

Town of Franklin

Town Administrator
Tel: (508) 520-4949



Fax: (508) 520-4903

355 East Central Street
Franklin, Massachusetts 02038-1352

Memorandum

June 21, 2019

To: Capital Subcommittee & Town Council
From: Jamie Hellen, Town Administrator

Re: FY19 Capital Plan Proposal Round 2

After the winter snow season has come to a close, the Town has \$692,000 left in free cash to appropriate. Based on the requests made this year and a few other odds and ends that have come up, which need immediate attention, the following is the recommended appropriations. The full Council will be considering these recommendations later this evening.

1. **\$448,000 for Roads & Infrastructure.** As we all know, the Town has a \$40 million backlog of road work and we the Town had to cut funds in this year's operating budget and hope to get that back in for FY21. I will have another request later this year to appropriate the hotel revenue to continue to help on roads.
2. **\$24,000 for the Old South Church Study.** This money will be used for historic preservation consultants to evaluate the cost to fully renovate and bring up to code the Old South Church.
3. **\$100,000 for Public Safety Communications Infrastructure.** Verizon informed us earlier this year they are replacing all of the copper wires in Town that helped our public safety officials communicate via handheld radio to communicate on scene to the station. Staff spent the last several months meeting with Verizon and our consultants to develop a long-range game plan for coverage townwide. We are using \$87,000 in previously authorized capital funds for the Fire Department for these purposes, \$100,000 from the rebate from the MECC being delayed and this free cash appropriation to complete Phase I and Phase II. See attached plan for details.
4. **\$100,000 wage settlement account.** This is a rare and one-time request to help pay for anticipated contractual obligations, retirements, and departmental reorganizations that will occur in the next six months.
5. **\$20,000 - Beaver Street recycling center.** This the start of the land swap with the state. Funds will be used for various state requirements to swap the property, including environmental assessments, legal fees, surveys and appraisals over the next couple years.



TOWN OF FRANKLIN

RESOLUTION NO.: 19-43

APPROPRIATION: FY19 Capital Plan Round 2

TOTAL REQUESTED: \$ 492,000

PURPOSE: To appropriate funds for the 2019 Capital Plan Round 2:

Roads and Infrastructure	\$ 448,000
(including but not limited to design, engineering, pavement reconstruction, sidewalk and parking lot construction, drainage installation and ancillary grading and landscaping)	
Old South Church Study	\$ 24,000
Beaver Street Recycling Center	\$ <u>20,000</u>
	\$ 492,000

Be It Moved and Voted by the Town Council that the sum of Four Hundred and Ninety-Two Thousand Dollars (\$492,000) be transferred from Free Cash for the FY2019 Round 2 Capital Plan as outlined above to be expended at the discretion of the Town Administrator and to include any residual funds remaining in line items.

This resolution shall become effective according to the provisions of the Town of Franklin Home Rule Charter.

DATED: _____, 2019

VOTED: _____

UNANIMOUS: _____

A TRUE RECORD ATTEST:

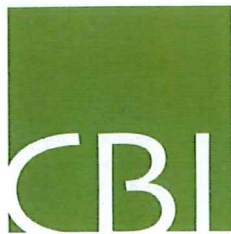
YES: ____ NO: ____

ABSTAIN: ____ ABSENT: ____

RECUSED: _____

Teresa M. Burr
Town Clerk

Glenn Jones, Clerk
Franklin Town Council



A Vidaris Company

CBI CONSULTING, LLC

AGREEMENT FOR CONSULTING SERVICES

between
CBI Consulting, LLC
and
Town of Franklin

May 30, 2019

Michael D'Angelo
Director of Public Facilities
Town of Franklin
355 East Center Street
Franklin, MA 02038

Tel: (508) 889 3503
Email: dangelom@franklinps.net

Proj: South Franklin Congregational Meeting House Peer Review
Re: Agreement for Consulting Services

CBI Proposal No.: P190879

Dear Mr. D'Angelo:

CBI Consulting, LLC (CBI), a Vidaris company, is pleased to present the following fee proposal for architectural and engineering consulting services associated with the South Franklin Congregational Meeting House in Franklin, MA.

It is our understanding that the project is being undertaken in order to plan for the future reuse of the existing South Franklin Congregational Meeting House, which includes, but is not limited to, CBI performing a peer review of the previous study by CIVITECTS in May 2015.

CBI will review the CIVITECTS study, conduct a visual review of the existing building, include an additional hazardous materials report to supplement the study, and prepare recommendations with an updated cost estimate. All of the work will be performed with the understanding that the building will no longer be used as an assembly space, and that repairs will be completed by the Town of Franklin prior to sale, which requires the application of prevailing wage rates in the cost estimate.

We propose to provide Architectural, Historical, and Structural Engineering services in-house, and to engage subconsultants who specialize in other tasks required of the work, including NV5 (formerly RDK) for Mechanical, Electrical, Plumbing and Fire Protection Engineering; FLI Environmental Inc. (FLI) for Hazardous Materials Testing; Code Red Consultants (Code Red) for code consulting; and PM&C for cost estimating.

Our work will include the following tasks and deliverables:

Peer Review

CBI, NV5, and FLI will visit the site and conduct a visual inspection of the building from the ground. FLI will conduct hazardous material testing of accessible areas of the building.

T 617 • 268.8977
F 617 • 464.2971
cbiconsultingllc.com
vidaris.com



Page 2
South Franklin Congregational Meeting House Peer Review
Agreement for Consulting Services
CBI Proposal No.: P190879
May 30, 2019

CBI will subsequently perform a peer review of the existing study by CIVITECTS and will provide comments and recommendations with regards to Architectural, Historical, Structural and accessibility upgrades with the code support from Code Red.

NV5 will update their previous study to reflect changes in code requirements since 2015.

CBI and our subconsultants will prepare a Summary of Findings and Recommendations, which will include photographs and an updated cost estimate.

CBI, NV5, and FLI have included one (1) site visit each under this phase. CBI has also included one (1) meeting with the Town to discuss our findings.

FEE: CBI can perform these tasks for a lump sum price of **\$23,700** broken down as follows:

Architectural, Historical, Structural and Project Management (CBI)	\$11,934
MEP and Fire Protection (NV5)	\$3,516
Code Consulting (Code Red)*	\$3,300
Cost Estimating (PM&C)	\$2,200
FLI Environmental Inc. (FLI)	\$2,750

**Code Red's fee includes code assistance only. This fee does not include a Code Report and/or site visit(s) by Code Red. If necessary, Code Red will perform site visit(s) on a time and materials basis with an hourly rate of \$180/hour.*

SCHEDULE: The following schedule is based on CBI's start date on or before June 11, 2019.

<u>Site Survey</u>	by June 31, 2019
<u>Recommendations + Hazmat</u>	by July 31, 2019
<u>Estimate</u>	by August 15, 2019

REIMBURSABLE EXPENSES: Miscellaneous and out of pocket expenses such as travel, printing, photographs, and testing are included in the fee.

EXCLUSIONS: The following items are excluded from the fee:

1. Exploratory Investigations and Contractor Assistance. (*Roof Test Cuts, Masonry Test Cuts, Concrete Cores, Test Pits, Window Removal, Excavation, etc.*)
2. Additional Meetings and Site Visits: Additional Reimbursable Meetings performed by CBI at the Town's request will be charged \$1,000 per meeting, which includes the Project Manager for one (1) half-day onsite.
3. Plans, Details, and Specifications for Repair
4. Architectural Design
5. Structural Engineering



Page 3
South Franklin Congregational Meeting House Peer Review
Agreement for Consulting Services
CBI Proposal No.: P190879
May 30, 2019

6. Civil Engineering
7. Landscape Architecture
8. Land Surveying
9. Geotechnical Engineering
10. Sampling above and beyond FLI's proposed quantities

EXISTING PLANS

The fee assumes that existing blueprints and as-built plans of the building are not available.

The attached Conditions of Engagement apply. We are prepared to begin at your direction, with signature below, and anticipate that the site visit can be completed in one (1) month after signed Contract, and deliverables completed in two (2) months after signed Contract.

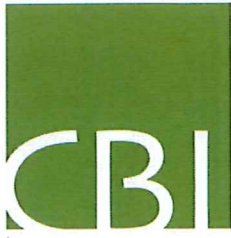
Any action subsequent to the project scope will be under separate agreement.

CONDITIONS OF ENGAGEMENT

Services provided under this Agreement by CBI Consulting, LLC, ("CBI" or "Consultant") are subject to the following Conditions of Engagement. Acceptance and use of any work-product prepared by CBI or to the extent CBI performs any services in connection with the Project at the verbal or written direction of the Client, indicates the Client's acceptance of all of the terms set forth in the Conditions of Engagement and this proposal (together shall constitute the "Agreement").

PAYMENT

1. Budget fee estimates are based on CBI's projected work schedule. All work will be charged according to actual hours performed and pursuant to the rate schedule included in this Agreement. Although we have attempted to provide a directionally accurate estimate based upon information provided to us, the actual amount invoiced and that the Client is responsible for paying to CBI for the work could be higher or lower than the estimate. Client agrees to pay CBI for its services in connection with this Agreement.
2. All budget fee estimates are exclusive of reimbursable expenses, as described below.
3. Budget fee estimates do not include an allowance for meetings except where specifically noted in the scope of services.
4. The budget fee estimate value assumes that the Project continues based on the schedule listed in this Agreement, without significant interruptions or deviations. If any phase of the Project is stopped and then re-started after more than six (6) months, CBI may increase its rates, estimates, or staffing to include the work needed for re-starting the Project.
5. Invoices will be issued monthly and are due upon receipt. After thirty (30) days, 1½% per month late fee will be charged. CBI reserves the right to stop work on projects where invoices remain unpaid for over sixty (60) days. Collection fees, if required will be charged to the Client. CBI reserves the right to suspend work, withhold the work product, or withhold signature on shop drawings, submittals, building department affidavits, or final approvals, if payments are not made in accordance with the contract. CBI shall not incur any penalty, or be liable for any damages resulting from its suspension of its services or its withholding of its work-product pursuant to this provision. To the fullest extent permitted by law Owner shall defend, indemnify and hold CBI harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by or incurred in connection with CBI's suspension of work or withholding of work product or signature pursuant to this section. Collection fees, including attorney's fees, if required, will be charged to the Client.
6. Reimbursable expenses are all expenses incurred by CBI in connection with this Project on behalf of the Client and will be marked up 15%. Reimbursable Expenses include, but are not limited to travel (portal to portal), long distance telephone charges, IT services, courier service, blue prints, and other reproduction costs. All air travel, if approved in advance by the Owner in writing, will be in business class.



Page 4
South Franklin Congregational Meeting House Peer Review
Agreement for Consulting Services
CBI Proposal No.: P190879
May 30, 2019

7. To the extent the Project incurs delays, CBI may require an adjustment to our level of effort, hourly rate, and/or fee and will communicate any such adjustment in the form of a change order request and Client agrees that approval of such change order request shall not be unreasonably withheld.
8. Payment to CBI is not contingent on the performance of the contractor. Holding payments to CBI in response to contractor non-performance is a breach of contract.
9. For all residential clients, payment in full is due to CBI before the final work product will be released by CBI to the Client.

EXCLUSIONS & CONDITIONS

1. The sole beneficiaries of this Agreement and the services to be provided hereunder are the parties hereto. This Agreement is not intended and shall not be deemed to confer any benefit or rights upon persons or entities other than the parties hereto.
2. CBI will not be responsible for coordination of the construction work.
3. Equipment required to gain access to the interior and exterior areas to be monitored or reviewed, such as, but not limited to, ladders, scaffold and lift operator, will be provided by the Client at its expense. Access and coordination are the responsibility of the Client.
4. CBI will use prescriptive Building Code requirements (unless provided with more stringent requirements and those requirements associated values by the Client) as the basis for performing consulting and/or monitoring services contained within this proposal.
5. All documents necessary to CBI's performance of its services under this Agreement, will be supplied by the Client.
6. Laboratory and/or jobsite testing services, unless specifically noted in the scope of services in this proposal, are not included. If needed, CBI can provide an additional proposal for these services.
7. The Client will give five (5) business days prior written notice to CBI before all monitoring, meetings, job site visits as well as prior to the commencement of each task and/or Scope of Services item.
8. CBI will not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, or for the failure of the Contractor, subcontractors, or any other person performing any of the Work, to carry out the Work in accordance with the Contract Documents. If CBI has knowledge of such failures it shall inform the Client.
9. Captions and titles of the different sections of this Agreement are solely for reference and are not considered as substantive parts of this Agreement.
10. To the extent CBI performs contract administration or inspection services under this Agreement, whether in a fabrication facility (e.g. "shop"), at a mockup, or at the site, those services provided by CBI hereunder are visual observations of readily accessible areas and systems. Latent or concealed defects which are not readily accessible or visible or conditions or defects which could not be evaluated without using destructive testing methods (by way of example, but not limited to, opening of column enclosures, opening of walls, roofs, or opening of ceilings) are not reviewed and are not the responsibility of CBI. With regard to monitoring elements which can be observed only when the walls are open (e.g., fire safing), the Client will have the sole responsibility of coordination between parties and of providing adequate notification to CBI as to when the observations can be made before the wall or construction assembly is closed. If it becomes necessary for the wall or the construction assembly to be reopened in order to allow for CBI's observation, such as for fire safing, the Client will be responsible for all associated costs.
11. All pedestrian safety, fall protection, overhead protection, fabrication, and Project site safety are the sole responsibility of the Client or others, and not CBI.
12. No warranties or guarantees of any nature are expressed nor are any to be implied by CBI. Any and all actions taken and/or decisions made as a result of any recommendation and/or services provided by CBI shall be at the entire risk and obligation of the Client.
13. CBI's services shall be performed in a manner consistent with that degree of skill and care ordinarily exercised by consultants performing similar services in the same locality, at projects of similar size and scope, and under the same or similar circumstances and conditions.
14. Any estimates of construction or other costs prepared by CBI will be based on the information then available to CBI. Such estimates are an exercise of our professional judgment and are not guaranteed or warranted. To the extent CBI has identified with particularity, in its scope of services, that it will provide consulting services in connection with an estimate of construction, the scope and budget estimate value for that work are as specifically set forth in this



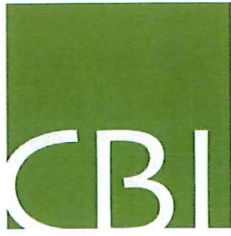
Page 5
South Franklin Congregational Meeting House Peer Review
Agreement for Consulting Services
CBI Proposal No.: P190879
May 30, 2019

Agreement. Any services not specifically identified in the scope of services related to estimates of construction is excluded from this Agreement.

15. The Consultant will retain all samples removed from the Project site for ninety (90) days. After ninety (90) days, the samples will be disposed of unless the Client requests these samples in writing.
16. Client agrees to provide CBI with all of the information, plans and changes in plans, and new information that Client possesses that may materially affect the delivery of CBI's services. Client agrees to indemnify and hold CBI harmless from all claims, damages, losses, and related expenses involving information of which Client had knowledge but did not timely call to CBI's attention or correctly show on plans furnished to CBI.
17. The Client will provide the right of entry to the Project site and any other property necessary for the CBI, its sub-consultants, and all necessary equipment in order to complete the work. The Consultant and its sub-consultants will take reasonable precautions to minimize damage to the property. However, the Client understands that in the normal course of work some damage, such as interior damage from exploratory demolition or water testing, may occur. The Consultant and its sub-consultants will make a reasonable effort to avoid damage but the correction shall not become the obligation of the Consultant or its sub-consultants.
18. CBI's designs (if any), specifications, reports, notes, calculations, and other written or electronic documents (the "Work Product") are instruments of our service for this Project only. The Work Product may be used only for the purposes disclosed to us. The Client may not use or transfer the Work Product to others for a purpose for which they were not prepared without CBI's prior written approval. Client agrees to indemnify CBI for loss caused by any unauthorized use of CBI's work-product. Use of the Work Product for any other projects site or use is solely at the Client's risk and client recognizes that to do so would be hazardous. To the fullest extent permissible by law the Client shall indemnify defend and hold harmless CBI for any and all consequences, damages, including third party claims as a result of or incurred in connection with the unauthorized use of the Work Product.

MISCELLANEOUS TERMS

1. Hazardous and Toxic Materials: CBI shall have no responsibility for the discovery, removal, diagnosing and otherwise preventing the formation of, or protecting against hazardous and toxic materials, organisms and substances at the Project. The Client or Owner shall bring no claim against CBI relating to the presence of asbestos, hazardous wastes or any other hazardous or toxic materials at the Project. To the fullest extent permissible by law the Client or Owner shall indemnify, defend and hold harmless CBI from and against any and all claims, causes or action, damages, losses, liabilities and expenses, including but not limited to attorney's fees, insurance deductibles, and any costs associated with delays, arising out of the presence of asbestos, hazardous wastes or any other hazardous or toxic materials at the Project site.
2. Arbitration: All claims, disputes or matters in controversy relating to this Agreement (however characterized) shall be resolved by through binding arbitration administered by the American Arbitration Association in accordance with the American Arbitration Association construction rules and procedures then in effect. Such arbitration proceeding shall be conducted in Boston, Massachusetts unless the parties mutually agree to another location. Arbitration shall be conducted by a single arbitrator jointly selected by the parties, and in the event the parties cannot agree on the selection of the arbitrator within twenty (20) business days from commencement of such action, the arbitrator shall be appointed pursuant to the American Arbitration Association rules. The arbitrator shall decide the dispute expeditiously, the parties' objective being to have a reasoned award and decisions within ninety (90) calendar days from joinder of issue. The arbitrator may extend this period as necessary or appropriate. The arbitrator shall allow limited discovery as is appropriate and fair to the parties. A demand for arbitration shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted or demanded.
3. Limitation of Liability: CBI's liability is limited. The principals, employees and agents of CBI shall in no event be personally liable to the Client or any other third party. In no event shall CBI be liable to the Client, or any other entity, for an amount in excess of the actual fees collected by CBI for this engagement, nor for any consequential, incidental, economic, special, reliance, liquidated, performance, expectation or delay damages or for any design or construction defects. CBI's affiliates shall have no liability in connection with this Agreement to the Client or any other entity.
4. Indemnification: Client agrees, to the fullest extent permitted by law, to defend, indemnify and hold CBI harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by Client's negligence, acts, breach of this Agreement, errors or omissions and those of its contractors, subcontractors or consultants or anyone for whom Client is legally liable, and arising from the Project that is the subject of this Agreement. CBI is not obligated to indemnify Client in any manner whatsoever.



Page 6
South Franklin Congregational Meeting House Peer Review
Agreement for Consulting Services
CBI Proposal No.: P190879
May 30, 2019

5. In the event that CBI will be compelled to participate in any dispute resolution proceedings, CBI shall be compensated and reimbursed by Client for CBI's participation at CBI's hourly rates at the time of its participation. This provision shall survive the termination or completion of this Agreement.
6. Statute of Limitations: Notwithstanding and overriding any applicable statute of limitations, Client and CBI agree that any and all actions, disputes, or claims brought by either party against the other or demands on a parties' insurance policy or policies, which relates in any way to this Agreement and CBI's services hereunder, shall be waived and barred upon the earlier of the following: (a) after one (1) year has passed from the time the aggrieved party knew or should have known of its cause of action; or (b) after one (1) year has passed from the time of the last date CBI provides services pursuant to this Agreement on this Project.
7. Notice of Claims: For purposes of notice hereunder and for any other notice required by this Agreement, notice shall be given by certified mail or by hand delivery as follows:

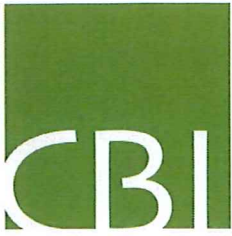
If to the Client:

Michael D'Angelo
Director of Public Facilities
Town of Franklin
355 East Center Street
Franklin, MA 02038

If to CBI:

Rebecca Klebanoff
CBI Consulting, LLC
250 Dorchester Ave.
Boston, MA 02127

8. Suspension of Services and Termination: The Agreement may be terminated by either party with seven (7) calendar days advanced written notice to the other party. CBI shall be entitled to suspend performance of its services under this Agreement if the Client fails to make payments in accordance with the terms of this Agreement. Client shall not be entitled to recover from CBI any delay or other damage or damages as a result of the invocation of CBI's right to suspend its services or terminate the Agreement. Upon termination, Client agrees to compensate CBI for all undisputed services provided up to the date of termination, and the foregoing provisions shall survive termination of the Agreement. To the fullest extent permitted by law Owner shall defend, indemnify and hold CBI harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) to the extent caused by or incurred in connection with CBI's termination of the Agreement pursuant to this section.
9. This Agreement and the rights and obligations of the parties shall be interpreted, governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts, without giving effect to principles of conflicts of laws.
10. This Agreement is the entire agreement and expresses the entire understanding between the Parties as to the subject matter herein. All other agreements between the parties, either express or implied are superseded and replaced in their entirety by this Agreement.
11. The contractor for this project shall include CBI Consulting, LLC as a Named Insured with a Waiver of Subrogation on its general liability, umbrella, and auto insurance for this project regardless of the CBI's involvement beyond the scope of this agreement. The client shall be responsible for the contractor's compliance with this provision.




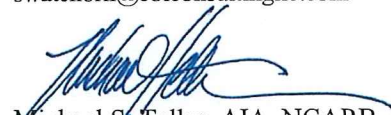
Page 7
South Franklin Congregational Meeting House Peer Review
Agreement for Consulting Services
CBI Proposal No.: P190879
May 30, 2019

If Client fails to accept this proposal within thirty (30) days from the date of the proposal, at CBI's sole direction, CBI reserves the right to render this proposal invalid and may present Client with a revised proposal which may have modifications to fee, scope, or terms.

Please contact the undersigned with any questions.

Very truly yours,
CBI Consulting, LLC


Steven Watchorn, AIA, NCARB,
LEED AP BD+C
Project Manager
swatchorn@cbiconsultingllc.com


Michael S. Teller, AIA, NCARB,
LEED AP BD+C
Principal
mteller@cbiconsultingllc.com

Acknowledged and Accepted

Client Signature Title

Print Name

Date

By signing you are certifying that you are authorized to enter into an Agreement either as the Owner or their Authorized Representative with CBI and that you will pay all charges or authorize payment for all charges.

Attachments: FLI proposal dated May 23, 2019
Code Red proposal dated May 22, 2019
PM&C proposal dated May 23, 2019
NV5 proposal dated May 30, 2019

SAW/RF/hld
P190879 South Franklin Congregational Meeting House 05-30-19



FLI Environmental

69 BRIDGE STREET
DEDHAM, MA 02026
PHONE 781.251.0040
FAX 781.251.0901

May 23, 2019

Mr. Royden Glen Fejer
Assistant Project Manager
CBI Consulting, LLC
250 Dorchester Ave.
Boston, Massachusetts 02127

VIA EMAIL

RE: Asbestos & HazMat Inspection – South Franklin Congressional Meeting House
FLI Proposal # 19-126i

Dear Mr. Fejer:

FLI Environmental, Inc. (FLI) is pleased to submit the following proposal to provide you with Asbestos consulting services at the above referenced site. FLI is a Certified Asbestos Analytical Service and employs individuals licensed as Asbestos Inspectors, Designers and Project Monitors. FLI has not conducted a site walk through of the subject areas to formulate this proposal.

The proposal shall outline the technical approach and services for performing the site inspection, analytical services and summary report necessary for proper project completion.

I. SCOPE OF WORK:

A. Asbestos Inspection

1. FLI shall provide an experienced, State licensed and EPA accredited Asbestos Inspector to perform the asbestos inspection at the subject building(s). The inspection will be performed in accordance with State of Massachusetts regulations.
2. Information from previous inspections of the subject property will be utilized to avoid duplication of information and reduce the number of samples required to complete the survey.
3. The inspector shall identify suspect asbestos-containing materials (ACM's) within the subject areas. Representative areas within wall chases, tunnels, above solid ceilings and suspended ceilings will also be inspected. Window sealants (caulking and glazing) will be included in the inspection scope. Sampling will result in minor damage to suspect building materials. FLI will attempt to sample in a manner to reduce potential damage and (when able) will sample in areas that are less noticeable (i.e. behind doors or in corners). Sampled materials will not be replaced or repaired. Please Note: Accessing areas behind solid walls or ceilings, below finished flooring layers or other enclosed spaces will result in damage to these finishes and substrates. These materials will not be repaired or replaced.

4. Roofing materials will not be included in the inspection scope at this time. If roofing materials need to be sampled at a later date, in order to guarantee the integrity of the roof patch, FLI requires the building owner to hire an independent roofing company to perform the repair work. FLI is not a roofing company and will not attempt to repair roof cuts that must be restored to a leak-free condition.
5. The suspect materials shall be identified by material, system and location. The inspector will estimate quantities of materials testing positive for asbestos.
6. Bulk samples shall be collected of specific suspect materials using the EPA NESHAPS protocol. Up to three samples of each material will be collected for analysis. Additional samples will be collected for surfacing materials. FLI shall have "suspect" asbestos material samples analyzed by Polarized Light Microscopy (PLM) per EPA Method 600/R-93/132 and shall ensure thorough documentation (chain of custody) and record keeping. Analysis will be performed in a State and NVLAP Accredited Laboratory.
7. At the completion of the inspection and receipt of the bulk sample analysis, FLI shall submit a summary report detailing the findings of the survey. This report shall outline confirmed ACM types, locations, quantities and recommendations. Non-asbestos materials will also be noted and summarized.

B. Lead Paint Inspection

1. FLI will collect representative samples of paint from surfaces throughout the subject areas. Samples will be analyzed by Atomic Absorption Spectrometry at an accredited laboratory. The United States Environmental Protection Agency (EPA) defines lead-based paint as a dried paint film with a lead concentration of greater than or equal to 5,000 PPM or 0.5% by weight.
2. A summary table outlining the results of the sampling will be included in the final report.

C. Additional Hazardous Materials

FLI will identify and estimate quantities of the following during the asbestos inspection:

Above Ground Storage Tanks (ASTs)

FLI will inspect the Site for the presence of ASTs. The contents of the ASTs will be identified and quantified to the best of our ability using field observations.

White Goods/Appliances

FLI will inspect the Site for air conditioners, refrigerators, chillers, freezers, and any other equipment that may contain chlorofluorocarbons (CFCs) as well as Cathode Ray Tube (CRT) devices.

Mercury/PCB Containing Devices

FLI will identify and locate fluorescent lighting, light fixture ballasts, capacitors, thermostats, switches, boiler controls and transformers.

Oil-containing Devices

FLI will identify oil-containing devices such as boilers, large motors, compressors, generators, hydraulic door closers and elevators.

Radioactive Exit Signs

FLI will locate and inventory radioactive exit signs and smoke detectors.

Miscellaneous Materials

FLI will identify and quantify any other materials that would require special handling, including but not limited to lead acid batteries found in emergency exit signs, lighting, UPS systems and fire controls.

II. FEE SCHEDULE

- A. The work shall be invoiced using the lump sum and unit costs listed below. The amount quoted includes portal to portal travel time from FLI's Dedham office. No additional time or sample analysis will be billed without specific authorization from the client.

B. Inspection Services

Licensed Asbestos Inspector (Travel, Fieldwork, Final Report)	\$ 1,200.00
Asbestos Bulk Sample Laboratory Analysis (up to 60 samples @ \$15/ea)	\$ 900.00
<u>Lead Paint Sample Laboratory Analysis (up to 10 samples @ \$35/ea)</u>	<u>\$ 350.00</u>

TOTAL ESTIMATED INSPECTION COST \$ 2,450.00

III. TERMS:

- A. Work can be scheduled upon receipt of signature approval outlined below. An invoice for the balance due will be sent upon completion of sampling and submittal of final report. Payment is due in full upon receipt of invoice. FLI shall schedule the work upon receipt of a signed contract or signature approval outlined below.
- B. Fieldwork will be scheduled within 1 week of receipt of written notice to proceed. FLI will work with Forte Architecture to coordinate a schedule that works for the client. A draft report, including laboratory analytical data, will be submitted within one week of receipt of laboratory sample results.
- C. All rates listed above are applicable for work performed within an 8-hour shift during normal working hours of 7:00 a.m. to 7:00 p.m. Analytical costs are based on standard laboratory turnaround. Night, weekend and emergency work (if required) or expedited sample turnaround will be invoiced at increased rates.
- D. Payment is not contingent upon sample results being deemed favorable to the client. The client and/or owner shall ensure access to all areas included in the scope of work. Inaccessible areas cannot be inspected.

E. The rates listed herein shall be valid for this project for a period of Thirty days.

Should you have any questions regarding this proposal or our services, please do not hesitate to contact us at (781) 251-0040. FLI appreciates the opportunity to provide you with our services and we look forward to working together on this project.

Sincerely,

FLI Environmental, Inc.



David MacDonald
President

Approval for FLI Proposal # 19-126i by CBI Consulting, LLC and Notice to Proceed:

Signature

Date

Print Name and Title

Purchase Order Number

May 22, 2019

Steven Watchorn
CBI Consulting, LLC
250 Dorchester Ave.
Boston, MA 02127

**RE: South Franklin Congregational Meeting House – Franklin, MA
Proposal to Provide Fire Protection and Life Safety Code Consulting Services**

Dear Steven:

Code Red Consultants, LLC (Consultant) is pleased to provide this proposal for Fire Protection and Life Safety Code Consulting services to CBI Consulting, LLC (Client) for the code review of the South Franklin Congregational Meeting House in Franklin, MA. The building was previously studied in May of 2015, with this new study undertaken to perform a peer review of the previous documents and the understand code changes that will affect any work to the building.

BASE SCOPE OF SERVICES

The specific scope of services to be provided under this agreement are as follows:

Professional Services

1. Perform a peer review of the "Comprehensive Investigation & Analysis" report dated May 11, 2015 prepared by Civitects. The review will focus on building and accessibility code-related findings. The letter summarizing the findings will include an analysis of the relevant code changes from the 8th to the 9th Editions of 780 CMR as they relate to this building.
2. Provide up to 4 hours of general consulting services to perform miscellaneous tasks such as:
 - Attend meetings
 - Participate in conference calls
 - Conduct code reviews
 - Prepare code reports and narratives
 - Respond to code questions
 - Perform other services at the request of the Client within the budgeted amount.

COMPENSATION

The base scope of services described within this proposal will be provided for a firm fixed fee of \$3,000, inclusive of expenses.

If a site visit is necessary, this will be performed on a time & materials basis with an hourly rate of \$180/hour, with expenses billed separately at cost.

ADDITIONAL SERVICES

The proposed fee for the project is limited to the Base Scope of Services outlined within the Proposal. Additional Services can be provided if requested under a separate agreement between the Consultant and the Client.

TERMS & CONDITIONS

The agreement between the Consultant and the Client includes the Consultant's Terms and Conditions, which are attached to this proposal and incorporated in their entirety. The Client acknowledges that it has received and reviewed the Consultant's Terms and Conditions, and agrees to be bound thereby.

APPROVAL

The pricing in this proposal remains valid for a period of 60 days. You may indicate your acceptance by signing a copy and returning it to us as authorization to proceed.

Sincerely,
CODE RED CONSULTANTS



Paul J. Moan, P.E.

Approved by:
CBI CONSULTING, LLC

Name

Date

CODE RED CONSULTANTS LLC TERMS AND CONDITIONS

1. It is understood and agreed that these terms and conditions, together with the proposal by Code Red Consultants LLC ("CONSULTANT"), form the complete agreement between CONSULTANT and CLIENT for the specified scope of services (the "Services"). Terms set forth in other documents, including for example, a prime agreement, purchase order, requisition, or other notice or authorization to proceed, are inapplicable to the Services, except when specifically provided for in full on the face of such document and accepted in writing by CONSULTANT. CONSULTANT's acknowledgement of receipt or performance of work subsequent to receipt thereof, does not constitute acceptance of any terms or conditions other than those set forth herein. If terms and conditions contained herein and in the proposal by CONSULTANT are inconsistent with terms and conditions contained in other documents, the terms and conditions contained herein and in the proposal by CONSULTANT shall take precedence.
2. **CLIENT Information.** CLIENT shall furnish to CONSULTANT all drawings, including as-built fire protection system, architectural, structural, mechanical, electrical, and fixture plans, surveys, tests and other information pertaining to the design of the project. CLIENT understands and acknowledges that CONSULTANT relies on the completeness and accuracy of information supplied by CLIENT in order to perform the Services.
3. **Access.** CLIENT shall arrange for and make all provisions for CONSULTANT and its agents to enter and access the project site(s), and any and all premises reasonably necessary for the provision of the Services.
4. **Standard of Care.** CONSULTANT shall provide the Services in accordance with generally accepted professional practice consistent with the degree of skill and care ordinarily exercised by practicing design professionals performing similar services in the same locality, at the same site and under the same or similar circumstances. CONSULTANT makes no warranty or guarantee, express or implied, regarding the Services. CONSULTANT shall not be responsible for any construction means, methods, techniques, sequences or procedures. CONSULTANT shall not be responsible for the acts or omissions of CLIENT, CLIENT's other consultants, architects, engineers, contractors, subcontractors, their agents or employees, or other persons performing work or providing services. Notwithstanding, CONSULTANT will notify CLIENT if CONSULTANT becomes aware of errors, omissions or inconsistencies in the services or information provided by CLIENT or other consultants.
5. **CFSP Services.** If the Services include NFPA 241 deliverables, including Construction Fire Safety Programming ("CFSP"), CLIENT agrees that CONSULTANT shall not have any control over, charge of, or responsibility for the means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the implementation and enforcement of the CFSP. As a result, except for personal injuries or property damage caused by CONSULTANT's employees while performing services on the project site, CLIENT, its employees, agents, subcontractors, and insurers, forever waive and release CONSULTANT from claims, damages, losses and expenses arising out of or resulting from the implementation and enforcement of the CFSP, CLIENT, as the responsible party under NFPA 241 for the implementation and enforcement of the CFSP, shall indemnify and hold harmless CONSULTANT from and against claims, damages, losses and expenses arising out of or resulting from the implementation and enforcement of the CFSP.
6. **Payment.** Payment in full of each Invoice is due thirty (30) days following the date of the Invoice. In the event payment is not made when due, collection fees shall be assessed, including reasonable attorney's fees and interest accrued at 1.5% per month.
7. **Insurance.** CONSULTANT shall maintain the following insurance for the duration of this agreement: (1) general liability (\$1 million each occurrence/\$2 million aggregate); (2) automobile liability (\$1 million combined single limit); (3) umbrella liability (\$5 million each occurrence/aggregate); (4) workers compensation (per statutory limits); and (5) professional liability (\$2 million per claim/aggregate). CONSULTANT will furnish a certificate of insurance upon request. If requested by CLIENT, CONSULTANT will purchase additional insurance, beyond that which it normally carries, at CLIENT's expense.
8. **Waiver of Subrogation.** CONSULTANT and CLIENT waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages to the extent covered by any property or other insurance in effect whether during or after the project. CONSULTANT and CLIENT shall each require similar waivers from their contractors, consultants and agents.
9. **Indemnification.** CONSULTANT shall indemnify and hold CLIENT and CLIENT's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of CONSULTANT, its employees and its consultants in the performance of professional Services under this agreement. CLIENT shall indemnify and hold CONSULTANT and CONSULTANT's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of CLIENT, its employees, agents, contractors, subcontractors, and any other party for whom the CLIENT is responsible.
10. **Hazardous Materials.** CONSULTANT 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. Accordingly, CLIENT agrees to assert no claims against CONSULTANT, its principals, agents, employees

and consultants, if such claim is based, in whole or in part, upon the negligence, breach of contract, breach of warranty, indemnity or other alleged obligation of CONSULTANT or its consultants, and arises out of or in connection with the detection, assessment, abatement, identification or remediation of hazardous materials, pollutants or asbestos at, in, under or in the vicinity of the project site. CLIENT shall defend, indemnify and hold harmless CONSULTANT, its principals, agents, employees, and consultants and each of them, from and against any and all costs, liability, claims, demands, damages or expenses, including reasonable attorneys' fees, with respect to any such claim or claims described in the preceding sentence, whether asserted by CLIENT or any other person or entity. CONSULTANT shall not be liable for any damages or injuries of any nature whatsoever, due to any delay or suspension in the performance of the Services caused by or arising out of the discovery of hazardous substances or pollutants at the project site. Notwithstanding, CONSULTANT agrees that it will promptly notify CLIENT if it becomes aware of the existence of such hazardous materials or toxic substances.

11. **Termination/Suspension.** Either party may terminate this agreement for convenience on written notice of at least thirty (30) days. In the event CLIENT exercises this provision, CONSULTANT shall be paid for all Services rendered up to and including the date of termination, as well as reasonable termination expenses. Either party may terminate this agreement at any time for cause in the event the other party fails to substantially perform its obligations under this agreement. In the event CLIENT exercises this provision, CONSULTANT shall be paid for all Services rendered up to and including the date of termination. If the Services are suspended for a period of more than sixty (60) days, CONSULTANT shall be entitled to an equitable adjustment of its fees. No deductions shall be made from the CONSULTANT's compensation on account of any penalty, liquidated damages or other sums withheld from payments to contractors, or on account of the cost of changes in the project.
12. **Documents.** Nothing contained in this agreement shall create a contractual relationship with, or a cause of action in favor of, a third-party against either CONSULTANT or CLIENT. The Services are being performed solely for the benefit of CLIENT, and no other entity shall have any claim against CONSULTANT because of this agreement or CONSULTANT's performance of services hereunder. Drawings, calculations and specifications as instruments of service are and shall remain at all times the exclusive property of CONSULTANT, whether the project for which they are made is executed or not. CONSULTANT shall retain all common law, statutory and other reserved rights, including copyrights. CONSULTANT grants to CLIENT a non-exclusive license to use CONSULTANT's instruments of service solely and exclusively for the stated project. The instruments of service are not to be used by CLIENT, owner, or any other party for other projects or extensions to the stated project, except by written agreement with appropriate compensation to CONSULTANT. In the event CLIENT uses the instruments of

service for any purpose other than this intended purpose, without retaining CONSULTANT's prior written agreement, CLIENT releases CONSULTANT from all claims arising from such uses, and CLIENT shall defend and/or indemnify CONSULTANT of and from all resulting damages.

13. **Disputes.** In the event of any dispute, claim, question or controversy arising out of this agreement, its performance, interpretation and/or breach, the same will be determined by arbitration pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association.
14. **Limitation of Liability.** CLIENT hereby agrees that to the fullest extent permitted by law CONSULTANT's total liability to CLIENT for any and all injuries, claims losses, expenses or damages whatsoever arising out of or in any way related to the project or this agreement from any cause or causes including but not limited to CONSULTANT's negligence, errors, omissions, strict liability, breach of contract or breach of warranty, shall not exceed the total sum paid on behalf of or to CONSULTANT by CONSULTANT's insurers in settlement or satisfaction of CLIENT's claims under the terms and conditions of CONSULTANT's insurance policies applicable thereto. If no such insurance coverage is provided with respect to CLIENT's claims, then CONSULTANT's total liability to CLIENT for any and all such uninsured CLIENT's claims shall not exceed the total compensation paid to CONSULTANT under this agreement.
15. **Waiver of Consequential Damages.** CONSULTANT and CLIENT waive consequential damages for claims, disputes or other matters in question arising out of or relating to this agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this agreement, including but not limited to, liability for loss of profits, loss of use of property, delays, or other special, indirect, consequential, punitive, exemplary or multiple damages.
16. **Miscellaneous.** This agreement shall be governed by the law of the state or jurisdiction where the project is located. Any dispute or claim proceedings shall take place in the state or jurisdiction where the project is located. Any change or modification to these terms shall be in writing and signed by both parties. Neither party may assign or transfer this agreement or any rights hereunder without the written consent of the other party. If any provision of this agreement shall be determined to be invalid or unenforceable, the remaining provisions hereof shall remain in full force and effect, and be binding upon the parties hereto. The covenants and agreements contained herein shall apply to, insure to the benefit of and be binding upon the parties and upon their respective successors and assigns.



Partnering for quality results

May 23, 2019

Royden Glen Fejer
Assistant Project Manager
CBI Consulting, LLC
A Vidaris Company
250 Dorchester Ave.
Boston, MA 02127

**Re: Fee Proposal for Cost Estimating Services
South Franklin Congregational Meeting House; South Franklin, MA**

Dear Royden,

Thank you for the opportunity to submit this proposal for construction cost consulting services for an updated study and peer review of the previous study of the South Franklin Congregational Meeting House.

Our fee for cost estimating services is as follows:

Feasibility Study Update: \$1,900

This fee includes all expenses.

Thank you again for asking PM&C to submit a proposal on this project. If this proposal is agreeable please sign and send back to this office.

Sincerely,

Accepted By:

Peter Bradley BSC Q.S.; LEED AP
President

Name

Date



May 30, 2019

Mr. Royhden Glen Fejer
CBI Consulting, LLC
250 Dorchester Avenue
Boston, Massachusetts 02127

RE: South Franklin Congregational Meeting House
Mechanical and Electrical Assessment/Study
Franklin, Massachusetts
Engineering Services Proposal (Revised)

Dear Mr. Fejer:

In accordance with your request, Richard D. Kimball d/b/a NV5, is pleased to submit a revised Scope of Services and Proposed Fee to provide engineering services for the above referenced project.

Scope of Services

RDK will provide Mechanical and Electrical Engineering Services to provide an update on the MEP scope of the previous study completed on 5/11/15, based on updated code requirements and additional MEP requirements that are not included in the previous study.

- Review of available drawings.
- Based on the scope of services stated above, prepare a Draft Report of findings and code requirements to bring the building to current code compliance.
- Meet with CBI to review the Draft Report
- Finalize the report

Proposed Fee

Task	Amount
Draft Report	\$ 2,112.00
Review Meeting	\$ 528.00
Final Report	\$ 576.00
Total	\$3,216.00

The above stated services will be provided for a lump sum fee. Invoices will be submitted monthly, on a percent complete basis. Reimbursable expenses are included in the fixed fee.

Assumptions

- Acoustics consulting and code compliance with acoustic requirements is not included in our basic scope of services.

Additional Services

- Expansion of the scope of this project.
- Preparation of revisions to the report documents after submission of the final report, caused by changes initiated by others.
- Cost estimating.
- Design Documents.
- Acoustical Consulting Services.

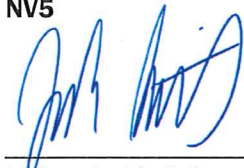
Authorization

All services will be conducted in accordance with this Proposal and General Terms and Conditions. To initiate services, please complete and sign the attached Proposal Acceptance Form. Our Proposal will remain valid for acceptance for up to 30 days from the date on this Proposal, after which, we reserve the right to modify the Proposal, scope and fees.

Thank you for the opportunity to present this proposal. If you have any questions or need additional information, please feel free to call.

Very truly yours,

NV5



Joshua Smith, P.E.
Sr. Mechanical Engineer

Enclosures: General Terms and Agreement
 Proposal Acceptance Form



GENERAL TERMS AND CONDITIONS

1. **STANDARD OF CARE.** The Services shall be performed in a manner consistent with the level of care and skill ordinarily exercised by members of NV5's profession currently practicing under similar conditions and in the same locality as the Project. Data, interpretations and recommendations by NV5 will be based solely on information discovered by, or made available to, NV5 during the course of the engagement. In connection with such information, NV5 shall not be responsible for the use or interpretation of such information by non-parties to this Agreement. NV5 shall not be held liable for problems that may occur if NV5's recommendations are not followed.

1.1 It is understood and agreed that the NV5 shall not be held responsible for any inaccuracies in any materials, data or records as provided to the NV5 by the CLIENT, which have been prepared by any other person, firm or agency and on which NV5 in its professional judgment has relied and/or utilized in the performance of the NV5's services. Client agrees that NV5 shall not be responsible for the means, methods, procedures performance, site safety of the construction contractors or subcontractors, or for their errors or omissions. Client agrees that the work created pursuant to this Agreement is for the sole and exclusive use of Client and is not for the benefit of any third parties. This Agreement and the Services to be performed hereunder shall in no way be construed as a guarantee of deficient-free construction.

1.2 NV5 makes no warranty, either express or implied, as to its findings, recommendations, plans, specifications, or professional advice except that the services were performed in a manner consistent with the level of care and skill ordinarily exercised by members of NV5's profession currently practicing under similar conditions and in the same locality as the Project.

2. **PAYMENTS.** NV5 will submit to Client invoices for the balance due, which shall be due and payable immediately upon submission. If Client objects to all or any portion of any invoice, Client will so notify NV5 in writing within ten (10) calendar days of the invoice date, identify the cause of disagreement, and immediately pay that portion of the invoice not in dispute. In the absence of written notification described above, the balance as stated on the invoice shall be deemed accepted. Invoices are delinquent if payment has not been received when due. In such event, Client shall pay an additional charge of one and one-half (1.5) percent per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount. Payment thereafter will first be applied to accrued interest and then to the principal unpaid amount. NV5 shall be entitled to recover for all costs and expenses incurred (including any attorney's fees) in connection with collection of any delinquent amount. NV5 reserves the right to withhold all reports or deliverables unless and until payment is made by Client in accordance with this Agreement.

If the Client fails to make payment when due, NV5 may, upon seven (7) days written notice to the Client, suspend performance of services under this Agreement. Suspension of services will include, depending on the phase of the project, withholding delivery of reports, studies, construction documents, affidavits, closeout documents, and/or other applicable documents. In the event of a suspension of services, NV5 will have no liability to the Client and/or Owner for delay or damage caused the Client/and or Owner because of such suspension of service.

If applicable, within a reasonable period of time after submitting our invoices to the Client, NV5 reserves the right to contact the Owner directly for assistance and/or to have payment made directly from the Owner to NV5 in lieu of receiving payments from the Client.

3. **REIMBURSABLE EXPENSES.** Transportation, lodging and meals in connection with travel; postage and delivery charges; reproduction and plotting costs; automobile travel; miscellaneous items, and subconsultants/subcontracts (if required) will be invoiced **as stated in the Agreement**. Mileage charges for automobiles will be invoiced at the prevailing rate established by the IRS. In those situations where reimbursable expenses are invoiced separately, backup for expenses will be provided only if required contractually by the Client or Owner.

4. **RETAINAGE.** No retainage will be held from payment of NV5's invoices.

5. **SEPARATE CONSULTANTS.** If a firm or firms are separately engaged by the Client or the Owner to provide services under the general direction of NV5, NV5 will have no responsibility or liability for the performance or technical sufficiency of the services of such separately engaged firms.

6. **NO DEDUCTION** will be made from NV5's compensation on account of claims of negligence in performance of professional services by NV5, except in the case where the finder-of-fact has made a determination of professional negligence by NV5 and assessed damages caused by NV5's negligence. In such a case, the compensation to NV5 may be offset by the damages (or any part of damages) assessed by the finder-of-fact.

7. **ALL DOCUMENTS** including reports, electronic media, and drawings, prepared or furnished by NV5 and its subconsultants pursuant to this Agreement are instruments of service in respect of this Project and NV5 will retain an ownership and property interest therein whether or not the Project is completed. The Client may make and retain copies of such documents for information and reference in connection with the Project; however, such documents are not intended or represented to be suitable for reuse by the Client, including extensions of the Project or on any other project, nor are they to be relied upon by anyone other than the Client. Accordingly, the Client will, to its fullest extent permitted by law, defend, indemnify and hold harmless NV5 from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions and damages whatsoever arising out of or resulting from any unauthorized reuse of the documents or disbursement by Client to third parties. If it is necessary to distribute any documents to an unrelated third party, both the third party and Client agree: (a) the third party is bound by all of the conditions and limitations of this Agreement and related documents; and (b) the third party is bound by all limitations of liability or indemnity provisions

NV5 reserves the right to remove its professional seal and title block from documents turned over to the Client.

8. **DISPUTE RESOLUTION.** Client agrees that in the event NV5 institutes litigation to enforce or interpret the provisions of this Agreement, such litigation is to be brought and adjudicated in Essex County, Massachusetts, and Client waives the right to bring, try or remove such litigation to any other county or judicial district. The Client shall make no claim for professional negligence, either directly or by way of a cross complaint against the NV5, unless the Client has first provided the NV5 with a written certification executed by an independent consultant currently practicing in the same discipline as the NV5 and licensed in the same State. This certification shall: (i) contain the name and license number of the certifier; (ii) specify the acts or omissions that the certifier contends are not in conformance with the standard of care in paragraph 23; and (iii) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. After attempting to negotiate among themselves in good faith, and prior to the initiation of any legal proceedings, the parties agree to submit all claims, disputes or controversies arising out of or in relation to the interpretation, application or enforcement of this Agreement to non-binding mediation. Mediation will be conducted under the auspices of a mediation service or professional mediator as the parties agree upon. The party seeking to initiate mediation shall do so by submitting a formal written request to the other party to this Agreement. This Article will survive completion or termination of this Agreement, but under no circumstances will either party call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceedings to litigate such a claim or dispute under the laws of the Commonwealth of Massachusetts. The parties agree that all causes of action against each other shall accrue no later than the date of substantial completion of the project.

9. **JOBSITE SAFETY.** Neither the professional activities of NV5, nor the presence of NV5 or its employees and subconsultants at a construction/project site, will relieve the Contractor of its obligations, duties and responsibilities, including, but not limited to, construction means, methods, sequence, techniques or procedures necessary for performing, superintending and coordinating the Work in accordance with the contract documents and any health or safety precautions required by any regulatory agency. NV5 has no authority to exercise any control over any contractor in connection with the Work, including construction means, methods, sequence, techniques or procedures. NV5 takes on no responsibility for any health or safety precautions required by any regulatory agency, or responsibility for jobsite safety.

10. **COST ESTIMATES.** As NV5 has no control over construction costs or contractor's prices, any reasonable estimate of construction costs made by NV5 will be on the basis of NV5's experience and judgment as design professionals. NV5 cannot and does not warrant or guarantee that contractor's proposals, bids or costs will not vary from our estimates.

11. **ENERGY ESTIMATES/MODELING.** NV5 has no control over building and equipment operation and/or maintenance, or climatic conditions. Accordingly, any energy estimates and/or models are made on the basis of NV5's experience and judgment as design professionals. NV5 cannot and does not warrant or guarantee that actual building or system operating costs will not vary from our estimates and/or models.

12. **HAZARDOUS MATERIALS.** Unless otherwise provided in this Agreement, NV5 will have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the Project site, including but not limited to asbestos, asbestos products, PCB's, or other toxic substances.

13. CLIENT'S RESPONSIBILITIES. The Client will provide NV5 with all existing, reliable, and accurate information relating to the Project, but not limited to existing conditions, soils investigations, and program data. If the Client becomes aware of any fault or defect in the Project or NV5's services, he/she will promptly notify NV5. The Client will furnish required information or services as expeditiously as necessary for the orderly performance of the services.

14. OWNER REPRESENTATIVE. If the Owner retains an Owner Representative for the Project, the Owner shall provide to NV5, in writing, a list of duties, responsibilities and authority (DR&A list) the Owner Representative has been assigned by the Owner. NV5 shall be entitled to rely upon the proper performance by the Owner Representative for the items on the DR&A list and shall bear no responsibility to the Owners or its representative(s) for any opinions, directions or decisions given by the Owner and Owner Representative that are in conflict with DR&A. In the event the Owner makes any changes to the Owner Representative's DR&A list, the Owner shall notify NV5, in writing, in a timely manner. NV5 shall be entitled to rely solely upon the Owner Representative's decisions and directions as to all areas listed in the DR&A list. If any Owner-directed changes to the Owner Representative's DR&A list result in additional time or expense in order for NV5 to prepare, coordinate or respond to changes to the plans or specification, NV5 shall be entitled to an equitable adjustment in fees and schedule for the performance of these additional services.

15. VALUE ENGINEERING. If the Client and/or Owner retain the services of a Value Engineer (VE) to review the design prepared by NV5, these services shall be at the Client's and/or Owner's sole expense and shall be performed in a timely manner so as not to delay the orderly progress of NV5's services. The Client and/or Owner shall promptly notify NV5 of the identity of the VE and shall define the VE's scope of services. All recommendations of the VE shall be given to NV5 for review, and adequate time will be provided for NV5 to respond to these recommendations.

If NV5 objects to any recommendations made during the VE process, it shall state so in writing to the Client and/or Owner, along with the reasons for objecting. If the Client and/or Owner, in spite of NV5's objections or without NV5's knowledge, requires the incorporation of changes into reports, drawings, specifications, bidding or other documents, the Client and/or Owner agrees to waive all claims against NV5 and to indemnify and hold harmless NV5 from any damages, liabilities or costs, including reasonable attorneys' fees and costs of defense, which arise in connection with or as a result of the incorporation of such design changes required by the Client and/or Owner.

In addition, NV5 shall be compensated for services necessary to incorporate recommended value engineering changes into reports, drawings, specifications, bidding or other documents. NV5 shall be compensated as Additional Service for all time spent to prepare for, review and respond to the recommendations of the VE. NV5's time for performance of its services shall be equitably adjusted.

16. INSURANCE. At all times during the terms of this Agreement the NV5 shall maintain, at its own cost and expense, insurance coverage as protection from claims filed against NV5 as follows:

- Workers Compensation (as required by law)
- Commercial General Liability (to person or property)
- Commercial Automobile Liability (to person or property)
- Professional Liability (errors and omissions)

At the request of the Client, NV5 shall provide appropriate certificates thereof. In the event a claim against the NV5 is brought, alleging errors or omissions by the NV5 and NV5 is found NOT to be legally liable, then Client shall pay all costs incurred by NV5 in defending itself against such claim.

17. INDEMNIFICATION FOR MOLD CLAIMS. It is understood by the parties that the existing or constructed building may, as a result of its construction, use, maintenance, occupation or otherwise, contain or be caused to contain mold substances which can present health hazards and result in bodily injury, property damage and/or necessary remedial measures. If, during the Project, NV5 is made aware of any such substances, NV5 will, without assuming liability for consequential or any other damages, suspend performance of services until the Client retains a qualified specialist to abate and/or remove the mold substances. The Client agrees to release and waive all claims against NV5 and its subconsultants arising from or in any way connected with the existence of mold on or about the project site whether during or after completion of construction. The Client further agrees to indemnify and hold NV5 harmless from and against all claims, costs, liabilities and damages, including reasonable attorneys' fees, arising in any way from the existence of mold on the project site whether during or after completion of construction, except for those claims, liabilities, costs or damages caused by the negligent acts of NV5.

18. GREEN/LEED® DESIGN. If the Project includes any level of LEED, Green Building Rating System and other similar environmental guidelines (collectively "LEED"), the Client and/or Owner recognize that the achievement of such certification is subject to third parties over which NV5 has no control, and may require the cooperation of the Client, Owner, Contractor, and others. The Client and/or Owner acknowledge and understand LEED is subject to

various and possible contradictory implementation. Therefore, the Parties agree that if LEED certification is the stated goal of the Project, NV5 shall use reasonable care in its design to achieve the goal but makes no warrantee or guarantee that the Project, when complete, will actually achieve LEED certification. In addition, the Client and/or Owner acknowledge that its desire to achieve LEED may impact the available design and product options and may impact the overall cost, schedule, and performance of the complete project. The Client and/or Owner have accepted these potential impacts in the recognition of the importance it has placed on the values of a LEED project.

19. PERIOD OF PERFORMANCE. Except as otherwise provided for in the Agreement, if the services covered under this agreement have not been completed within twelve (12) months, through no fault of NV5, the amounts of compensation, rates and multipliers set forth herein will be equitably adjusted with respect to services performed after that date.

20. TAX CREDIT. The Client agrees that any State or Federal energy related tax deduction and/or credit available to NV5 as result of the Project, including but not limited to the 179-D Tax Credit, will be assigned to NV5 as the MEP/FP Engineering Consultant.

21. WAIVER OF CONSEQUENTIAL DAMAGES. To the fullest extent permitted by law, neither the Client nor NV5, its subconsultants and subcontractors, 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 of consequential damages shall include, but not be limited to loss of use, loss of profit, loss of business, loss of income, loss of reputation, increased energy, water and other operational costs, unrealized tax incentives, credits, deductions and or rebates, and any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract, and breach of strict or implied warranty.

22. LIMITATION OF LIABILITY. In recognition of the relative risks and benefits of the Project to both the Client and NV5, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of NV5 to the Client, and anyone claiming by, through or on behalf of the Client for any and all claims, losses, costs, damages 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 NV5 to the Client shall not exceed \$50,000.00, or NV5's total fee for services paid on this Project, whatever is less. It is understood that this limitation applies to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law. It is intended that this limitation of liability applies to all services performed on the project (including any future assignments or enlargements to the scope of services). It is also intended that this limitation of liability applies to NV5 and its employees.

23. CONTINGENCY. The Client and/or Owner and NV5 agree that certain increased costs and changes may be required because of possible omissions, ambiguities, or inconsistencies in the drawings and specifications prepared by NV5 and, therefore, that the final construction cost of the Project may exceed the contracted construction cost. The Client and/or Owner agrees to set aside a reserve in the amount of five percent (5%) of the Project construction cost as a contingency to be used, as required, to pay for any such increased costs and changes. The Client and/or Owner further agrees to make no claim by way of direct or third party action against NV5 or its subconsultants with respect to any increased costs within the contingency because of such changes. Not included in the contingency are typical change orders for owner requested changes, unforeseen conditions, substitution of equipment, changes in design, and/or code official required changes.

24. TERMINATION OR ABANDONMENT. The Agreement may be terminated by NV5 upon no less than seven (7) days written notice, should the Client fail substantially to perform in accordance with the terms of this agreement through no fault of NV5.

25. MISCELLANEOUS. This Agreement (consisting of the "Standard Terms and Conditions" and the Letter Agreement) constitutes the complete and sole agreement between NV5 and the Client with respect to the Project, and may be amended only by a written document signed by both parties, and will be governed by the laws of the Commonwealth of Massachusetts.

26. SUCCESSORS AND ASSIGNS. Neither the Client nor the NV5 shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that are or may become due) this document, or any claims that may arise from the performance of services under this agreement, without the written consent of the other, except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this document. Nothing contained in this paragraph shall prevent the NV5 from employing such independent consultants, associates and subcontractors, as it may deem appropriate to assist in the performance of services hereunder. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the Client

and the NV5. Nothing herein shall create a contractual relationship with or cause of action in favor of a third party against either the Client or NV5.

All claims and causes of actions between the parties to this agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of substantial completion for acts or failures to act occurring prior to substantial completion, or the date of the issuance of the final certificate for payment for acts or failures to act occurring after substantial completion.

27. FEDERAL COMPLIANCE. As a federal contractor, NV5 is required to incorporate the following into this Agreement: Unless exempt, the Client shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered entities take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

28. AUTHORIZATION. Your signature guarantees that you are duly authorized by your company to enter into the above agreement. The agent of the Client who signs this attests that he/she has the authority to enter into this agreement.

PROPOSAL ACCEPTANCE FORM

Description of Services: Engineering Services
Project Name: Mechanical & Electrical Assessment/Study
Project Location: Franklin, Massachusetts
Proposal No.:
Proposal Date: May 30, 2019

APPROVAL & PAYMENT OF CHARGES: *Invoices will be charged and mailed to the account of:*

Firm: _____

Attention: _____

Address: _____

_____ Email: _____

Telephone: _____ Fax: _____

PROPOSAL ACCEPTED BY:

AUTHORIZED SIGNATURE: _____

NAME & TITLE: _____

DATE ACCEPTED: _____

PAYMENT TERMS: As set forth in Section 2 of the *General Terms and Conditions*

Please remit payments to: NV5, PO Box 74008680, Chicago, IL 60674-8680

PROPERTY OWNER IDENTIFICATION (If other than above)

Name: _____

Address: _____

Telephone: _____ Fax: _____

This Proposal Acceptance, the scope of services outlined in the Proposal, Schedule of Fees, and *General Terms and Conditions* constitute the entire agreement between the Client and NV5, and supersede all prior written or oral understandings.