

February 24, 2023

Project No: RG23-1013

534 West 42nd Street Condominium
c/o Livingston Management
225 West 35th Street, 14th Floor
New York, NY 10001
Attn: Claude Simon

Re: 534 West 42nd Street, New York, NY 10036
9th Cycle FISP Report, Facade Repairs,
and Amended 9th Cycle FISP Report (the "Project")

Dear Mr. Simon,

Rodriguez + Gambino Architectural Building Envelope Consultants ("RG") is pleased to submit this proposed agreement for the above referenced project. The following services will be provided based on the program requested for the scope at the Project.

Services:

Phase 1. Investigation, Preparation and Filing of 9th Cycle FISP Report

- A. Review of prior 8th cycle report filed as "SWARMP" on 05/29/2018 by Anthony Addesso, Registered Architect, as well as any other documentation provided by the Client with respect to the history of the existing conditions and/or previous construction or repair work at the property.
- B. Conduct an onsite pre-inspection meeting with the Client to review logistics and scheduling of the inspection process.
- C. Conduct a visual investigation of the existing building facades and their appurtenances as required under the current amended version of section 103-04 of Title 1 of the Rules of the City of New York ("1 RCNY 103-04") and determine if any probes should be conducted.
- D. If applicable, conduct visual investigations of any terrace, balcony, roof and/or bulkhead railings as required under "1 RCNY 103-04". Access to all balconies, terraces, and rear yards must be provided at the time of RG's site visit.
- E. RG shall conduct physical (up close) examinations of exterior walls fronting each public right of way as required under "1 RCNY 103-04" via aerial lift.
- F. Conduct an onsite post-inspection meeting with the Client to review the findings of the investigation prior to preparing the report. Please note that should an "Unsafe" condition be noted that could not be resolved immediately during our inspection, Section 103-04(c)(2)(vii) of the Rules of the City of New York (1RCNY), which governs Periodic Inspection of Exterior Walls and Appurtenances of Buildings, requires RG to immediately notify the Buildings Department and the Owner of the building, by immediately calling 311 and then following up with a letter or fax, of the existence of the unsafe conditions.
- G. Using the DOB Now-Safety platform, prepare a TR6 Technical Report: Periodic Inspection of Exterior Walls & Appurtenances form. Upload all photographs and supporting documentation and prepare a report classifying the building as either "Safe," "SWARMP," or "Unsafe" as required under "1 RCNY 103-04."

- H. Notify the Client that the report and TR6 is ready for their review and digital signature via the DOB Now-Safety platform.
- I. Upon Clients review and execution of the report and TR6, and upon Clients payment of the report filing fee via the DOB Now-Safety Platform, RG shall file the Sub-Cycle B, 9th Cycle Façade Inspection Safety Program ("FISP") report.
- J. Provide the Client with a copy of the stamped form and report downloaded via the DOB Now-Safety platform.

Phase 2. Construction Documents

- K. Conduct a visual observation and investigation of the existing building envelope including all façades, roofs etc. Our investigation may include non-destructive or invasive testing measures such as sounding, probes (via Contractor hired by the Owner), and infrared investigation and moisture meter readings.
- L. Arrange for and observe the sampling of possible asbestos and/or lead containing existing façade coatings, roofing, sealants, and other materials that may be impacted during the Project. All sampling and analyzation will be conducted as required by the Environmental Protection Agency guidelines and by independent consultant to be separately retained by the Client.
- M. Prepare preliminary scope of work documents which will include all noted deficiencies, as well as any noted conditions in the 8th Cycle FISP report (prepared by others), for Client's review prior to preparation of Construction Documents.
- N. Upon Client's approval of the preliminary scope of work, RG will finalize the design for the Project.
- O. Preparation of drawings and specifications ("Construction Documents") necessary to provide a basis for competitive bid and suitable for filing with the New York City Building Department ("DOB").
- P. Our Construction Documents will contain clear and concise building elevations and details prepared utilizing current CAD standards and software as well as bid documents, which include a breakdown of costs into unit and gross prices suitable for a comparative bidding.

Phase 3. Expediting Services

- Q. File the completed Construction Documents with the DOB to apply for the necessary construction work (and related permits that will be secured and paid for by the Client's selected construction contractor) and meet with DOB plans examiners to respond to DOB objections as may be required. Client shall be responsible to pay for all filing and associated fees to DOB and all agencies having jurisdiction over the Project.

Phase 4. Bidding and Construction Observation.

- R. Assist the Client with obtaining bids from qualified contractors, RG will provide the Client with a recommended bidders list which shall include at a minimum five qualified bidders for the Clients review and approval. Conduct one (1) pre-bid meeting with all bidders, prepare up to one (1) addenda, if necessary, analyze the bids and prepare written spreadsheet of bids for Client's review and comparison. Review bids and make recommendations for Client's award of construction contract.
- S. Conduct one (1) bidder interview meeting with the Client and its selected bidders to review the submitted bids along with proposed schedules, manpower, bidder references etc.

- T. Conduct one (1) meeting with representatives of the Client and its selected Contractor from the list of bidders to establish progress schedule, access and delivery requirements, and compile a submissions list prior to commencement of work.
- U. Advise and consult with the Client during the construction period, visiting the site at intervals appropriate to the stage of construction (1 site visit per week is assumed) to become generally familiar with the progress and quality of the portion of the construction work completed, and to determine, in general, if such work observed is being performed in a manner indicating that when it is fully completed will be in accordance with the Construction Documents.
- V. On the basis of the site visits, keep the Client reasonably informed about the progress and quality of the portion of the construction work completed, and report to the Client known deviations from the Construction Documents and from the most recent construction schedule submitted by the Contractor, and defects and deficiencies observed in such work.
- W. Attend weekly progress meetings (within the 1 site visit noted in item U.) with the Client and contractor to discuss issues such as work progress, changes in the work, payments to the contractor, and any other scope related issue.
- X. Review and approve or take other appropriate action on the contractor's submittals such as shop drawings, product data and samples.
- Y. Should unforeseen field conditions or Owner requested alterations be required that increase the Project scope, provide all necessary design services, provide new details and specifications to the Contractor for pricing, issue change orders and provide additional Construction Observation services required to carry out new Project Scope.
- Z. Review the contractor's applications for payment and authorize progress payments as construction work proceeds, that to the best of RG's knowledge, information and belief, the construction work has progressed to the point indicated and that the quality is in accordance with the Construction Documents, subject to later evaluation for conformance on Substantial Completion, results of subsequent tests and inspections, correction of minor deviations prior to completion, and specific qualifications expressed by RG.
- AA. Prepare a punch list to correct observed deficiencies in the construction work performed and submit to Client and contractor to use in completing the construction work.
- BB. Perform a final inspection and obtain sign offs of the completed construction.

Phase 5. Filing of FISP Extensions

- CC. Beginning immediately upon filing of the 9th Cycle FISP Report and until an acceptable "Safe" or "SWARMP" Amended "FISP" report filing is accepted, RG shall prepare the required FISP extension of time request filings via DOB NOW, as required by the NYC Department of Buildings.
- DD. Upon Client review and execution, and upon Client's payment of the report filing fee via the DOB NOW-Safety Platform, RG shall file the extension of time requests.

Phase 6. Filing of Amended Sub-Cycle B, 9th Cycle, FISP Report

- EE. Based on the visual, physical (up-close) inspection and the terrace/roof and railing inspections conducted during the façade repair project, RG shall prepare a written report amending the current "Unsafe" classification as either "Safe," or "SWARMP," as required under "1 RCNY 103-04."

- FF. Prepare a TR6 Technical Report: Periodic Inspection of Exterior Walls & Appurtenances form and submit the form to the Client for signature prior to filing with the NYC Dept. of Buildings ("DOB").
- GG. Provide the Client with a copy of the approved Sub-Cycle B 9th Cycle Façade Inspection Safety Program ("FISP") report.

Compensation:

- Phase 1 Services: RG's Fee for its Services described in Sections A. through J. in Phase 1 shall be the amount of Fourteen Thousand Nine Hundred Dollars (\$ 14,900) plus reimbursables (includes cost of articulating boom).
- Phase 2 Services: RG's Fee for its Services described in Sections K. through P. shall be the amount of Seven Thousand Two Hundred Fifty Dollars (\$ 7,250) plus reimbursables.
- Phase 3 Services: RG's Fee for its Services described in Section Q. shall be the amount of Three Thousand Seven Hundred Fifty Dollars (\$ 3,750), plus reimbursables.
- Phase 4 Services: RG's Fee for its Services described in Sections R. through BB. shall be billed at the following hourly rates, plus reimbursables:
- | | |
|------------------------|---------------|
| Principal | \$250.00/hour |
| Senior Project Manager | \$225.00/hour |
| Project Manager | \$195.00/hour |
| Project Coordinator | \$180.00/hour |
| Draftsperson/Technical | \$130.00/hour |
| Administrative | \$ 85.00/hour |
- Phase 5 Services: RG's Fee for its Services described in Sections CC. through DD. shall be the amount of Seven Hundred Fifty Dollars per extension filing (\$ 750/per filing), plus reimbursables.
- Phase 6 Services: RG's Fee for its Services described in Sections EE. through GG. shall be the amount of Three Thousand Five Hundred Dollars (\$ 3,500), plus reimbursables.

Reimbursable Expenses:

Reimbursable Expenses are payable in addition to compensation and Additional Services and include expenses incurred by RG and its consultants that are directly related to the Project, and will be provided at a multiple of one and fifteen hundredths (1.15) times the amount of their actual cost. Any outside services or non-architectural consulting services requested by the Client or necessary for the Project will be provided at a multiple of one and twenty hundredths (1.20) times the amounts billed to, or incurred by RG for such services. Back-up documentation for reimbursable expenses of \$100 or less shall not be provided unless a requirement for such documentation is presented prior to the execution of this agreement. Customary reimbursable costs are as follows:

- Transportation (including mileage, tolls and parking);
- Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- Printing, reproductions, plots, standard form documents;
- Postage, handling and delivery;
- Expense of overtime work requiring higher than regular rates, if authorized in advance by the Client;
- Client-requested renderings, models, mock-ups, professional photography, and presentation materials;
- RG's expense of additional insurance coverage or limits if the Client requests insurance in excess of that normally carried;
- All taxes levied on professional services and on reimbursable expenses;
- Other similar Project-related expenditures.

Additional Services:

Additional Services are those services not otherwise described in this Agreement and will be provided only upon written authorization of the Client. Some Additional Services include:

- Drafting of an AIA Contract between Owner and Contractor
- Additional site visits to conduct up close investigations of the balcony or terrace railings at units not available during our initial site visits;
- RG cost for probe inspections that may be required if problematic conditions are present at the building that may require additional investigation prior to RG classifying the status of the building;
- RG investigation from inside the building of window-mounted air conditioner units which do not have a visible exterior mounted support bracket or anchoring that meets the recommendations set forth by the NYC Dept. of Buildings;
- Providing any coordination of drawings of and attending any meetings with any consultants, specialty contractors or vendors retained directly by the Client;
- Resolution of active ECB violations, verifications of construction costs and Post-approval Amendments;
- Preparation for and attendance at public hearings and community board meetings.

Standard Hourly Rates:

Principal	\$250.00/hour
Senior Project Manager	\$225.00/hour
Project Manager	\$195.00/hour
Project Coordinator	\$180.00/hour
Draftsperson/Technical	\$130.00/hour
Administrative	\$ 85.00/hour

Please note that rates are subject to increase on an annual basis.

Payment Terms:

In order for RG to engage and schedule work for this Project, an initial payment of Seven Thousand Five Hundred Dollars (\$ 7,500.00) shall be made by the Client upon execution of this Agreement which will be attributed to the final invoice on the project.

Payment on account of RG's services and reimbursables shall be made monthly upon presentation of RG's invoices for services rendered.

RG will not commence Services on any phase or Scope of Services until payment for Services previously performed have been paid in full.

Fees and Services Not Included

- Government filing fees, contractor's fees for probe investigation and lab testing fees;
- Progress or Special Inspections required by DOB;
- Obtaining Property Survey, Work Permits, Temporary or Final Certificates of Occupancy, and an asbestos survey, ACP-5 or ACP-7 filings;
- Contractor cost for suspended outrigger scaffold or other elevated platform;
- Contractor cost for probes or scaffolding that may be required if problematic conditions are present at the building that may require additional investigation prior to RG classifying the status of the building;
- Resolution or removal of ECB violations or Stop Work Orders;
- RG cost for preparation of repair scopes, construction documents, the re-inspection of the premises, the re-submittal of a report if required following an audit by the Department of Buildings;
- RG cost for filing of an amended report or extensions;
Note: If any "Unsafe Conditions" are observed at any façade at any point during the inspection, §103-04(c)(2)(vii) of the Rules of the City of New York (1RCNY), which governs Periodic Inspection of Exterior Walls and Appurtenances of Buildings, requires the Engineer to immediately notify the Buildings Department and the owner of the building of the existence of the unsafe conditions. The building owner must then immediately commence repairs and install any necessary protective measures. In the event of the discovery of unsafe conditions, "RCNY 103-04" requires that an FISP report classifying the building as "Unsafe" be filed. Following repairs of the unsafe conditions, "RCNY103-04" requires that the premises be re-inspected and an amended FISP report be filed.
- Contractor cost for the installation of protective measures should unsafe conditions be noted.
- Any service not described in this Agreement.

This Agreement consists of 8 pages that includes and incorporates the attached Standard Terms and Conditions and the Compensation schedule noted in page 4 is based on the use this Agreement in its entirety.

Please note that the cost for this proposal is valid for six (6) months from the date of this proposal.

If the above is acceptable, please return one signed copy of this Agreement including the Standard Terms and Conditions (with initialed pages) with your initial payment. Please feel free to contact our office if you should have any questions or comments related to this proposal.

534 West 42nd Street Condominium:



Client Signature

3-19-23

Date



Rodriguez + Gambino Architectural
Building Envelope Consultants

Claude Simon

Printed Name

President

Title of Signatory*

Moises D. Rodriguez, Principal

Printed Name, Title of Signatory

**Please note if Signing As Authorized Managing Agent of Corporation*

534 West 42nd Street, New York, NY

RG23-1013

RG's Standard Terms and Conditions

A. ENTIRE AGREEMENT

These Standard Terms and Conditions are incorporated into and made a part of the Agreement between RG and the Client and shall be enforceable as part of such Agreement as if fully set forth therein. The Agreement supersedes all prior written proposals and/or negotiations between the parties not specifically described herein. The Agreement may be modified only in writing executed by both parties.

B. RG's SERVICES

RG's visits to the Project site at periodic intervals of the Project's construction are to determine in general if the Project is being constructed in general accordance with its Construction Documents. RG will not make exhaustive or continuous on-site observations to check the quality or quantity of the Project's construction and will not be responsible for any contractor's failure to construct the Project in accordance with RG's Construction Documents.

RG will not have control over, nor be responsible for, any construction means, methods, procedures, temporary structures or work, or for safety precautions and programs in connection with the construction, or for any failure of the construction/installation work to comply with any laws, rules, regulations or codes applicable to the Project.

RG's review of shop drawings, submittals and samples for conformance with its drawings and specifications does not include review for the accuracy of dimensions and quantities required for proper construction since these are the contractor's responsibility.

RG's Services include visual observation only and exclude the cost of exploratory probes and any physical testing and analysis recommended. RG will not be responsible for any existing condition or resulting damages if the Client fails to authorize investigation or correction after due notification by the Client, and will not be responsible for any cost or expense associated with any latent defects in any existing structures or other existing conditions of the Project that could not be seen or verified at the start of the Project. RG's investigation of the Project site's present condition excludes uncovering any existing structural member or system or any invasive inspection or physical destruction of any part of the Project, as well as the discovery or identification, presence, handling, removal or disposal of or exposure to, any potentially hazardous or toxic materials. If RG has reason shall notify the Client who shall authorize and pay for all costs and expenses related to the investigation of such condition and all costs to repair or correct said condition.

RG will not be responsible for reviewing or evaluating any cost or budget estimates for the Project prepared by others, and will not be liable for any damages, claims or costs arising out of, or relating to, any cost or construction estimate. Any construction cost estimate prepared by RG represents its judgment as a design professional and is not a representation that the bids or negotiated prices for the construction will not exceed such estimate.

C. CLIENT's REPRESENTATIONS AND RESPONSIBILITIES

The Client will provide all information regarding the requirements of the Project, including objectives, constraints, schedule, criteria, budget and site requirements. All information provided by or on behalf of the Client shall be complete and current and RG may rely on its accuracy and completeness.

All equipment and materials associated with RG's design must be installed by experienced and qualified contractors who possess all applicable certifications and licenses.

The Client will not modify RG's drawings or supporting documentation without first obtaining RG's written consent to same. If the Client replaces or selects a new Project Representative, any time spent by RG to bring the new Project Representative current shall be provided and compensable as Additional Services pursuant to the terms of this Agreement.

D. PAYMENT TERMS

Invoices shall be submitted monthly based on the Services and Additional Services performed. Payment is due thirty (30) days from the date of invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate of 1% per month. Client shall pay all costs and expenses, including reasonable attorneys' fees, for the collection and enforcement of Client's payment obligation.

No deductions shall be made from RG's compensation on account of any claims for alleged errors or omissions in the Services or Additional Services, or for sums withheld from payments to contractor(s), or on account of the cost of changes in any contractors' services.

E. OWNERSHIP OF DOCUMENTS

All documents prepared or furnished by RG pursuant to this Agreement, including those in electronic form, are for use solely with respect to this Project, and RG, as the author and owner of its documents, retains all rights to them including copyrights. RG grants the Client a license to use the documents to complete and maintain the Project, provided the terms of this Agreement, including payment, are fully satisfied. Any unauthorized use shall be at the Client's risk without liability to RG, and the Client agrees, to the fullest extent permitted by law, to indemnify and hold RG harmless from all claims, damages, and expenses, including attorney's fees, arising out of such unauthorized use or deviation from the documents subsequent to RG's completion of Services pursuant to, or the earlier termination of, this Agreement by or on behalf of Client.

F. PUBLICITY

RG will have the right to photograph and use photographs of the Project in its promotional materials, including in brochures, websites or other marketing material and trade publications.

G. INSURANCE, INDEMNITY, LIMITATIONS AND WAIVERS

Insurance. RG shall maintain the following minimum insurance in addition to other insurance required by law, pay all associated deductibles and premiums, and will provide certificates evidencing such insurance coverage:

- i) General Liability insurance with policy limits of One Million Dollars (\$1,000,000.00) per occurrence, Two Million Dollars (\$2,000,000.00) in the aggregate;
- ii) Professional Liability insurance for liability of RG arising out of its negligent acts, error or omissions in its professional services in the amount of One Million Dollars (\$1,000,000.00) per claim. Two Million Dollars (\$2,000,000.00) in the aggregate.

Limitation of Liability. The Client and RG recognize the relative risk and benefits of the Project to both parties. The risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of RG to the Client for any and all claims, losses, costs, damages of any nature whatsoever from any cause of causes related to RG's negligent acts, errors or omissions, so that the total aggregate liability of RG shall not exceed the amount of professional liability insurance then available to RG at the time of the settlement or judgment of the claim. It is intended that this limitation applies to any and all liability or cause of action described herein, regardless of legal theory alleged, unless otherwise prohibited by law.

Waiver of Consequential Damages. RG and the Client waive consequential damages for claims, disputes, and 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 in accordance with the provisions defining termination.

Contractor's Insurance and Indemnification. If the Client is the Owner of the Project, it shall cause its contractors or construction manager to agree to indemnify the Client and RG and hold them harmless from all claims that may arise out of or result from that contractor's work, services or operations, to the fullest extent permitted by law, and require them to purchase and maintain such insurance as will protect RG for its Services on the Project and to name RG as an Additional Insured on and under their insurance policies for RG's benefit. Any applicable insurance maintained by RG shall be excess and non-contributing to the insurance procured and maintained by it.

H. SUSPENSION AND TERMINATION

This Agreement may be terminated by either party upon at least seven (7) days' written notice should the other party fail to substantially perform the terms of this Agreement, through no fault of the party initiating the termination. The Client's failure to make payment in accordance with this Agreement will be considered its failure to substantially perform, and cause for termination by RG. In the event of the Client's failure to substantially perform, RG may elect to suspend its Services and Additional Services until the Client's failure is cured and all amounts due prior to the suspension, plus any expenses incurred on account of the interruption and resumption of Services, are fully paid. RG will not be liable to the Client for any delay or damages resulting from such suspension of Services or Additional Services.

If any portion of the Project or the Services is stopped or suspended, through no fault of RG, for more than

thirty (30) days in the aggregate, RG may terminate this Agreement upon seven (7) days' written notice to Client.

In the event of any termination by the Client, RG will be entitled to compensation for all Services and Additional Services performed or furnished, and reimbursable expenses incurred, through the effective date of the termination. However, if the Client terminates this Agreement through no fault of RG, or if this Agreement is terminated by RG, the compensation for RG's Services and Additional Services performed or furnished shall be computed on an hourly basis at RG's hourly rates provided in this Agreement, and RG will be entitled to payment of an additional reasonable sum for expenses directly attributable to termination.

The Client shall to the fullest extent permitted by law, release, indemnify and hold RG harmless for delays, clarifications or non-conformance with RG's Construction Documents if RG is terminated prior to its construction.

If the Client terminates RG for convenience or if RG terminates this Agreement for failure to pay, the Client shall pay a licensing fee as compensation for the Client's continued use of RG's design documents solely for the purposes of completing, using and maintaining the Project, in the amount of one half of RG's compensation for its Services that would be payable to RG had this Agreement not been terminated.

I. MISCELLANEOUS

Limitations on liability, waivers and indemnities in this Agreement are business understandings between the parties and shall apply to the fullest extent permitted by law to all legal theories of recovery, including breach of contract or warranty, breach of fiduciary duty, tort (including negligence), and strict or statutory liability. All limitations of liability, indemnifications, waivers and representations contained in this Agreement shall survive the completion or termination of this Agreement and shall continue as enforceable obligations of the parties.

If any portion of this Agreement is held as a matter of law to be unenforceable, the remainder of its terms will be enforceable.

CA