

FIRE CODE *PRO*

PROPOSAL

CLIENT

To: FOUNTAIN TOWERS CONDOMINIUM, INC.
7118 Bonita Dr,
Miami Beach, FL 33141

Date: October 11, 2024
Project: ELSS Phase I
Proposal # 10112024

STATEMENT OF WORK

The Scope of Work is limited to those consulting services required to assist the client in obtaining an Engineered Life Safety System (ELSS) design by a Registered Fire Protection Engineer. The registered engineer for this project will be Jeffrey Collins of Collins Fire Protection and Life Safety Solutions, LLC. Fire Code Pro, Inc., offers the following consulting services:

PHASE I-ENGINEERED LIFE SAFETY SYSTEM DESIGN

1. BUILDING LIFE SAFETY AND FIRE PROTECTION SYSTEM SURVEY

This package shall include a comprehensive survey of all life safety and fire protection components in a 10-story residential condominium for evaluation of compliance with the *Florida Fire Prevention Code, NFPA 101, Chapter 31 Existing Apartment Buildings* as relates to the automatic sprinkler requirements for high-rise buildings.

- A. **BUILDING SURVEY:** The building survey will include review of existing life safety and fire protection drawings, inspection of the fire and smoke barriers, inspection of all fire protection systems (fire alarm, sprinklers, smoke alarms, etc.), evaluation of vertical openings, floor and walls fire penetrations, fire doors, exit stairways, corridors, common areas, hazardous rooms and spaces, storage spaces, mechanical rooms, equipment rooms, elevator machine rooms and spaces, and a representative sample of apartment units.
- B. **BUILDING EVALUATION:** The existing life safety and fire protection features in the building will be evaluated utilizing *NFPA 101A Guide on Alternative Approaches to Life Safety* to determine the degree of building modifications to be included in the Engineered Life Safety System in lieu of a complete automatic sprinkler system.

2. ENGINEERED LIFE SAFETY SYSTEM DEVELOPMENT AND REPORT

This shall include the development of an Engineered Life Safety System designed specifically for Fountain Towers Condominium, Inc., which will be presented to the City of Miami Beach, Fire Prevention Division for review and approval or modification.

- A. **REPORT DEVELOPMENT:** Based upon the evaluation criteria specified in NFPA 101A, a report outlining a recommended remediation plan will be developed in conjunction with the Registered Fire Protection Engineer provided by Fire Code Pro, Inc. The fire protection engineer will be the engineer of record for the ELSS and will seal the report. All design elements included in the remediation plan will be at the request of the engineer of record subject to approval by the Authority Having Jurisdiction (AHJ).
- B. **ASSOCIATION APPROVAL:** The recommendations of the Engineer will be presented to the Board of Directors for approval, or to a designated representative or committee.

- C. AHJ APPROVAL PROCESS: The approved, sealed ELSS shall be presented to the Fire Marshal for review and approval. All meetings and correspondence required to obtain a final disposition regarding the report shall be included.

The Scope of Services will be considered completed with the final disposition of the Fire Marshal.

DRAWINGS

1. No drawings are being provided in this proposal.

DELIVERABLES

1. All Code research as required.
2. A building survey in table form as part of the ELSS report.
3. A remediation plan containing the recommendations of the Engineer of Record for approval or modification by the AHJ.
4. All correspondence with the Project Manager, the AHJ and the Board of Directors, as necessary.
5. All meetings with the Board of Directors via virtual meetings.
6. A final disposition by the AHJ regarding the ELSS.

CLARIFICATIONS AND EXCEPTIONS

1. This contract proposal is valid for 45 days from the date of delivery.
2. The scope of services does not warrant issuance of any building permits.
3. Additional services not stated in this proposal shall be provided on an hourly basis, or by separate proposal, at the rates stated in the attached fee schedule.
4. The client is responsible for all fees associated with all fire and building department meetings and inspections.
5. This contract is not contingent upon acceptance of, or approval of, the Engineer's proposed recommendations for action on the part of the Client, or the acceptance of, or agreement with, the final requirements for compliance as determined by the Authorities Having Jurisdiction.
6. This contract assumes that record drawings needed to complete the analysis of the building layout and all fire protection systems are available and will be provided by the Client.
7. A current NFPA 80 fire door inspection shall be provided by the Owner indicating that all fire doors are in compliance and fully functional.
8. No permit or shop drawings are included in this scope of services.
9. This contract is not contingent upon the approval by the Association of the recommended remediation plan or the approval of the final disposition of the Authority Having Jurisdiction (Fire Marshal).
10. INDEMNIFICATION. The client agrees to hold harmless, indemnify, and defend FIRE CODE PRO and its affiliates and subconsultants and their employees, officers, directors and agents against all claims, suits, fines and penalties, attorneys' fees and other costs of settlement and defense, which claims, suits, fines, penalties or costs arise out of or are related to this Agreement or the services, except to the extent they are caused by the indemnified party's negligence.
11. WAIVER OF CONSEQUENTIAL DAMAGES. Notwithstanding any other provision in this Agreement, and to the fullest extent permitted by law, neither FIRE CODE PRO nor the Client, their respective officers, directors, partners, employees, contractors or sub consultants shall be liable to the other for, or shall make, any claim

for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, damage to reputation or any other consequential damages either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty.

12. LIMITATION OF LIABILITY. The Client agrees, to the fullest extent permitted by law, to limit the liability of FIRE CODE PRO to Client for any and all claims, losses, costs, damage of any nature whatsoever or claims expenses from any cause or causes, including attorneys' fees and costs and expert witness fees and costs, so that the total aggregate liability of FIRE CODE PRO to Client shall not exceed the total amount paid to FIRE CODE PRO under this Agreement, regardless of theories of liability or causes of action asserted against FIRE CODE PRO, unless otherwise prohibited by law.
13. DISPUTE RESOLUTION. All disputes between the Client and FIRE CODE PRO shall be subject to non-binding mediation. Either party may demand mediation by serving written notice stating the essential nature of the dispute, the amount of time or money claimed, and requiring the matter be mediated within forty-five days of service of notice. The mediation shall be administered by the American Arbitration Association in accordance with their most recent Construction Mediation Rules, or by such other person or organization as the parties may agree on.

ADDITIONAL SERVICES

1. Additional services not specifically stated in this proposal shall be by prior written agreement and are not part of this proposal.
2. Prior authorization will be required by a representative of the owner/client before any additional work will be undertaken. This authorization shall be by written correspondence and shall include email authorization.
3. Attendance to any meetings or participation in conference call in excess of those defined in the above scope items.
4. Preparation of any drawings not including in the scope of services above, including but not limited to Life Safety, Mechanical, or other Fire Protection Systems.
5. Performance and/or witnessing of any final acceptance testing not explicitly stated in the scope of services above.
6. Review of additional shop drawings or revisions to the design after our secondary review based on initial findings and comments.

PHASE I-ENGINEERED LIFE SAFETY SYSTEM DESIGN

INVESTMENT SUMMARY

BUILDING LIFE SAFETY AND FIRE PROTECTION SYSTEM SURVEY

As described in Statement of Work, Drawings, Deliverables

ENGINEERED LIFE SAFETY SYSTEM DEVELOPMENT AND REPORT

As described in Statement of Work, Drawings, Deliverables

TOTAL PHASE I

\$13,800.00

Terms

The above listed services will be delivered for a total cost of \$10,800.00 payable as follows:

\$6,400.00 due upon acceptance of the proposal.

\$6,400.00 due upon completion of the Engineered Life Safety System report.

\$1,000.00 due upon delivery of the final disposition of the Fire Marshal.

ACCEPTANCE PHASE I

This proposal and its Standard Terms and Conditions (see Attachment 1) shall serve as the contract upon agreement, unless otherwise mutually agreed upon by changes in writing. In the absence of written modifications to this agreement, it shall serve as the entire agreement between Fire Code Pro and the Client.

The agreement will be deemed to be in effect upon documented notification to proceed.

The price, scope of work and conditions are accepted. I hereby authorize **Fire Code Pro, Inc.**, to perform the work as specified.

Client	Consultant
By: _____	By: <u>Frank Gagliano</u>
Name: _____	Name: Frank Gagliano
Title: _____	Title: President
Date: _____	Date: October, 11, 2024

ATTACHMENT 1

STANDARD TERMS AND CONDITIONS

1. **CONTRACT** – These Contract Provisions and the accompanying Proposal constitute the full and complete Agreement between the parties and may be changed, amended, added to, superseded, or waived only if both parties specifically agree in writing to such amendment of the Agreement. In the event of any inconsistency between these Contract Provisions and any proposal, contract, purchase order, requisition, notice to proceed, or like document, these Contract Provisions shall govern.
2. **RIGHT OF ENTRY** – When entry to property is required for the Consultant to perform its services, the Client agrees to obtain legal right-of-entry on the property.
3. **DOCUMENTS** – All reports, notes, drawings, specifications, data, calculations, and other documents, including those in electronic form, prepared by Consultant are instruments of Consultant's service that shall remain Consultant's property. The Client agrees not to use Consultant-generated documents for marketing purposes, for projects other than the project for which the documents were prepared by Consultant, or for future modifications to this project, without Consultant's express written permission.

Any reuse or distribution to third parties without such express written permission or project-specific adaptation by CONSULTANT will be at the Client's sole risk and without liability to Consultant or its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors. Client shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless Consultant from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from such unauthorized reuse or distribution.

4. **DISPOSAL OF SAMPLES** – Consultant will discard samples upon completion of the work covered under this Agreement, unless the Client instructs otherwise in writing.
5. **HAZARDOUS MATERIALS** – The scope of Consultant's services for this Agreement does not include any responsibility for detection, remediation, accidental release, or services relating to waste, oil, asbestos, lead, or other hazardous materials, as defined by Federal, State, and local laws or regulations.
6. **CONSTRUCTION PHASE SERVICES** – If Consultant performs any services during the construction phase of the project, Consultant shall not supervise, direct, or have control over Contractor's work. Consultant shall not have authority over or responsibility for the construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the work of the Contractor. Consultant does not guarantee the performance of the construction contract by the Contractor and does not assume responsibility for the Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
7. **STANDARD OF CARE** – Consultant and its employees, subsidiaries, independent professional associates, subconsultants, and subcontractors will exercise that degree of care and skill ordinarily practiced under similar circumstances by design professionals providing similar services. Client agrees that services provided will be rendered without any warranty, express or implied.

Consultant shall exercise usual and customary professional care in its efforts to comply with applicable codes, regulations, laws rules, ordinances, and such other requirements in effect as of the date of execution of this Agreement.

8. **OPINION OF PROBABLE COSTS** – Consultant will not furnish opinions of probable cost and does not guarantee the accuracy of such estimates if rendered as an opinion. However, users of the probable cost opinions must recognize that CONSULTANT does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices or performing the work.
9. **SUSPENSION OF WORK** – The Client may, at any time, by written notice, suspend further work by Consultant. The Client shall remain liable for, and shall promptly pay Consultant for all services rendered to the date of suspension of services, plus

suspension charges, which shall include the cost of assembling documents, personnel and equipment, rescheduling or reassignment, and commitments made to others on Client's behalf.

Client shall pay Consultant pursuant to the rates and charges set forth in the Proposal. Consultant will submit monthly invoices to Client for services rendered and expenses incurred. If Client does not pay invoices within thirty (30) days of submission of invoice, Consultant may, upon written notice to the Client, suspend further work until payments are brought current. The Client agrees to indemnify and hold Consultant harmless from any claim or liability resulting from such suspension.

10. **CHANGES OR DELAYS** – Unless the accompanying Proposal provides otherwise, the proposed fees constitute CONSULTANT's estimate to perform the services required to complete the Project. Required services often are not fully definable in the initial planning; accordingly, developments may dictate a change in the scope of services to be performed. Where this occurs, changes in the Agreement shall be negotiated and an equitable adjustment shall be made.

Costs and schedule commitments shall be subject to renegotiation for unreasonable delays caused by the Client's failure to provide specified facilities, direction, or information, or if Consultant's failure to perform is due to any act of God, labor trouble, fire, inclement weather, act of governmental authority, failure of transportation, accident, power failure, or interruption or any other cause beyond the reasonable control of Consultant. Temporary work stoppage caused by any of the above may result in additional cost beyond that outlined in the accompanying Proposal.

11. **LIABILITY** – To the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, employees, agents, and Consultants to Client and anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Consultant's services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, negligence, strict liability, breach of contract or breach of warranty shall not exceed the total compensation received by Consultant under this Agreement.
12. **CONFLICTS OF INTEREST** – This assignment may involve parties with adverse interests to clients with whom Consultant has current or past relationships. It is Consultant policy to make reasonable attempts to identify such relationships prior to acceptance of a professional assignment, but Consultant cannot assure that conflicts or perceived conflicts will not arise, and Consultant does not accept responsibility for such occurrences.
13. **REIMBURSABLE EXPENSES** – Consultant will bill direct nonpayroll expenses at cost plus 10%. Direct expenses include all reasonable expenses resulting from required responses to subpoenas or court orders related to work under the Contract.
14. **COMPLIANCE WITH LAWS** – Consultant shall exercise the reasonable standard of care to comply with requirements of all applicable codes, regulations, and current written interpretation thereof published and in effect during the Consultant's services. In the event of change in such codes, regulations or interpretations during the course of the Project that were not and could not have been reasonably anticipated by the Consultant and which result in substantive change to the construction documents, the Consultant shall not be held responsible for the resulting additional costs, fees or time, and shall entitled to reasonable additional compensation for the time and expense of responding to such changes.
15. The Client acknowledges that the requirements of federal, state and local laws, rules, codes, ordinances, and regulations, including the American Disabilities Act, are subject to various and possible contradictory interpretations. The Consultant will use reasonable professional efforts and judgement to correctly interpret and apply such requirements. Consultant, however, cannot and does not warrant or guarantee that the work will comply with the interpretation of such requirements by others.
16. **SITE VISITS** – On the basis of site visits, the Consultant shall keep the Client reasonably informed about the progress and quality of the portion of Work completed, and report to the Client (1) known deviations from the design documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.
17. **MISCELLANEOUS - Governing Law:** The laws of the state in which the Consultant office executing this Agreement is located shall govern the validity and interpretation of this Agreement.

Invalid Terms: In the event any of these Contract Provisions are found to be illegal or otherwise unenforceable, the unenforceable Contract Provision will be stricken. Striking such a Contract Provision shall have no effect on the enforceability of the remaining Contract Provisions and those remaining Contract Provisions shall continue in full force and effect as if the unenforceable Contract Provision were never included in the Agreement.

Mediation: The Client and Consultant agree to submit all claims and disputes arising out of this Agreement to non-binding mediation prior to the initiation of legal proceedings. This provision shall survive completion or termination of this Agreement; however, neither party shall seek mediation of any claim or dispute arising out of this Agreement beyond the period of time that would bar the initiation of legal proceedings to litigate such claim or dispute under the applicable law.

Consultant Reliance: Consultant shall be entitled to rely, without liability, on the accuracy and completeness of any and all information provided by Client, Client's Consultants and contractors, and information from public records, without the need for independent verification.

Certifications: Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant's having to certify, guaranty, or warrant the existence of conditions that Consultant cannot ascertain.

Third Parties: 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 Client or Consultant. Consultant's services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against Consultant because of this Agreement or Consultant's performance of services hereunder.

Consequential Damages: Neither the Client nor the Consultant shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

Governing Law: The laws of the state in which the Consultant office executing this Agreement is located shall govern the validity and interpretation of this Agreement.

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Attachment 2

Fee Schedule 2024

Fee Structure

All time spent working on the project to the nearest quarter hour by professional, technical, and clerical personnel will be billed by invoice as work is completed. The following hourly rates for the listed categories of personnel are currently in effect:

<u>Hourly Rate</u>	<u>Category</u>
\$340	Expert Witness Services
\$425	Testimony at trial or deposition
\$175	Principal in charge
\$175	Senior consultants
\$150	Associate consultants
\$100	Technician
\$75	Clerical

There is a three-hour minimum charge for all site visits, meetings, and inspections including travel time. Travel time outside of Miami-Dade County will incur a two-hour charge billed at the appropriate hourly rate for the personnel listed above. Travel outside of Miami-Dade, Broward, Palm Beach, Monroe, and Collier counties will incur an 8-hour minimum charge per day plus expenses.

Unless otherwise stated, any cost estimate presented in a proposal is for budgetary purposes only and is not a fixed price. All services will only be performed with prior authorization of the Client in writing or via email. A retainer of up to 50% of the estimated billable hours may be required before commencement of each segment of the project.

Expert witness cases require a \$2500.00 retainer for services.

Reimbursable Expenses

Per Diem of \$80.00 per day for overnight travel.

Accommodations at cost.

Airfare at cost.

Rental car/ Ground transportation or ride service at cost.

Telephone/fax charges at cost.

Postage and shipping/courier services at cost.

Printing and reproduction at cost.

Other project expenses: photocopying, laser printing, etc., at cost.

Preparation of bid specifications, CAD drawings and permit documents exclusive of consulting and design fees.

Engineering design, review and sealing of documents as required by law not specifically included in the contract for services.