

August 14, 2020

Jennifer Linton  
Conifer Realty  
1000 University Ave, Suite 500  
Rochester, NY 14607

Dear Mrs. Linton,

To assist Conifer Realty with your green building and energy efficiency goals on the 25 Delaware project, Sustainable Comfort is pleased to present this proposal [referred to as Exhibit "A"]. We are committed to helping you deliver a high quality, energy efficient and healthy building. As a RESNET certified HERS Rater, Energy Star Partner, NYSERDA partner, Enterprise Green Communities partner, and USGBC LEED for Homes Provider, Sustainable Comfort will work with your team to achieve compliance with the following programs:

**Energy Efficiency Program:** EPA Energy Star Multifamily New Construction Program – ERI Pathway  
**Green Building Program:** LEED Version 4, BD+C Homes

### Proposed Scope

The 25 Delaware Ave project consists of a total of 52 units with two separate multifamily buildings consisting of a 46 unit 4 story building above a parking garage at 25 Delaware Ave, and a 6 unit building in Albany NY. As the green building and energy efficiency partner for this project, Sustainable Comfort will complete these tasks:

#### Phase I – Pre-Development Support

1. Utility Cost Estimate – If requested we can provide a utility cost estimate for anticipated electric and gas costs for the project.
2. Phase I Report – Provide the necessary documentation to the 2020 HCR 9% round. Our deliverable for this stage will be feasibility reports for the EPA Energy Star Multifamily New Construction Program to meet the mandatory energy efficiency strategy, and LEED for Homes V4 to meet the optional green building requirements.

#### Phase II – Funding Award and Construction

1. LEED Preliminary Rating – After a review of the available plans, we will review the important requirements for both the LEED for Homes and NYSERDA New Construction – Housing Program with the project team.
2. Energy Modeling – The project intends to follow the ERI Pathway of the EPA Energy Star Multifamily New Construction Program. Individual energy models using HERS Rating Software will be created for each apartment configuration using information from all available plans and specifications. Alternate constructions or equipment selections will be evaluated as needed with the project team to meet the program requirements.

3. Design Review Report - After a detailed review of the available plans, we will provide comments on any changes to meet the program checklists, inspection, and testing requirements for the LEED for Homes V4, and Energy Star Multifamily New Construction Program.
4. LEED Registration - The project will be registered with LEED and any design submissions such as the ventilation calculations submitted to the USGBC for approval.
5. Contractor Orientation - Once construction is underway, the Energy Star inspection requirements including air sealing details, insulation installation and performance testing will be reviewed with all subcontractors and any questions answered.
6. Open Wall Inspections - Open wall inspections to inspect air sealing and insulation quality following the RESNET inspection guidelines will be conducted.
7. Performance Testing - Performance testing including duct leakage testing, blower door testing, and ventilation testing for the project will be conducted, and the units will be inspected for all Energy Star and LEED items.
8. Final Energy Star Certification - At construction completion, all required information to will be compiled to issue the Energy Star Multifamily New Construction Program Certification.
9. Final LEED Submission - The project submittal packages will be reviewed in accordance with LEED for Homes regulations. Once Sustainable Comfort, Inc. receives a complete, accurate, and correct submittal package for certification, we will submit the package to the USGBC for review and complete the final certification call. Once USGBC approves the package, Sustainable Comfort will purchase a circular glass LEED plaque for the client.

### Proposed Schedule

We will begin our work upon receipt of a signed Professional Service Agreement [Exhibit B attached]. The Phase II work is contingent on the project receiving funding in the 2020 HCR 9% round. Our analysis will follow the schedule of the project.

### Fee for Service

Our total fee for these services is **Seventy Eight Thousand Three Hundred Seventy Five Dollars [\$78,375.00]**. We will have billed for the following fee according to these milestones:

#### Phase II: Construction

The Phase II work is contingent on the project receiving funding in the 2020 HCR 9% round. We will not charge any fees until we receive notice that the project has been selected for funding.

- Milestone 1: Design Review - to 35% of total project cost, billed after construction financing has been closed.
- Milestone 2: Contractor Orientation - to 55% of total project cost, billed after our meeting with the GC and subcontractors to review our inspection schedule and program requirements.
- Milestone 3: Open Wall Inspection - to 75% of total project cost, billed after we have begun open wall inspections.
- Milestone 4: Final Testing - to 95% of total project cost, billed after final testing has begun for the project.

- Milestone 5: Certification – to 100% of total project cost, billed after the project receives notice of certification from the Energy Star and LEED for Homes programs.

Estimated Additional Fees: LEED Registration and Certification: Separate fees for registration and certification will be due to the USGBC, which are not included in our fee for service. At the time of registration and certification we will request permission to pay for the fees and submit an invoice for reimbursement. The exact fees are subject to change from the USGBC and will be re-confirmed prior to payment. By utilizing the SCI member fee we can obtain discounts for the project fees. At the current rates, we estimate the member fees to be:

- Registration member fees: **\$1,800 due during design**
- Certification member fees: **\$2,858 [\$0.035/sf] due at end of construction**

We are looking forward to working with you and your team on this project. Please let me know if you have any questions.

Sincerely,  
Albert LaValley, President  
Sustainable Comfort, Inc.  
860-595-9907  
albert@greenrater.com

Enclosure: Professional Service Agreement

By signing below, signing party agrees to proceed with the proposal dated August 14, 2020 to Conifer Realty and agrees to the terms and conditions in Exhibit B "Agreement for Engineering Services."

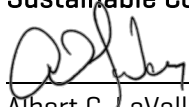
**Conifer Realty**

  
\_\_\_\_\_  
Authorized Signer

8/17/2020

\_\_\_\_\_  
Date

**Sustainable Comfort, Inc.**

  
\_\_\_\_\_  
Albert G. LaValley, President

8/18/2020

\_\_\_\_\_  
Date

**EXHIBIT B: AGREEMENT  
FOR ENGINEERING SERVICES**

THIS AGREEMENT made August 14, 2020, by and between:

**Conifer Realty**  
**1000 University Ave, Suite 500**  
**Rochester, NY 14607**  
(hereinafter referred to as "Client")

and

**Sustainable Comfort, Inc.**  
**146 Main Street, Suite 301**  
**Worcester, MA 01608**  
(hereinafter referred to as "SCI")

**WITNESSETH**, that it is the intention of the Client to retain SCI for energy engineering consulting services in support of green building and energy efficiency efforts at a proposed site(s):

**25 Delaware, Albany, New York**

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions contained herein, the Client and SCI agree as follows:

**ARTICLE 1: PROFESSIONAL SERVICES**

SCI shall provide Basic Services and Additional Services as identified in this Article 1. Basic Services and Additional Services shall hereinafter be collectively identified as the Services.

**1.1 BASIC SERVICES**

SCI's Basic Services shall consist of engineering services as detailed in our proposal letter dated **August 14, 2020** to **Conifer Realty**.

**1.2 ADDITIONAL SERVICES**

SCI shall provide Additional Services for the Project when authorized in writing by the Client in addition to the Basic Services. Such Additional Services shall include any services not specifically included in Paragraph 1.1 of this Agreement, and the scope, deliverables, and schedule for such Additional Services shall be defined in writing through a mutually agreed modification to this Agreement.

**ARTICLE 2: SCI'S RESPONSIBILITIES**

**2.1.1** SCI acknowledges the importance to the Client of the Client's project schedule and agrees to put forth its best professional efforts to perform its services under this Agreement in a professional and workmanlike manner consistent with that schedule. The Client understands, however, that SCI's

performance must be governed by sound analysis and engineering practices and the availability of information provided by others.

**2.1.2** SCI shall not be responsible for delay caused by circumstances beyond its reasonable control, nor for delay which may be occasioned by actions which are required in the exercise of usual and customary professional care. SCI shall not be liable for damages arising out of any such delay, nor deemed to be in default of this Agreement as a result thereof.

**2.1.3** Client and SCI understand and agree that the SCI is providing the Services according to its best skill and judgment as a professional and that SCI has no control over decisions of third-parties who make final determinations as to whether the Project may qualify for any energy efficiency standard, tax credit, or certification requirement. SCI shall act in the capacity as an advisor to the Client, but no action or activity of the SCI when performing the Services shall be construed as a guarantee or warranty that (1) the Project will achieve an identified Target Green Measure or any related tax incentive or other funding; or (2) that any Target Green Measure shall exist or be available when the Project is completed.

**2.1.4** Client acknowledges that any cost estimates provided by SCI shall represent SCI's judgment as a professional familiar with the construction industry. It is recognized that neither Client nor SCI has control over the cost of labor, materials or equipment, or over any third-party firms' methods of determining bid prices, or over competitive bidding, market or negotiating conditions. Accordingly, SCI cannot and does not warrant or represent that any bids or negotiated prices prepared by any third-party firm will not exceed the estimate.

**2.1.5** In the event that the Project is subsequently designed and/or constructed by others, SCI shall have no responsibility for the design services or construction work performed by others and any failure of such others to produce a project that achieves the Target Green Measures.

**2.1.6** SCI has the expertise, experience and skill to render the desired Services and shall perform the Services in a competent and efficient manner using best efforts to accomplish the objectives of the Service.

**2.1.7** SCI shall abide by and perform the Services in accordance with all applicable laws, rules, regulations and standards prevailing in the industry.

**2.1.8** SCI shall maintain all necessary licenses, permits, certifications or other authorizations necessary to provide the Services under this Agreement during the term of this Agreement.

**2.1.9** SCI has become familiar with and examined the project site and the local conditions under which the project is to be designed, constructed and operated.

### **ARTICLE 3: CLIENT'S RESPONSIBILITIES**

**3.1.1** The Client shall provide full information regarding the building systems and the utility costs and bills, for the Project as identified in our proposal dated **August 14, 2020** to **Conifer Realty**.

**3.1.2** SCI shall be entitled to rely upon the accuracy and completeness of information furnished by the Client. Client agrees to indemnify and hold SCI harmless for any claim for damages solely arising from any inaccurate information provided by Client and all services and work based on inaccurate information supplied by Client.

**3.1.3** The Client shall furnish all information reasonably requested by SCI that is necessary to perform the Services in a timely manner, so as not to delay the Services.

**3.1.4** The Client shall provide SCI access to the Project and all areas of the Project necessary for Consultant to perform the Services.

**3.1.5** The Client shall designate a representative authorized to act in its behalf with respect to the Project. All direction and authorization shall be by or through such representative.

#### **ARTICLE 4: COMPENSATION**

##### **4.1 RATE OF COMPENSATION.**

**4.1.1** SCI will be compensated for its professional services as outlined in Exhibit A above. The site visits for this project are included in our price.

**4.1.2** SCI shall submit a monthly invoice for all Services and the Client shall pay any such invoice within 30 days of receipt.

**4.1.3** By signing below, the Customer agrees to pay SCI **Seventy Eight Thousand Three Hundred Seventy Five Dollars (\$78,375.00)**, as outlined in our proposal dated **August 14, 2020** to **Conifer Realty**.

**4.1.4** SCI acknowledges and agrees that, except as provided herein, it shall not be entitled to and the Client shall not be obligated to pay, any monies or other compensations for the Services provided in this Agreement.

##### **4.2 ADDITIONAL SERVICE RATES.**

**4.2.1** The cost of any Additional Services requested in accordance with Paragraph 1.2 of this Agreement may be negotiated as a fixed fee for a discrete scope of services or may be billed at SCI's hourly rates. For all Services to be billed at hourly rates, including the Basic Services, the following rate schedule shall apply:

##### **Sustainable Comfort, Inc.**

##### **Professional Services Hourly Rates**

Officer/Executive	\$200 per hour
Senior Engineer/Program Manager	\$165 per hour
Senior Project Manager	\$150 per hour
Project Manager	\$135 per hour
Engineer	\$115 per hour

\*Applicable taxes not included in rates.

**4.2.2** SCI shall submit a monthly invoice for all Additional Services and the Client shall pay any such invoice within 30 days of receipt. No additional work will be paid without prior written authorization from **Conifer Realty**.

**ARTICLE 5: GENERAL TERMS**

**5.1 TERM OF AGREEMENT**

**5.1.1** The term of this agreement shall commence once executed and shall continue until SCI satisfactorily completes the performance of Services or until either party decides to terminate this agreement as provided for herein (the "Term").

**5.2 TERMINATION OF AGREEMENT**

**5.2.1** This Agreement may be terminated by either party upon ten (10) days written notice should the other party fail substantially to perform in accordance with its terms through no fault of the party initiating the termination.

**5.2.2** In the event of termination as set forth in Subparagraph 5.1.1, SCI shall be paid for Services performed to termination date, if such obligation to pay is not in dispute. Any and all Materials prepared for and/or delivered to the Client prior to termination shall remain the property of the Client.

**5.3 INSURANCE**

**5.3.1** SCI shall secure and maintain in force during the life of the Agreement, insurance policies and coverage as described below:

General Liability:	
General Aggregate:	\$ 2,000,000
Personal Injury:	\$ 1,000,000
Each Occurrence:	\$ 1,000,000
Medical Expenses (any one person):	\$ 10,000
Automobile Liability:	
Combined Single Limit:	\$ 1,000,000
Owner's Protective Liability:	
Each Occurrence:	\$ 1,000,000
Aggregate:	\$ 1,000,000
Umbrella Liability:	
Each Occurrence:	\$5,000,000
Aggregate:	\$5,000,000
Worker's Compensation:	
Employer Limit Each Accident:	\$ 1,000,000
Employer Limit Disease – Policy Limit:	\$ 1,000,000
Employee Limit Disease – Each Employee:	\$ 1,000,000

All such insurance policies shall be in a form satisfactory to Client, with companies having a minimum rating of "A" by the A.M. Best Co., and shall be obtained and become effective within two weeks of execution of this Agreement. SCI shall submit certificates of insurance to Client. The certificate shall require that the insurance Client give at least thirty (30) days prior written notice of cancellation or material change in any such policy to Client.

**5.3.2 Waivers of Claims; Subrogation.** Notwithstanding anything to the contrary set forth in this Agreement, the Client and the SCI waive all claims against one another for damage to or destruction of real or personal property to the extent such damage or destruction can be covered by commercially available

“all risks” property insurance. The risk to be borne by each party shall also include the satisfaction of any deductible amounts required to be paid under any applicable property insurance carried by the party whose property is damaged, and each party agrees that the other party shall not be responsible for satisfaction of such deductible. The intent of this provision is that each party shall look solely to its insurance with respect to property damage or destruction that can be covered by “all risks” insurance of the type described in this Paragraph. Each such policy shall include a waiver of all rights of subrogation by the insurance carrier against the other party, its agents, and employees with respect to property damage covered by the applicable property insurance policy.

#### **5.4 INDEMNITY**

**5.4.1** Subject to Sections 5.4 and 5.5 herein, each party (individually, an “Indemnitor”) shall indemnify and hold the other party, its parent, subsidiary, affiliated companies, agencies, or entities and their respective officers, directors and employees harmless from, and against, all claims, costs, damages, expenses, settlements, fines, awards, demands, and liability of any other whatsoever nature or kind, including reasonable attorneys’ fees, court costs, costs of appeal and expert witness fees (the “Losses”), to the extent caused by (a) Indemnitor’s breach of this Agreement or (b) Indemnitor’s acts, omissions or negligence.

#### **5.5 MUTUAL WAIVER OF CONSEQUENTIAL DAMAGES**

**5.5.1** The SCI’s sole liability (whether in contract, tort, statute, for indemnity under Section 5.3 herein, or otherwise) for the Losses in any manner related to this Agreement as between these parties, shall, subject to the limitations set forth herein, be the payment of direct damages. Notwithstanding any other provision of this Agreement to the contrary, and to the fullest extent permitted by law, the SCI’s and its affiliates, shareholders, officers, directors, employees, agents, contractors, consultants, subcontractors, and subconsultants’ liability under this Agreement or in connection with the Project shall not include consequential, indirect, special, incidental, or similar damages (including damages for loss of business, loss of profits or the like) arising in any manner from this Agreement or the Services hereunder regardless of how characterized, even if the SCI or such other party has been advised of the possibility of such damages or if such damages were reasonably foreseeable, and even if a remedy set forth herein is found to have failed of its essential purpose.

**5.5.2** The Client’s sole liability (whether in contract, tort, statute, for indemnity under Section 5.3 herein, or otherwise) for the Losses in any manner related to this Agreement as between these parties, shall, subject to the limitations set forth herein, be the payment of direct damages. Notwithstanding any other provision of this Agreement to the contrary, and to the fullest extent permitted by law, the Client’s and its affiliates, shareholders, officers, directors, employees, agents, contractors, consultants, subcontractors, and subconsultants’ liability under this Agreement or in connection with the Project shall not include consequential, indirect, special, incidental, or similar damages (including damages for loss of business, loss of profits or the like) arising in any manner from this Agreement or the Services hereunder regardless of how characterized, even if the Client or such other party has been advised of the possibility of such damages or if such damages were reasonably foreseeable, and even if a remedy set forth herein is found to have failed of its essential purpose.

#### **5.6 LIMITATION OF LIABILITY**

**5.6.1** Subject to the limitation in Section 5.4 herein, the aggregate liability of the SCI, including for indemnity under Section 5.3 HEREOF, shall not exceed the greater of: (i) the fee paid to consultant for the services or (ii) AVAILABLE PROCEEDS OF INSURANCE PROVIDED HEREUNDER. The allocations of liability in this section represent the agreed and bargained-for understanding of the parties and the SCI’s Fee for the Services expressly reflects the provisions of this SECTION 5.5.



## **5.7 HAZARDOUS MATERIALS**

**5.7.1** Neither the Client nor the SCI desires to or is licensed to undertake direct obligations relating to the identification, abatement, cleanup, control, removal or disposal of hazardous materials. As used in this Agreement, the term "hazardous materials" shall mean any substances, including but not limited to asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes), bacteria, fungus, mold, or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Facility (hereinafter collectively referred to as "hazardous materials"). Consistent with applicable laws, Client shall supply SCI with any information in its possession relating to the presence of hazardous materials in areas where SCI shall perform Services that may result in the disturbance of hazardous materials. If either Client or SCI become aware of or suspects the presence of hazardous materials that may be disturbed by the Services, it shall immediately stop the Services in the affected area and notify the other's contacts. As between Client and SCI, Client shall be responsible at its sole expense for addressing the potential for or the presence of hazardous materials in conformance with all applicable laws and addressing the impact of its disturbance before Client continues with the Services.

## **5.8 SUCCESSORS AND ASSIGNS**

**5.8.1** The Client and SCI each binds themselves, successors, assigns, and legal representatives to the other party to this Agreement and to the successors, assigns, and legal representatives of the other party with respect to all covenants of this Agreement. Neither the Client nor SCI shall assign, sublet, or transfer its interest in this Agreement without the written consent of the other. SCI may elect to contract with subconsultants and/or subcontractors as it so deems necessary or desirable. If SCI contracts with sub-consultants or subcontractors then SCI shall be fully responsible for the performance of such sub-consultants or subcontractors and such sub-consultants and subcontractors shall be subject to the same terms and conditions as SCI.

## **5.9 FORCE MAJEURE**

**5.9.1** Neither Party shall be liable under this Agreement for delays, failures to perform, damages, losses or destruction or malfunction of any equipment or any consequence thereof, caused by, or due to fire, earthquake, flood, water, the elements, third party labor disputes, power failures, explosions, civil disturbances, acts of terrorism, governmental actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties or cause beyond its reasonable control.

## **5.10 EXTENT OF AGREEMENT**

**5.10.1** This Agreement represents the entire and integrated agreement between the Client and SCI and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended only by Amendments numbered 1, 2, 3, etc., which are signed by both the Client and SCI.

**5.10.2** It is agreed that if the Client issues a Purchase Order or other document for the Services provided under this Agreement, such instrument shall be deemed for the Client's internal use only, and any provisions contained therein which may be in conflict with any terms of this Agreement shall be null and void and shall have no effect whatsoever upon this Agreement.

## **GOVERNING LAW**

This Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

**THIS AGREEMENT**, once executed, shall be effective as of the first date signed below.

**Conifer Realty**

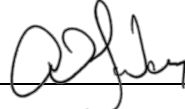


\_\_\_\_\_  
Authorized Signer

8/17/2020

\_\_\_\_\_  
Date

**Sustainable Comfort, Inc.**



\_\_\_\_\_  
Albert G. LaValley, President

8/18/2020

\_\_\_\_\_  
Date