

AGREEMENT FOR PROFESSIONAL ROOFING AND WATERPROOFING CONSULTING SERVICES

This Agreement for Professional Roofing and Waterproofing Consulting Services (“Agreement”) is made and entered into by and between Fort Bend County, Texas (“County”), a political subdivision of the state of Texas, and Armko Industries, Inc. (“Consultant”), a corporation authorized to conduct business in the State of Texas. County and Consultant may be referred to individually as a “Party” or collectively as the “Parties.”

WHEREAS, Consultant is a professional architectural and engineering firm which provides professional consulting services in the Greater Houston Area; and

WHEREAS, County desires for Consultant to provide professional roofing and waterproofing consulting services to the County concerning the re-roofing project at the O.D. Tucker Arena; and

WHEREAS, Consultant represents that it is qualified and desires to perform such services for County; and

WHEREAS, pursuant to the requirements of Chapter 2254 of the Texas Government Code, County has determined that Consultant is the most highly qualified provider of such professional services and the Parties have negotiated a fair and reasonable price for the same; and

WHEREAS, this Agreement is not subject to competitive bidding requirements under § 262.023 of the Texas Local Government Code because this Agreement is for professional consulting services and may not be competitively bid pursuant to Chapter 2254 of the Texas Government Code.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties do mutually agree as follows:

1. **Recitals.** The recitals set forth above are incorporated herein by reference and made a part of this Agreement.
2. **Scope of Services.** Consultant shall render services to County as provided in Consultant’s Proposal dated September 9, 2024, attached hereto as “Exhibit A” and incorporated herein by reference (the “Services”).

3. **Time for Performance.** Time for performance for the Services provided under this Agreement shall begin with Consultant's receipt of Notice to Proceed. The Services shall be scheduled at a time that is mutually agreeable between the parties but without reasonable delay.

4. **Compensation and Payment Terms.**

Consultant's fees for the Services shall be calculated at the rate(s) set forth in Exhibit "A" attached hereto. The Maximum Compensation to Consultant for the Services performed under this Agreement is \$108,000.00. In no event shall the amount paid by County to Consultant under this Agreement exceed said Maximum Compensation without an approved change order.

- (a) Consultant understands and agrees that the Maximum Compensation stated is an all-inclusive amount and no additional fee, cost or reimbursed expense shall be added whatsoever to the fees stated in the attached Exhibit "A."
- (b) County will pay Consultant based on the following procedures: Upon completion of the tasks identified in the Scope of Services, Consultant shall submit to County staff person designated by the County Consultant, one (1) electronic (pdf) copy of the invoice showing the amounts due for services performed in a form acceptable to County. Consultant shall submit invoices no more frequently than on a monthly basis. County shall review such invoices and approve them within 30 calendar days with such modifications as are consistent with this Agreement and forward same to the Auditor for processing. County shall pay each such approved invoice within thirty (30) calendar days.
- (c) Accrual and payment of interest on any overdue payments assessed by Consultant, if any, shall be governed by Chapter 2251 of the Texas Government Code.
- (d) Consultant understands and agrees that County's obligation to make any payment(s) hereunder is dependent upon Consultant's completion of the Services in a timely, good, and professional manner and in accordance with the performance representations made in Section 25 of this Agreement. Therefore, County reserves the right to withhold payment pending verification of satisfactory work performed.

5. **Limit of Appropriation.** Consultant understands and agrees that the Maximum Compensation for the performance of the Services within the Scope of Services described in Section 2 above is \$108,000.00. In no event shall the amount paid by County under this Agreement exceed the Maximum Compensation without a County approved change order. Consultant 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 \$108,000.00 specifically allocated to fully discharge any and all liabilities County may incur under this Agreement. Consultant does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total Maximum Compensation that Consultant may become entitled to and the total maximum sum that County may become liable to pay Consultant under this Agreement shall not under any conditions, circumstances, or interpretations thereof exceed \$108,000.00.

6. **Non-appropriation.** Consultant understands and agrees that in the event no funds or insufficient funds are appropriated by the County under this Agreement, County shall immediately notify Consultant in writing of such occurrence and the Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were received or made without penalty, liability or expense to the County. In no event shall said termination of this Agreement or County's failure to appropriate said funds be deemed a breach or default of this Agreement or create a debt by County in any amount(s) in excess of those previously funded.
7. **Taxes.** Consultant understands and agrees that County is a governmental entity and political subdivision of the state of Texas, and as such, is exempt from payment of any sales and use taxes. County shall furnish evidence of its tax-exempt status upon written request by Consultant.
8. **Insurance.** Prior to commencement of the Services, Consultant 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. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by County. Consultant 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. Consultant shall obtain such insurance written on an Occurrence form from such companies having Best's 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 in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
 - (b) 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.
 - (c) 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.

- (d) Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- (e) Professional Liability insurance with limits not less than \$1,000,000.

County and members of the Fort Bend County Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of Consultant shall contain a waiver of subrogation in favor of County and members of Commissioners Court. For Commercial General Liability, the County shall be named as an Additional Insured on a Primary & Non-Contributory basis.

If required coverage is written on a claims-made basis, Consultant warrants that any retroactive date applicable to coverage under the policy precedes the Effective Date of this Agreement and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Agreement is completed.

Consultant shall not commence any portion of the work under this Agreement until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by County.

No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to County.

Approval of the insurance by County shall not relieve or decrease the liability of Consultant.

9. **Indemnity. PURSUANT TO SECTION 271.904 OF THE TEXAS LOCAL GOVERNMENT CODE, CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS COUNTY, ITS OFFICIALS, OFFICERS, AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, LOSSES, DAMAGES, CAUSES OF ACTION, SUITS, LIABILITY, AND COSTS, INCLUDING THE REIMBURSEMENT OF REASONABLE ATTORNEY FEES, ARISING OUT OF OR RESULTING FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT OR CONSULTANT'S AGENTS, EMPLOYEES, OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL. IN ADDITION, CONSULTANT SHALL FURTHER PROCURE AND MAINTAIN LIABILITY INSURANCE WITH COVERAGE AS PROVIDED IN SECTION 8 OF THIS AGREEMENT.**

CONSULTANT SHALL TIMELY REPORT TO COUNTY ALL SUCH MATTERS ARISING UNDER THE INDEMNITY PROVISIONS ABOVE. UPON THE RECEIPT OF ANY CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN, OR JUDGMENT, AND NO LATER THAN THE FIFTEENTH DAY OF EACH MONTH, CONSULTANT SHALL PROVIDE COUNTY WITH A WRITTEN REPORT ON EACH MATTER, SETTING FORTH THE STATUS OF EACH MATTER, THE SCHEDULE OR PLANNED PROCEEDINGS WITH RESPECT TO EACH MATTER, AND THE COOPERATION OR ASSISTANCE, IF ANY, OF COUNTY REQUIRED BY CONSULTANT IN THE DEFENSE OF EACH MATTER. IN THE EVENT OF ANY DISPUTE BETWEEN THE PARTIES AS TO WHETHER A CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN, OR JUDGMENT APPEARS TO HAVE BEEN CAUSED BY OR APPEARS TO HAVE ARISEN OUT OF OR RESULTS FROM AN ACT OF NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY CONSULTANT, OR ITS AGENTS, EMPLOYEES, OR ANOTHER ENTITY OVER WHICH CONSULTANT EXERCISES CONTROL, CONSULTANT SHALL, NEVERTHELESS, FULLY DEFEND SUCH CLAIM, DEMAND, SUIT, ACTION, PROCEEDING, LIEN, OR JUDGMENT UNTIL AND UNLESS THERE IS A DETERMINATION BY A COURT OF COMPETENT JURISDICTION THAT SAID ACTS AND/OR OMISSIONS OF CONSULTANT ARE NOT AT ISSUE IN THE MATTER.

THE INDEMNITY PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT HOWEVER CAUSED, AND NO PAYMENT, PARTIAL PAYMENT, OR ISSUANCE OF CERTIFICATION OF COMPLETION OF THE SERVICES UNDER THIS AGREEMENT BY COUNTY, WHETHER IN WHOLE OR IN WHOLE OR IN PART, SHALL WAIVE OR RELEASE ANY OF THE PROVISIONS OF THIS SECTION.

10. **Public Information Act.** Consultant expressly acknowledges and agrees that County is a public entity and as such, is subject to the provisions of the Texas Public Information Act under Chapter 552 of the Texas Government Code. In no event shall County be liable to Consultant for release of information pursuant to Chapter 552 of the Texas Government Code or any other provision of law. Except to the extent required by law or as directed by the Texas Attorney General, County agrees to maintain the confidentiality of information provided by Consultant expressly marked as proprietary or confidential. County shall not be liable to Consultant for any disclosure of any proprietary or confidential information if such information is disclosed under Texas law or at the direction of the Texas Attorney General. Consultant further acknowledges and agrees that the terms and conditions of this Agreement are not proprietary or confidential information.
11. **Compliance with Laws.** Consultant shall comply with all federal, state, and local laws, statutes, ordinances, rules, regulations, and the 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. Consultant, in providing all

services hereunder, further agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

12. **Independent Contractor.** In the performance of work or services hereunder, Consultant shall be deemed an independent Contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Consultant. Consultant and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.
13. **Use of Customer Name.** Consultant may use County's name without County's prior written consent only in Consultant's customer lists. Any other use of County's name by Consultant must have the prior written consent of County.
14. **County Data.** Nothing in this Agreement shall be construed to waive the requirements of Section 205.009 of the Texas Local Government Code. Nothing in this Agreement will be construed to waive the requirements of any record retention laws applicable to County.
15. **Personnel.** Consultant 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 Consultant 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.

All employees of Consultant shall have such knowledge and experience as will enable them to perform the duties assigned to them. Any employee or agent of Consultant who, in County's opinion, is incompetent or by his conduct becomes detrimental to providing Services pursuant to this Agreement, shall, upon request of County, immediately be removed from association with the Services required under this Agreement.

When performing Services on-site at County's facilities, Consultant shall comply with, and will require that all Consultant's Personnel comply with, all applicable rules, regulations and known policies of County that are communicated to Consultant 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.

16. **Confidential and Proprietary Information.** Consultant 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 Consultant 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 Consultant 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 Consultant) publicly known or is contained in a publicly available document; (b) is rightfully in Consultant'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 Consultant who can be shown to have had no access to the Confidential Information.

Consultant agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Consultant 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. Consultant 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, Consultant shall advise County immediately in the event Consultant 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 Consultant will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Consultant against any such person. Consultant agrees that, except as directed by County, Consultant 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, Consultant will promptly turn over to County all documents, papers, and other matters in Consultant's possession which embody Confidential Information.

Consultant 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. Consultant 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.

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

17. **Ownership and Reuse of Documents.** All work product and data produced or developed under this Agreement by Consultant including any documents, data, notes, reports,

research, graphic presentation materials, and any other related material (collectively, "Materials"), shall at all times be the property of County. County, at all times, shall have a right of access to the Materials. Consultant shall promptly furnish and deliver all such Materials to County on request. Notwithstanding the foregoing, Consultant shall bear no liability or responsibility for Materials that have been modified post-delivery to County or used by County for a purpose other than that for which they were prepared under this Agreement.

18. **Inspection of Books and Records.** Consultant shall permit County, or any duly authorized agent of County, to inspect and examine the books, records, information, and documentation (collectively, "Records") of Consultant which relate to the Services provided under this Agreement for the purposes of making audits, examinations, excerpts, copies, and transcriptions. Consultant shall maintain all such Records in a readily available state and location, reasonably accessible to County or their authorized representatives. County's right to inspect such books and records shall survive the termination of this Agreement for a period of four (4) years, or until any litigation concerning any of the Services has been satisfactorily resolved, whichever occurs later. **CONSULTANT SHALL NOT DESTROY OR DISCARD ANY RECORDS REASONABLY RELATED TO THIS AGREEMENT OR THE SERVICES, UNLESS THE TIME PERIOD FOR MAINTAINING THE SAME HAS EXPIRED.**

19. **Termination.**

- (a) Without Cause. County, in its sole discretion, and without prejudice to any other remedy to which it may be entitled to at law or in equity, may terminate this Agreement, in whole or in part, without cause, upon thirty (30) days prior written notice to Consultant.
- (b) With Cause. County, in its sole discretion, and without prejudice to any other remedy to which it may be entitled to at law or in equity, may terminate this Agreement, in whole or in part, with cause, for any of the following reasons, each of which shall constitute a material breach and "Default" of the Agreement:
- (1) Consultant fails to perform any portion of the Scope of Services within the timeframe(s) provided under this Agreement.
 - (2) Consultant fails to comply with County's documentation and reporting requirements, terms and requirements of this Agreement, or applicable federal, state, or local laws and regulations.
 - (3) Non-performance and suspension of the Agreement by Consultant that exceeds thirty (30) calendar days due to Force Majeure.

- (4) Consultant fails to perform any obligation under this Agreement or as required by law, ordinance, or regulation and such failure creates an imminent threat to the public health and/or safety.
 - (5) Consultant otherwise materially breaches any of the covenants or terms and conditions set forth in this Agreement or fails to perform any of the other provisions of this Agreement or so fails to make progress as to endanger performance of this Agreement in accordance with its terms.
 - (6) County shall notify Consultant in writing of the alleged Default in reasonable detail ("Notice"). Upon receipt of said Notice, Consultant shall have opportunity to cure such Default within the time specified in the Notice by County. If Consultant fails to cure such Default within such time, and to the reasonable satisfaction of County, then County may elect to terminate this Agreement for cause.
 - (7) If, after termination of the Agreement by County for cause, it is determined for any reason whatsoever that Consultant was not in Default, or that the Default was excusable, the rights and obligations of the Parties hereunder shall be the same as if the termination had been issued by County without cause in accordance with this Agreement.
- (c) Upon termination of this Agreement for any reason, Consultant shall cease all work and activity for the Services by the date specified by County and shall not incur any new obligations or perform any additional services for the work performed hereunder beyond the specified date. County shall compensate Consultant in accordance with Section 4, above, for such work provided by Consultant under this Agreement prior to its termination and which has not been previously presented for payment by Consultant to County.
 - (d) If County terminates this Agreement as provided in this Section, no fees of any type, other than fees due and payable at the termination date, shall thereafter be paid to Consultant.
20. **Force Majeure.** In the event either Party is rendered unable, wholly or in part, by Force Majeure to carry out any of its obligations under this Agreement, then, within a reasonable time after the occurrence of such event, but no later than ten (10) calendar days after, the Party whose obligations are so affected (the "Affected Party") thereby shall notify the other in writing stating the nature of the event and the anticipated duration. The Affected Party's obligations under this Agreement shall be suspended during the continuance of any delay or inability caused by the event, but for no longer period. The

Affected Party shall further endeavor to remove or overcome such delay or inability as soon as is reasonably possible.

For purposes of this Agreement, Force Majeure includes, but is not limited to: acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind of the government of the United States of America or the State of Texas or any civil or military authority other than a Party to this Agreement, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, severe storms, floods, washouts, drought, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines or canals, and any other incapacities of any Party, similar to those enumerated, which are not within the control of the Party claiming such inability, which such Party could not have avoided by the reasonable exercise of due diligence and care.

21. **Assignment.** Consultant shall not assign this Agreement to another party without the prior written consent of County.
22. **Successors and Assigns Bound.** County and Consultant each bind themselves and their successors and assigns to the other Party and to the successors and assigns of such other Party, with respect to all covenants of this Agreement.
23. **Publicity.** Contact with citizens of Fort Bend County, media outlets, or other governmental agencies shall be the sole responsibility of County. Under no circumstances, whatsoever, shall Consultant release any material or information developed or received during the performance of Services hereunder unless Consultant obtains the express written approval of County or is required to do so by law.
24. **Notice.** Any and all notices required or permitted under this Agreement shall be in writing and shall be mailed by certified mail, return receipt requested, or personally delivered to the following addresses:

If to County: Fort Bend County Facilities Management and
Planning Department
Attn: Director
301 Jackson Street, Suite 301
Richmond, Texas 77469

And

Fort Bend County, Texas
Attn: County Judge
401 Jackson Street, 1st Floor
Richmond, Texas 77469

If to Consultant: Armko Industries, Inc.

Attn: _____

1320 Spinks Road

Flower Mound, Texas 75028

Within five (5) business days of the Effective Date of this Agreement, each Party to this Agreement shall designate in writing to the other Party one person and one alternate person to be that Party's designated spokesperson for communications between the Parties.

25. **Standard of Care.** Pursuant to Section 271.904 of the Texas Local Government Code, Consultant represents to County that Consultant has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession ("Professionals") practicing in the greater Houston metropolitan area. Consultant shall provide the Services to County with the same professional skill and care ordinarily provided by such Professionals under the same or similar circumstances and professional license and as expeditiously as is prudent considering the ordinary professional skill and care of a competent Professional.
26. **Travel Policy.** Mutually approved travel and mileage expenses incurred in the performance of the Services hereunder will be reimbursed to Consultant only to the extent that those costs do not exceed Fort Bend County travel reimbursement allowances. A copy of County's Travel Policy with those reimbursement limits shall be provided to Consultant upon request.
27. **Arbitration, Litigation Waiver, and Attorney Fees.** County does not agree to submit disputes arising out of this Agreement to binding arbitration nor does County agree to pay any and/or all attorney fees incurred by Consultant in any way associated with this Agreement. Therefore, any references in Consultant's Proposal to binding arbitration, waiver of a right to litigate a dispute, or payment of attorney fees are hereby deleted.
28. **No Waiver of Jury Trial.** County does not agree that all disputes (including any claims or counterclaims) arising from or related to this Agreement shall be resolved without a jury. Therefore, any references in Consultant's Proposal to County's waiver of jury trial are hereby deleted.
29. **Limitations.** Limitations for the right to bring an action, regardless of form, shall be governed by the applicable laws of the State of Texas, and any provisions to the contrary in Consultant's Proposal are hereby deleted.
30. **Indemnification by County. CONSULTANT UNDERSTANDS AND AGREES THAT UNDER THE TEXAS CONSTITUTION AND THE LAWS OF THE STATE OF TEXAS, COUNTY CANNOT ENTER INTO AN AGREEMENT WHEREBY COUNTY AGREES TO INDEMNIFY OR HOLD**

HARMLESS ANOTHER PARTY. THEREFORE, ANY AND ALL REFERENCES IN CONSULTANT'S PROPOSAL TO COUNTY DEFENDING, INDEMNIFYING, OR HOLDING OR SAVING HARMLESS CONSULTANT OR ANY OTHER PARTY, FOR ANY REASON WHATSOEVER, ARE HEREBY DELETED.

31. **Entire Agreement and Modification.** This Agreement constitutes the entire Agreement between the Parties and supersedes all previous agreements, written or oral, pertaining to the subject matter of this Agreement. Any amendment to this Agreement must be in writing and signed by each Party to come into full force and effect. **IT IS ACKNOWLEDGED BY CONSULTANT THAT NO OFFICER, AGENT, EMPLOYEE, OR REPRESENTATIVE OF COUNTY HAS ANY AUTHORITY TO CHANGE THE TERMS OF THIS AGREEMENT OR ANY ATTACHED EXHIBITS HERETO UNLESS EXPRESSLY AUTHORIZED BY THE FORT BEND COUNTY COMMISSIONERS COURT.**
32. **Open Meetings Act.** Consultant expressly acknowledges that County is subject to the Texas Open Meetings Act, TEX. GOV'T CODE ANN. §§ 551.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will comply with the provisions of the Texas Open Meetings Act in relation to the Agreement.
33. **Conflict.** In the event there is a conflict among the terms of this document entitled "Agreement for Professional Roofing and Waterproofing Consulting Services" and the terms of Consultant's Proposal or any other exhibit attached hereto, the terms of this document shall prevail with regard to the conflict.
34. **Understanding Fair Construction.** By execution of this Agreement, the Parties acknowledge that they have read and understood each provision, term, and obligation contained herein. This Agreement, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting Party than the non-drafting Party.
35. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
36. **No Waiver of Immunity.** Neither the execution of this Agreement nor any other conduct of either Party relating to this Agreement shall be considered a waiver or surrender by County of its governmental powers or immunity under the Texas Constitution or the laws of the state of Texas.
37. **Applicable Law and Venue.** This Agreement shall be construed according to the laws of the state of Texas. Venue for any claim arising out of or relating to the subject matter of this Agreement shall lie in a court of competent jurisdiction of Fort Bend County, Texas.

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 Consultant in any way associated with the Agreement.

38. **Certain State Law Requirements for Contracts** The contents of this Section are required by Texas law and are included by County regardless of content For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Consultant hereby verifies that Consultant and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:

- (a) Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, Consultant is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
- (b) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Consultant does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
- (c) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Consultant does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
- (d) If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Consultant does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.

39. **Human Trafficking. BY ACCEPTANCE OF THIS AGREEMENT, CONSULTANT 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.**

40. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of the Agreement.
41. **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 shall have the same force and effect as the use of manual signatures.
42. **Certification.** By his or her signature below, each signatory individual certifies that he or she is the properly authorized person or officer of the applicable Party hereto and has the requisite authority necessary to execute this Agreement on behalf of such Party, and each Party hereby certifies to the other that it has obtained the appropriate approvals or authorizations from its governing body as required by law.

(Execution Page Follows)

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IN WITNESS WHEREOF, and intending to be legally bound, County and Consultant hereto have executed this Agreement to be effective on the date signed by the last Party hereto.

FORT BEND COUNTY, TEXAS

ARMKO INDUSTRIES, INC.



KP George, County Judge



Authorized Agent – Signature

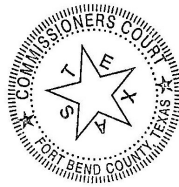
December 4, 2024
Date Approved by Commissioners Court on 12/3/2024

Rodney R. Ruebsahm
Authorized Agent- Printed Name

ATTEST:



Laura Richard, County Clerk



President
Title

11/20/24
Date


APPROVED:



Facilities Management and Planning Department

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$ 108,000.00 are available to pay the obligation of Fort Bend County, Texas within the foregoing Agreement.



Robert Ed Sturdivant, County Auditor

Exhibit A: Consultant's Proposal dated September 9, 2024

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EXHIBIT A

(Consultant's Proposal Follows Behind)



OWNER: FORT BEND COUNTY

PROJECT: O.D. TUCKER ARENA REROOF
4310 Highway 36 South
Rosenberg, TX 77471

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 FOR REROOFING

AGREEMENT MADE this 9th day of September, 2024, 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 Roofing and Waterproofing Consulting Services specifically requested by the Client.

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

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O.D. TUCKER ARENA REROOF**

SCHEDULE A - 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
- G. Roof Details
- H. Compile Bid Package to include:
 - 1. General Requirements
 - 2. Product Specifications
 - 3. Roof Plans
 - 4. Roof Details
- I. Provide digital files for distribution of Bid Package.

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 meeting.
- C. Provide a maximum of three (3) site visits: two (2) mid-construction and a final stage completion walk.
- 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 A: \$ 108,000.00 Lump Sum

ADDITIONAL ON-SITE OBSERVATIONS

Additional visits over and above the two hour weekly on-site observations as described in Schedule A shall be \$250.00 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:

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- 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

Phases 1-2 for **Schedule A** 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	75%
Phase 2 – Bidding	5%
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 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.

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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.

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SIGNATURE PAGE

**FORT BEND COUNTY
FORT BEND FACILITIES AND CONSTRUCTION**
301 Jackson St.
Richmond, TX 77469

Signature

Print Name

Title

Date

ARMKO INDUSTRIES, INC.
1320 Spinks Road
Flower Mound, TX 75028



Signature

Dennis Leifrig

Print Name

Roofing & Building Envelope Consultant

Title

September 5, 2024

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

H. Ray Stringer, Jr., AIA

Print Name

Corporate Architect

Title

September 5, 2024

Date

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Armko Industries, Inc.
Flower Mound, TX United States

Certificate Number:
2024-1241387

Date Filed:
11/20/2024

Date Acknowledged:
12/03/2024

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

Fort Bend County

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

25-Fac-100177
Professional services for Waterproofing

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary
	Ruebsahm, Rodney R.	Flower Mound, TX United States	X	
	Ruebsahm, R. Ryan	Flower Mound, TX United States	X	

5 Check only if there is NO Interested Party.

☐

6 UNSWORN DECLARATION

My name is _____, and my date of birth is _____.

My address is _____, _____, _____, _____, _____.
(street) (city) (state) (zip code) (country)

I declare under penalty of perjury that the foregoing is true and correct.

Executed in _____ County, State of _____, on the _____ day of _____, 20____.
(month) (year)

Signature of authorized agent of contracting business entity
(Declarant)