cost and expense, defend OWNER in any action or proceedings arising from any such matter and shall indemnify OWNER and hold OWNER free and harmless from and against all costs, attorneys' fees, expert witness fees, and any other expenses incurred in such action or proceeding. As a material part of the consideration for OWNER's execution of this Agreement, GENERAL CONTRACTOR hereby assumes all risk of damage or injury to any person or property, in, on or about any part of the PROJECT resulting from, or relating to the performance or obligations of GENERAL CONTRACTOR or its employees.

OWNER shall not be liable for injury or damage that may be sustained by GENERAL CONTRACTOR, its employees, agents, subcontractors, materialmen and/or suppliers on, at or related to the PROJECT, or any property of GENERAL CONTRACTOR caused by or resulting from any cause whatsoever, including but not limited to vandalism, fire, theft, negligence of others (including other subcontractors, workers, materialmen and/or suppliers working on or at the PROJECT), gas, water, or rain or from breakage, leakage, obstruction, or other defects of pipes, sprinklers, wires, whether such damage or injury results from conditions arising from the PROJECT or from other sources, except to the extent such damage or injury results from the negligence or willful acts of OWNER.

17. **Independent Contractor.** The parties agree and GENERAL CONTRACTOR acknowledges that GENERAL CONTRACTOR and all contractors and subcontractors are independent contractors of the OWNER and are not employees of OWNER. While performing under this Agreement, each party shall act in the capacity of an independent entity and not as an employee of the other party. This Agreement is not intended to be, and will not be construed as, a joint venture, partnership or other formal business organization. Neither party shall have the right nor obligation to make any commitments or incur any obligations on behalf of the other party, except as provided in this Agreement. GENERAL CONTRACTOR agrees that GENERAL CONTRACTOR operates legally GENERAL CONTRACTOR's own company and

pays all federal, state, local, social security, Medicare and unemployment taxes, liability and workers' compensation insurance premiums, and license or permit fees necessary to conduct its business.

18. **Completion of Project; Punch List; Final Payment.** Upon final completion of the PROJECT (that being the date upon which a Certificate of Occupancy is obtained for the building at the PROJECT and such buildings are ready for occupancy in accordance with the use intended there at by OWNER,) OWNER and GENERAL CONTRACTOR shall jointly inspect the PROJECT, and all construction completed there at, at which time they shall jointly prepare a list of those items which, in their mutual opinion, are incomplete or require correction ("Punch List"). Items on the Punch List shall be corrected by subcontractors hired within a reasonable period of time. Final payment to GENERAL CONTRACTOR, as in paragraph 3, shall be made upon completion, to OWNER's satisfaction, of all items contained on the Punch List.

19. **Warranties.** All subcontractors, materialmen and suppliers hired to work on or provide materials for the PROJECT shall be required to provide a warranty of their work and materials for not less than one (1) year. All warranties of any subcontractors, materialmen and suppliers shall be for the benefit of OWNER. GENERAL CONTRACTOR shall use its best efforts to enforce any warranty work required on the PROJECT.

20. **No Waiver.** The failure of the OWNER to insist upon the strict compliance with the architectural and/or engineering drawings and specifications in the performance of this Agreement by GENERAL CONTRACTOR, or the failure of either party hereto to exercise any right, option or remedy contained in this Agreement, shall not be construed as a waiver for the future of any such provision, right, option, or remedy, or as a waiver of any subsequent breach. No provision of this Agreement shall be deemed to have been waived unless such waiver shall be in writing signed by the party to be charged.

21. **Alterations; Adjustments.** No modification in this Agreement, the terms or performance hereof shall be binding upon either party unless reduced to writing and signed by both parties hereto.

22. **Waiver of Subrogation.** GENERAL CONTRACTOR hereby waives any rights it may have against OWNER on account of any loss or damage occasioned to GENERAL CONTRACTOR, its employees, agents, on behalf of or through GENERAL CONTRACTOR or the PROJECT, and which may arise from any risk covered by insurance carrier for the benefit of GENERAL CONTRACTOR.

23. **Performance Bond.** GENERAL CONTRACTOR shall submit a Two-Hundred Fifty Thousand Dollar (\$250,000) performance bond payable to the OWNER. GENERAL CONTRACTOR may fulfill this obligation by engagement of a Surety acceptable to OWNER or by depositing the above sum in escrow payable to the OWNER. Whenever GENERAL CONTRACTOR shall be, and is declared by the OWNER to be in default under this Agreement, GENERAL CONTRACTOR may promptly remedy the default, or shall promptly pay to the OWNER the amount of this Performance Bond, plus other amounts identified herein.

If the amount of this Performance Bond is not sufficient to cover the OWNER's costs of completing the PROJECT, due to exhaustion of the proceeds of the Performance Bond, or the increase in the costs necessary to complete the PROJECT, or for any other reason, then GENERAL CONTRACTOR binds itself to replenish the amount of the Performance Bond and to save the OWNER harmless from any costs incurred by the OWNER from GENERAL CONTRACTOR's failure to either remedy the default or to complete the PROJECT in accordance with its terms and conditions in a timely manner.

24. **Miscellaneous.**

A. The headings or captions of the sections and subsections of this Agreement are for convenience and reference only, and do not form a part hereof, and do not in any way modify, interpret, construe or restrict the scope of the particular sections or subsections of paragraphs to which they refer.

B. This Agreement shall be interpreted pursuant to the laws of the State of Michigan.

C. All prior negotiations, understandings or agreements of whatsoever kind or nature between the parties hereto and/or their respective agents, employees or representatives concerning the transaction herein contemplated are hereby merged and incorporated into this Agreement; the parties hereto acknowledging that this document fully encompasses all agreements and understandings between the parties. No oral representation or warranty has been made by any party to induce execution of this Agreement. No agreement shall be effective to change, modify or terminate this Agreement, in whole or in part, unless such change, modification or termination is in writing and duly signed by the party against whom enforcement of such change, modification or termination is sought. No waiver of any of the provisions hereof shall be effective unless in writing and signed by the party to be charged with such waiver. No waiver shall be deemed a continuing waiver in respect of any subsequent breach or default, whether of similar or different nature unless expressly so stated in writing.

D. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original and it shall not be necessary, in making proof of this Agreement, to produce or account for more than one such counterpart, but all such counterparts shall together constitute one and the same instrument.

E. The use of gender references in this Agreement is not meant to be a limitation and the use of particular gender shall be interpreted to include the other of masculine, feminine and neuter where the situation so demands; similarly, the use of the singular shall be interpreted to include the plural where the situation so demands and vice versa.

F. In the event that either party commences litigation to enforce any of the terms, covenants and conditions of this Agreement and the other party is found to be in breach or default hereof, then the non-breaching party shall be entitled to reimbursement of all costs and expenses incurred in connection with such enforcement including reasonable attorney fees. The parties agree that jurisdiction shall be in Grand Traverse County, Michigan for any litigation.

G. The parties hereto specifically acknowledge that this Agreement and the provisions hereof are the culmination of lengthy negotiations between them. The initial drafting of any particular paragraph hereof by either party, their respective legal counsel or representative was for convenience only. Accordingly, each party agrees that no provision hereof shall be construed or interpreted for or against either party based on the authorship of such provision.

H. Any notices, report or demand required, permitted or desired to be given pursuant to any of the provisions of this Agreement shall be in writing and shall be deemed to have been

sufficiently given or served for all purposes if sent by registered or certified mail, return receipt requested, and postage prepaid, with a copy by U.S. mail to the parties at the address as set forth hereinbefore. Any of the parties may, at any time, and from time to time hereafter, change the address to which notice shall be sent to them hereafter by notice to the other parties given in the manner provided in this section. The date of giving such notice, if given in the manner provided, shall be the date of mailing.

I. This Agreement shall be valid and legally binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, administrators, successors and assigns.

J. GENERAL CONTRACTOR is not an “Iran Linked Business” within the meaning of the Iran Economic Sanctions Act, Michigan Public Act No. 517 of 2012.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the day and year first-above written.

ACCEPTANCE: By signature below, the **Architectural Plans and Specifications**, attached as Appendix A, are satisfactory and are hereby accepted. OWNER authorizes GENERAL CONTRACTOR to proceed with this Agreement.

OWNER

GENERAL CONTRACTOR

Whitewater Township

By: Ron Popp
Its: Supervisor

By:
Its:

By: Cheryl A. Goss
Its: Clerk

APPENDIX A
ARCHITECTURAL PLANS AND SPECIFICATIONS

Cheryl A. Goss

From: Christopher Patterson [REDACTED]
Sent: Tuesday, March 28, 2017 2:51 PM
To: Cheryl A. Goss
Cc: Matthew Kuschel
Subject: RE: Contract with Licensed Engineer - Quick Question

Follow Up Flag: Follow up
Flag Status: Flagged

Categories: Extremely Important Information

That would be an appropriate change Cheryl. We have no issue with that.

Chris Patterson
FAHEY SCHULTZ BURZYCH RHODES PLC
(517) 381-3205

From: Cheryl A. Goss [mailto:clerk@whitewatertownship.org]
Sent: Tuesday, March 28, 2017 10:00 AM
To: Christopher Patterson [REDACTED]
Cc: Matthew Kuschel [REDACTED]
Subject: RE: Contract with Licensed Engineer - Quick Question

Chris –

Thank you for supplying these new documents. The board recently discussed the Construction Management agreement again and thought that, because of the involvement of the licensed engineer, we are really hiring a “General Contractor” and wanted all instances of “Construction Manager and Principal Contractor” changed to “General Contractor” in the document.

Do you have any issues with that change?

Cheryl A. Goss
Whitewater Township Clerk
5777 Vinton Road, P.O. Box 159
Williamsburg, Michigan 49690
Telephone: 231.267.5141 X 24
Fax: 231.267.9020
clerk@whitewatertownship.org
Office Hours: Mon/Tue/Wed/Thurs 8:30 am to 5:00 pm, Fri 8:30 am to 12:00 pm

From: Christopher Patterson [REDACTED]
Sent: Saturday, March 25, 2017 11:03 AM
To: Cheryl A. Goss
Cc: Matthew Kuschel
Subject: RE: Contract with Licensed Engineer

Cheryl,

Attached is the contract for the licensed engineer. Since the Township is having a separate engineer apart from the principal contractor, we also revised the contractor agreement consistent with the engineer agreement.

It was also the intent to keep the agreement basic, but protect the Township's interests.

We placed the compensation requested in Article 3. Since there was a notation by you of assistance by Direct Designs, we also included an additional line addressing their assistance. It would be our intent that Direct Designs bills Pressell Engineering, and Pressell then invoices the Township for it and Direct Designs time.

We also included not to exceed clauses here so that the Township does not have a problem in the future where the costs from the engineer overseeing the project get out of hand.

Article 5 also includes insurance requirements. The liability limits can be adjusted, but there are typical limits that you would see on a project. Admittedly, given that this project may be smaller than typical, we could see a reduction in the policy limits. Pressell should already have certain insurance in place, so it may be sufficient to agree to the terms in the current policies held by Pressell.

Please let me know if you have any questions.

Thank you,

Chris
517-381-3205 (office)
269-744-4807 (cell)

From: Cheryl A. Goss [<mailto:clerk@whitewatertownship.org>]
Sent: Tuesday, March 14, 2017 7:10 AM
To: Christopher Patterson [REDACTED]
Subject: RE: Contract with Licensed Engineer

I will be out of the office the week of March 13 through 17. Emails will be answered on March 20.

If you need in-person assistance, Deputy Clerk Terese Hooper will be in the office on Tuesday, March 14, from 8:30 a.m. to 5:00 p.m.

Cheryl A. Goss
Whitewater Township Clerk
5777 Vinton Road, P.O. Box 159
Williamsburg, Michigan 49690
Telephone: 231.267.5141 X 24
Fax: 231.267.9020
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WHITEWATER TOWNSHIP

5777 Vinton Road • P.O. Box 159 • Williamsburg, MI 49690
(231) 267-5141 • FAX (231) 267-9020

(date)

Bidder:

Whitewater Township will receive sealed bids at the Whitewater Township Clerk's Office, 5777 Vinton Road, Williamsburg, Michigan, 49690, until 5:00 p.m. on _____ (30 days out) _____, for the following:

General Contractor - 8380 Old M-72 Renovation/Addition Project
(Architectural Plans and Specifications attached)
(Construction Agreement attached)

INSTRUCTIONS TO BIDDERS

1. A mandatory pre-bid inspection of the premises will take place on _____ at _____ (time).
2. All bids must be submitted to Cheryl Goss, Whitewater Township Clerk, 5777 Vinton Road, Williamsburg, Michigan, 49690, **no later than (time) on (date). (30 days out)**
2. **All bids must be submitted in a sealed envelope and clearly marked "Construction Bid." TELEFAXED AND E-MAIL BIDS WILL NOT BE ACCEPTED.**
3. The bid form must be completed and signed by an authorized representative of the Bidder.
4. All bids must remain firm for a period of thirty (30) days following the Township's receipt of the bid.
5. The Township reserves the right to accept or reject any or all bids, to waive irregularities, and to accept the bid which in its opinion is in the best interests of the Township.

**WHITEWATER TOWNSHIP
INVITATION TO BID
8380 Old M-72 Renovation/Addition Project**

Whitewater Township will accept sealed bids for the purpose of selecting a general contractor for its 8380 Old M-72 Renovation/Addition Project, which includes renovation of approximately 800 square feet of the existing fire/ambulance facility located at 8380 Old M-72, Williamsburg, MI, 49690, and construction of an approximately 20' x 80' addition to the existing facility at the same address. Scope of the project is as outlined in the Architectural Plans and Specifications and Construction Agreement.

Bid packets containing the Instructions to Bidders, Architectural Plans and Specifications, and Construction Agreement may be obtained at the Township Clerk's office, 5777 Vinton Road, Williamsburg, MI 49690, or on the home page of the township website, whitewatertownship.org. A mandatory pre-bid inspection of the premises will take place on _____ at _____.

Each bid must be submitted in a sealed envelope bearing the name of the bidder and marked "Construction Bid." Bids should be delivered to the Whitewater Township Clerk's office, 5777 Vinton Road, Williamsburg, Michigan 49690, **no later than (day, date, time)** Telefaxed and e-mail bids will not be accepted. The Whitewater Township Board reserves the right to reject any and all bids. Questions may be directed to Cheryl Goss, Whitewater Township Clerk, 231-267-5141 x24 or clerk@whitewatertownship.org.