

May 9, 2021 (Updated Design)

Legendary East Pasadena  
c/o G. Graham Ferrier/CEO-Design Director  
Ferrier Architecture Studio (fAS)  
2404 Wilshire Blvd, Suite 1D  
Los Angeles, CA. 90057

Subject: RMU/380 S. Rosemead Blvd. Mixed Use with Multifamily, Retail, Amenities, and Parking Project  
380 S. Rosemead Blvd., Pasadena, CA 91107  
Temporary Earth Embankment Shoring Engineering Proposal

Labib Funk + Associates (JLA) appreciates the opportunity to provide subject project proposal based on request for proposal due to redesign of project per revised architectural drawings provided with April 16, 2021 email from Graham Ferrier. This proposal is based on revised March 23, 2021 architectural drawings prepared by Ferrier Architecture Studio (fAS) and geotechnical report dated August 21, 2019 by Geotechnologies.

### **Project Description and Scope**

1. Visit site to assess existing site conditions including proximity of adjacent existing structures.
2. Review applicable portions of geotechnical engineering report and consult with geotechnical engineer to obtain design criteria for shoring soil pressures.
3. Coordinate architectural, structural, topographic survey, and civil plans with temporary shoring design and drawings. Depth of shoring is estimated to be maximum 28 feet below grade with a shoring system at north, south, east, and west sides of project. An agreement should be explored with adjacent property owners to provide a shoring system with steel soldier beams, wood lagging, and tieback anchors along adjacent properties. If tie backs are not approved by adjacent property owners, rakers with heel blocks will be required. JLA to be informed whether tie backs or rakers will be utilized prior to starting shoring design.
4. Prepare CAD plans, details, and calculations for temporary shoring.
5. Provide plans and calculations for filing with building department and public works.
6. Respond to building department plan review comments and attend meetings with city plan checkers.
7. Assist shoring contractor during construction when requested, including one pre-construction meeting and additional structural observations.
8. Review and respond to RFI's and submitted shoring survey monitoring readings.

### **Schedule**

Time required to submit shoring drawings and calculations is approximately six weeks after decision is made to provide tie backs or rakers and final soils report with architectural, structural foundation, and site topographical/survey CAD plans that indicate existing elevation grades, existing adjacent structures, project foundations, and utilities are received.



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**Fee**

Based on estimated shoring area of approximately 22,030 square feet, proposed fees are as shown below. Reimbursable expenses per attached Terms and Conditions, which apply to this proposal, are in addition to below fees:

**FEE THRU PERMITTING (Scope Items 1-6)**

Construction Documents (Item 4 - 6)	\$25,000
Plan Check Services (Items 5 and 6)	\$6,000
<b>Total</b>	<b>\$31,000</b>

**Add/Alternate – Plan check Submittal**

JLA will submit drawings to City for Plan Check for an additional fee of \$1,000. Client is responsible for associated city fees.

Initial here if accepting Plan Check Add Service: \_\_\_\_\_

Initial here if declining Plan Check Add Service: \_\_\_\_\_

**Add/Alternate – BOE Submittal**

JLA will submit drawings to Department of Public Works for an additional fee of \$1,000. Client is responsible for associated City fees.

Initial here if accepting BOE Add Service: \_\_\_\_\_

Initial here if declining BOE Add Service: \_\_\_\_\_

**FEE FOR CONSTRUCTION ADMINISTRATION (Scope Items 7-9) & ADDITIONAL SERVICES**

Construction administration services (Items 7 thru 9) and additional services for scope not included in this proposal will be provided when requested per below hourly rates that are valid for one year from date of this proposal plus expenses per attached Terms and Conditions.

Principal Engineer	\$250.00
Project Manager	\$195.00
Project Engineer	\$175.00
Drafter	\$125.00
Site visits including shoring observations-Hourly (\$500 minimum/visit)	

**Exclusions**

1. Increase in shoring area or revised shoring methods that are different than noted above.
2. Revisions to building architectural or structural plans or shoring procedures that affect scope noted above or occur after preparation of shoring design and drawings have been initiated.

JLA appreciates the opportunity to work on this project. If you have questions or comments, do not hesitate to contact JLA.

If this proposal is acceptable, please sign and return with \$3,000 retainer check. Retainer will be applied to CD (\$2,000) and CA (\$1,000) phases of project.



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Sincerely,

Labib Funk + Associates

Chuck Whitaker  
Principal

This proposal is open for acceptance for 30 days from date of this proposal.

Authorized to Proceed

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## TERMS AND CONDITIONS

*Effective 11/01/2019*

### 1. REIMBURSABLE EXPENSES

Expenses other than salary costs that are directly attributable to our professional services are invoiced at our cost plus 15%. These expenses include such items as out-of-town travel expenses, use of personal and rental cars, special fees and permits, premiums for additional or special insurance where required, mailing, copying & printing expenses, etc.

### 2. SERVICES BY OTHERS

When considered necessary, other technical firms or outside consultants may be used with your approval and the cost of such services, plus ten percent (10%), will be included in our invoice. Unless specifically agreed to in writing, LFA has retained no consultants for this project.

### 3. ACCESS TO SITE

Unless otherwise stated, LFA will have access to the site for activities necessary for the performance of the services.

### 4. INSURANCE LIMITS

Insurance limits are as follows: General Liability \$1,000,000 each occurrence & \$2,000,000 aggregate, Professional Liability \$2,000,000 each occurrence & \$2,000,000 aggregate. Workman's Comp \$1,000,000.

### 5. PAYMENTS TO ENGINEER

Invoices will be submitted monthly for the prior month's services unless specified otherwise on Contract. Payment is due upon the invoice date and becomes delinquent thirty (30) days thereafter. In the event of non-payment, LFA may, without waiving any of the claims or rights against you, and without liability whatsoever to you, terminate performance of the services. A late charge will be added to delinquent amounts at the rate of one-and-one-half percent (1-1/2%) for each thirty (30) days delinquency (provided the rate of such late charge shall not exceed the maximum allowable by the laws of the state in which our office submitting the invoice is located, and if so exceeding, the interest rate shall be the maximum amount allowable in that state). All attorney's fees and expert fees, LFA's time, and costs shall be paid by the Client. Payment to LFA shall not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the Client of offsetting reimbursement or credit from other parties caused additional services or expenses. No withholding, deductions or offsets shall be made from LFA's compensation for any reason unless LFA has been found to be legally liable for such amounts. Payment of LFA's fees shall be a condition precedent to bringing any action or suit against LFA.

### 6. STANDARD OF CARE

LFA's services shall be provided consistent with and limited to the standard of care applicable to such services, which is that LFA shall provide its services consistent with the professional skill and care ordinarily provided by consultants practicing in the same or similar locality under the same or similar circumstances. Such standard of care is not a warranty or guarantee and LFA shall have no such obligation. Accordingly, Client should prepare and plan for clarifications and modifications which may impact both the cost and schedule of the Project.

### 7. SCHEDULES & BUDGETS

Any schedules or completion dates, budgets, or estimates of cost prepared by LFA represent LFA's professional judgment based on its experience and available information. Since neither LFA nor Client has control over the cost of labor, materials, or equipment, or contractor's methods of determining prices, or over competitive bidding or market conditions, LFA cannot and does not warrant or represent that actual schedules, budgets or completion dates or actual costs will not vary from schedules or completion dates, budgets, or estimates of cost prepared by LFA or proposed, established, or approved by Client.

### 8. OTHER PROVISIONS

It is understood that LFA will not provide design and construction review services relating to safety precautions, means, methods, techniques or sequences of any contractor or subcontractor on the project. Further, it is understood that LFA will not provide any supervisory services relating to the construction of the project.

In recognition of the relative risks, rewards and benefits of the project to both the client and LFA, the risks have been allocated so that the client agrees that, to the fullest extent permitted by law, LFA's total liability to the client, for any and all injuries, claims, losses, expenses, attorney's fees and expert fees, damages or claim expenses arising out of this agreement, from any cause or causes, shall be limited to LFA's fee. Such causes include, but are not limited to, LFA's negligence, errors, omissions, strict liability, breach of contract or breach of warranty.

Client intends that LFA's involvement with the project shall not subject the individuals affiliated with LFA or its subconsultants to personal exposure for the risk attendant to that involvement. Therefore, any remedies of Client and Client's related business entities concerning services performed pursuant to the obligations imposed by this agreement shall be sought against LFA and/or its subconsultants, if any, and any related business entities, and in no event shall damages or indemnification concerning this agreement and/or project ever be sought against LFA's principals, shareholders, employees and other affiliated individuals, regardless of the kind and cause of loss involved.

Any revisions to the structural system due to Value Engineering or a Peer Review are not included in the basic services & will be charged as additional services.

If project is stopped for more than a 3 month period due to any reasons, a restart fee of \$4,000.00 will apply. Project will be designed & submitted to Plan Check to the Governing Authority in ONE Phase & in ONE unique submittal. Additional submittals to the Governing Authority due to Project Phasing will be charged as additional services based on hourly rates.

Either party to this Agreement may not assign its rights hereunder without the prior written consent of the other party. Nothing contained in this agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or Consultant.

**9. TERMINATION**

This agreement may be terminated by either party by seven (7) days' written notice to the other in the event of a substantial failure of performance by the other party through no fault of the terminating party. If this agreement is terminated, LFA shall be paid for services performed to the termination notice date, including reimbursable expenses due. If LFA for any reason does not complete all the services contemplated by this agreement, LFA cannot be responsible for the accuracy, completeness or workability of the contract documents prepared by LFA if used, modified or completed by another party or the Client. Accordingly, the Client agrees, to the fullest extent permitted by law, to indemnify, defend and hold LFA harmless from any claim, liability or cost (including reasonable attorneys' fees and defense costs) for injury or loss arising or allegedly arising from such reuse, modification or completion made by any party to any contract documents prepared by LFA.

If Client sells the Project, Client shall obtain from buyer an agreement, for the benefit of Consultant, which guarantees that the release and indemnification of Consultant will be honored by buyer and any subsequent buyer. These provisions shall survive the termination of this Agreement; and in the event that any portion of these provisions shall be prohibited by law, then these provisions shall not be void, but rather shall be interpreted as applying only to fullest extent allowed by law.

**10. OWNERSHIP OF DOCUMENTS**

The drawings, calculations and specifications are instruments of service and are, and shall remain, the property of LFA, whether the project for which they are made is executed or not. They are not to be used on other projects or extensions to this project except by agreement in writing and with appropriate compensation to LFA. Reuse or modification of the project documents by Client, shall be at Client's sole risk and Client agrees to indemnify, defend and hold LFA harmless from all claims, damages, and expenses, including attorney's fees, arising out of such reuse or modification by Client or by others acting through Client. If this agreement is terminated as discussed in Item 9 above, the Client shall pay a licensing fee as compensation of \$10,000 for the Client's continued use of LFA's Instruments of Service solely for purposes of completing, using, and maintaining the Project.

**11. VENUE**

Labib Funk + Associates (LFA) is a DBA of John Labib Structural Engineers, LLP.

This agreement shall be interpreted and enforced in accordance with the laws of the State of California. The venue of any action brought to interpret or enforce any of the terms of this agreement or otherwise adjudicate the rights or liabilities of the parties hereto shall be in Los Angeles County, California.

**12. BANKRUPTCY**

Consultant shall be entitled to immediately, and without notice, suspend the performance of any and all of its obligations pursuant to this agreement if Client files a voluntary petition seeking relief under the United States Bankruptcy Code or if there is an involuntary bankruptcy petition filed against Client in the United States Bankruptcy Court, and that petition is not dismissed within fifteen (15) days of its filing. Any suspension of services made pursuant to the provisions of this paragraph shall continue until such time as this agreement has been fully and properly assumed in accordance with the applicable provisions of the United States Bankruptcy Code and in compliance with the final order or judgment issued by the Bankruptcy Court. If the suspension of performance of Consultant's obligation pursuant to this agreement continues for a period in excess of ninety (90) days, Consultant shall have the right to terminate all services pursuant to this agreement.

**13. LIEN RIGHTS**

This agreement shall not be construed to alter, affect or waive any design professional's lien, mechanic's lien or stop notice right which Consultant may have for the performance of services pursuant to this agreement. Client agrees to provide to Consultant the present name and address of the record owner of the property upon which the project is to be located. Client also agrees to provide Consultant with the name and address of any and all lenders who may loan money on the project and who are entitled to receive a preliminary notice.

**14. THIRD PARTY LENDERS**

If payment for Consultant's services is to be made on behalf of Client by a third-party lender, Client agrees that Consultant shall not be required to indemnify the third-party lender, in the form of an endorsement or otherwise, as a condition to receiving payment for services.

**15. ADDITIONAL AGREEMENTS/GUARANTEES**

The Consultant shall not be required to execute any documents subsequent to the signing of this Agreement that in any way might, in the judgment of the Consultant, increase the Consultant's contractual or legal obligations or risk, or adversely affect the availability or cost of its professional or general liability insurance. Nor shall Consultant be required to sign any documents, requested by any party, including Client, that would result in the Consultant's having to certify, guarantee, warrant or state the existence of conditions whose existence the Consultant cannot ascertain. The Client also agrees not to make resolution of any dispute with the Consultant or payment of any money due to the Consultant, in any way contingent upon the Consultant's signing any such certification, guarantee, warranty or statement.

**16. CONDOMINIUMS AND FUTURE CONVERSION TO CONDOMINIUMS**

If Condominiums, or future conversions to Condominiums are proposed, undersigned shall provide LFA with proof of Owner purchased insurance plan for Condominiums naming LFA as insured for errors and omissions and general liability. Owner purchased insurance plan shall preempt and take effect prior to insurance provided by LFA. Owner to be responsible for each and every deductible regardless of allegations made against LFA. Insurance shall remain in force for 10 years after substantial completion.

**CONDO CONVERSION:** In the event that Owner or Owner's successor in interest or assigns converts or allows the conversion of the Project from an apartment project, as presently contemplated by the parties, to a project involving residential condominium ownership, then the other provisions of this Agreement notwithstanding, LFA shall be released and indemnified by Owner from any damages or claims arising from or as a result of the conversion process which are brought by a unit owner or the unit owners' association. LFA shall not be released or indemnified, however, from (1) damages or claims arising prior to the commencement of the conversion of the Project. Owner will be released from the



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conversion obligations if (a) Owner does not convert the Project for a period of ten (10) years following substantial completion of the original construction of the Project; or (b) prior to the conversion process, Owner purchases and maintains Project specific professional liability insurance coverage with policy coverage's equal to the amounts required in the LFA contract for the benefit of LFA; or (c) if Owner sells the Project, Owner obtains from buyer an agreement, for the benefit of LFA, which guarantees the release and indemnification of LFA will be honored by buyer and any subsequent buyer. These provisions shall survive the termination of this Agreement; and in the event that any portion of these provisions shall be prohibited by law, then these provisions shall not be void, but rather shall be interpreted as applying only to fullest extent allowed by law.