

Review of Spending on Planning for a New Firehouse

SUMMARY

- The East Clinton Fire District (ECFD) has spent a total of \$56,162.50 on architectural drawings for a contemplated new firehouse. In January 2014, the board approved a \$42,000 design contract, plus a \$10,000 non-refundable deposit, with Liscum McCormack VanVoorhis (LMV) for schematic plans. Since the design contract expired, LMV's hourly fees for additional design work total \$6,942.50. Available board minutes don't reflect any prior board authorization for any of the additional work. The ECFD has paid LMV \$4,162.50 of the total. LMV hasn't yet asked the district to pay for \$2,780 of the hourly fees for additional architectural work.
- Discussions about a new firehouse occurred at least as early as 2012 at meetings of the board, which is a municipal agency. The board taxes property owners to support the Clinton Volunteer Fire Department and oversees the volunteer firefighting and rescue organization. As rumors and questions arose after LMV started its early design work, the plans prepared under the initial \$42,000 contract were almost never discussed at public board meetings from March 2014 to October 2016, the available minutes indicate. Most planning and decision-making was done through an ad hoc committee organized by the department. Available board minutes don't contain any formal delegation of authority to the committee. A preliminary floor plan approved by the committee was submitted to the board in October 2016 and updated a year later.
- The size of a possible new firehouse clearly has been scaled back during the deliberations to date. Responding to the ECFD's initial wish list, one early LMV plan in 2014 had two stories, 26,343 square feet, six drive-through bays, and a banquet hall seating 220 people. The cost of one 2014 plan was put at about \$22 million. The ad hoc committee decided to trim back in early 2016, embracing a 14,850 sqft. plan presented to the board in October 2016. It had one story, six bays (two drive-through), and a meeting/training room seating 220 people. LMV estimated the construction cost for such a floor plan to be \$5.4 million, exclusive of furnishings, equipment and appliances. LMV's estimated architectural/engineering fee was \$406,875, before applying the payments ECFD has made. That preliminary plan was updated in October 2017 and handed to the board last November. It is similar in size at 15,335 sqft., but configured differently.

BACKGROUND

In March 2018, the East Clinton Fire District Board delegated Byron Calame, a board member, to review the spending on planning for a new firehouse and report to the Board with any relevant recommendations. This review was to specifically include the \$52,000 "Construction Work in Progress" asset currently carried on the ECFD balance sheet and the status of the District's account at the architecture firm of Liscum McCormack VanVoorhis (LMV).

This review seeks to address firehouse accounting questions posed by Chairman Stephen Forschler and to begin to provide some record of how aspirations for a new East Clinton Fire District (ECFD) firehouse have been pursued so far. It includes a history of the efforts so far, links to key documents, recommendations, and a time line. It is not an assessment of the need for a new firehouse.

The Board accepted the report for further review at its May 16, 2018, meeting, and moved that it be attached to the minutes and thus made available to the public. Acknowledging the continuing pursuit of a new firehouse, the board agreed to continue to treat the money spent so far on architectural plans as an investment in an eventual structure – and thus an asset.

METHODOLOGY

This review is based on an examination of the minutes of all regular ECFD Board meetings from Jan. 1, 2012, to the present (except for April 2012 and December 2013) and of all special meetings that could be detected in the files. It is also based on a check of available ECFD financial records, the district's account at Liscum McCormack VanVoorhis (LMV), all the schematics prepared by LMV, the district's files related to planning for a new firehouse, and the recollections of certain participants.

HISTORY

After acquiring property across Firehouse Lane in February 2011, the board began discussing a new firehouse with LMV partner Mike McCormack at an "Executive Meeting" in October 2012. At a special board meeting five months later, commissioners listed for McCormack what they believed a new firehouse needed to have: "6 bays plus a wash bay, 3 drive thrus; offices, conference room, ready room and business need to be on separate floor than public function areas... banquet area...investigate solar, radiant and geothermal." The minutes don't mention any discussion of estimates or goals as to the budget or cost of a new firehouse.

During the next six months, discussions with McCormack tended to be held outside of board meetings. A McCormack letter to the board on Oct. 2, 2013, proposed an "architectural/engineering services agreement and \$10,000 retainer" to proceed with the planning. At a Nov. 30 special meeting, the board's then-three commissioners voted unanimously to accept the LMV letter agreement. The \$10,000 retainer was paid on Jan. 6, 2014, from a Bank of Millbrook account often referred to as the Building and Grounds Fund. (In November 2015, minutes show the board had the General Fund reimburse the Building and Grounds for the retainer payment.)

In the first significant formal step toward a new firehouse, a "Standard Form of Agreement Between Owner and Architect for a Project of Limited Scope" prepared by LMV was signed on Jan. 6, 2014. [\[Appendix A\]](#) One of the attachments to the agreement was the Oct. 2 letter. [\[Appendix B\]](#) LMV's project description: "The building will be a five bay station with ancillary spaces for such bays and firematic use, an approximate 300 person meeting room for multiple functions and office space for the various firematic entities." LMV estimated the

construction cost at \$3.5 million.

The agreement called for LMV to receive a fee of \$42,000 for the initial “Schematic Design Phase” of the project. If the project continued through the “Design Development Phase, Construction Documents Phase, and Construction Phase,” its overall fee would be \$280,000, or 8% of the estimated \$3.5 million cost. The \$10,000 retainer? It “shall be credited to the Owner’s account in the final invoice.” Additional services were to be billed at an hourly rate.

The specified scope of work included reviewing the proposed design elements with the district to provide a basis for the Schematic Design and providing floor plans and elevations, and concept design elements for review and approval.

There is no mention in the minutes of a permissive referendum on the contract, which normally would be required if the account to be used to pay the \$42,000 was a formally designated reserve fund. If it was not officially a reserve fund as the payments were made during 2014, the money may essentially have come from general funds -- creating the possibility the payments technically didn’t require a referendum.

Just as the installment payments to LMV started on Feb. 28, the public release of an audit of the ECFD by Office of the State Comptroller -- covering the period of Jan. 1, 2011, to April 30, 2012 -- raised serious questions about the district’s reserve funds. The audit found that eight of 11 district accounts, which had contained \$462,598.64 at the end of 2011, were being called reserve funds. But the Comptroller’s investigators found there was “no documentation to indicate how and why the reserve accounts were established” and that the district secretary-treasurer had simply “decided to label these accounts as reserves.”

As the final LMV installment was paid Aug. 7, the board was promoting a resolution to create an official building reserve fund and set an Oct. 28 date for the referendum required to create such a fund. The district called the resolution a “vote to move funds from several savings accounts into one reserve account specifically set up to be a capital reserve fund” for future construction projects. The resolution was rejected, 88 to 43.

The \$42,000 in fees paid to LMV in four installments during 2014 actually came from an ECFD account labeled “Bank of Millbrook-C,” according to a district spreadsheet of its bank accounts. But it’s not clear whether that account was an official reserve fund.

In any case, the initial \$10,000 deposit/retainer and the \$42,000 in fees paid to LMV during 2014 were capitalized in the ECFD’s audited financial statement that year as an asset of \$52,000 labeled, “Construction Work in Progress.” The asset figure currently stands at \$52,000, and doesn’t include the subsequent schematic-related payments to LMV totaling \$4,162.50.

From a flurry of schematics presented by McCormack in the following months, the board began to make choices. At a Feb. 27 special meeting, McCormack presented four alternative designs, ranging in size from 21,490 sqft. to 26,343 sqft. and including both one- and two-story structures. The 26,343-sqft. schematic dated Feb. 27, 2014, was discarded early. [\[Appendix C\]](#) A favorite emerged at a March 11 special meeting, and McCormack then

prepared fresh versions of that schematic design for a two-story structure with 25,250 sqft. that were dated June 17, 2014. [\[Appendix D\]](#)

After the March 11 special meeting, the firehouse schematic designs were almost never discussed in any detail at board meetings during the remainder of 2014, 2015 and much of 2016, the minutes indicate. McCormack's name almost never shows up in the minutes as an attendee. But LMV invoices and billing records from 2016-2017 indicate that he was preparing for and attending meetings "with the Department."

Negotiations with McCormack about plans for a firehouse appeared to shift to a new committee formed by the department, although board minutes don't show any formal change in negotiating authority. The April 15, 2015, minutes do note that a "new firehouse committee is being formed." Although that committee is referred to in various ways, it seems to have eventually become known as the "Fire Department Building Committee" and appears to have negotiated directly with McCormack. The 15 or so members included commissioners who were also members of the department and department/company officers, according to two of the members.

Eventually, an informal three-member "subcommittee" of the Fire Department Building Committee seems to have taken shape to deal with McCormack. It's three members over the past couple of years were Steve Forschler, chairman of the board and rescue captain; Don Estes, now chief; and Tim McCormack, immediate past chief (and brother of Mike McCormack). They were publicly identified by Forschler in response to a taxpayer's question at the Nov. 15, 2017, board meeting.

This shift in negotiations from board meetings to a department committee came about as public questions grew at 2015 board meetings about the status of a rumored new firehouse and plans for it, the minutes of meetings show. The minutes of the April 15, 2015, meeting note a citizen's inquiry about the new firehouse and the cost of the architect. Current Commissioner Art Weiland, then a citizen and not a member of the Clinton Volunteer Fire Department, asked about the role of the new firehouse committee at the same meeting.

At the Feb. 10, 2016, board meeting, Weiland, by then a newly elected commissioner, requested the "architectural plans" for the new firehouse, according to the minutes. A similar request came in an email from residents Idan Sims and Dean DeStazio. "Stephanie advised that District does not have architectural plans," the minutes reported, quoting Stephanie Bonk, then the board chair. At that date, the district had received a dozen schematic floor plans and elevations, although none were sufficiently technical to be used to construct a building.

Decisions about the schematic design of a new firehouse, the available records indicate, were being made at meetings of the Fire Department Building Committee rather than at board meetings. There's no evidence those possibilities or decisions were disclosed or discussed at board meetings during this period.

It became apparent from a Feb. 24, 2016, LMV invoice for professional services performed between Jan. 1 and Jan. 22, 2016, [\[Appendix E\]](#) that a decision had been made to significantly downsize the firehouse. A major portion of the billing was for work to "prepare

schematics of downsized overall plan as requested.” The resulting “Schematic Ground Floor Plan” dated Feb. 11, 2016, [\[Appendix F\]](#) contained 14,850 sqft, a significant downsizing from the June 17, 2014, design for a two-story structure [\[Appendix D\]](#) that the board had favored earlier; the initial version of that design had contained 25,250 sqft.

Since there was no indication in the minutes that the board had called for the downsizing -- or authorized the payment of the \$2,081.25 invoice on March 16 -- LMV was asked who had “requested” the downsizing. Its response: “After the committee saw and liked Roosevelt’s new firehouse (9G), the Board requested LMV revise the floor plan to reduce the size to be similar to Roosevelt’s size and also to save money.”

(Why was the district getting billed on an hourly basis when the original Schematic Design Phase agreement with LMV was for a flat fee of \$42,000? The original agreement provided that after 16 months, additional work on the new firehouse would be billed at an hourly rate. LMV’s February invoice said the hourly-rate billing would apply “until a new fee arrangement for new building concept is established.”)

The downsized February 2016 Schematic Ground Floor Plan [\[Appendix F\]](#) became the first design to be presented at a board meeting since early 2014. Minutes of the Oct. 12, 2016, meeting report the “Receipt of preliminary Fire House schematic approved by Fire Department Building Committee.” The schematic was shown to the board, and citizens at the meeting were allowed to view it briefly. The minutes go on to state that, “Commissioners will be developing a Budget, Site Plan.”

The minutes don’t indicate what the cost of the downsized design might be. Indeed, the board minutes almost never mention details about the budget or estimated cost for any of the numerous designs or how their price might compare to the \$3.5 million estimate in the original 2014 LMV agreement. Although it’s not recorded in the minutes, then-Commissioner Forschler had publicly estimated at some point prior to July 2016 that the full cost of an earlier, larger design would have been roughly \$22 million.

Starting in 2017, the role of the Fire Department Building Committee in firehouse planning seemed to be more openly acknowledged by the board. The Feb. 15 minutes show the board agreed to have two commissioners attend meetings of the Department’s Building and Grounds Committee to serve as a “liaison reporting back to the board.” (A complication: State open-meeting law bars more than two commissioners from getting together to do business outside of a duly announced district board meeting.) The March 15 minutes note that Chairman Forschler and Commissioner Weiland “attended a Department Bldg. Committee meeting with Liscum, VanVoorhis & McCormack.” While that arrangement didn’t continue, the July minutes stated that a meeting with the department committee “will be set up to give the Commissioners a formal presentation.” The idea of a joint public relations campaign to foster “engagement of the public” was also discussed by the board.

The increased communication and the Fire Department Building Committee approval of the downsized schematic shown to the board in late October 2016 appeared to lead to a renewed effort to proceed. McCormack, in a Feb. 23, 2017, letter to the board, proposed an “updated” Architectural/Engineering Services agreement to complete the Schematic Design phase and proceed with the overall project. [\[Appendix G\]](#)

McCormack's letter said the "programming and schematic design services for the new building...have been substantially completed." It noted that "the current schematic building design's construction budget is projected to be \$5,425,000, exclusive of furnishings, equipment and appliances." At a reduced 7.5% fee, down from 8% in the original agreement, the projected total LMV bill would be \$406,875. The updated Schematic Design phase fee would be \$61,000, to which the \$42,000 paid under the first agreement and the payments of hourly invoices would be credited. There is no mention in board minutes of receiving the letter.

The accounting for the LMV hourly invoices after the original agreement expired was jumbled -- starting with the February 2016 invoice for the firm's work to downsize the initial schematics. The district mistakenly paid the February invoice a second time on June 15, 2016. The duplicate payments were made through the usual voucher-check procedure, according to Commissioner Weiland, who first detected them and who had also inquired early on about the \$52,000 "Construction Work in Progress" asset. It couldn't be determined which district account the duplicate payments were charged to.

Rather than do a refund of the ECFD's duplicate payment, the LMV -- a year later, on Feb. 27, 2017 -- applied the duplicate \$2,081.25 payment to other work it had been doing. Its description of that work: "Review documents and billing for new agreement and plans, preliminary design review and sketches to prepare for upcoming meeting with the Department." Since the board minutes don't show that work being approved, LMV was asked who authorized it. The response: two members of the informal subcommittee of the Fire Department Building Committee.

There was other confusion in the accounting for hourly work. In his Feb. 23, 2017, letter proposing an updated overall agreement, McCormack stated that the district then had an account credit of \$2,081.21 produced by the ECFD's duplicate payment. (The reason that the credit was four cents less than the district's payment is not worth explaining here.) The letter didn't mention that the credit resulted from the ECFD's duplicate payment -- or give any indication that it was going to be applied four days later to work already done.

Minutes of the Nov. 15, 2017, board meeting state that Chairman Forschler showed the board the Schematic Ground Floor Plan dated Oct. 25, 2017, [[Appendix H](#)] and there was "discussion on floor plan for new firehouse." Containing 15,335 sqft., the design remained in the downsized range. He said the estimated cost of a building based on the Oct. 25 plan was \$5.5-\$6 million, plus "another \$1 million in soft costs," according to notes taken by a citizen at the meeting. The schematic wasn't shared with the public at the meeting.

With McCormack citing a credit balance in his Feb. 23, 2017, letter, the board authorized the use of any available credit balance at LMV to prepare elevations, according to the minutes of the Nov. 15 meeting. As the board learned later, of course, there had been no available credit on Nov. 15.

Chairman Forschler then asked McCormack in a Dec 26, 2017, email about any credit balance and how much elevations would cost. McCormack's Dec. 29 email reply indicated that the credit had been used up and that work "to finish up the elevations and provide a

rendered colored elevation of the front of the building” would add up to about \$2,080. Forschler responded the following day that the elevations work “warrants discussion at our next district meeting.”

By the time of the next board meeting on Jan. 10, 2018, however, a fresh schematic floor plan and six elevations dated Jan 1, 2018, had been completed and delivered. Two were done in color. [\[Appendix I\]](#) LMV records show that most, if not all, of that professional services work had been done prior to Dec. 31. Asked who authorized the work, the firm said key people on the account don’t remember who asked for the elevations.

At yearend, doing the math on information provided by LMV indicated the district’s account balance due stood at \$2,780. LMV said it had no immediate plans to bill the ECFD for the \$2,780, figuring it would wrap that amount into the new architectural/engineering services agreement it hopes the district will sign.

The minutes of the March 14, 2018 board meeting, in the “Financials” section, report the following comments from Chairman Forschler: “On the balance sheet, page 1 of 8, under fixed assets, there is a line item called construction in progress with an amount of \$52,000. This needs to be cleaned up. There is some confusion as to what we have in deposit with the architect. Commissioner Calame will contact the architects, Liscum and McCormack, and figure out exactly what we have on deposit, what we owe them, what they owe us.”

TIME LINE

A summary time line can be viewed [here](#).

RECOMMENDATIONS

1. Maintain the current \$52,000 “Construction Work in Progress” capital asset. A key reason for this recommendation is the belated discovery of Section 6-G of state municipal law. It states, “The term ‘capital improvement’ shall mean: (1) Any physical betterment or improvement or *any preliminary studies* and surveys relative thereto.” [Emphasis added.] LMV’s schematic designs which obviously started with big dreams that have been pared down in size and cost seem to qualify as “preliminary studies.” The Section 6-G rule addresses several arguments made for expensing at least the \$42,000 in fees: That the schematics the district has received don’t have the technical detail required for use in actual construction. Or that the bulk of the schematics prepared by LMV are for a structure of a size that has been put aside. The schematics undoubtedly have contributed to a zeroing in on what any eventual construction documents would need to accomplish. Given the general similarity of the first and latest schematic elevations, it seems that there hasn’t been a big change in the *kind* of structure being contemplated -- no shift to concrete block construction, for instance. The Oct. 25, 2017, and Jan. 8, 2018, schematics appear, at least for now, to be part of a continuum.
2. Ensure that future significant financial commitments related to a new firehouse are subject to at least a permissive referendum.

3. Make sure the ECFD has a duly constituted “type” building reserve fund.
4. Ensure that future spending for professional services such as the two \$2,081.25 payments to LMV is authorized in advance by the board. While the pay for additional hourly work was set in the original agreement with LMV, evidence is lacking that the \$6,942.50 in professional services hourly work done by LMV beyond the fixed \$42,000 was authorized by the board.
5. Given the board’s total responsibility for the use of taxpayer money, future planning decisions regarding a new firehouse should be discussed and acted on in board meetings. As for informal planning efforts, this review suggests how difficult it can be to have productive committee-level interaction between the board and department when only two board members can take part in any such meetings. An alternative: Calling special board meetings that would be devoted to listening to comments from department members and residents on pending plans/ideas for a new firehouse.
6. Create a district-enabled advisory committee to help with the planning for a new firehouse and to spur broader interest in the project. It could be composed of CVFD members and residents who aren’t CVFD members -- recruited and selected with the approval of the board. Various leadership models could be adopted for the advisory committee: the board chair or a designated commissioner as chair of the advisory committee; the board chair and the company chief as co-chairs; or the board chair and the CVFD president as co-chairs.

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5.15.18



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October 2, 2013

Mrs. Stephanie Bonk, President
Board of the East Clinton Fire Commissioners
PO Box 1
Clinton Corners, NY 12514

Re: Proposal for Architectural/Engineering Services
East Clinton Fire Department Station Project
Clinton Corners, NY

Dear President Bonk,

It has been a distinct pleasure working with you and your committee on your project for a new fire station in Clinton Corners, NY. Liscum McCormack VanVoorhis is pleased to submit this proposal for the proposed project and will be delighted to continue working with you and your committee on this project.

Our understanding is that the project will entail the development of a new fire station for the East Clinton Fire District. The new complex will be on lands adjacent to the existing fire station on Firehouse Lane. The new building will be a five bay station with ancillary spaces for such bays and firematic use. There is planned to be a 300 person plus or minus meeting room for multiple functions and there will be office space for the various firematic entities.

The planned structure's design is to be congruous with the design of the existing area architecture in form and materials. We will work in concert and coordinate with your committee for the project and have anticipated multiple meetings during the design process. In addition to Architectural Design Services this proposal includes Mechanical, Electrical, Plumbing, and Structural Engineering Design Services.

Based on the understood scope of the project we have included the following tasks in the following Architectural/Engineering Design Services:

1. Review the proposed design elements of the project with you and your committee to provide a basis for the Schematic Design and Design Development.
2. Provide Schematic and Design Development Floor Plans and Elevations, and concept design elements for review and approval. The schematic design services will also include the selection of finishes inside and outside as well as construction type.
3. Based on the approved Design Development documents we will provide Construction Documents which will be for bidding the project and also to obtain a Building Permit. Construction Documents that we will provide will include MEP and Structural Engineering.
4. We will assist in the bidding of the construction documents and the negotiation of the successful bids on your behalf.
5. Construction Phase Services including periodic site visits.

We propose to provide the professional design services noted in item 1 through 5 based on a fee of 8 % the cost of construction, plus reimbursable expenses. I have enclosed our current hourly rate schedule, with our reimbursable expenses, for your review.

We have not included as part of this proposal the following items:

- * Property Surveys of the existing property
- * Geotechnical exploration or structural soils recommendations
- * Civil Engineering/Survey Services
- * Site and Site utilities design
- * Hazardous material assessment/design
- * Municipal fees
- * Environmental Engineering or studies
- * Cost Consulting Services
- * Kitchen Design Services
- * Architectural/Engineering Services beyond the noted services

If this proposal is acceptable, please sign below and return one copy to our office along with a retainer of \$ 10,000.00. The retainer will be applied to your final invoice. We are prepared to begin immediately with your authorization.

Retainer rec'd. # 101, 1/06/2014

Page 3 of 3

We will, at the acceptance of this proposal, prepare an AIA agreement as the basis of understanding of our and the owners responsibilities for your review and approval.

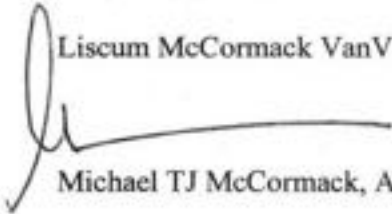
Thank you for your confidence in us to provide this proposal for your project.

We know it will be a very exciting project and we look forward to working with you and the continuation of a valued professional relationship.

If you have any questions, please feel free to call.

Very truly yours,

Liscum McCormack VanVoorhis

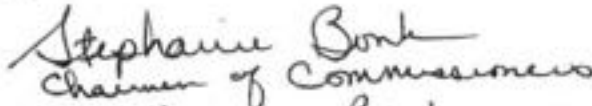


Michael TJ McCormack, AIA

Authorization to Proceed:

This will authorize Liscum McCormack VanVoorhis to proceed with professional Architectural design services in accordance with this proposal and confirms my acceptance of all terms and conditions.

Signed


Chairman of Commissioners

Print Name

Stephanie Bonk

Date

12/1/13



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2013 RATE SCHEDULE

HOURLY RATES

Principal Architect -	\$140.00
Project Architect -	\$125.00
Sr. Staff Architect -	\$115.00
Staff Architect -	\$105.00
Sr. Drafter/Designer -	\$ 93.00
Drafter/Designer -	\$ 80.00
Clerical -	\$ 50.00

REIMBURSABLE EXPENSES

Mileage -Per IRS current rates plus toll payments
 White prints - \$0.60/square foot
 Photocopies - \$0.15 each

TERMS AND CONDITIONS:

Any expense incurred on behalf of the client and not listed above, shall be invoiced at 1.15 times the expense.

The above rates are subject to change upon notice by the Architect.

Invoices will be mailed within the month following the month the services were performed.

Payment for invoiced services is due within 10 days of receipt.

A service charge of 1.5% on past due account balances will be charged. This will be charged against the past due balance as of the 1st of the month.

Accounts which are over 60 days past due from the date on the invoice will be notified in writing and work will stop. Accounts past due 90 days will be referred for collection.

A retainer is required on new accounts and as indicated in the contract.

A signed contract or letter of authorization, and the specified retainer, must be received prior to start of work.

The retainer will be applied to the final invoice of an account **when the project is completed.**

CONTRACT # 13144

 **AIA** Document B104™ – 2007

Standard Form of Agreement Between Owner and Architect for a Project of Limited Scope

AGREEMENT made as of the sixth day of January
in the year Two Thousand Fourteen
(In words, indicate day, month and year)

BETWEEN the Architect's client identified as the Owner:
(Name, address and other information)

East Clinton Fire Department
P.O. Box 1
Clinton Corners, NY 12514

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

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

Liscum McCormack VanVoorhis Architects
181 Church Street
Poughkeepsie, NY 12601

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

New fire station on lands adjacent to the existing fire station on Firehouse Lane. The building will be a five bay station with ancillary spaces for such bays and firematic use, an approximate 300 person meeting room for multiple functions and office space for the various firematic entities.

The Owner and Architect agree as follows.

Init.

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§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A107-2007, Standard Form of Agreement Between Owner and Contractor for a Project of Limited Scope.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect 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.

§ 10.4 If the Owner requests the Architect to execute certificates or consents, the proposed language of such certificates or consents shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 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 Architect.

§ 10.6 The Architect 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.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. However, the Architect's materials shall not include information the Owner has identified in writing as confidential or proprietary.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services as described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

A fee of 8% of estimated \$3,500,000.00 construction cost.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

At the current hourly rates, see attached Rate Schedule Attachment "B".

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

At the current hourly rates, see attached Rate Schedule Attachment "B".

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus **zero** percent (**0** %), or as otherwise stated below:

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	15 %	42,000
Design Development Phase:	percent (20 %)	56,000
Construction Documents Phase:	percent (45 %)	126,000
Construction Phase:	percent (20 %)	56,000
Total Basic Compensation	one hundred percent (100.00%)	280,000 total

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extracts;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Expense of professional liability insurance dedicated exclusively to this Project or the expense of additional insurance coverage or limits requested by the Owner in excess of that normally carried by the Architect and the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus **zero** percent (**0** %) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of **Ten Thousand and 00/100** Dollars (\$ **10,000.00**) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid **thirty** (**30**) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

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

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

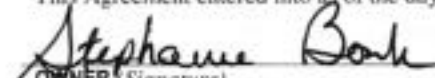
See Hourly Rate Terms and Conditions - Attachment "B"

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect 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 Architect.

§ 13.2 This Agreement incorporates the following documents listed below:
(List other documents, if any, including additional scopes of service and AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, forming part of the Agreement.)

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


OWNER (Signature)

Stephanie Bonk, President
(Printed name and title)


ARCHITECT (Signature)

Michael TJ McCormack, Partner
(Printed name and title)

CAUTION: You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.



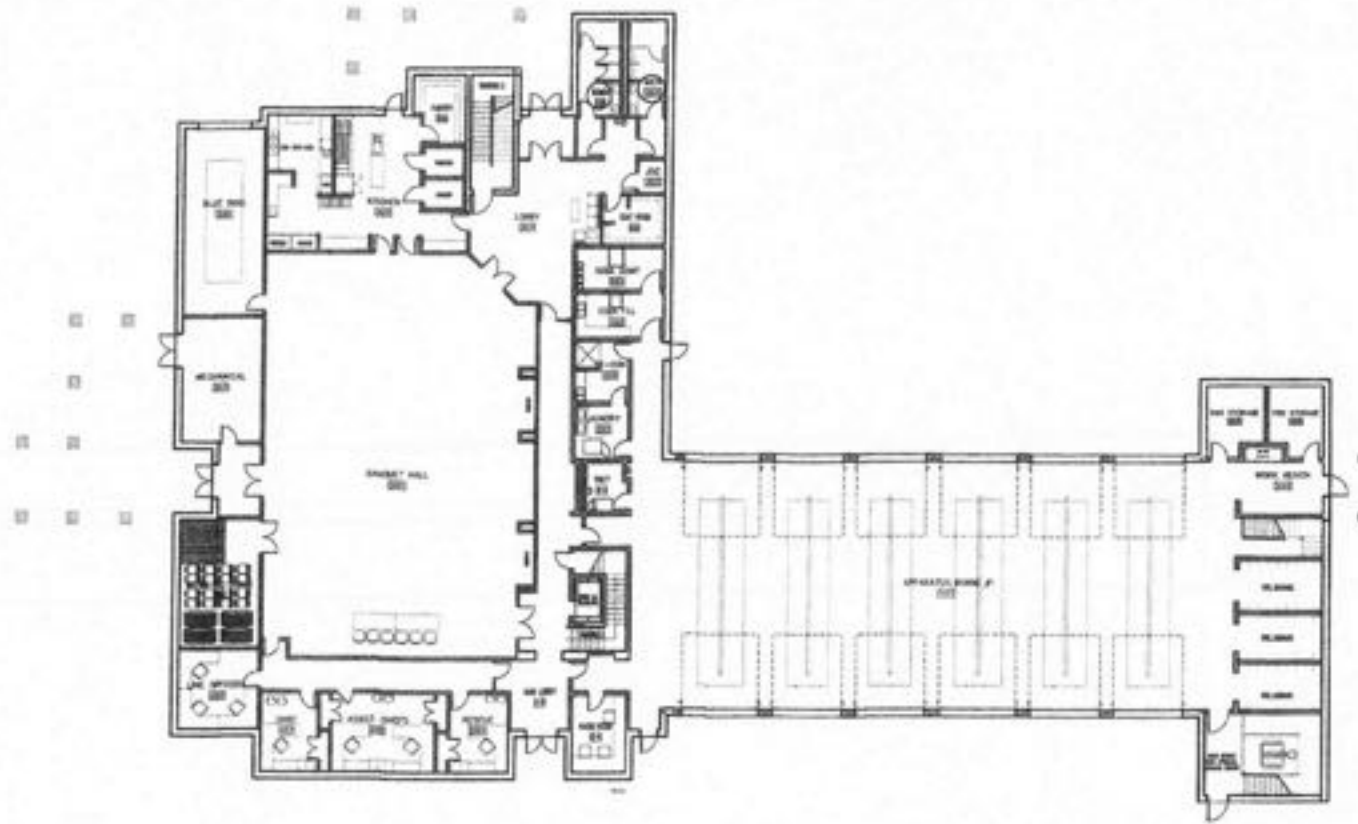
SECOND FLOOR PLAN
SCALE: 1/8" = 1'-0"

GROUND FLOOR PLAN
SCALE: 1/8" = 1'-0"

EAST CLINTON FIRE DEPARTMENT
TOWN OF CLINTON, NEW YORK

DESIGN ALTERNATE - "4"

LISCUM McCORMACK VANVOORHIS
ARCHITECTS ■ PLANNERS ■ INTERIORS ■
181 CHURCH STREET
POUGHKEEPSIE NY 12601



FIRST FLOOR PLAN
SCALE: 1/8" = 1'-0"

EAST CLINTON FIRE DEPARTMENT
TOWN OF CLINTON, NEW YORK

DESIGN ALTERNATE - "3"

LISCUM MCCORMACK VANVOORHIS
ARCHITECTS ■ PLANNERS ■ INTERIORS ■
81-1680 RICHMOND AVE. ■ POUGHKEEPSIE, NY 12601



DESIGN ALTERNATE - "3"

LISCUM McCORMACK VANVOORHIS
ARCHITECTS ■ PLANNERS ■ INTERIORS ■
181 CHURCH STREET
POUGHKEEPSIE, NY 12601



G-1 FRONT ELEVATION



A-1 RIGHT SIDE ELEVATION

NOTES

1	REVISIONS	DATE
2		
3		

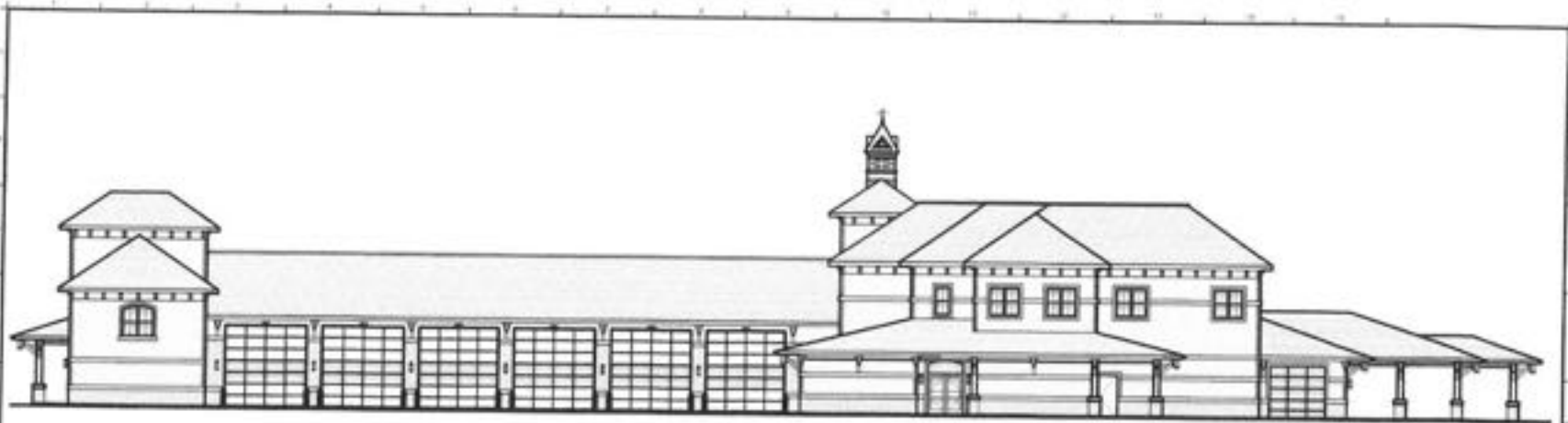
**Urcum
McCormack
VanVoorhis**

ARCHITECTS

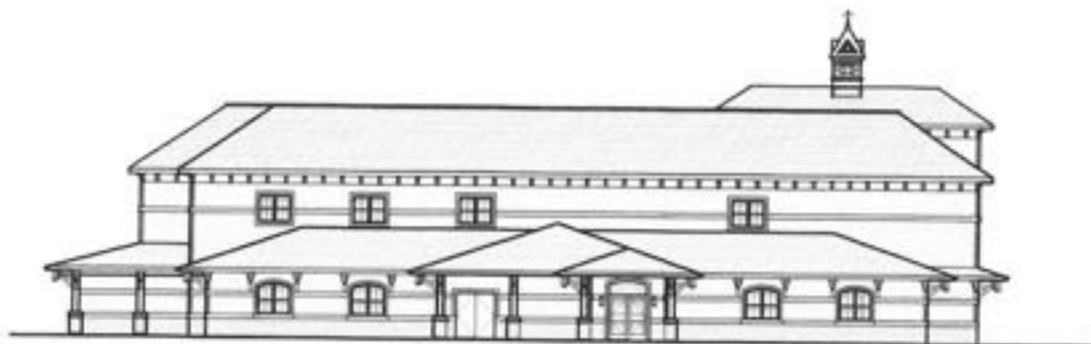
EAST CLINTON RD
9 Prosser Lane
East of Clinton, VA

SCHEMATIC ELEVATIONS

SS	12/14
MR	8/17/14
A103	



G-1 REAR ELEVATION



A-1 LEFT SIDE ELEVATION

NOTES



EAST CLAYTON RD
8 FIVEHOLE LANE
TOWN OF CLAYTON, NY

SCHEMATIC ELEVATIONS

NO. 104
DATE 8/17/14

A104

Liscum McCormack VanVoorhis

(845)452-2268

181 Church Street

Poughkeepsie, NY 12601

Appendix E
Current Invoice

PROJECT #	DATE	INVOICE #
13144	2/24/2016	7928

BILL TO	PROJECT DESCRIPTION
Mr. Steve Forschler Board of the East Clinton Fire Comm. PO Box 1 Clinton Corners, NY 12514	New Fire Station East Clinton Fire Department Clinton Corners, NY

TERMS	DUE DATE	PERIOD OF PROFESSIONAL SERVICES RENDERED		
upon receipt	2/24/2016	1/1/16 to 1/22/16		
DESCRIPTION		HRS/QTY	RATE	AMOUNT
For Professional Services Rendered: Schematic Design phase - assist with proposals for environmental/building survey, 15.5 hrs. - prepare schematics of downsized overall plan as requested.				
Principal Architect		0.75	150.00	112.50
Sr. Staff Architect		15.75	125.00	1,968.75
Services total				2,081.25
Contract Agreement Note: We will bill at our hourly rates for the time being until a new fee agreement for new building concept is established. This hourly invoicing billed/paid will be credited toward the schematic phase of the new agreed fee.				
Please write the project number on your check. Payment due upon receipt. Thank you.		Total This Invoice		\$2,081.25
		Payments/Credits This Invoice		-\$2,081.25
Invoices 30 days past due will incur a 1.5% late fee.		Balance Due This Invoice		\$0.00

[illegible]

A-1' GROUND FLOOR PLAN

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181 Church Street
Roughkeepsie, NY 12601
Tel: 845-452-2268
Fax: 845-452-3752
www.lmwarchitects.com

File 13144
Appendix G

February 23, 2017

Board of East Clinton Fire Commissioners
P.O. Box 1
Clinton Corners, New York 12514

**Re: Architectural/Engineering Services Proposal
East Clinton Fire Department Public Safety Building Project
Clinton Corners, New York**

Dear Fire Commissioners:

It has been a distinct pleasure working with you and your committee on your project for a new fire station in Clinton Corners, NY. Liscum McCormack VanVoorhis is pleased to submit this proposal, updated from our letter agreement of October 2, 2013, for the proposed project. We will be delighted to continue working with you and your committee on this project.

Our understanding is that the project will entail the development of a new fire station for the East Clinton Fire District. The new complex will be on lands adjacent to the existing fire station on Firehouse Lane. Programming and schematic design services for the new building, a six-bay station with ancillary spaces for such bays and firematic use have been substantially completed. There is planned to be a meeting room / ready room for multiple functions and there will be office space for the various firematic entities. The previously approved schematic ground floor plan is attached for reference.

The planned structure's design is to be congruous with the design of the existing area architecture in form and materials. We will work in concert and coordinate with your committee for the project and have anticipated multiple meetings during the furthering of the design process. In addition to Architectural Design Services, this proposal includes Mechanical, Electrical, Plumbing, and Structural Engineering Design Services.

Based on the understood scope of the project we have included the following tasks for Architectural/Engineering Design Services:

1. Review the proposed design elements of the project with you and your committee to formalize for the Schematic Design and further Design Development.
2. Provide updated Schematic and Design Development Floor Plans and Elevations, and concept design elements for review and approval. The design services will also include the selection of finishes inside and outside as well as construction type.
3. Based on the approved Design Development documents we will provide Construction Documents which will be for bidding the project and also to obtain a Building Permit. Construction Documents that we will provide will include MEP and Structural Engineering.

4. We will assist in the bidding of the construction documents and the negotiation of the successful bids on your behalf. We anticipate a Wicks Law project with four separate prime contracts.
5. Construction Phase Services will include periodic site visits.

We propose to provide the professional design services noted in Items 1 through 5 based on a fee rate of 7.5% the cost of construction, plus reimbursable expenses. We have enclosed our current hourly rate schedule, with our reimbursable expenses, for your review.

The current schematic building design's construction budget is projected to be \$5,425,000, exclusive of furnishings, equipment and appliances.

At 7.5%, the total A/E fee is projected to be \$406,875. The breakdown of phase of work is as follows:

Schematic Design	15%	\$ 61,000
Design Development	20%	\$ 81,500
Construction Documents	40%	\$163,000
Bidding / Negotiation	5%	\$ 19,875
Construction Administration	20%	\$ 81,500

To date, the East Clinton Fire District has compensated Liscum McCormack VanVoorhis for schematic design services in the amount of \$42,000 which will be credited towards the completion of schematic design phase services. The District has provided a professional services retainer in the amount of \$10,000 which will be applied to your final invoice. In addition, the District is currently carrying an account credit in the amount of \$2,081.21.

The following work items are not included as part of our proposed scope of services:

- * Property Surveys of the existing property
- * Geotechnical exploration or structural soils recommendations
- * Civil Engineering/Survey Services
- * Site and Site utilities design
- * Hazardous material assessment, design or certifications
- * Municipal fees
- * Environmental Engineering or studies
- * Cost Consulting Services
- * Kitchen Design Services
- * Renderings / 3D or Building Information Modeling
- * USGBC LEED design or certification services
- * Architectural/Engineering Services beyond the noted services

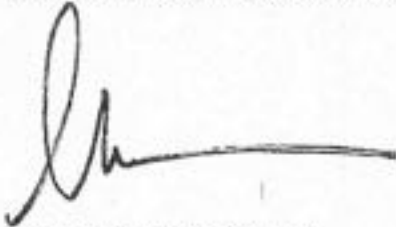
If this updated proposal is acceptable, please sign below and return one copy to our office. We are prepared, upon your authorization, to begin moving this project forward. We will, at the acceptance of this proposal, finalize an AIA Owner-Architect agreement as the basis of understanding of our and the owner's responsibilities for your review and approval. A draft version of AIA B101-2007 is attached for your review.

Thank you for your confidence in us to provide this updated proposal for your project.

We know it will be a very exciting project and we look forward to our ongoing work with you and the continuation of a valued professional relationship. If you have any questions, please feel free to call.

Sincerely,

LISCUM McCORMACK VANVOORHIS

A handwritten signature in black ink, appearing to read 'Michael TJ McCormack', with a long horizontal flourish extending to the right.

Michael TJ McCormack, AIA
Principal

Hand Delivered

cc: LC / MTM
File 13144

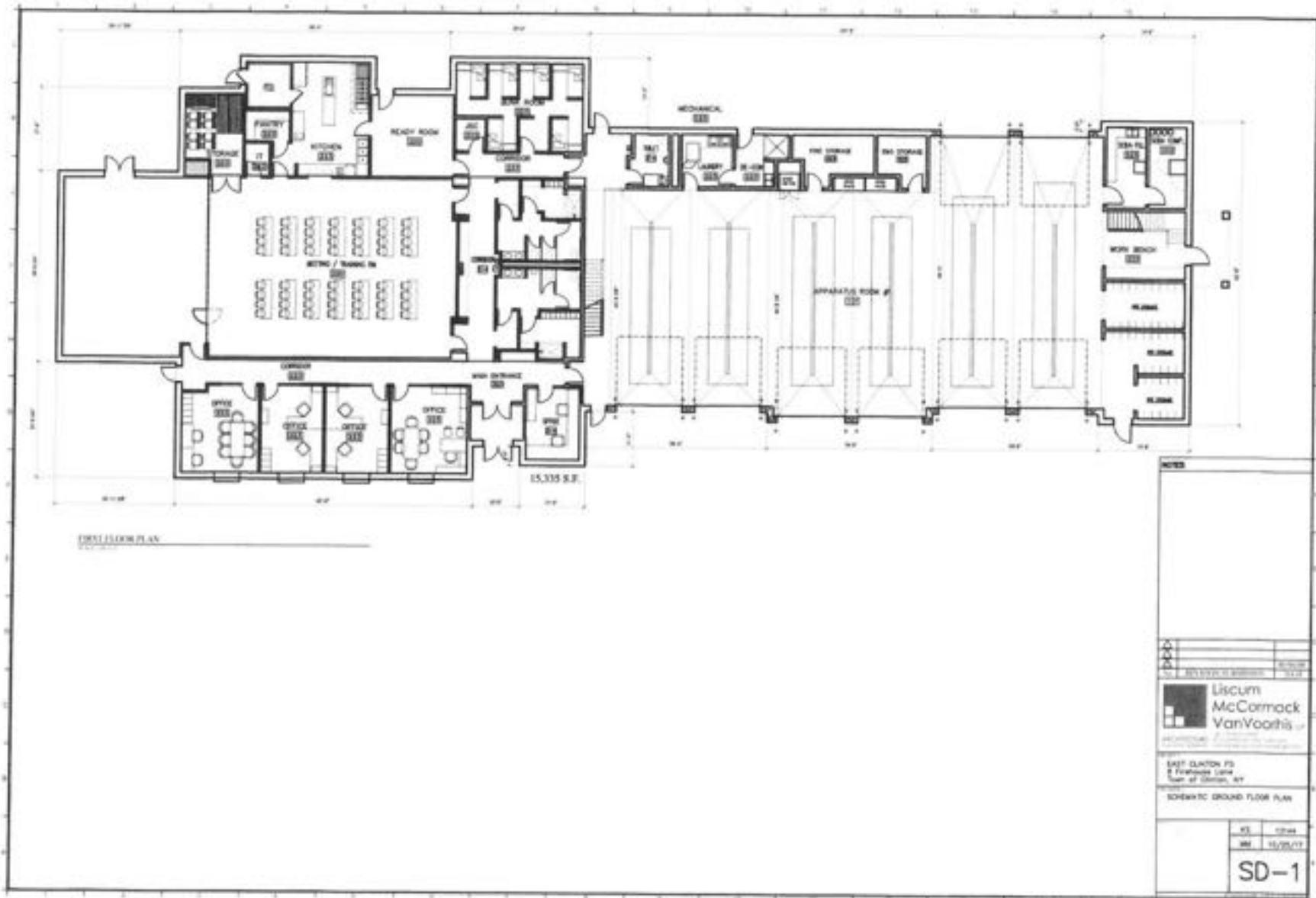
Authorization to Proceed

This will authorize Liscum McCormack VanVoorhis to proceed with professional architectural/engineering design services in accordance with this proposal and confirms my acceptance of the terms and conditions.

Signed _____ Date _____

Print Name _____

Appendix H

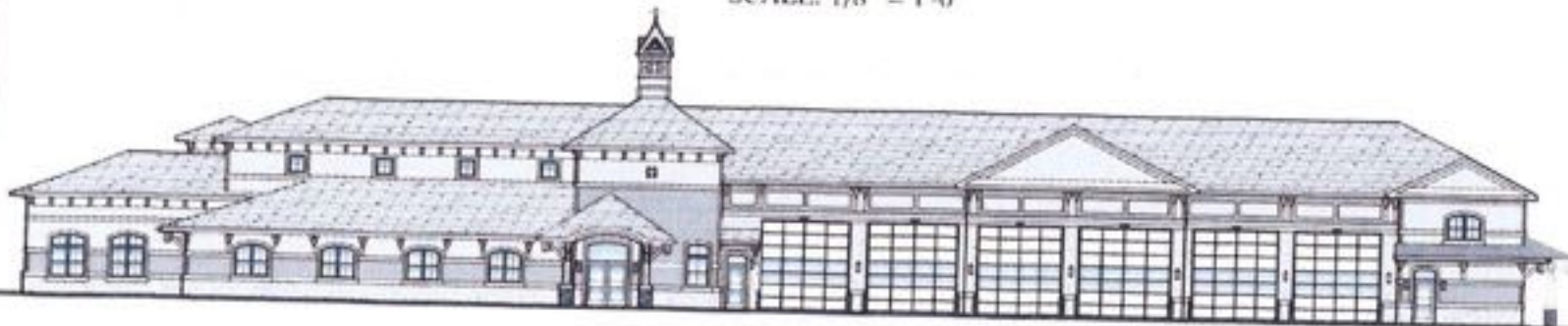


Appendix I



ELEVATION 'A'

SCALE: 1/8" = 1'-0"



ELEVATION 'B'

SCALE: 1/8" = 1'-0"

EAST CLINTON FIRE DEPARTMENT
TOWN OF CLINTON, NEW YORK

LISCUM MCCORMACK VANVOORHIS
ARCHITECTS ■ PLANNERS ■ INTERIORS ■ 181 CHURCH STREET
POUGHKEEPSIE NY 12601

TIME LINE

Dec. 3, 2010: Minutes of Board meeting show it approved a resolution, subject to a permissive referendum, for the purchase of property at 8 Firehouse Lane for not more than \$215,000. The closing on the property was set for Feb. 28, 2011.

Oct. 10, 2012: Minutes of “Executive Meeting” of Board contain one of the first board-level references to planning for a new firehouse when Michael TJ McCormack, a partner in the architectural firm of Liscum McCormack VanVoorhis (LMV), met with the board to discuss “number of bays, height of apparatus, social structure, BBQ area,” the minutes state.

Oct. 2, 2013: LMV letter to Board proposed an “architectural/engineering services” agreement and a \$10,000 retainer.

Nov. 30, 2013: Board voted unanimously to accept the LMV agreement.

Jan. 6, 2014: The ECFD’s \$10,000 retainer check, drawn on what was called the Building and Grounds account, was mailed to LMV.

The detailed LMV agreement was signed by the Board Chair and Mike McCormack. It called for LMV to receive a fee of \$42,000 for an initial “Schematic Design Phase” of the project. If the project continued on through the “Design Development Phase, Construction Documents Phase, and Construction Phase,” its overall fee would be \$280,000, or 8% of the estimated \$3.5 million cost. The \$10,000 retainer “shall be credited to the Owner’s account in the final invoice.” Additional services are to be billed at an hourly rate.

There is no mention in the minutes of a permissive referendum, which normally would be required if the Building and Grounds account to be used to pay the \$42,000 was a formally designated reserve fund. If it was not officially a reserve fund as the payments were made during 2014, then the money was essentially coming from general funds -- and perhaps the payments technically didn’t require a referendum.

February 2014: The public release of an audit of the ECFD by Office of the State Comptroller, covering the period of Jan. 1, 2011, to April 30, 2012, raised serious questions about the district’s reserve funds. Among them: the audit found that eight of 11 district accounts containing \$462,598.64 at the end of 2011 were being called reserve funds; but the Comptroller’s investigators found there was “no documentation to indicate how and why the reserve accounts were established.” It turned out the district secretary-treasurer had simply “decided to label these accounts as reserves,” according to the audit.

Feb. 27, 2014: Special board meeting with Mike McCormack, who presented four alternative plans for the five commissioners to consider:

Design Alternative 1, 22,500 sq ft.

Design Alternative 2, 21,490 sq ft.

Design Alternative 3, 25,250 sq. ft.

Design Alternative 4, 26,343 sq. ft.

Feb. 28, 2014: The first installment payment of \$14,700 on the LMC schematic design contract was paid from the Building and Grounds Fund.

March 11, 2014: In a special board meeting with Mike McCormack, the board settled on a favorite -- Design Alternative 3.

April 2, 2014: Second installment payment of \$12,600 from the Building and Grounds Fund made on LMC schematic design contract.

May 27, 2014: Third installment payment of \$6,300 from the Building and Grounds Fund made on LMC schematic design contract.

June 17, 2014: New set of schematics completed for Design Alternative 3.

Aug. 7, 2014: Fourth and final installment payment of \$8,400 on LMC schematic design contract.

Oct. 28, 2014: Shortly after the \$42,000 in payments was completed, a board resolution to create an official building reserve fund was rejected, 88 to 54, in a referendum. In promoting the resolution, the district had called it a “vote to move funds from several savings accounts into one reserve account specifically set up to be a capital reserve fund” for future construction projects.

April 15, 2015: Public questions at board meeting about new firehouse committee being formed.

May 13, 2015: Minutes of regular Board meeting note that, “Company is moving forward with New Firehouse committee....”

July 22, 2015: Report on the condition of the existing firehouse by M.A. Day Engineering, PC, submitted to the Department. One conclusion: “The facility in its current condition is outdated and fitted for older emergency response equipment.” It isn’t clear who commissioned the study and paid for it.

Nov 11, 2015: Minutes of regular Board meeting, under New Business, state: “Engineer Report made public.”

Nov. 23, 2015: Special Board meeting minutes report: “Motion to pay “due to” transfer from General Fund to Buildings and Grounds in the amount of \$10,000.00 as reimbursement for a bill paid, as recommended by accountant by Stephanie, seconded by Steve. All in favor.”

Dec. 10, 2015: Board meeting minutes: Numerous questions from the public about the firehouse.

Dec. 21, 2015: Audited 2014 ECFD financial statement capitalized the \$10,000 retainer and \$42,000 in fees paid to LMV as an asset of \$52,000 labeled, "Construction Work in Progress."

Jan. 1-22, 2016: LMV prepared downsized schematic floor plan after being requested to do so, as noted on a Feb. 24, 2016, invoice.

Feb. 10, 2016: Board meeting minutes show questions about "architectural plans" from Commissioner Art Weiland and in an email from Idan Sims and Dean DeStazio. "Stephanie advised that District does not have architectural plans."

Feb. 11, 2016: Downsized schematic floor plan completed. It contained 14,850 sqft.

March 16, 2016: Payment of \$2,081.25 made to LMV for hourly billing of work done between Jan. 1-22, 2016, to "prepare schematics of downsized overall plan as requested." Note: "We will bill at our hourly rates for the time being until a new fee agreement for new building concept is established." A search of all available ECFD Board minutes from 2012 to date turned up no authorization for proceeding with the work covered by this invoice.

June 15, 2016: Payment of \$2,081.25, duplicating the payment on March 16, 2016, sent to LMV by mistake. (See Feb. 27, 2017.)

June 15, 2016: Board meeting minutes mention numerous questions about new firehouse and department building committee.

July 8, 2016: Sometime prior to this date, Commissioner Forschler had publicly estimated that the cost of pursuing one of the early, larger schematic designs would be "\$22 million." That estimate isn't included in any meeting minutes.

Oct. 12, 2016: Board meeting minutes: "New Business. Receipt of preliminary Fire House schematic approved by Fire Department Building Committee...Commissioners will be developing a Budget, Site Plan."

Feb. 27, 2017: A McCormack letter to board proposed an "updated" Architectural/Engineering Services agreement to complete the Schematic Design phase and proceed with the overall project. The letter said the "programming and schematic design services for the new building...have been substantially completed." It noted that "the current schematic building design's construction budget is projected to be \$5,425,000, exclusive of furnishings, equipment and appliances." At a reduced 7.5% fee, the projected total LMV bill was \$406,875. This made the Schematic Design phase fee \$61,000, to which the \$42,000 paid under the first agreement would be credited. There is no mention in board minutes of receiving the letter

Feb. 27, 2017: LMV prepared an "invoice" listing work done since Jan. 22, 2016, to which it intends to eventually apply the ECFD's duplicate payment of \$2,081.25. The search of all available ECFD Board minutes from 2012 to date turned up no authorization for proceeding with the work described in this invoice.

Oct. 25, 2017: Updated schematic floor plan sticks with downsized thinking. Floor plan is 15,760 sqft.

Nov. 15, 2017: Board meeting minutes state that Steve Forschler showed the Oct. 25 Schematic Ground Floor Plan to the board, but not the public. Notes taken by a citizen in attendance show Forschler commented at some length on the status of the effort to build a new firehouse. He said the estimated cost of building to the Oct. 25 schematic would be \$5.5-\$6 million, plus "another \$1 million in soft costs."

Forschler said schematic elevations were needed to proceed and proposed that the Board authorize the use of any available credit at LMV to prepare elevations. A motion to do that was approved.

He indicated that an informal three-member subcommittee was taking a key role in the planning for a new firehouse. He identified its members as himself, Don Estes, and Tim MacCormack. "Representatives of the Department have had input into this," he said.

March 14, 2018: Board meeting minutes show Chairman Forschler commenting financial issues related to the firehouse effort: "On the balance sheet, page 1 of 8, under fixed assets, there is a line item called construction in progress with an amount of \$52,000. This needs to be cleaned up. There is some confusion as to what we have in deposit with the architect. Commissioner Calame will contact the architects, Lyscum and McCormack, and figure out exactly what we have on deposit, what we owe them, what they owe us."

March 22, 2018: Based on the actual hours of professional service devoted to the project since Jan. 22, 2016, billed at 2017 hourly rates, LMV said the total fees stood at \$4,861.25. After applying the ECFD's duplicate payment of \$2,081.25, the math indicates the District owes LMV \$2,780.00. But LMV said it said it didn't plan to bill the ECFD for the \$2,780, figuring it would wrap that amount into the new architectural/engineering services agreement it hopes the district will sign.

#####