

STATE OF TEXAS §
 §
COUNTY OF FORT BEND §

**ADDENDUM TO ARMKO INDUSTRIES, INC.'S AGREEMENT FOR CONSULTING SERVICES
AND REROOFING AT MULTIPLE BUILDINGS**

THIS ADDENDUM ("Addendum") is entered into by and between Fort Bend County, ("County"), a body corporate and politic under the laws of the State of Texas, and Armko Industries, Inc., ("Armko"), a company authorized to conduct business in the State of Texas (hereinafter collectively referred to as the "parties").

WHEREAS, the parties have executed and accepted Armko's Agreement for Consulting Services and Reroofing at Multiple Buildings (the "Agreement"), attached hereto as Exhibit "A" and incorporated by reference, for specified Building Envelope Consulting Services (the "Services"); and

WHEREAS, County has determined that this Agreement is for personal or professional services and therefore exempt from competitive bidding under Chapter 262 of the Texas Local Government Code; and

WHEREAS, the following changes are incorporated as if a part of the Agreement:

1. **Scope of Services.** Subject to this Addendum, Armko will render Services to County as described in Armko's Agreement for Consulting Services and Reroofing at Multiple Buildings (Exhibit A). Any Services to be performed by Armko for County on County property must be scheduled at least two weeks in advance with the County's Facilities Maintenance Department, or as mutually agreed upon by the parties. The County's Facilities Maintenance Department may be contacted between the hours of 8:00 a.m. and 5:00 p.m., excluding County holidays or other County closures, at (281) 238-3565 concerning the scheduling of any Services.
2. **Payment; Non-appropriation; Taxes.** Payment shall be made by County within thirty (30) days of receipt of invoice. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County. County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request. Interest resulting from late payments by County shall be governed by Chapter 2251, TEXAS GOVERNMENT CODE. County reserves the right to withhold payment pending verification of satisfactory work performed.

Upon termination of this Agreement, County shall compensate Armko in accordance with this Section, for those services which were provided under this Agreement prior to its termination and which have not been previously invoiced to County. Armko's final invoice for said services will be presented to and paid by County in the same manner set forth above.

3. **Limit of Appropriation.** Armko clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of Seventy Thousand and 00/100 dollars (\$70,000.00), specifically allocated to fully discharge any and all liabilities County may incur. Armko does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Armko may become entitled to and the total maximum sum that County may become liable to pay to Armko shall not under any conditions, circumstances, or interpretations thereof exceed Seventy Thousand and 00/100 dollars (\$70,000.00). In no event will the amount paid by the County for all services under this Agreement exceed this Limit of Appropriation without an amendment executed by the parties.
4. **Public Information Act.** Armko expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Armko shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement are not proprietary or confidential information.
5. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending, indemnifying, holding or saving harmless Armko for any reason are hereby deleted. Armko shall indemnify and defend County against all losses, liabilities, claims, causes of action, and other expenses, including reasonable attorney's fees, arising from activities of Armko, its agents, servants or employees, performed under this agreement that result from the negligent act, error, or omission of Armko or any of Armko's agents, servants or employees.
6. **Applicable Law; Arbitration; Attorney Fees.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. County does not agree to pay any and/or all attorney fees incurred by Armko in any way associated with the Agreement.
7. **Modifications.** The parties may not amend or waive this Agreement, except by a written agreement executed by both Parties.

8. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, ARMKO ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF SERVICES OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.
9. **Use of Customer Name.** Armko may use County's name without County's prior written consent only in any Armko's customer lists, any other use must be approved in advance by County.
10. **Performance Warranty.** Armko warrants to County that Armko has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Armko will apply that skill and knowledge with care and diligence to ensure that the services provided hereunder will be performed and delivered in accordance with the highest professional standards.
11. **Conflict.** In the event there is a conflict between this Addendum and the Agreement, this Addendum controls.
12. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.
13. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.
14. **Electronic and Digital Signatures.** The Parties to this Agreement agree that any electronic and/or digital signatures of the Parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.
15. **Ownership and Reuse of Documents.** All documents, data, reports, research, graphic presentation materials, etc., developed by Armko as a part of its work under this Agreement, shall become the property of County upon completion of this Agreement, or in the event of termination or cancellation thereof, at the time of payment under § 2 for work performed. Armko shall promptly furnish all such data and material to County on request.
16. **Personnel.** Armko represents that it presently has, or is able to obtain, adequate qualified personnel in its employment for the timely performance of the Services required under this Agreement and that Armko shall furnish and maintain, at its own expense, adequate and sufficient personnel, in the opinion of County, to perform the Services when and as required and without delays.

When performing Services on-site at the County, Armko shall comply with, and ensure that all Armko Personnel comply with, all rules, regulations and policies of County that are communicated to Armko in writing, including security procedures concerning systems and data and remote access thereto, building security procedures, including the restriction of

access by County to certain areas of its premises or systems for security reasons, and general health and safety practices and procedures.

17. **Compliance with Laws.** Armko shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Armko shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.
18. **Insurance.** Prior to commencement of the Services under this Agreement, Armko shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Armko shall provide certified copies of insurance endorsements and/or policies if requested by County. Armko shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Armko shall obtain such insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:
 - (a). Workers' Compensation insurance. Substitutes to genuine Workers' Compensation Insurance will not be allowed. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 - (b). Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 - (c). Business Automobile Liability insurance with a combined Bodily Injury/Property Damage limit of not less than \$1,000,000 each accident. The policy shall cover liability arising from the operation of licensed vehicles by policyholder.
 - (d). Professional Liability insurance with limits not less than \$1,000,000.

County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation. All Liability policies including Workers' Compensation written on behalf of Armko shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

If required coverage is written on a claims-made basis, Armko warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of two years beginning from the time that work under the Agreement is completed.

19. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.
20. **Confidential Information.** Armko acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Armko or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Armko shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Armko) publicly known or is contained in a publicly available document; (b) is rightfully in Armko's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Armko who can be shown to have had no access to the Confidential Information.

Armko agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Armko uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Services to County hereunder, and to advise each of its employees and agents of their obligations to keep Confidential Information confidential. Armko shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Armko shall advise County immediately in the event Armko learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Armko will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Armko against any such person. Armko agrees that, except as directed by County, Armko will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Armko will promptly turn over to County all documents, papers, and other matter in Armko's possession which embody Confidential Information.

Armko acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Armko acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

Armko in providing all services hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will.

This Addendum is effective upon execution by County.

FORT BEND COUNTY

KP George, County Judge

Date

ATTEST:

Laura Richard, County Clerk

REVIEWED:

Facilities Management and Planning
Department

ARMKO INDUSTRIES, INC.

Christi Stromberg
Authorized Agent – Signature

Christine Stromberg
Authorized Agent- Printed Name

Corporate Secretary - Treasurer
Title

1/7/21
Date

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$_____ are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

Exhibit A: Armko's Agreement for Consulting Services and Reroofing at Multiple Buildings

Exhibit A



OWNER: FORT BEND COUNTY

PROJECT: 2021 MULTIPLE BUILDINGS ROOF REPLACEMENT

FORT BEND COUNTY JAIL MULTIPLE AREAS

1410 Williams Way Boulevard, Richmond, TX 77469

WILLIAM B. TRAVIS BUILDING - AREAS A AND B

301 Jackson Street, Richmond, TX 77469

EMERGENCY MEDICAL SERVICES (EMS) - MEDIC 2

1514 Parkway Boulevard, Sugarland, TX 77478

IDC SHOP - MULTIPLE ROOFS

1809 Eldridge Road, Sugarland, TX

1320 SPINKS ROAD
FLOWER MOUND, TX 75028
972.874.1388 o / 972.874.1391 f
www.armko.com
Texas Registered Architectural Firm #BR369
Texas Registered Engineering Firm #F-006498

**AGREEMENT FOR CONSULTING SERVICES
AND REROOFING AT MULTIPLE BUILDINGS**

AGREEMENT MADE this 19th day of November, 2020, between Fort Bend County (hereinafter referred to as the "Client") and Armko Industries, Inc. (hereinafter referred to as Armko); in consideration of the mutual promises herein contained, the parties hereto agree as follows:

DESCRIPTION OF WORK

It is the desire of the Client to engage the services of Armko to perform Building Envelope Consulting Services specifically requested by the Client.

Armko shall perform these services for the Client as an independent consultant and not as an employee.

**AGREEMENT FOR CONSULTING SERVICES
FORT BEND COUNTY
2021 MULTIPLE BUILDINGS ROOF REPLACEMENT**

SCHEDULE A - ROOF ANALYSIS

Roof Analysis

- A. Visual examination of interior and exterior roof-related sheet metal, parapets, copings, flashings, roof mat, deck system, and penetrations and/or projections through the roof system.
- B. Analysis of insulation at core areas.
- C. Observation of topside of deck at core areas.

Total for Schedule A: Fee for Schedule A is included in Schedule B

SCHEDULE B - CONSTRUCTION DOCUMENTS, BIDDING, and CONSTRUCTION ADMINISTRATION

CONSTRUCTION DOCUMENTS - PHASE 1

- A. Perform building evaluation.
- B. Establish Scope of Work.
- C. Identify areas of concern for the new work as well as the existing conditions.
- D. Establish tie-in options and weathertightness of the existing facility during demolition.
- E. Define the roofing specifications.
- F. Prepare construction documents per agreed upon Scope of Work.
 - 1. Roofing Specifications
 - 2. Roof Plans
 - 3. Roof Details, including unusual and difficult transitions between walls and roof elements
- G. Compile Bid Package to include:
 - 1. General Requirements
 - 2. Product Specifications
 - 3. Roof Plans
 - 4. Roof Details, including unusual and difficult transitions between walls and roof elements
- H. Provide digital copies for advertisement

BIDDING - PHASE 2

- A. Assist in notification to the construction community.
- B. Assist at pre-proposal and/or proposal conference.
- C. Assist with bid questions, clarifications, and addenda.
- D. Provide technical assistance during the bidding/negotiation procedure, upon request.

CONSTRUCTION ADMINISTRATION - PHASE 3

- A. Perform submittal review.
- B. Facilitate and/or conduct pre-construction and pre-installation meetings.
- C. Provide major phase site presence with construction observations
- D. Provide observation reports of each site visit to Owner, including photographs.
- E. Respond to contractor questions (RFIs).
- F. Review monthly and final progress payment requests, upon request.
- G. Provide final observations.

Fee for Schedule B: \$70,000.00 (Not to Exceed)

Fort Bend County Jail – Three (3) Areas	\$46,000.00
Travis Building Areas A & B	\$21,000.00
Sugarland EMS	\$1,000.00
IDC Front Office	\$2,000.00
NOT TO EXCEED	\$70,000.00

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ADDITIONAL ON-SITE OBSERVATIONS

Additional visits over and above the two hour weekly on-site observations as described in Schedule B shall be \$125.00 per hour, portal to portal, incurred only upon Client's written request.

REIMBURSABLE EXPENSES

Reimbursable expenses are in addition to compensation for Basic and Additional Services and only include expenses incurred by the Armko Industries, Inc. employees and consultants in the interest of the Project, as identified in the following clauses. Reimbursable expenses shall be itemized and presented monthly by Armko Industries, Inc. to the Client, for payment upon approval by the Client's authorized representative. Reimbursable expenses shall be billed by Armko Industries, Inc. at Armko's actual costs, without mark-up, unless rates are specified below. Unless prior approval is provided by the Client, reimbursement shall be paid to Armko Industries, Inc. only for the following:

- i. Copies and reproduction of construction documents and drawings and specifications at Armko Industries Inc.'s actual cost.
- ii. Fees advanced for securing approval of authorities having jurisdiction over this Project at costs incurred by Armko Industries, Inc.
- iii. Reimbursement for travel, lodging, and meals authorized in advance by the Client.
- iv. Advertising/solicitations for bids at actual cost incurred by Armko Industries, Inc.

TERMS

Schedule A will be included in Schedule B.

Phases 1-2 for **Schedule B** will be invoiced at the completion of each Phase. Balance due for Phase 3-Construction Administration will be invoiced in monthly increments until completion of project, based on percentage of construction completed.

Phase 1 – Construction Documents	70%
Phase 2 – Bidding	10%
Phase 3 – Construction Administration	20%

Armko shall receive payment within thirty (30) days after receipt of invoice by Client according to the payment schedule above. Armko's provision of its services hereunder shall be within its discretion, as shall the hours and days to be worked.

LIMITATION OF LIABILITY/WARRANTIES

Client agrees that Armko shall provide only the services set out herein and that Armko makes no warranties, express or implied, with respect to the products it may recommend to their fitness for a particular purpose. Client agrees to look solely to the warranties made by the contractor and/or manufacturer of said products, including, without limitation, consequential damages arising out of the use of said product.

Any language, term or condition of this agreement to the contrary notwithstanding, Armko makes no express or implied warranties, including warranties of merchantability or fitness for any purpose, regarding Armko's service, which warranties are expressly disclaimed.

To the fullest extent permitted by law, and not withstanding any other provision of this Agreement, the total liability in the aggregate, of Armko and Armko's officers, directors, partners, employees and sub-consultants, and any of them, to the Client and anyone claiming by and through the Client, for any and all claims, losses, costs or damages, including attorney's fees and costs and expert witness fees and costs of any nature

**AGREEMENT FOR CONSULTING SERVICES
FORT BEND COUNTY
2021 MULTIPLE BUILDINGS ROOF REPLACEMENT**

whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed the actual total of any applicable, available, remaining and/or available insurance policy limits which pertain to any claim made. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

Armko shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or the safety precautions and programs in connection with the project, since these are solely the contractor's rights and responsibilities.

CHOICE OF LAW/VENUE

This agreement shall be governed by and construed in accordance with the laws of the State of Texas and is performable in Fort Bend County, Texas.

CANCELLATION

Either party hereto may cancel this agreement in writing upon thirty (30) days written notice. The contract shall thereafter terminate thirty (30) days after the postmark date of said notice. Nothing contained herein shall relieve either party from performing hereunder during said thirty (30) day period. Payment for all services performed prior to the termination date shall be due within five (5) days after said termination date, unless earlier payment is required under any other provision of this agreement.

ANTI-BOYCOTT and ANTI-TERRORIST PROVISIONS

In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods or services unless the contract contains a written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract.

Chapter 2252, Texas Government Code does not allow a governmental entity to contract with a company that does business with Iran, Sudan, or a foreign terrorist organization on a list prepared by the Texas Comptroller.

The signatory executing this contract on behalf of the company verifies that the company does not boycott Israel, will not boycott Israel during the term of this contract, and that it does not contract with a prohibited entity listed by the Texas Comptroller.

ENTIRE AGREEMENT

This agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the services to be rendered to the client by Armko and contains all of the covenants and agreements between the parties with respect to such transaction in any matter whatsoever.

REGISTERED FIRM

Armko is a registered architectural and engineering firm. The Texas Board of Architectural Examiners^[1] has jurisdiction over complaints regarding the professional practices of persons registered as architects in Texas. The Texas Board of Professional Engineers^[2] has jurisdiction over complaints regarding the professional practices of persons registered as engineers in Texas.

^[1] Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, TX 78701, (512) 305-9000.

^[2] Texas Board of Professional Engineers, 1917 IH-35 South, Austin, TX 78741, (512) 440-7723.

**AGREEMENT FOR CONSULTING SERVICES
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2021 MULTIPLE BUILDINGS ROOF REPLACEMENT**

SIGNATURE PAGE

FORT BEND COUNTY

301 Jackson Street, Suite 301
Richmond, TX 77469

ARMKO INDUSTRIES, INC.

1320 Spinks Road
Flower Mound, TX 75028

Signature

Print Name

Title

Date

Signature
Dennis Lelfrig, IIIFCC, CIT-1

Print Name
Roofing & Building Envelope Consultant

Title
November 19, 2020

Date

ARMKO PROPOSAL CERTIFICATION

This is to hereby certify that this Agreement has been reviewed by me and is acceptable for presentation to the above client for execution.

Signature
Rodney R. Ruebsahm

Print Name

Title

Date