



**SIMON**  
ROOFING™

**Our Commitment to Excellence**

Lump Sum Proposal Presented to:

LCMC Facilities  
Capital Authorization

PM Michael Lawson


SVP \_\_\_\_\_

Code LCMC Infrastructure 2022

Sub Touro

Budget tracker attached

\*Two Signatures Required

**Touro** 

**LCMC Health**

**PROJECT**  
**Touro Hospital**  
**TEAROFF - SECTION 28**  
**1401 Foucher Street**  
**New Orleans, LA 70115**  
**Approx. 5,609 SF**

**CLP™+FR 120aw with 20-Year Warranty**

**Two Hundred Thirty Two Thousand Five Hundred Forty Seven and 93/100 Dollars (\$232,547.93)**

UNIT COSTS	
Unit cost items are provided in the event unforeseen conditions are uncovered during construction. If any item listed is needed to complete the scope of work, a change order will be provided based on the unit pricing listed below:	
Unit cost to test existing roof material for asbestos: <small>(Note: this fee includes a limited number of ACM samples &amp; tests. Additional samples may be required for multiple roofing plies and roof sections at an additional fee depending on the quantity of samples/tests needed.)</small>	<b>\$3,804.00</b>

This agreement is entered into as of this day and year and is executed in two (2) original copies of which one is to be delivered to the Owner and the other to Simon Roofing. This proposal is valid for thirty (30) days.

OWNER / OFFICER SIGNATURE

SIMON ROOFING

Signature

Date

Signature

10/25/2022

Date

Printed Name and Title

Printed Name and Title

Scott Landry SVP

Shawn Morrow - Regional Account Management

# Report Listing PO19

COMPANY GLN:

Purchase Order: 9010034949-0-MCAP

ORIGINAL

LOUISIANA CHILDREN'S MED CTR

Page: 1  
Date: 10/01/22

SHIP TERMS:  
SHIP VIA:

FREIGHT: FOB DESTINATION

VENDOR: 57181  
SIMON ROOFING AND SHEET METAL  
POST OFFICE BOX 951109  
CLEVELAND OH 44193  
United States of America

SHIP TO:  
TOURO INFIRMARY  
1401 FOUCHER ST  
NEW ORLEANS LA 70115

CONTACT:  
PHONE:  
FAX:

CONTACT: Lori Cupit  
PHONE: 504-702-2192  
FAX:  
BUYER GLN:  
EMAIL ADDRESS: lori.cupit@lcmchealth.org

TERMS

DISCOUNT  
DAYS RATE NET ACCOUNT NUMBER

Net 30 Days

30

Purchase Order Currency: U.S. Dollar

Invoice by mail  
Process Level: LCMC

Simon Roofing  
Proposal - Roof Section 28  
09/14/2022  
\$236,352

Dept Contact:  
Michael Lawson

Bill To Address:

LCMC HEALTH  
ATTN: UMC ACCOUNTS PAYABLE  
2000 CANAL STREET  
NEW ORLEANS LA 70112  
United States of America  
Email: LCMCAP.LCMCHEALTH.ORG

LINE	ITEM NUMBER	DESCRIPTION	QUANTITY	PRICE	EXTENDED AMOUNT
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# Report Listing PO19

COMPANY GLN:

Purchase Order: 9010034949-0-MCAP

ORIGINAL

LOUISIANA CHILDREN'S MED CTR

Page: 2

Date: 10/01/22

LINE	ITEM NUMBER DESCRIPTION	QUANTITY PRICE	EXTENDED AMOUNT
1	PROJECT ID: C22-901-01663 LCMC Infrastructure 2022 Touro Deliver To: Touro Requesting Location: M8455 Deliver on October 5, 2022 No charge item	1.00 EA 0.0000	0.00
2	ROOF SECTION 28 CLP + FR 120aw Approx. 5,609 Deliver To: Touro Requesting Location: M8455 Deliver on October 5, 2022 CLP + FR 120aw Approx. 5,609 SF 20-Year Warranty	1.00 EA 236,352.0000	236,352.00
Purchase Order Summary			
Tax Summary		Taxable	
New Orleans - INV		236,352.0000	0.00
Goods Total:			236,352.00
Order Total:			236,352.00

End of Purchase Order: 9010034949-0-MCAP



**Our Commitment to Excellence**

Presented to:



**PROJECT**

**Touro Hospital  
TEAROFF - SECTION 28  
1401 Foucher Street  
New Orleans, LA 70115**

**Section 28 | CLP™+FR 120aw | Approx. 5,609 SF | 20-Year Warranty**

**Respectfully Submitted**  
**Shawn Morrow**  
**Regional Account Management**  
**Phone 504-421-6142**  
**September 14, 2022**

**[www.simonroofing.com](http://www.simonroofing.com)**

**SCOPE OF WORK**  
**Tearoff – CLP™+FR 120aw System**  
**20-Year Superior Performance Warranty**  
**(Section 28 - Approx. 5,609 SF)**

**Notes**

1. Standard permits are included in the total cost of the job. If special permits or engineering documents are required to complete the job, this will be considered an Add-On cost and will be billed accordingly.
2. On certain types of roof systems, the possibility of asbestos containing material exists. In our continual commitment to protect our clients and employees we test those systems when the scope requires removal of part or all of the membrane. Attached is a line-item price to test only the roof membrane (including flashing).
3. This proposal **does not include** the removal and disposal of any asbestos containing material if any is present.

**A. Preparation:**

1. Conduct a pre-job meeting with owner/owner's representative(s) to review jobsite safety issues, set up areas for materials and dumpsters, loading/unloading areas, planned production schedule and review any/all owner related construction concerns.
2. Install all necessary Safety Equipment to perform the Scope of Work, including:
  - a. Install perimeter warning lines and fall protection system.
3. Provide Porta John to eliminate any unnecessary foot traffic into the building.
4. Remove and dispose of up to 5,609 square feet of existing roofing membrane and insulation down to the originally installed decking substrate to prepare for new roof system.
5. Remove all demolition debris and dispose of properly.

**B. Installation:**

1. Install new insulation over the existing roof deck as described below, to meet SR specifications. Insulation joints will be staggered. Any joints over ¼" will be filled to minimize thermal bridging.
  - a. Adhere one layer of 1.5-inch Rigid Board insulation in beads of SR Insulation adhesive spaced 6 inches on center.
2. Adhere new CLP™ FR sheet over the new insulation with SR Wite Brite™ Bonding Adhesive at a rate of 1.67 gallons per 100 square feet per SR specifications.
3. Remove loose flashing as needed. Install new CLP™ flashing around entire perimeter and all penetrations utilizing a 5-course application of SR Wite Brite™ Cement and reinforced polyester fabric. Note: A proper base tie-in will be installed to prevent bridging per SR specifications.
4. Provide and install 6 new drain inserts with new clamping rings and strainers at drain locations. Note: Drains will be sumped with tapered insulation to provide positive water flow.
5. Properly flash drains utilizing a 5-course application of SR Wite Brite™ Cement and reinforced polyester fabric.
6. Fabricate and install 223 linear feet of new 24-gauge Kynar finish coping cap.

7. Fabricate and install 178 linear feet of new 24-gauge Kynar finish counter-flashing fastened 12" on center on walls.
8. Fabricate and install 40 linear feet of new 24-gauge Kynar finish counter-flashing fastened 12" on center on curbs.
9. Provide and install 65 linear feet of new, low profile, roof-to-roof expansion joint.
10. Provide and install 1 new pitch pan and fill with pitch pan filler per manufacturer's requirements.
11. Install one layer of SR Wite Brite™ White Coating (liquid applied seamless membrane) over the entire roof area at the rate of 1 gallon per 100 square feet.
12. In approximately 600 square feet of ponding areas, install SR Envirogreen™ Coating at a rate of 1.5 gallons per 100 square feet after the final coat of SR Wite Brite™.

### C. Completion:

1. Clean entire site of all construction debris affiliated with Simon Roofing and Sheet Metal Corporation (SRSMC) Scope of Work and properly dispose.
2. Inspect entire project to ensure compliance with the manufacturer's recommendations. Any deficiencies that are found that do not meet the manufacturer's guidelines will be repaired as necessary.
3. Provide a Superior Performance **20 Year Labor and 20 Year Materials Warranty** upon completion and inspection. **Simon Roofing can provide a warranty renewal option at the end of the life of the warranty. Note: Upon request Simon Roofing can provide our Care & Maintenance Warranty Protection Program, which includes yearly inspections and routine maintenance for the life of the warranty. Please contact your sales representative for more information.**

### D. Exclusions:

1. If Satellite dishes, lightning protection or photovoltaic panels are present in the work area, they may need to be moved to allow for the application of the new roof system installation. If you would like to have your preferred vendor move the equipment, please advise Simon Roofing and we will coordinate our work scope with your vendor. The costs associated with the moving and recalibration of the existing satellite dish(s), lightning protection or photovoltaic panels, if required, are not included in this proposal.
2. This proposal does not include any electrical, HVAC or plumbing disconnects/reconnects or repairs. If any electrical, HVAC or plumbing disconnections/reconnections or repairs are required a change order will be issued to cover the costs associated with these types of repairs from a certified contractor.
3. Interior protection is not included in this proposal.
4. Any existing HVAC Rooftop Units, condenser units, exhaust fans, or other roof top equipment that will need to be modified to meet local building code is not included in this proposal. These modifications include, but are not limited to, hurricane straps, curb mounting hold down straps, or equipment securement.

## GENERAL CONDITIONS

1. **Insurance.** Simon Roofing and Sheet Metal Corp. ("Simon") shall, at its expense, maintain insurance as follows:

Commercial General Liability	\$ 1,000,000.00	Occurrence
	\$ 2,000,000.00	General Aggregate / Products Aggregate
Automobile	\$ 1,000,000.00	Each Occurrence / Aggregate
Excess Liability	\$ 25,000,000.00	Occurrence / General Aggregate
Excess Liability	In accordance with applicable state law	

The aforementioned coverages apply to negligent acts committed solely by employees of Simon. All policy coverages are subject to the conditions, exclusions and limitations of each respective policy. Upon the Customer's request, the Customer shall be added to such insurance policy as an additional insured, as its interest may appear, and a certificate of insurance will be provided upon award of the contract. The Customer shall maintain broad form, all risk property and contents coverage, including liability coverage, on its land, building(s) and the building's contents, to the full insurable value thereof. Simon and the Customer waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to this Section 1 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Customer as fiduciary. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

2. **Acceptance.** This Proposal constitutes Simon's offer to the Customer and becomes a binding contract on the terms and conditions set forth herein upon the Customer's written acceptance or issuance of a Purchase Order.
3. **Contract Sum.** The cost for the Work includes all labor, material, equipment, insurance, taxes and supervision for the lump sum as stated herein ("Contract Sum"). Pricing shall be valid for thirty (30) days from the proposal date.
4. **Scope of Work.** Simon shall conduct roofing work at the Property in accordance with the Scope of Work as set forth in this Proposal ("Work"). Simon shall provide all labor, materials, equipment and tools necessary for the completion thereof, all in accordance with the terms and conditions set forth herein. Simon shall complete all Work in a workmanlike fashion and in accordance with standard practices. Although Simon tries to include as many items as it can within the Scope of Work, the dynamic and complex nature of roofing projects makes it simply not possible to anticipate every challenge or variable from the outset. Simon's Work does not include any item not explicitly stated in Simon's Scope of Work, including but not limited to: (i) testing for, inspecting, performing work related to, or otherwise determining the integrity or soundness of the structural components of roof, walls, floor, fixtures or other structure aspects on or around the premises (including but not limited to deteriorated roof decking, beams, wooden nailers, wet or damaged insulation, adding or removing roof penetrations, or additional fastening); (ii) detecting, testing for, removing or disposing of Hazardous Materials or other hazardous substances; (iii) inspecting or testing for the sanitary condition of the premises; (iv) inspecting for or testing the operating condition or safety of the Customer's equipment; (v) design, evaluation, sizing, maintenance or replacement of any roofing or flooring drains or drainage systems; (vi) any pre-existing conditions or equipment on the premises, such as protrusions or items on or around the premises including but not limited to electrical lines, gas lines, HVAC units (including any disconnects or reconnects), other mechanical equipment, curbs, duct work, skylights, lightning protection, communication systems, or cables (hereinafter "Pre-Existing Conditions"); (vii) any latent, hidden or unobservable conditions at the premises which may impact or affect the work; (viii) any electrical, excavation, plumbing, utility, design or engineering services; (ix) inside protection or monitoring, engineering or third party testing; (x) any changes made or progress delays caused by requirements or restrictions of the Customer, Customer's representative, building owner, or other contractors (including but not limited to safety or policy requirements exceeding OSHA requirements, security or screening requirements exceeding 10 minutes, or any restrictions regarding ideal set up area, number of days worked within a week, hours worked on certain weekdays or weekends, or use of certain equipment or materials); or (xi) any other alteration or deviation from the Work not explicitly stated in the Scope of Work (all such items hereinafter referred to as "Changes in the Work"). Unless otherwise explicitly stated in Simon's Scope of Work, any Pre-Existing Conditions that may need to be moved to allow for the proper completion of the Work shall be the sole responsibility of the Customer.
5. **Changes in the Work.** All Changes in the Work shall be considered additional work which shall be an extra charge over and above the Contract Sum set forth herein. Such Changes in the Work shall be charged, at the sole option of Simon, based upon one of the following methods (each a "Change Order Sum"): (i) time and material basis based upon Simon's then-current Time and Material Service List Pricing Sheet ("Price Sheet"); (ii) unit pricing if provided herein; or (iii) lump sum proposal as agreed upon by both parties. A 15% markup for overhead and 10% markup for profit, plus freight and handling, shall be added for any miscellaneous materials or labor not found in the Simon Price Sheet, including but not limited to rentals and subcontractor charges. Changes in the Work shall be executed only upon a written change order from the Customer ("Change Order"), provided however that should Simon elect to proceed without a written Change Order, the Customer agrees that the absence of a written Change Order shall not constitute a defense to Simon's right to be compensated for the extra work.
6. **Time for Performance.** The Work shall be scheduled as outlined in this Section 6 and shall be substantially completed within a reasonable amount of time, as extended by any Excusable Delay, defined below. For emergency repairs, the Work shall be scheduled as soon as possible, but in any event within twenty-four (24) hours of the date of acceptance of this Proposal or receipt of a Purchase Order from the Customer. For non-emergency repairs, the Work shall be scheduled within three (3) days of the date of acceptance of Proposal or as otherwise agreed upon by both parties. If the Work includes any type of roof tear-off, Simon Roofing shall not tear off any part of the roof or expose the inside of the building if the chance of precipitation is 30% or greater.
7. **Excusable Delays.** Simon shall not be liable for damages for delays in performance or failure to perform due to causes beyond the reasonable control and without the fault or negligence of Simon. Such causes may include, but are not limited to, inclement weather (which shall mean 30% or greater chance of precipitation, high winds, or snow, ice or water accumulations), war, riot, strike or walkout, embargo, fire, flood, tornado, hurricane, other acts of God, shortages of materials or labor, delays caused by third parties or the Customer or any of its employees or agents, or any other occurrence or event beyond the reasonable control of Simon ("Excusable Delay"). Delays due to any Excusable Delay shall extend the time for completion of the Work. It is within Simon's sole discretion to determine whether the Work can be performed under weather conditions existing at the time of scheduled performance.

8. **Payment Terms.** If the Contract Sum is less than Fifteen Thousand Dollars (\$15,000), payment shall be due NET 30 DAYS after substantial completion. If the Contract Sum is equal to or greater than Fifteen Thousand Dollars (\$15,000), payment terms shall be based upon the following project progress billing schedule: (1) 50% of the Contract Sum shall be due before commencement of the Work. The Customer acknowledges and agrees that Simon shall not commence Work until such sum is received; (2) Semi-monthly progress billing, due NET 30 DAYS after the invoice date, shall be invoiced for the remainder of the Contract Sum (percentage increment billing shall be contingent upon job size, weather conditions, etc.). Simon shall generate an invoice for all balances owed. It is understood by the Customer that Simon shall protect its lien rights in the event that payment is not received when due, as set forth under this Section 8. Any warranty offered in connection with this Proposal will be considered voided if full payment is not received by Simon within one hundred and twenty (120) days from the date of the invoice. The Customer shall be responsible for any collection expenses or fees incurred by Simon, including but not limited to attorney fees, collection fees, and court costs, in efforts to collect payment of any past due balance. If any invoice is not paid in full within the stated payment terms, interest shall accrue on the unpaid amount at a rate equal to one percent (1%) per month, until such balance is paid in full.
9. **Customer Credit.** The Customer hereby authorizes Simon to investigate the Customer's credit, which may include but is not limited to, obtaining credit records, histories and reports from third party sources and consumer and/or corporate financial ratings or evaluations from third-party sources. The Customer expressly grants Simon authorization to take any other reasonable steps necessary in evaluating the Customer's credit history and ability to pay. Should Simon at any time deem the Customer's credit status or history to be unfavorable, Simon may terminate this Proposal without liability. The Customer expressly acknowledges that Simon's obligations under this Proposal or any other proposal or contract are contingent upon Simon's approval of the Customer's credit.
10. **Clean up.** Simon shall keep the Work area reasonably neat and free of rubbish and debris. Upon completion of the Work, Simon shall remove its tools and equipment and shall leave the work area in a "broom clean" condition.
11. **Application.** Certain products used in roofing or flooring applications, especially solvent-based materials, can emit odors that are sometimes strong. The Customer acknowledges that odors and emissions from products shall be released and noise shall be generated as part of the roofing and/or flooring process to be performed. In all instances, the Customer shall be responsible for indoor air quality, including assuring adequate ventilation for the Customer's facility and taking other steps to prevent fumes and odors from entering the building, such as controlling HVAC units, intake vents, wall vents, windows, doors, and other openings. In addition, Simon's presence or work on top of the roof may cause dust or debris to dislodge and/or release into the environment from the interior underside of the roof decking. The Customer shall be responsible for containing and protecting the interior contents from such dust and debris. The Customer shall hold harmless Simon against any and all loss, liability, demands, claims, suits, damages, causes of action and expenses of any kind or nature, including attorneys' fees and expenses incident thereto, caused by, relating to or arising out of fumes, odors or dust and debris that are emitted during the roofing and/or flooring process.
12. **Termination.** This Proposal may be terminated by Simon after twenty-four (24) hour written notice to the Customer in the event of (1) material breach of this Proposal by the Customer; (2) failure by the Customer to make payment under this Proposal for a period of ten (10) days after invoice due date; (3) unexpected extraordinary changes in the Work including, but not limited to, discovery of Hazardous Materials or unsafe working conditions; (4) unexpected material changes in the working conditions between the date of acceptance of this Proposal and the project commencement date. In the event of such a termination by Simon, Simon shall be entitled to recover from the Customer payment for all Work executed and for any and all loss with respect to materials, equipment, tools and machinery, including all overhead and profit applicable to the Work. Should Simon materially breach this Proposal, Simon shall have fifteen (15) business days to cure such default after the Customer provides written notice of such default to Simon. If Simon fails to cure the default within the specified time period, the Customer may terminate this Proposal after twenty-four (24) hour written notice to Simon. In the event of such a termination by the Customer, the Customer shall not be entitled to make any additional payments under this Proposal except such payments for all Work already executed.
13. **Environmental Compliance.** For purposes of these General Conditions, the term "Hazardous Material" means any substance or material defined by applicable state or federal laws as hazardous to health and regulated as such, including, without limitation, toxic mold or other mold that may be harmful or cause health concerns, lead, fungus, asbestos, hazardous chemicals, toxic gases and other like items or events. Except to the extent explicitly stated in the Scope of Work herein, Simon's Work does not include testing for, or abatement or remediation of Hazardous Materials. If Simon discovers Hazardous Materials on the Property, Simon shall stop Work in the affected area, report its discovery to the Customer at once, and suspend any further Work until 1) Simon and the Customer have mutually agreed that Simon shall remove the Hazardous Materials, or 2) the Customer has notified Simon, in writing, and Simon is sufficiently satisfied that the material has been determined not to be hazardous or has been removed or rendered non-hazardous. If the discovery of Hazardous Materials on the Property and/or the removal by Simon of such Hazardous Materials causes delay or additional cost to Simon, the time for completion shall be extended appropriately and the Contract Sum shall be increased in the amount of Simon's reasonable additional costs of shut- down, delay, start-up and removal. Simon assumes no responsibility or liability to the Customer for Hazardous Materials which may exist at the Property. To the fullest extent permitted by law, the Customer shall indemnify and hold harmless Simon and its agents and employees from and against any and all loss, liability, demands, claims, suits, damages to property, injuries (including but not limited to death) to persons, fees (including but not limited to attorneys' fees), fines and penalties levied by governmental authorities, and all other causes of action and expenses of any kind or nature, arising out of or resulting from the presence of Hazardous Materials at or near the Property, to the extent such claims, damages, losses and expenses are not caused by the sole gross negligence or intentional misconduct of Simon.
14. **Indemnification.** Simon shall indemnify and hold harmless the Customer and its officers, shareholders and employees against all loss, liability, demands, claims, suits, damages, causes of action, injury (including death), compliance or remediation actions, fines or civil penalties and expenses of any kind or nature, including attorneys' fees and expenses incident thereto caused by or arising out of: a) failure of Simon to abide by any applicable local, state or federal laws or ordinances; or b) the negligence or misconduct of Simon or its employees, except to the extent caused by the negligence or misconduct of the Customer. The Customer shall indemnify and hold harmless Simon and its officers, shareholders and employees against all loss, liability, demands, claims, suits, damages, causes of action, injury (including death), compliance or remediation actions, fines or civil penalties and expenses of any kind or nature, including attorneys' fees and expenses incident thereto caused by or arising out of a) petroleum contamination; b) structural, design or engineering deficiencies of the premises or any fixtures or structures on or around the premises; c) any Pre-Existing Conditions or other latent, hidden or unobservable conditions on or around the premises; d) failure of Customer to abide by any applicable local, state or federal laws or ordinances; or e) any acts or omissions of the Customer or its employees, contractors, agents or invitees, except to the extent caused by the negligence or misconduct of Simon. When applicable, the Customer shall indemnify and hold harmless Simon and its officers, shareholders and employees against all loss, liability, demands, claims, suits, damages causes of action and expenses of any kind or nature, including attorney's fees and expenses incident thereto for and against injuries (including death) to persons or property caused by or arising out of fire or explosion from or in connection with



gasoline dispensation equipment or facilities (including areas adjacent thereto). Further, the Customer hereby represents to Simon that the Customer's gasoline dispensation equipment and its facilities and equipment are in good working order, are not subject to any condition or defect that could or may cause leakage, and/or fire or explosion, have been recently tested by applicable local authorities, are in compliance with all federal, state and local laws and regulations, and are not presently affected by or subject to any condition, conditions, or circumstance that may lead to increased risk of fire or explosion.

15. **Warranty.** Upon full and final payment to Simon of the Contract Sum and if applicable Change Order Sum, a Superior Performance Warranty will be issued to the Customer for the Work for the time period as specified in the Scope of Work. The Superior Performance Warranty shall be the sole and exclusive warranty for the Work and shall be subject to the terms, conditions and limitations as stated therein.
16. **Governing Law and Jurisdiction.** This Proposal shall be governed by, and construed in accordance with, the laws of the State of Ohio, without regard to conflict of laws principles. All disputes arising out of or otherwise relating to any transaction or activity to which this Proposal relates shall be subject to the exclusive jurisdiction and venue of Mahoning County, Ohio, and the Customer consents to the personal and exclusive jurisdiction and venue of these courts.
17. **Entire Agreement.** This Proposal represents the entire and integrated agreement between Simon and the Customer and supersedes all negotiations, proposals and agreements. No oral agreements have been made other than set forth in this Proposal, and the customer acknowledges that no representations or warranties of any kind or nature not specifically set forth herein have been made. Except as otherwise provided in Section 5 herein, neither this Proposal nor the Work can be modified or changed in any way other than by a writing signed by Simon and the Customer, and any attempted oral modifications of this Proposal or the Work shall be void and of no force and effect. The parties hereby object to and reject the terms and conditions of any acknowledgement, order acceptance, or purchase order which are inconsistent with or in addition to the general conditions of this Proposal.
18. **Attorneys' Fees.** In any action in law or in equity, including an action for declaratory relief, brought to enforce or interpret the provisions of this Proposal, the prevailing party shall be entitled to reasonable attorneys' fees which the court may set in the same or in a separate action brought for that purpose, in addition to any other available relief.
19. **Independent Contractor.** Both parties acknowledge and agree that Simon is acting under this Proposal solely as an independent contractor, and not as a partner, joint venture or employee of the Customer and neither party shall have any authority to act for or bind or obligate the other in any manner whatsoever, except to the extent specifically set forth herein or as may hereafter be specifically authorized in writing by both parties.
20. **Limitation of Liability.** Notwithstanding anything in this Proposal to the contrary, in no event shall Simon be liable to the Customer or any of its employees, agents, subsidiaries, or any other third party for any consequential, punitive or liquidated damages arising out of or resulting from Simon's performance under this Proposal.
21. **Miscellaneous.** If any term, covenant, condition or provision of this Proposal are held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions of this Proposal shall remain in full force and effect and shall in no way be affected, impaired or invalidated. The failure of either party at any time to enforce any right or remedy available to it under this Proposal with respect to any breach or failure shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by the other party. This Proposal may not be delegated or assigned by either party without the other party's written consent and any purported delegation of duties or assignment of rights by either party under this Proposal is void unless the delegating party has obtained the other party's prior written consent. All causes of action which either party may have against the other as a result of breach of any term or condition, representation or warranty of this Proposal shall survive any expiration or termination of this Proposal. Simon and the Customer agree that this Proposal is to be binding upon their respective successors, permitted assigns, heirs, executors and administrators.