

SUPERVISOR  
Rick Galardi

CLERK  
Adam Cramton

TREASURER  
Sandy Stump



1401 W. Herbison Road, DeWitt, MI 48820-7900

TRUSTEES  
David Fedewa  
Steven Smith  
Brian Ross  
David Seeger

MANAGER  
Andrew Dymczyk

TO: Township Board  
Andrew Dymczyk, Township Manager *AD*

FROM: Al Hoard, Building Official  
Cory Donnell, Deputy Building Official

SUBJECT: Employment Contract – Plumbing Inspector

DATE: March 18, 2021

The Township has been without a backup Plumbing Inspector who is called up to perform plumbing inspections/plan review when the Inspector is unavailable. I have met with Mr. Penix and would recommend this hire.

SUGGESTED ACTION:

The Board approve the employment contract with Barry Penix contingent upon the successful completion of the pre-employment physical and authorize the Clerk and Manager to execute the same.

## EMPLOYMENT CONTRACT: PLUMBING INSPECTOR AND PLAN REVIEWER

**DEWITT CHARTER TOWNSHIP**, a municipal corporation, whose address is 1401 W. Herbison Road, DeWitt, MI 48820 (the "Township"), and **Barry Penix**, who resides at 14395 Island Lake Rd, Chelsea, MI 48118 (the "Employee") enter into the following Contractor Services Agreement ("Agreement") on the following terms:

- 1. Services to be Performed.** The Employee shall perform the services of a plumbing inspector within the Township and within any jurisdiction with which the Township has agreed to provide such services. These services shall include conducting plumbing inspections, engaging in plumbing plan reviews, performing services incident to those duties, and performing any duties otherwise required by the Township. These duties shall include, but are not limited to, making contact with applicants who fail an inspection/plan review to explain the reason(s) why the application was not approved. The Employee is also responsible for monitoring all permits from the date of issuance through the expiration date, and, if a permit is nearing its expiration date, for making at least three contacts with the permit holder in an effort to finalize a permit prior to expiration. If a permit expires prior to being finalized, the Employee shall provide the Township Building Official with notice of that expiration, as well as a written description or copy of any contacts with the permit holder prior to the permit's expiration. The Employee represents that he has the qualifications and experience to provide these services and agrees to perform these duties in accordance with all federal, state, and local laws.
- 2. Work Schedule.** The Employee is not required to work a specific number of hours; instead, the Employee is required to perform plumbing inspections and plan reviews on an as-needed basis. The Employee shall, upon notice of an inspection request, make an inspection within twenty-four (24) hours. If an inspection cannot be made within twenty-four (24) hours, the Employee must provide notice to the Township Building Official, describing the particular difficulties preventing an inspection from occurring within that time period. Failure to make an inspection within a reasonable time, or to provide an explanation for delay satisfactory to the Township Building Official, will result in the termination of this Agreement. Although the Employee is not required to be physically present at the Township Hall during all regular business hours of the Township, he is required to maintain regular hours during which he is available to answer questions from the public and to perform inspection services.
- 3. Compensation.**

  - a. Permit Fee Rate.** The Employee shall be compensated on the basis of work performed, and shall receive a flat fee per inspection performed regardless of the time involved in each discrete inspection overview. This flat fee shall be equal to one-half (1/2) of the permit fee actually collected by the Township in connection with plumbing inspections, not including any application fees. The Township's schedule of fees is hereby incorporated into this Agreement, and the Employee acknowledges that these fees are variable, as well as subject to change in the Township's sole discretion.
  - b. Minimum Wage.** If the permit fee rate described immediately above results in the Employee being paid less than minimum wage for hours worked, the Township will pay the difference between the permit fee rate and minimum wage to ensure that the Employee is compensated as

required by state and federal law.

- c. **Fluctuating Wage.** The Employee acknowledges that his compensation will fluctuate according to the number of inspections and/or plan reviews performed by the Employee, and that whether inspections or plan reviews occur is entirely beyond the Township's control. The Township makes no representation as to amount of compensation the Employee may receive, other than the representation that the Employee will not be paid less than minimum wage for hours worked. The Employee shall not be compensated for any inspection or plan review he does not personally perform.
  - d. **Plan Review and Other Services.** When required, the employee shall perform other services including, but not limited to, plan reviews. The Employee shall be paid at the rate of thirty dollars (\$30.00) per hour for the actual hours spent performing these duties.
  - e. **Additional Inspections.** The Employee acknowledges that, at the discretion of the Township Building Official, more than one inspection may be required for a single application. If additional inspections are required, and the costs of those inspections are not covered by the costs of the original permit, the Township will pay the Employee one-half (1/2) of the additional fee collected for these services, not including application fees. The Employee recognizes that the Township Building Official has the discretion to waive these additional fees, and agrees to perform additional services even if these fees are waived. If these fees are waived, however, the Employee shall have the right to appeal the Township Building Official's decision to the Township Manager.
  - f. **Overtime.** The Employee is not authorized to work more than forty (40) hours in any week without prior written authorization from the Township Board. A week shall be considered as the seven (7) day period beginning on Sunday at midnight. The Employee is required to record all hours worked on a weekly basis, and shall submit a written record of those hours to the Township according to the Township's ordinary payroll practices.
4. **At-Will Employment.** This Agreement is freely terminable by either party at any time, for any reason whatsoever. The Employee acknowledges that there have been no representations made, either orally or in writing, guaranteeing employment for a particular term or period. No representative of the Township, other than its Board, acting as a municipal body, has the authority to enter into any agreement for employment for any specified period of time or to make any agreement contrary to this Section, or Sections 9 and 10. Any provision of this Agreement expressly identifying grounds for termination are not intended to limit its at-will status, and are included only as a warning to the Employee that the Township intends to terminate this Agreement if any of those grounds are met, at a minimum.
5. **Tools.** The Township agrees to supply the Employee with any documentation or data available to it that is necessary for the Employee to perform his duties under this Agreement. The Township will also provide secretarial assistance to the Employee when necessary. The Employee, however, will be solely responsible for providing any tools needed to perform the duties required by this Agreement, including, but not limited to, his own source of transportation.

- 6. Limitation on Work within the Township.** The Employee agrees that he will not perform any work within the Township that would require plumbing inspections or plan reviews. If the Employee is called upon to inspect/review the work of his current or former employer(s), any such inspection or plan review will be conducted by the alternate inspector/reviewer identified below.
- 7. Alternate Inspector/Reviewer.** The Employee shall provide a certified plumbing inspector to complete inspections and/or plan reviews if the Employee is unavailable due to a conflict of interest (such as being required to inspect the work of his current or former employer), the Employee's absence, or other similar circumstances. The Township Building Official must approve of any alternate inspector prior to that individual undertaking any work. The alternate inspector/plan reviewer must bind himself or herself to the terms of this Agreement as an additional party prior to engaging in any of the Employee's duties. In no event will the alternate inspector/plan reviewer have been employed by any of the entities who formerly or currently employ the Employee, other than the Township.
- 8. Legal Proceedings.** The Employee acknowledges that he may be required to testify regarding violations of the plumbing code in code enforcement actions by the Township, or in other legal proceedings. The Employee may also be required to assist the Township, and its various officials, consultants, or representatives in preparing for these actions. If such testimony or assistance is required, the Employee shall be paid at the rate of thirty dollars (\$30.00) per hour for the actual hours spent performing these duties.
- 9. Benefits.** The Employee shall not be eligible for any fringe benefits including, but not limited to, holiday pay, vacation, sick and personal leave, funeral leave, jury duty pay, life, vision, health and dental insurance, military leave, short-term and long-term disability leave, or retirement benefits, unless such benefits are required by law, in which case they will be provided only to the minimum extent required by law. The Township will, however, provide the Employee with workers' compensation insurance and liability insurance.
- 10. Reimbursable Expenses.** The Township agrees that it will provide the Employee with reimbursement for certain expenses associated with the Employee's performance of his duties if the Township approves those expenses in advance. The Township shall only provide such reimbursement if the relevant fees and expenses are paid for by the Employee, and are not eligible for reimbursement with the Employee's other employer(s).

  - a. **Educational Expenses.** The Employee may be reimbursed for continuing education expenses related to his position. The Employee acknowledges that this reimbursement is discretionary, and that the Township is under no obligation to approve a request for reimbursement.
  - b. **Registration Fees.** The Employee is entitled to reimbursement of any fees that are necessary for the Employee to register as a plumbing inspector/plan reviewer for the Township.
  - c. **Mileage.** In the event the Employee is called upon to perform the duties outlined by Section 8, he will be reimbursed for mileage at the standard Township rate, without the need for prior approval.
- 11. Non-Exclusive Relationship.** The Employee is not obligated to only perform work for the Township,

and may freely seek employment elsewhere if it will not interfere with the Employee's duties under this Agreement. Similarly, the Township reserves the right to assign, outsource, or contract for the services contemplated by this Agreement at the Township's sole discretion with no obligations to the Employee.

- 12. Title to Records.** The Township shall have the sole and exclusive right, title and ownership to any and all records, documents, papers, reports, charts, maps, graphics, or manuscripts prepared for or pertaining to the services to be performed under this Agreement. Upon termination of this Agreement, all such materials and any copies shall be turned over to the Township immediately.
- 13. Licensing Obligation.** The Employee shall provide the Township with verification that he meets all state licensing requirements for the services to be provided under this Agreement. The Employee shall provide written notice to the Township within five (5) days of the Employee receiving notice of suspension or revocation of any required licenses. Failure to obtain and maintain any required license may result in the immediate termination of this Agreement.
- 14. Third-Party Beneficiaries.** In executing this Agreement, neither party intends that any individual or entity other than the signatories of this Agreement receive any rights, privileges, duties, or obligations. Nothing in this Agreement shall be construed to create any duty, standard of care, or liability to any person not an express party to this Agreement.
- 15. Amendment, Waiver, and Integration.** This document is the entire agreement between the parties. It supersedes any promises or agreement that the parties might have discussed or made to each other in relation to its subject, but which were not placed in this Agreement. Neither this Agreement nor any provision of this Agreement can be modified or waived in any way, except by an agreement in writing signed by each of the Parties. Non-enforcement of any provision of this Agreement by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or the remainder of this Agreement.
- 16. Choice of Law.** This Agreement is to be governed by the laws of the State of Michigan, and any dispute arising out of this Agreement shall be litigated, if at all, in the courts of Clinton County.
- 17. Headings.** The headings used in this Agreement have been used for the convenience of the parties and are not to be used in interpreting this Agreement.
- 18. Severability.** Any provision of this Agreement held to be void or unenforceable will not affect the validity of its remaining provisions.
- 19. Negotiated Agreement.** This Agreement results from negotiations between the parties, and the rule of construction that a contract is to be construed against its drafters is not applicable.

**[Signature Page to Follow]**

AGREED:

DEWITT CHARTER TOWNSHIP:

By: \_\_\_\_\_

Adam Cramton, Township Clerk

By: \_\_\_\_\_

Andrew Dymczyk, Township Manager

Dated: \_\_\_\_\_

EMPLOYEE:

By: \_\_\_\_\_

Barry Penix

Dated: \_\_\_\_\_