

**AGREEMENT FOR PROVISION OF LIMITED PROFESSIONAL SERVICES**

<b>CLIENT NAME:</b>	Church on the Hill	<b>DATE:</b>	March 30, 2020
<b>ADDRESS:</b>	169 Main Street, Lenox, MA 01240	<b>TELEPHONE:</b>	413-329-3026
<b>CONTACT:</b>	Liz Goodman	<b>E-MAIL:</b>	liz@goodman.md
<b>PROJECT LOCATION:</b>	169 Main Street, Lenox, MA		
<b>PROJECT DESCRIPTION:</b>	Site review and parking study to determine potential additional parking opportunities.		
<b>ESTIMATED SCHEDULE:</b>	Start immediately upon notice to proceed w/ retainer; estimate 30-60 days to complete.		

<b>OUTLINE SCOPE OF SERVICES:</b>	
<u>Basic Services:</u>	<u>Proposed Fee:</u>
<b>1. Site Visit:</b> Under this item we will visit the site with client and review potential areas for new parking. It is anticipated that there will be 2-3 potential options for new / reconfigured parking and possible use of pervious / green pavements. We will review the site for topography, visible utilities, wet areas, ledge and other constraints as well as opportunities.	\$900
<b>2. Compiled Site Plan:</b> Under this item we will develop a compiled site plan using available information such as USGS mapping, existing surveys (if available), aerial photography, assessor's mapping, Lenox zoning requirements, and other information to develop the base map for a parking assessment. The plan will be annotated with our observed constraints and opportunities during our site visit and will be used to prepare the preliminary feasibility concepts.	\$1,100
<b>3. Feasibility Memo &amp; Parking Concepts:</b> Item includes the preparation of an e-mail memo summarizing the parking opportunities and constraints identified by the research performed in previous items. This item will also illustrate 2 or 3 conceptual parking configurations for discussion and 1 follow up meeting to review the results as required. The illustrations will be 11x17 in size.	\$2,500
<b>TOTAL FEE ESTIMATE:</b>	<b>\$4,500</b>

**TOTAL FEE ESTIMATE:** \$4,500  
(Basic Services)

**AMOUNT OF RETAINER:** \$1,000  
(Retainer will be applied to last invoice(s) under the agreement)

**POSSIBLE ADDITIONAL SERVICES:**

(Not included in Basic Services; to be performed as needed subject to Client authorization.)

- Archeological and/or Historical Coordination
- Easement Plan Preparation
- Property Line Survey
- Permitting of Any Kind
- Engineering Design Plans
- Bid Phase Services
- Construction Phase Services
- Reimbursable Expenses, Mileage, Postage, Binding, etc.

**ACCEPTED BY CLIENT:**

**OFFERED BY FORESIGHT LAND SERVICES, INC:**

**BY:** \_\_\_\_\_  
(AUTHORIZED SIGNATURE)

**BY:**   
(AUTHORIZED SIGNATURE)

\_\_\_\_\_  
(TYPE OR PRINT NAME AND TITLE)

Steven A Mack, President  
(TYPE OR PRINT NAME AND TITLE)

**DATE:** \_\_\_\_\_

**DATE:** March 30, 2020

*Note: This Agreement is supplementary to and incorporates by reference the General Provisions for Limited Professional Services.  
Note: Acceptance of this Proposal is Limited to a period of thirty days after the Date (above) on which the proposal is offered, after which time the Proposal is Null and Void, unless amended in writing, including revisions of Proposed Schedule and Fees.*

**I. CONDITIONS OF AGREEMENT:** These General Provisions together with the attached proposal constitute the terms of the Agreement between FORESIGHT LAND SERVICES, INC. a corporation duly organized under the laws of the Commonwealth of Massachusetts ("FORESIGHT"), and the "CLIENT" with respect to the performance of the Services described in the attached proposal. The General Provisions also apply equally to the Basic Services as well as any Additional Services authorized subsequently, whether referred to explicitly or not. The proposal with Scope of Basic Services, any Additional Services authorized subsequently, any attachments, and these General Provisions contain all of the terms and conditions of this Agreement, and no oral representations made by either party prior to execution of this Agreement are a part hereof.

**II. SCOPE OF SERVICES; STANDARD OF PRACTICE:** FORESIGHT will act as an independent consultant representing the CLIENT, but shall not be considered an "Agent" or fiduciary of CLIENT, nor shall its services be considered as imposing any fiduciary duty. FORESIGHT agrees to perform the services described in the attached proposal. The Basic Scope of Services and the resultant fee are based on our current understanding of the Project and the assumptions and conditions stated in the proposal. FORESIGHT will carry out its services consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing in Western Massachusetts under similar conditions, circumstances, timeframe, and locality. FORESIGHT makes no other representations concerning its services, express or implied; and offers no warranty or guarantee as part of this Agreement, or any report, opinion, or document generated as a result thereof.

**III. ADDITIONAL SERVICES:** Services not explicitly agreed to as detailed in this Agreement will be considered Additional Services and subject to increased project fees. Any Additional Services will be provided subject to the CLIENT's authorization.

**IV. CERTIFICATIONS, GUARANTEES AND**

**WARRANTIES:** Foresight shall not be required to sign any documents, no matter by whom requested, that would result in Foresight having to certify, guarantee or warrant (hereinafter "certify") the existence of conditions whose existence Foresight cannot ascertain within the Basic Scope of Services and Standard of Practice. Foresight shall not be required to "certify" or execute any documents subsequent to the signing of this Agreement that in any way might, in Foresight's sole judgment, increase Foresight's risk or the availability or cost of its professional or general liability insurance. The Client hereby agrees not to make resolution of any dispute with Foresight or payment of any amount due to Foresight in any way contingent upon Foresight's signing any such "certification." Notwithstanding, as applied to any services under this agreement, the word "certify" shall mean an expression of the Consultant's professional opinion to the best of its information, knowledge and belief, and under no circumstances shall it constitute a warranty or guarantee by the Consultant.

**V. ACCESS TO SITE:** Unless otherwise stated, FORESIGHT will have access to the Project Site for activities necessary for the performance of the services, and such access will be arranged by the CLIENT. The CLIENT understands that use of testing or other equipment may unavoidably cause some damage. FORESIGHT will take precautions to minimize damage due to these activities, but shall not be held responsible for the restoration of any resulting damage.

**VI. LEGAL REPRESENTATION:** CLIENT is responsible for obtaining any and all legal advice and representation necessary for this Project, and when applicable, making its attorney available to FORESIGHT whenever necessary relative to the Project. Any opinions, conclusions or recommendations which FORESIGHT may express, or any assistance it may render to CLIENT on applications or processing of permits or approvals for the Project pursuant to this Agreement do not constitute legal advice. CLIENT shall consult their attorney about such matters.

**VII. CAVEAT ABOUT SERVICES RELATED TO PERMITS AND APPROVALS:** Granting of permits and approvals by municipal or other regulatory agencies often includes discretionary and subjective judgments. Such approvals depend upon many factors over which FORESIGHT has no control. FORESIGHT can therefore give no assurance that approvals will be granted or that any conditions imposed by the permit-granting authority will be acceptable to the CLIENT, or that permits will not be appealed. In consideration of CLIENT's assumption of the potential risks and rewards of the Project, CLIENT hereby waives any claim against FORESIGHT relative to any damages, direct or indirect, which may result from an unfavorable decision, appeal, or denial of any applications for permits or approvals. FORESIGHT shall be liable only for any proven damages resulting solely from FORESIGHT's negligent acts, errors or omissions, subject to the provisions of the Limitation of Professional Liability contained herein.

**VIII. OPINION OF PROBABLE COSTS:** Any opinions of the probable costs (not to be confused with "estimates") to construct the work recommended, designed, or specified by FORESIGHT are based on our experience and judgment as design professionals familiar with construction. The opinion may be based on a number of assumptions which FORESIGHT cannot control, such as hidden or changed site conditions, the means and methods of construction selected by the Contractor, the cost and extent of labor, equipment, and materials the contractor may employ, contractor's techniques in determining prices, market conditions at the time of bidding, and many other factors. Given the assumptions which must be made, FORESIGHT does not represent that its opinions of probable costs will be accurate. CLIENT therefore waives any claim against FORESIGHT relative to the accuracy of any opinion of probable construction costs prepared by FORESIGHT. If CLIENT desires an accurate construction "estimate," CLIENT should hire a professional estimator.

**IX. SERVICES DURING CONSTRUCTION:**

Unless otherwise stated in the proposal, it is assumed that FORESIGHT's services will include a full range of services including Services during the Construction Phase. The purpose of FORESIGHT's services during the construction phase of the Project, including any visits to the site, will be to enable FORESIGHT to better perform the duties and responsibilities assigned to and undertaken by it as an experienced and qualified design professional, and to provide the CLIENT with a greater degree of confidence that the completed work of the construction contractor or contractors (hereinafter "Contractor") will conform generally to the Contract Documents, and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by the Contractor. Construction Observation Site Visits will be conducted at intervals appropriate to the stage of construction to allow FORESIGHT to observe the general progress and quality of the Contractor's work, and to enable FORESIGHT to give the CLIENT a greater degree of

confidence that the work is being performed in a manner consistent with the construction documents. These Construction Observations shall not be construed as being equivalent to "Inspections." Unless otherwise agreed, FORESIGHT services do not include full-time On-Site Project Representation, and the Construction Observation Site Visits are not represented as being complete or comprehensive. During Construction Observation Site Visits, FORESIGHT shall not be responsible for any of the Construction Activities on the jobsite. FORESIGHT shall have no responsibility for supervising, directing or controlling in any way the Contractor's work. FORESIGHT shall have no authority over nor responsibility for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, nor jobsite safety precautions and programs incidental to the work of Contractor, nor for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes, permit conditions, or orders applicable to Contractor furnishing and performing its work. FORESIGHT does not guarantee the performance of the construction contract by the Contractor, and is not responsible if Contractor fails to furnish and perform its work in accordance with the Contract Documents, nor for any Change Orders that are issued during construction.

**X. WORK SCHEDULE:** FORESIGHT will endeavor to complete its services within the estimated schedule in the Agreement. If FORESIGHT is obstructed or delayed by any act of the CLIENT or the CLIENT's other Design Professionals, Construction Contractor, or agents, or by any act beyond the control of FORESIGHT including, but not limited to, inclement weather, illness, strikes, unanticipated degree of difficulty encountered in performing said services, or delay created within or by approving agencies, then the scheduled date for completion of the services will be extended an equivalent number of days. Compensation for any resulting additional services may also be required.

**XI. PAYMENT TERMS; SUSPENSION OF SERVICES:** The CLIENT agrees to pay FORESIGHT for the services rendered under this Agreement according to the amounts and payment methods specified in the Agreement. FORESIGHT will send you periodic invoices. Payment is due when you receive the bill. If you do not pay the balance due within thirty calendar days after the invoice date, FORESIGHT will add a FINANCE CHARGE OF 1½% PER MONTH (18% PER YEAR) to the amount due. In addition, FORESIGHT, at its sole discretion, may give you seven (7) days written notice, and suspend services under this Agreement unless you remit full payment within seven days. FORESIGHT is not liable for any delay or consequential damages which result from such suspension of services. The CLIENT agrees to pay all costs of collection, including reasonable attorneys' fees.

**XII. OWNERSHIP, AND LIMITED LICENSE FOR USE OF DOCUMENTS:** FORESIGHT agrees to provide CLIENT with a limited license to use the "Work Products" listed in the Agreement for the intended purposes of the Project, and for information and record reference purposes in connection with the completed Project. FORESIGHT will retain ownership of all documents it prepares or furnishes for this Project. This includes but is not limited to plans, drawings, reports, opinions of probable construction cost, specifications, field notes, computations, test data, computer files, and other such data, whether produced by hand or electronically, in hard copy or on electronic media. These documents are instruments of service prepared by FORESIGHT, and FORESIGHT shall retain all common law, statutory and other reserved rights, including without limitation, the copyrights thereto. FORESIGHT's agreement to provide CLIENT with a limited license to use the "Work Products" does not convey to the CLIENT any ownership rights, copyrights, or

rights to reuse the Work Products for any other project. In consideration of full payment for its services, FORESIGHT agrees that it will not, without CLIENT's prior consent, release to any other party any "Work Products" in the agreement which the CLIENT specifies as being confidential or proprietary. CLIENT may use the Work Products prepared by FORESIGHT for reference information and use intended for the specified Project but for no other projects. CLIENT agrees not to re-use (or allow other parties to use) the "Work Products" or information (a) to complete the Project if FORESIGHT's agreement has been terminated or FORESIGHT is no longer involved in the Project; (b) extensions or revisions of the Project without FORESIGHT's involvement; or (c) any other project. If CLIENT wants to re-use or adapt FORESIGHT's previous work, the CLIENT is obligated as a condition precedent to negotiate with FORESIGHT appropriate additional compensation, indemnification clauses, and other terms for such re-use or adaptation. If CLIENT re-uses or adapts the work without FORESIGHT's written authorization, consent or involvement, CLIENT assumes all associated responsibilities and risks, and agrees to defend, indemnify and hold harmless FORESIGHT and its sub-consultants, agents, officers and employees, from all direct or indirect claims, damages, losses and expenses, including reasonable attorney's fees and expert witness fees, arising out of or resulting therefrom such unauthorized reuse. Unless specifically stated in this Agreement, FORESIGHT will not provide CLIENT with any "Work Products" on electronic media. If such transfer of data is later agreed to, Special Terms and Conditions for Use of Electronic Data Files will apply in addition to these General Provisions and there may be additional compensation.

### **XIII. DELIVERY AND REUSE OF ELECTRONIC FILES**

In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by the Consultant, the Client agrees that all such electronic files are instruments of service of the Consultant, who shall be deemed the author, and shall retain all common law, statutory law and other rights, without limitation, including copyrights.

CLIENT agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project. The Client agrees not to transfer these electronic files to others without the prior written consent of the Consultant.

The Client further agrees to waive all claims against the Consultant resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than the Consultant.

FORESIGHT makes no representation about the electronic files transmitted to CLIENT being compatible with Client's programs and computer systems. If FORESIGHT is required to expend additional effort to reformat electronic files into other formats for CLIENT's use, these efforts shall be compensated for as Additional Services.

Electronic files furnished by either party shall be subject to an acceptance period of ten (10) working days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic files shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files.

The Client has been made aware that differences may exist between the electronic files delivered and the printed hard-copywork product documents. In the event of a conflict between the final issued work product documents prepared by the Consultant and electronic files, the final hard-copy documents shall govern.

In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless FORESIGHT, its officers, directors, employees and subconsultants (collectively, Consultant) against all damages, liabilities or costs, including

reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than the Consultant or from any reuse of the electronic files without the prior written consent of the Consultant. Under no circumstances shall delivery of electronic files for use by the Client be deemed a sale by the Consultant, and the Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the Consultant be liable for indirect or consequential damages as a result of the Client's use or reuse of the electronic files.

**XIV. HIDDEN CONDITIONS & HAZARDOUS MATERIALS:** FORESIGHT's services do not include studies or investigations regarding Hidden Conditions or Hazardous Materials. A condition is "hidden" if it cannot be documented by reasonable visual surface observation or review of records customarily and readily available during the performance of the services being rendered. This includes without limitation underground utilities and structures. Hazardous Materials may include but are not limited to asbestos, or spills of oil or other pollutants.

If CLIENT is aware of or has reason to believe that such Hidden Conditions or Hazardous Materials exist on the site, CLIENT shall notify FORESIGHT. If FORESIGHT has reason to believe that Hidden Conditions or Hazardous Materials may exist on the Project Site, FORESIGHT shall notify the CLIENT. In either case, CLIENT shall authorize and pay for costs associated with the investigation of such a condition and, if necessary, costs necessary to correct said condition. If (1) the CLIENT fails to notify FORESIGHT, or (2) CLIENT fails to authorize such investigation or correction after due notification by FORESIGHT of such a condition, or (3) FORESIGHT has no reason to believe that such a condition exists, the CLIENT is responsible for all risks associated with this condition, and FORESIGHT shall not be responsible for the condition nor any resulting damages to persons or property. Unless specifically agreed upon prior to the commencement of service, FORESIGHT shall have no responsibility for the discovery, presence, handling, removal, disposal, or exposure of persons to hazardous materials of any form. In addition, it is agreed that FORESIGHT's liability insurance may not cover costs from claims involving hazardous materials. Therefore, the CLIENT agrees, to the fullest extent permitted by law, to release, defend, indemnify and hold harmless FORESIGHT and its sub-consultants, agents, officers and employees, from and against all claims, damages, losses and expenses, direct and indirect, including but not limited to attorneys' fees and defense costs, arising out of or resulting from the performance, or non-performance, of any services by FORESIGHT or claims against FORESIGHT involving Hidden Conditions or Hazardous Materials.

**XV. CHANGED CONDITIONS; PROJECT CHANGES:** During the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to FORESIGHT may be revealed, or may arise during the preparation of Construction Documents (CD's) or during the construction phase. "Changed Conditions" may include but are not limited to redesign for owner-requested changes or permit-imposed conditions, changes in design scope during the CD phases resulting from coordination with other disciplines or "value engineering," issuance of Change Orders during construction, or other unforeseen conditions. To the extent that such Changed Conditions affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, FORESIGHT may call for renegotiation of appropriate portions of this Agreement. FORESIGHT shall notify CLIENT of the changed conditions necessitating renegotiation, and FORESIGHT and CLIENT shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate

this Agreement in accordance with the Termination provision hereof.

**XVI. INDEMNIFICATIONS:** FORESIGHT and CLIENT mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damage, liability or cost (including reasonable attorneys' fees and defense costs) to the extent caused by their own negligent acts, errors or omissions and those of anyone for whom they are legally liable, and arising from the project that is the subject of this agreement. Neither party is obligated to indemnify the other in any manner whatsoever for the other's own negligence.

**XVII. TERMINATION:** In the event of termination of this Agreement by either party, the Client shall within fifteen (15) calendar days of termination pay FORESIGHT for all services rendered and all reimbursable costs incurred by FORESIGHT up to the date of termination, in accordance with the payment provisions of this Agreement. Client may terminate this Agreement for the Client's convenience and without cause upon giving FORESIGHT not less than seven (7) calendar days' written notice. Either party may terminate this Agreement for cause upon giving other party not less than seven (7) calendar days' written notice for any of the following reasons: (1) Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party; non-payment by CLIENT of FORESIGHT's invoices would be considered such a substantial failure; (2) Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party; (3) Suspension of the Project or the Consultant's services by the Client for more than ninety (90) calendar days, consecutive or in the aggregate; (4) Material changes in the conditions under which this Agreement was entered into including a significant change in the Scope of Services or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes. In the event of any termination that is not the fault of FORESIGHT, the Client shall pay FORESIGHT, in addition to payment for services rendered and reimbursable costs incurred, for all expenses reasonably incurred by FORESIGHT in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expenses directly resulting from the termination.

**XVIII. ALLOCATION OF RISKS; LIMITATION OF PROFESSIONAL LIABILITY:** CLIENT and FORESIGHT have discussed the respective risks, rewards, and benefits of the Project while developing the objectives and Scope of Services. This Agreement represents an equitable allocation of those risks and rewards. In consideration of FORESIGHT's risks, and in order to persuade FORESIGHT to enter into this agreement, CLIENT agrees to limit FORESIGHT's total liability to the CLIENT for or on account of all claims and/or damages of any nature whatsoever caused by or arising out of FORESIGHT's performance of its services on this Project, including but not limited to FORESIGHT's negligent acts, errors or omissions, such that the total aggregate liability of FORESIGHT shall not exceed Fifty Thousand Dollars (\$50,000) or FORESIGHT's total fee, invoiced and paid, for services rendered on this Project, whichever is greater. FORESIGHT agrees to maintain Professional Liability Insurance in effect throughout the term of this Agreement. An Insurance Certificate will be sent to CLIENT upon request. In consideration of FORESIGHT procuring and maintaining said insurance, CLIENT agrees to hold personally harmless and hereby releases any and all claims against any director, officer, employee, or agent of FORESIGHT arising from any negligent act, error, or omission now existing or hereinafter arising in connection with the Project. CLIENT

agrees that for any and all claims for damages that it may have arising from any negligent act, error, or omission by FORESIGHT, CLIENT shall assert said claim against FORESIGHT directly and not against any of FORESIGHT's directors, officers, employees, or agents.

**XIX. CONSEQUENTIAL DAMAGES:** Notwithstanding any other provision of the Agreement, CLIENT and FORESIGHT agree that neither party shall be liable to the other for any consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the CLIENT or FORESIGHT, their respective employees, directors, officers, agents, consultants, or contractors. Consequential damages may include but are not limited to loss of use, loss of profit, damages due to delays, and/or effect on financing.

**XX. DISPUTE RESOLUTION:** CLIENT and FORESIGHT agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation, unless the parties mutually agree otherwise in writing. CLIENT and FORESIGHT further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

**XXI. APPLICABLE LAW:** The offer to perform services under this Agreement has been signed in the Commonwealth of Massachusetts and all terms and conditions of the Agreement shall be interpreted according to Massachusetts laws.

**XXII. ACCEPTANCE PERIOD:** This Agreement is open for acceptance for a period of thirty (30) days after the offering date on the Agreement, after which time it becomes null and void.