

October 17, 2024

Fountain Towers Condominium Association
Emma Trivella
7118 Bonita Dr
Miami Beach, FL 33141

Re: Proposal to Provide Fire Protection Engineering Services
Engineered Life Safety System (ELSS) Analysis

PBFPE #: 24.300
Miami, Florida

Emma,

Performance Based Fire Protection Engineering, PLLC (Consultant) submits this proposal to the Fountain Towers Condominium Association (Client) to perform fire protection consulting services for the high-rise condominium building located in Miami, Florida. The existing nine (9) story condominium building was originally constructed in 1970 and each floor is approximately 11,000 square feet. There are a total of 40 units in the building with 5 units on each floor.

The Consultant's scope includes the preparation of an *Engineered Life Safety System* (ELSS) in accordance with Section 718.112 of the Florida Administrative Code and Section 31.3.5.12 of the Florida Fire Prevention Code. An *Engineered Life Safety System* consists of a holistic evaluation of the existing building and its available fire protection and life safety features. As a result of this evaluation, additional life safety features may be recommended to provide an acceptable level of life safety in lieu of providing complete fire sprinkler protection throughout the building. The provided recommendations will be based on guidelines as provided in NFPA 101a, *Guide on Alternative Approaches to Life Safety*, in addition to close coordination with the Clearwater Fire Marshal.

The **Consultant estimates completion of the ELSS survey and report within 2-3 weeks** after formal notice to proceed (NTP). Formal approval of the ELSS is largely dependent on the responsiveness of the City of Miami Fire Chief in meeting and reviewing the submitted documents. Complete implementation of the ELSS will depend on the findings and recommendations resulting from this analysis and documented in the approved ELSS.

The applicable codes for the Scope of Services herein include the 2023 *Florida Building Code*, Eighth Edition (FBC) which is based on the 2021 International Building Code, the 2023 *Florida Fire Prevention Code* (FFPC), which is based on the 2021 Editions of NFPA 1, *Fire Code* and NFPA 101, *Life Safety Code*, as amended by local ordinances, as referenced applicable NFPA standards, and local AHJ requirements.



SCOPE OF SERVICES

Performance Based Fire Protection Engineering, PLLC will provide the following fire protection consulting services for the project, as described below.

1. Perform a review of available drawings and project information, provided by the Client, to understand the building.
2. **Conduct a site survey and life safety evaluation to access the current condition of the building. Up to eight (8) hours for one Consultant is included.** The survey is to consist of visual inspections of building construction, means of egress, fire suppression, fire alarm and smoke control elements. Findings from the site survey will be documented within the ELSS report.
3. Prepare an **Engineered Life Safety System (ELSS)** report including, at a minimum, the following sections (or equivalent):
 - a. General
 - i. Executive Summary
 - ii. Applicable Codes and Standards
 - iii. Occupancy and Use
 - b. Building Survey Findings
 - i. Building Construction
 - ii. Means of Egress
 - iii. Fire suppression
 - iv. Fire alarm
 - v. Smoke control
 - c. NFPA 101a Fire Safety Evaluations
 - d. Recommendations for Implementation
4. Participate in up to two (2) conference calls with project stakeholders to discuss and review the analysis and required/recommended fire protection features.
5. Respond to AHJ (Fire Marshal) comments and revise the ELSS, if necessary.
6. Revise (if necessary) and issue final ELSS report signed and sealed by State of Florida professional engineer.

ADDITIONAL SERVICES

1. **Attendance to any meetings or participation in conference call in excess of those defined in the above scope items.**
2. Preparation of any design permit documents or specifications including, but not limited to fire alarm, fire sprinkler, and/or smoke control.
3. Preparation of smoke control rational analysis and CONTAM modeling.
4. Special inspection and/or commissioning services of any system or installation.
5. Fire and/or egress modeling or any performance-based designs.
6. Preparation of the Emergency Response Plan.
7. The initial site visit is included in the fixed fee. If it is determined that an in-person meeting with the AHJ or an additional site visit is necessary, this will be discussed and approved by the Client and billed as an additional fee.



CLIENT RESPONSIBILITIES

1. Provide the Consultant with all requested drawings.
2. Coordinate meetings with stakeholders for meetings noted in the Scope of Services.
3. Provide additional information where identified in this proposal or when identified throughout the project.

CONTRACT

This proposal and its Standard Terms and Conditions 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 Fountain Towers Condominium Association and Performance Based Fire Protection Engineering, PLLC. The agreement will be deemed to be in effect upon documented notification to proceed. Associated fees and acceptance for each scope item is provided below.

The Consultant is requesting a 25% deposit to begin work and the remaining balance is due in accordance with the standard terms and conditions. The fees presented in this proposal are valid for 30 days from the date on the first page.

ACCEPTANCE

This proposal is hereby accepted by Fountain Towers Condominium Association as a lump sum (fixed-fee) including all professional services and expenses.

Engineered Life Safety System (ELSS) Analysis: \$ 20,000.00

Accepted By: _____ Date: _____

We appreciate the opportunity to provide you with this proposal and look forward to working with you.

Sincerely,

Performance Based Fire Protection Engineering, PLLC



Zachary Hatten, PE
Fire Protection Engineer
727.542.9831



ATTACHMENT 1 STANDARD TERMS & CONDITIONS

1. Agreement.

Performance Based Fire Protection Engineering, PLLC (hereinafter "PBFPE") has provided Fountain Towers Condominium Association (hereinafter "Client") with the Scope of Services to be performed. These Standard Terms and Conditions are incorporated into PBFPE's Proposal, and the attached Proposal and these Standard Terms and Conditions together shall be referred to as the "Agreement". Authorization to proceed with PBFPE's services as outlined under the attached Proposal, shall constitute the Client's acceptance of the Agreement.
2. Performance.

PBFPE will perform the services with the skill and care ordinarily used by qualified professionals performing the same type of services at the same time under similar conditions in the same or similar locality. Client agrees that PBFPE is not responsible for damages arising directly or indirectly from any delays for causes beyond PBFPE's control. For purposes of this Agreement, such causes include, but are not limited to, strikes or other labor disputes; severe weather disruptions or other natural disasters; or failure of performance by Client or Client's contractors or consultants. The Client will notify PBFPE in writing of any discovered deficiencies in the services within 15 days of their discovery during the active project, and no later than 120 days after substantial completion of the services. The Client will give PBFPE a reasonable opportunity to correct these deficiencies.
3. Independent Contractor.

Client is engaging PBFPE as an independent contractor, and not as an agent, employee, director or partner of Client. The parties agree that this Agreement does not establish a joint venture, employment or agency relationship. Nothing contained in this Agreement or any action by PBFPE shall be construed to impose a fiduciary duty on PBFPE or create a fiduciary relationship between PBFPE and Client or between PBFPE and any third party.
4. Limitations on Responsibility.

PBFPE will not be responsible for the acts or omissions of any others working on the project, except for its own and any retained subconsultant(s). PBFPE will not supervise, direct or have control over any contractor's work.
5. Termination.

This Agreement may be terminated by PBFPE or the Client, without cause, upon not less than ten (10) business days' written notice for such party's convenience. Upon such termination, Client shall pay and reimburse PBFPE for services rendered and costs incurred prior to the effective date of termination. PBFPE has the option to fully terminate its services upon 10 business days written notice (5 days suspension of services followed by 5 days before termination) any time payment is overdue by the Client. Client agrees to pay for all services through termination, plus termination and collection costs, including reasonable attorneys' fees, court costs, expert fees, and all other costs any other associated expenses.
6. Payment.

Except as expressly stated in the Proposal, Client will compensate PBFPE for the services at its project fixed-fee or standard rates, as well as reimburse any agreed upon expenses. PBFPE will submit periodic invoices that are due upon receipt. For fixed-fee projects, PBFPE has the right to request a deposit not to exceed 25% upon acceptance of the Scope of Services. The Client will notify PBFPE in writing within 10 days of any disputed item on an invoice and pay all undisputed items within 30 days from invoice date. Overdue payments will accrue interest at the lower of 1½ percent per month.
7. Indemnification.

The client agrees to hold harmless, indemnify, and defend PBFPE 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.



8. Insurance.
PBFPE will furnish certificates of insurance upon request.
9. Waiver of Consequential Damages.
Notwithstanding any other provision in this Agreement, and to the fullest extent permitted by law, neither PBFPE 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.
10. Limitation of Liability.
The Client agrees, to the fullest extent permitted by law, to limit the liability of PBFPE 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 PBFPE to Client shall not exceed the total amount paid to PBFPE under this Agreement, regardless of theories of liability or causes of action asserted against PBFPE, unless otherwise prohibited by law.
11. Dispute Resolution.
All disputes between the Client and PBFPE 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.
12. Certificate of Merit Requirement.
The Client shall make no claim for professional negligence, either directly or by way of a cross complaint against the PBFPE unless the Client has first provided the PBFPE with a written certification executed by an independent consultant currently practicing in the same discipline as the PBFPE and licensed in the state where the project at issue is located. This certification shall: a) contain the name and license number of the certifier; b) specify the acts or omissions that the certifier contends are not in conformance with the Standard of Care for a consultant performing professional services under similar circumstances; and c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the Standard of Care. This certificate shall be provided to PBFPE not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any arbitration or judicial proceeding. This Certificate of Merit clause will take precedence over any existing state law in force at the time of the claim or demand for arbitration.
13. Hazardous Substances.
We shall not identify, test, or inspect for any hazardous or toxic substances at the site of the project. PBFPE shall be held harmless to the extent permitted by law for all claims, liabilities and expenses (including reasonable attorney fees and expenses) related to any hazardous or toxic substances at the site.
14. Governing Law and Venue.
This Agreement shall be governed by the laws of the State of North Carolina and all dispute resolution proceedings shall be venued in the State of North Carolina unless other parties mutually agree otherwise.
15. Ethics and Conflicts of Interest.
Both parties shall perform their obligations ethically and with integrity, including but not limited to, avoiding conflicts of interest or disclosure of such promptly, and neither party shall receive any contingent fees or gratuities to and from the other party, including their agents, officers, employees and sub consultants or others to secure preferential treatment.

