

7 June 2016

SIMPSON GUMPERTZ & HEGER



Engineering of Structures
and Building Enclosures

Mr. William Smith
Principal
Boyd/Smith Inc.
221 Massachusetts Avenue
Boston, MA 02115

Re: Proposal for Construction Administration Services, Facade Repair, 185 Massachusetts Avenue, Boston, MA

Dear Mr. Smith:

At your request, we prepared this proposal for construction administration services for the facade repairs at The Carillon 185 Massachusetts Avenue, Boston, Massachusetts.

BACKGROUND AND OBJECTIVE

Based on a ten week construction schedule provided by Phoenix Bay State Construction that is scheduled to start on Wednesday, 8 June 2016 the work includes:

1. Remove and replace all sealant joints on each building elevation,
2. Surface prep the GFRC panels as per the coating manufacturers requirements,
3. Install two coats of the Royalan coating by KEIM to the GFRC panel system.

SCOPE OF WORK

We propose the following phased scope of work:

Construction Administration

Provide construction administration services, including the following:

1. Review contractor submittals.
2. Attend project meetings at the site during the construction phase and as requested by you.
3. Visit the site following project meetings and perform up to eight hours of additional site visits per week for the duration of the project to become generally familiar with the progress and quality of the completed work to confirm that the work is being performed in general conformance with the requirements of the construction documents. We will observe the work in progress and will report work not conforming to the construction documents to the contractor. We will report corrective action taken and will encourage the contractor's compliance with the construction documents by specific reference.
4. Respond to contractor requests for information (RFI), consult on potential construction problems, and prepare design changes to address unforeseen conditions.

SIMPSON GUMPERTZ & HEGER INC.

41 Seyon Street, Building 1, Suite 500, Waltham, MA 02453

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- 5. Review contractor's applications for payment and field measure all unit price items. Resolve any discrepancies in unit price quantities with the contractor.
- 6. Prepare a punch list at the completion of each phase of construction and review project closeout documents, inclusive of warranties

FEE

We propose to perform the scope of work identified above according to the following:

- 1. Construction Administration: We suggest that you establish a lump sum fee of \$26,000 for the Construction Phase. This fee is based on a ten week construction schedule beginning in June 2016 through mid-August 2016.

You have the right to terminate our services at any time, subject only to previous commitments we have made to others on your behalf. If acceptable, please sign and return one copy of this letter.

Sincerely yours,
SIMPSON GUMPERTZ & HEGER INC.


 Greggory G. Cohen, P.E.
 Senior Principal
 MA License No. 37140


 Paul M. Millette
 Senior Project Supervisor

Accepted: BOYD/SMITH INC.

Signature: William D. Smith
 Printed Name: William D. Smith
 Title: Property Manager
 Date: 6-7-16

GGC/ras (060616/BO16-0001607-GGC) CP-2
Encls.

**SIMPSON GUMPERTZ & HEGER INC. (SGH)
CONTRACT PROVISIONS**

CLIENT: Boyd/Smith Inc.

- 1. CONTRACT** – These Contract Provisions and the accompanying Proposal and Fee Schedule constitute the entire Agreement of the parties, and supersede all prior negotiations, agreements, and understandings with respect to the subject matter of this Agreement. These Contract Provisions shall take precedence over any inconsistency or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice to proceed, or like document. The parties may only amend this Agreement by a written document duly executed by both parties.
- 2. RIGHT OF ENTRY** – When entry to property is required by the work, the Client agrees to obtain legal right-of-entry on the property.
- 3. DOCUMENTS** – All reports, notes, drawings, specifications, data, calculations, and other documents prepared by SGH are instruments of SGH's service that shall remain SGH's property. The Client agrees not to use SGH-generated documents for marketing purposes or for projects other than the project for which the documents were prepared by SGH without SGH's prior written permission.

Any reuse or disbursement to third parties without such express written permission or project-specific adaptation by SGH will be at the Client's sole risk and without liability to SGH or its subsidiaries, independent professional associates, subconsultants, and subcontractors. Accordingly, the Client shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless SGH from and against any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions, and damages whatsoever arising out of or resulting from such unauthorized reuse or disbursement. Any release or project-specific adaptation by SGH will entitle SGH to further compensation at rates to be agreed upon by the Client and SGH.

- 4. DISPOSAL OF SAMPLES** – SGH will discard samples upon completion of the work covered under this Agreement, unless the Client instructs otherwise in writing.
- 5. HAZARDOUS MATERIALS** – The scope of SGH's services for this Agreement does not include any responsibility for detection, remediation, accidental release, or services relating to waste, oil, asbestos, lead, or other hazardous materials, as defined by Federal, State, and local laws or regulations.
- 6. CONSTRUCTION SERVICES** – When construction-phase services are included in the Agreement, SGH will provide personnel to evaluate whether construction is in general accordance with the construction contract, but not to perform detailed observations or inspections of the work.

SGH is not a guarantor or insurer of the contractor's work; the contractor is solely responsible for the accuracy and adequacy of construction and for all other activities performed by the contractor, including the means and methods of construction; supervision of personnel and construction; control of machinery; false work, scaffolding, and other temporary construction aids; safety in, on, and about the job site; and compliance with OSHA and all other applicable regulations. SGH's evaluation of the contractor's performance will not include review or observation of the adequacy of the contractor's safety measures or of safety conditions on the project site nor of Contractor's means or methods of construction.

- 7. STANDARD OF CARE** – SGH and its subsidiaries, independent professional associates, subconsultants, and subcontractors will exercise that degree of care and skill ordinarily practiced under similar circumstances by engineers and architects providing similar services. The Client agrees that services provided by SGH will be rendered without any warranty, express or implied.

SGH shall exercise usual and customary professional care in its efforts to comply with codes, regulations, laws rules, ordinances, and such other requirements in effect as of the date of execution of this Agreement.

The Client agrees that SGH has been engaged to provide technical professional services only, and that SGH does not owe a fiduciary responsibility to the Client.

- 8. OPINION OF PROBABLE COSTS** – When required as part of our work, SGH will furnish opinions of probable cost but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by SGH hereunder will be made on the basis of SGH's experience and qualifications and will represent SGH's judgment as an experienced and qualified design professional. SGH does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices or performing the work.
- 9. SUSPENSION OF WORK** – The Client may, at any time, by written notice, suspend further work by SGH. The Client shall remain liable for, and shall promptly pay SGH for all services rendered to the date of suspension of services plus suspension charges. Suspension charges shall include the cost of assembling documents, personnel and equipment rescheduling or reassignment, and commitments made to others on the Client's behalf. If after ninety (90) days the Client resumes SGH's work on the Project, SGH and the Client shall renegotiate SGH's fee.

If payment of invoices by the Client is not maintained current, SGH may, upon written notice to the Client, suspend further work until payments are brought current. The Client agrees to indemnify and hold SGH harmless from any claim or liability resulting from such suspension.

- 10. TERMINATION** – The Client or SGH may terminate this Agreement for cause, except only the Client may terminate for convenience. The party initiating termination shall so notify the other party. The Client shall compensate SGH for services performed prior to termination and for prior authorized commitments made by SGH on the Client's behalf.
- 11. CHANGES OR DELAYS** – Unless the accompanying Proposal provides otherwise, the proposed fees constitute SGH's estimate to perform the services required to complete the Project. Required services often are not fully definable in the initial planning; accordingly, developments may dictate a change in the scope of services to be performed. Where this occurs, changes in the Agreement shall be negotiated and an equitable adjustment shall be made. In addition, costs and schedule commitments shall be subject to renegotiation for unreasonable delays caused by the Client's failure to provide specified facilities, direction, or information.

- 12. FORCE MAJEURE** – SGH will not be liable to the Client for delays in performing its Services or for direct or indirect costs resulting from such delays that may result from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party.

- 13. LIABILITY** – SGH will furnish appropriate insurance certificates for general and professional liability upon request. The Client agrees that SGH's total liability to the Client and the total liability to the Client of SGH's principals, officers, agents, and employees, for any and all injuries, claims, losses, expenses, or damages whatsoever, including attorney's fees, arising out of or in any way related to the Project or this Contract from any cause or causes, including, but not limited to, SGH's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty shall not exceed SGH's total fee under this Agreement or \$50,000, whichever is greater. In no event shall SGH be liable to Client for any indirect, incidental, special or consequential damages whatsoever (including but not limited to lost profits or interruption of business) arising out of or related to the services provided under the Agreement.

- 14. CONFLICTS OF INTEREST** – This assignment may presently or in the future involve parties with potentially adverse interests to those of SGH's existing or future clients ("Affected Parties" or "Affected Party"). Prior to SGH's acceptance of this assignment, SGH will make reasonable attempts to identify any Affected Parties based on information SGH has in its possession from the Client and any Affected Parties and SGH's search of its project and proposal databases. To the extent that SGH identifies a relationship with an Affected Party, SGH will inform the Client as to the identity of such parties. Client agrees to allow SGH to release to any Affected Parties the fact of SGH's engagement by the Client and any other information required to evaluate any potential conflict.

SGH's ability to inform the Client of a relationship with an Affected Party is limited by the thoroughness and accuracy of the information provided to SGH by the Client and any Affected Parties, and by SGH's limitations in reasonably and diligently discovering all relationships with Affected Parties. Regardless of SGH's relationship with an Affected Party, and, provided such relationship with an Affected Party does not arise from SGH's willful disregard of a relationship with the Affected Party, SGH shall be entitled to payment for all services rendered to the date of discovery or notice, whichever occurs first, of a relationship between SGH and an Affected Party. SGH does not guarantee that a relationship between the Client and an Affected Party, which may be perceived by the Client as a conflict, will not arise during the course of an assignment or thereafter. SGH disclaims responsibility for such occurrences and to the fullest extent permitted by law, the Client agrees to waive any claim against SGH arising out of any such actual or potential conflict-related occurrences. Subsequent to the date of this Agreement, SGH will not be in a position to guaranty that it can advise the Client of any future Affected Parties or perceived or actual conflict circumstances that may arise, but will endeavor to notify Client of such situations.

- 15. INDEMNIFICATION** – SGH shall, subject to the limitation of liability contained in Section 13, indemnify the Client for any loss or damage caused solely by the professional negligence of SGH in performance of the services under this Agreement.

16. MISCELLANEOUS

Governing Law: The laws of the state in which the Project is located shall govern the validity and interpretation of this Agreement.

Invalid Terms: If any of these Contract Provisions shall be finally determined to be invalid or unenforceable in whole or in part, the remaining provisions hereof shall remain in full force and effect and be binding upon the parties. The parties agree to reform the contract between them to replace any such invalid or unenforceable provision with a valid and enforceable provision that comes as close as possible to the intention of the stricken provision.

SGH Reliance: Unless otherwise specifically indicated in writing, SGH shall be entitled to rely, without liability, on the accuracy and completeness of information provided by the Client, the Client's consultants and contractors, and information from public records, without the need for independent verification.

Copyright Infringement Indemnification: To the fullest extent permitted by law, the Client agrees to defend, indemnify, and hold harmless SGH from any and all claims, damages, suits, causes of action, liabilities or costs, including reasonable attorneys' fees and costs of defense, arising out of or in any way connected with SGH's use of documents or designs prepared by the Client's consultants, that may be asserted against or incurred by SGH.

Certifications: SGH shall not be required to sign any documents, no matter by whom requested, that would result in SGH's having to certify, guaranty, or warrant the existence of conditions that SGH cannot ascertain.

Payment: Invoices will be submitted periodically, and are due and payable upon receipt. Unpaid balances shall be subject to an additional charge at the rate of 1-1/2% per month from the date of invoice if the unpaid balance is not paid within thirty (30) days. The Client shall reimburse SGH for all attorney's fees and costs related to collection of overdue payments.

Litigation: All costs and labor associated with compliance with any subpoena or other official request for documents, for testimony in a court of law (other than in connection with expert witness services), or for any other purpose relating to work performed by SGH, in connection with work performed for the Client, shall be paid by the Client as a direct expense (actual cost plus 10%).

Taxes: Client shall, in addition to the other amounts payable under this Agreement, pay, on a timely basis, all sales, use, value added or other taxes, federal, state or otherwise, however designated (hereinafter "Taxes"), which are levied or imposed by reason of the transactions contemplated by this Agreement or any of the Services, except for taxes on SGH's net income. Client shall promptly pay SGH for any Taxes actually paid by SGH on behalf of Client, or which are required to be collected or paid by SGH. SGH may bill Client separately for such Taxes.