

JAN 25 2021

Approved

REQUEST FOR AGENDA PLACEMENT FORM

Submission Deadline - Tuesday, 12:00 PM before Court Dates

SUBMITTED BY: Jim Simpson

TODAY'S DATE: January 15, 2021

DEPARTMENT:

X County Attorney's Office

SIGNATURE OF DEPARTMENT HEAD:

X _____

REQUESTED AGENDA DATE:

X January 25, 2021

SPECIFIC AGENDA WORDING:

Consideration of Cost Estimates and Agreement with Addendum between Johnson County and CMJ Engineering, Inc. for Materials Testing for the Johnson County Burleson Sub-courthouse Renovation and Construction Project

PERSON(S) TO PRESENT ITEM: Ralph McBroom

SUPPORT MATERIAL: Descriptive letter from CMJ Engineering, Inc. to County Judge dated January 5, 2021; Cost Estimate; Terms for Construction Materials Testing Services; Addendum to Terms for Construction Materials Testing. (Note - First 3 documents are in one one file)

TIME:

ACTION ITEM: 10

WORKSHOP: _____

(Anticipated number of minutes needed to discuss item)

CONSENT: _____

EXECUTIVE: _____

STAFF NOTICE:

COUNTY ATTORNEY: _____ X _____

ISS DEPARTMENT: _____

AUDITOR: _____

PURCHASING DEPARTMENT: _____ X _____

PERSONNEL: _____

PUBLIC WORKS: _____ X _____

BUDGET COORDINATOR: _____

OTHER: _____

*******This Section to be Completed by County Judge's Office*******

ASSIGNED AGENDA DATE: _____

REQUEST RECEIVED BY COUNTY JUDGE'S OFFICE _____

COURT MEMBER APPROVAL _____

Date _____

Estimate No.: 21-006
January 5, 2021

**Johnson County
County Judge**
2 N. Main Street, Room 120
Cleburne, Texas 76033
email: tmalott@johnsoncounty.org

**ESTIMATE
CONSTRUCTION MATERIALS TESTING SERVICES FOR
JOHNSON COUNTY SUB-COURTHOUSE RENOVATION
BURLESON, TEXAS**

Dear Ms. Malott,

We are pleased to submit this estimate for providing construction materials engineering services on the above referenced project. **We understand we have been selected to provide these services based on our qualifications.**

Cost Estimate - Defined

This is an ESTIMATE and should in no way be considered a lump sum proposal. CMJ will only bill for actual services performed. Services performed beyond the estimated items and quantities may exceed the estimated testing budget. Fewer services performed than estimated may be lower the estimated testing budget.

The total testing cost is dependent upon the contractor's means and methods, such as the size of areas/amount of items ready for testing per site visit, size/rate of concrete placements, method of masonry grouting (once per day or several times per day, pumping or hand placement), etc. As the contractor typically schedules our services, the actual number of site visits required are beyond our control. Based on our experience, we have made assumptions as to the means and methods the individual contractors may choose to follow.

Scope of Work

Our scope of service is based on our review of the project plans and specifications. We propose to service this project on a call out, as-needed basis. **All same-day service requests will be charged the greater of either \$250 or our actual rescheduling costs based on the project's unit fees, for each site visit performed. Service requests may be made Monday through Friday 7:00 am to 5:00 pm and should be received 24-hours in advance but no later than 3:00 PM of the day prior to service. CMJ will make every effort to service same day service requests but cannot guarantee your request will be serviced without the required prior notice.**

Earthwork

Laboratory testing of existing subgrade and select fill; in-place moisture/density testing of same.

Drilled Piers

On site verification of initial pier start by a Project Manager or if required, a Geotechnical Engineer. Full time excavation observation, reinforcing steel observation, and concrete testing and observation. Post installation verification of pier reports by project management staff. Based on our review of the project geotechnical report we anticipate that the piers will be installed in dry subsurface conditions and have proposed the use of a Drilled Pier Engineering Technician. If wet drilling conditions are encountered requiring the use of temporary casing, rapid concrete placement due to ground water seepage, underwater drilling techniques, or water encountered at belled pier founding elevations, we will use a Senior Pier Specialist Engineering Technician billed at the rate as shown on our enclosed budget attachment.

Cast-In-Place Concrete

Pre- and post-concrete placement reinforcing steel observation. On-site placement observation and testing to include slump, temperature, entrained air content, and the molding of test cylinders. Laboratory curing and testing of cylinders.

Structural Steel Observation

On-site visual observation and testing of field welded and bolted connections by AWS Certified Welding Inspector. On-site ultrasonic testing of full-penetration welds by ANSI Certified Non-Destructive testing technician as required.

Project Budget

Based upon our understanding of your needs and the project specifications, our unit fees and estimated quantities for this project will be as stated on the budget attachment. All fees for services performed which do not appear on the budget attachment will be based on our standard fee schedule. The final charges will be a function of the total services performed. All charges for laboratory services are F.O.B. our laboratory. **All same-day service requests will be charged the greater of either \$250 or our actual rescheduling costs based on the project's unit fees, for each site visit performed.**

The prices provided in the attached fee schedule will remain valid for forty-five (45) days from the date on this estimate, or for one year from that date if our services for this project are started within the forty-five (45) day period. Invoices will be submitted for these services on a monthly basis. These will be due and payable upon receipt. **CMJ will not supervise or direct work that is performed by the contractor or subcontractors and is not responsible for their means and methods utilized or the resultant outcome of their efforts.**



CMJ ENGINEERING, INC.

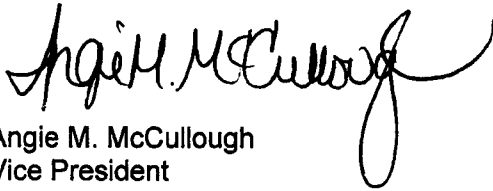
Johnson County
Johnson County Sub-Courthouse Renovation
Burleson, Texas
Page 3

Cost Estimate No. 21-006
January 5, 2021

Closing

CMJ Engineering, Inc. appreciates the opportunity to submit this estimate. We have included the attached unit fees that correspond to our understanding of the required work scope that will be required of CMJ Engineering. Feel free to call us if you have any questions regarding our services or estimate. Following your authorization, we are ready to begin work and look forward to providing you with our services.

Respectfully,
CMJ ENGINEERING, INC.



Angie M. McCullough
Vice President



Will Avila
Project Manager



**COST ESTIMATE
CONSTRUCTION MATERIALS TESTING SERVICES FOR
JOHNSON COUNTY SUB-COURTHOUSE RENOVATION
BURLESON, TEXAS**

| <u>DESCRIPTION</u> | <u>NO</u> | <u>FEE</u> | <u>UNIT</u> | <u>AMOUNT</u> |
|---|-----------|------------|-------------|---------------------------|
| <u>Earthwork</u> | | | | |
| Moisture/Density Relations (ASTM D698) | <u>2</u> | \$ 175.50 | each | \$ 351.00 |
| Liquid & Plastic Limit (ASTM D4318-B) | <u>2</u> | \$ 61.50 | each | \$ 123.00 |
| Laboratory Sieve Analysis (ASTM C117, D1140) | <u>2</u> | \$ 69.00 | each | \$ 138.00 |
| Laboratory Sieve Analysis (ASTM C136) | <u>2</u> | \$ 83.50 | each | \$ 167.00 |
| Earthwork Observation/Testing Including all Non-Test Pit | | | | |
| In-Place Moisture/Density Testing by ASTM D6938 (Min. 4 Hours/Trip) | <u>28</u> | \$ 72.50 | hour | \$ 2,030.00 |
| Additional Fee-Test Pit In-Place Moisture/Density Testing | | \$ 15.00 | each | \$ - |
| Project Management - Initial Project Set-up | <u>2</u> | \$ 95.50 | hour | \$ 191.00 |
| Vehicle Trip Charge | <u>7</u> | \$ 43.00 | trip | \$ 301.00 |
| Estimated Total for Earthwork Services: | | | | <u>\$ 3,301.00</u> |
| <u>Pier Observation</u> | | | | |
| Concrete Test Cylinders (ASTM C31/39 - 4" x 8" - Min. 5/Set) | <u>5</u> | \$ 21.00 | each | \$ 105.00 |
| Engineering Technician (Min. 4 Hours/Trip) | <u>8</u> | \$ 72.50 | hour | \$ 580.00 |
| Project Management | <u>4</u> | \$ 95.50 | hour | \$ 382.00 |
| Cylinder Pick Up | <u>1</u> | \$ 200.00 | each | \$ 200.00 |
| Vehicle Trip Charge | <u>3</u> | \$ 43.00 | trip | \$ 129.00 |
| Estimated Total for Pier Observation Services: | | | | <u>\$ 1,396.00</u> |
| <u>Concrete Observation/Testing</u> | | | | |
| Concrete Test Cylinders (ASTM C31/39 - 4" x 8" - Min. 5/Set) | <u>15</u> | \$ 21.00 | each | \$ 315.00 |
| Concrete Testing Technician (Min. 4 hours/trip) | <u>12</u> | \$ 50.00 | hour | \$ 600.00 |
| Cylinder Pick Up | <u>3</u> | \$ 200.00 | each | \$ 600.00 |
| Vehicle Trip Charge | <u>6</u> | \$ 43.00 | trip | \$ 258.00 |
| Estimated Total for Concrete Observation/Testing Services: | | | | <u>\$ 1,773.00</u> |

**COST ESTIMATE
CONSTRUCTION MATERIALS TESTING SERVICES FOR
JOHNSON COUNTY SUB-COURTHOUSE RENOVATION
BURLESON, TEXAS**

| <u>DESCRIPTION</u> | <u>NO</u> | <u>FEE</u> | <u>UNIT</u> | <u>AMOUNT</u> |
|--|-----------|------------|-------------|---------------------------|
| <u>Structural Steel Observation</u> | | | | |
| Structural Steel Observation by CWI (Min. 5 Hours/Trip) | 15 | \$ | 83.50 hour | \$ 1,252.50 |
| Vehicle Trip Charge | 3 | \$ | 43.00 trip | \$ 129.00 |
| Estimated Total for Structural Steel Services: | | | | <u>\$ 1,381.50</u> |
| Estimated Total for Above Testing and Observation Services: | | | | <u>\$ 7,851.50</u> |

Notes:

1. Project Management fees will be charged as follows: 2 hours for initial project setup, foundation reconciliation at 3 minutes per pier, compliance review and statement of same at 3 minutes per report with a 1 hour minimum, post-tensioning compliance review at 0.50 hours per page with a 1.0 hour minimum and a 79G/house pad compliance report review and letter at 10 minutes per lot, if CMJ is informed at the start of this project of this need. Should the client choose not to sign CMJ's agreement and instead request CMJ to sign the client's contract, any time spent reviewing/revising client's contract will be billed at the above listed project management hourly rate. All other services that would be requested of a project manager will be billed as same.
2. Overtime rates of 1.5 times the regular rate will be charged for hours worked or services performed over eight (8) hours per day, or before 7:00 a.m. and/or after 5:00 p.m. Monday thru Friday. All lab and field services performed on Saturday, will be billed at 1.5 times the regular rate and will be billed at 2.0 times the regular rate for Sundays and recognized holidays.
3. All laboratory test fees are F.O.B. our laboratory. Engineering technician minimums and vehicle trip charges will apply to all trips to the job-site including sample pickups and specimen pickups.
4. A minimum amount of technician time and a vehicle trip charge will be billed for each call out, sample pickup or specimen pickup unless noted otherwise. Technician time is charged portal-to-portal from our Fort Worth office.
5. 4"x8" concrete compression test specimens will be used per ACI 318 requirements unless instructed otherwise.
6. Structural steel observation at fabrication shop fees based on facilities located in the Dallas-Fort Worth metroplex area.
7. Additional tests not specified in this fee schedule will be quoted upon request, or based on our current fee schedule.
8. Vehicle trip charge in excess of 25 miles from CMJ's office will be based on \$0.81/mile plus tolls, portal-to-portal our office.
9. Specimen collection fees as stated are either project specific or based on a maximum of 25 miles from CMJ.
10. All same-day service requests will be charged a minimum \$250 insufficient notice fee or actual rescheduling costs if greater.
11. All test-pit moisture-density testing will be charged a \$15 fee for each test in addition to standard hourly fee.
12. CMJ will not supervise or direct work that is performed by the contractor or subcontractors and is not responsible for their means and methods utilized or the resultant outcome of their efforts.

TERMS FOR CONSTRUCTION MATERIALS TESTING SERVICES

THE AGREEMENT

This AGREEMENT is made by and between CMJ ENGINEERING, INC., hereinafter referred to as CMJ, and Johnson County, hereinafter referred to as CLIENT.

The AGREEMENT between the parties consists of these TERMS, the attached COST ESTIMATE identified as COST ESTIMATE No. 21-006 dated January 5, 2021, and any exhibits or attachments noted in the COST ESTIMATE. Together, these elements will constitute the entire AGREEMENT superseding any and all prior negotiations, correspondence, or agreements either written or oral. Any changes to this AGREEMENT must be mutually agreed to in writing.

STANDARD OF CARE

CLIENT recognizes that subsurface conditions may vary from those observed at locations where borings, surveys, or explorations are made, and that site conditions may change with time. Data, interpretations, and recommendations by CMJ will be based solely on information available to CMJ. CMJ is responsible for those data, interpretations, and recommendations, but will not be responsible for other parties' interpretations or use of the information developed.

Services performed by CMJ under this AGREEMENT are expected by CLIENT to be conducted in a manner consistent with the level of care and skill ordinarily exercised by members of the CMT LABORATORY profession practicing contemporaneously under similar conditions in the locality of the project. Under no circumstance is any warranty, expressed or implied, made in connection with the providing of CMT LABORATORY services.

SITE ACCESS AND SITE CONDITIONS

CLIENT will grant or obtain free access to the site for all equipment and personnel necessary for CMJ to perform the work set forth in this AGREEMENT. CLIENT will notify any and all possessors of the project site that CLIENT has granted CMJ free access to the site. CMJ will take reasonable precautions to minimize damage to the site, but it is understood by CLIENT that, in the normal course of work, some damage may occur and the correction of such damage is not part of this AGREEMENT unless so specified in the COST ESTIMATE.

CLIENT is responsible for accurately delineating the locations of all subterranean structures and utilities. CMJ will take reasonable precautions to avoid known subterranean structures, and CLIENT waives any claim against CMJ arising from damage done to subterranean structures and utilities not identified or accurately located.

SAMPLE DISPOSAL

CMJ will retain samples transported to the geotechnical laboratory for testing for a period of thirty (30) days following submission of the report covering those samples. Further storage or transfer of samples can be made at CLIENT'S expense upon CLIENT'S prior written request.

MONITORING

If CMJ is retained by CLIENT to provide a site representative for the purpose of monitoring specific portions of construction work or other field activities as set forth in the COST ESTIMATE, then this phrase applies. For the specified assignment, CMJ will report observations and professional opinions to CLIENT. No action of CMJ or CMJ'S site representative can be construed as altering any AGREEMENT between CLIENT and others. CMJ will report to CLIENT any observed geotechnically-related work which, in CMJ'S professional opinion, does not conform with plans and specifications. The CMJ has no right to reject or stop work of any agent of the CLIENT. Such rights are reserved solely for CLIENT. Furthermore, CMJ'S presence on site does not in any way guarantee the completion or quality of the performance of the work of any party retained by CLIENT to provide field or construction-related services.

CMJ will not be responsible for and will not have control or charge of specific means, methods, techniques, sequences or procedures of construction or other field activities selected by any agent or agreement or CLIENT, or safety precautions and programs incident thereto.

BILLING AND PAYMENT

CLIENT will pay CMJ in accordance with the procedures indicated in the COST ESTIMATE and its attachments. Invoices will be submitted to CLIENT by CMJ, and will be due and payable upon presentation. If CLIENT objects to all or any portion of any invoice, CLIENT will so notify CMJ in writing within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay when due that portion of the invoice not in dispute. In the absence of written notification described above, the amount as stated on the invoice will be paid.

Invoices are delinquent if payment has not been received within thirty (30) days from date of invoice. At the option of the CMJ, CLIENT will pay an additional charge of one-and-one-half (1.5) percent per month (or the maximum percentage allowed by law, whichever is lower) on any delinquent amount, except for any portion of the invoiced amount in dispute and resolved in favor of CLIENT. Disputed amounts withheld by the client which are subsequently resolved in favor of the CMJ will carry the additional charge, as described above, effective thirty (30) days from the date of the original invoice. In the event CLIENT fails to pay CMJ within sixty (60) days after invoices are rendered, CLIENT agrees that CMJ will have the right to consider the failure to pay the CMJ's invoice as a breach of this AGREEMENT.

This AGREEMENT may be terminated by either party seven (7) days after written notice in the event of any breach of any provision of this AGREEMENT or in the event of substantial failure of performance by the other party, or if CLIENT suspends the work for more than three (3) months. In the event of termination, CMJ will be paid for services performed prior to the date of termination plus reasonable termination expenses, including, but not limited to the cost of completing analyses, records, and reports necessary to document job status at the time of termination.

RISK ALLOCATION

Many risks potentially affect CMJ by virtue of entering into this AGREEMENT to perform professional engineering services on behalf of CLIENT. The principal risk is the potential for human error by CMJ. For CLIENT to obtain the benefit of a fee which includes a nominal allowance for dealing with CMJ'S liability, CLIENT agrees to limit CMJ'S liability to CLIENT and to all other parties for claims arising out of CMJ'S performance of the services described in this AGREEMENT. The aggregate liability of CMJ will not exceed the amount of the CMJ'S fee for negligent professional acts, errors, or omissions.

Limitations on liability and indemnities in this AGREEMENT are business understandings between the parties voluntarily and knowingly entered into, and shall apply to all theories of recovery including, but not limited to breach of contract, warranty, tort (including negligence), strict or statutory liability, or any other cause of action, except for willful misconduct or gross negligence. The parties also agree that CLIENT will not seek damages in excess of the limitations indirectly through suits with other parties who may join CMJ as a third-party defendant. Parties means CLIENT and CMJ and their officers, employees, agents, affiliates, and subcontractors.

Both CLIENT and CMJ agree that they will not be liable to each other, under any circumstances, for special, indirect, consequential, or punitive damages arising out of or related to this AGREEMENT.

DISCOVERY OF UNANTICIPATED HAZARDOUS MATERIALS

CLIENT represents that CLIENT has made a reasonable effort to evaluate if hazardous materials are on or near the project site, and that CLIENT has informed CMJ of CLIENT'S findings relative to the possible presence of such materials.

Hazardous materials may exist at a site where there is no reason to believe they could or should be present. CMJ and CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. CMJ and CLIENT also agree that the discovery of unanticipated hazardous materials may make it necessary for CMJ to take immediate measures to protect health and safety. CLIENT agrees to compensate CMJ for any equipment decontamination or other costs incident to the discovery of unanticipated hazardous materials.

CMJ agrees to notify CLIENT when unanticipated hazardous materials or suspected hazardous materials are encountered. CLIENT agrees to make any disclosures required by law to the appropriate governing agencies. CLIENT also agrees to hold CMJ harmless for any and all consequences of disclosures made by CMJ which are required by governing law. In the event the project site is not owned by CLIENT, CLIENT recognizes that it is CLIENT'S responsibility to inform the property owner of the discovery of unanticipated hazardous materials or suspected hazardous materials.

Notwithstanding any other provision of the AGREEMENT, CLIENT waives any claim against CMJ arising from CMJ'S discovery of unanticipated hazardous materials or suspected hazardous materials, including, but not limited to, any costs created by delay of the project and any cost associated with possible reduction of the property's value.

CLIENT will be responsible for ultimate disposal of any samples secured by CMJ which are found to be contaminated. This includes any soil or rock cuttings, and contaminated drilling or wash water which is generated as a consequence of drilling activities.

DISPUTES RESOLUTION

All claims, disputes, and other matters in controversy between CMJ and CLIENT arising out of or in any way related to this AGREEMENT will be submitted to "alternative dispute resolution" (ADR) before and as a condition precedent to other remedies provided by law. If and to the extent CLIENT and CMJ have agreed on methods for resolving such disputes, then such methods will be set forth in the "Alternative Dispute Resolution Agreement" which, if attached, is incorporated into and made a part of this AGREEMENT. If no specific ADR procedures is set forth in this AGREEMENT, then it shall be understood that the parties shall submit disputes to mediation as a condition precedent to litigation.

If a dispute at law arises from matters related to the services provided under this AGREEMENT and that dispute requires litigation instead of ADR as provided above, then:

- (1) the claim will be brought and tried in judicial jurisdiction of the court of the county where CMJ's principal place of business is located and CLIENT waives the right to remove the action to any other county or judicial jurisdiction, and
- (2) the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees, and other claim related expenses.

GOVERNING LAW AND SURVIVAL

The law of the State of Texas will govern the validity of these TERMS, their interpretation and performance.

If any of the provisions contained in this AGREEMENT are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired. Limitations of liability and indemnities will survive termination of this AGREEMENT for any cause.

The parties have read the foregoing, understand completely the terms, and willingly enter into this AGREEMENT which will become effective on the date signed below by CLIENT.

Johnson County
CLIENT
[Signature]
By:

CMJ ENGINEERING, INC.
[Signature]
By: Angie M. McCullough

County Judge
Position

Vice President
Position

January 25, 2021
Date

January 5, 2021
Date

**CONTRACT TERMS ADDENDUM
FOR
THE JOHNSON COUNTY SUB-COURTHOUSE RENOVATION
PROJECT CONTRACT BETWEEN JOHNSON COUNTY, TEXAS AND
CMJ ENGINEERING, INC.
TERMS FOR CONSTRUCTION MATERIALS TESTING
2021**

1.1

These terms are and shall be a part of any Agreement between **Johnson County, Texas**, a political subdivision of the State of Texas, (hereinafter referred to as "**County**"), and **CMJ Engineering, Inc.** (hereinafter referred to as "**CMJ**"). **County** and any, contractor or subcontractor may be referred to as a "**PARTY**" or collectively referred to as the "**PARTIES**". **Johnson County, Texas** may also be referred to as "**Client**" in certain documents prepared by CMJ Engineering, Inc.

1.2

The following documents shall comprise and constitute the entire and complete Agreement between the Parties:

- 1 This Contract Terms Addendum For The Johnson County Sub-Courthouse Renovation Project Contract Between Johnson County, Texas and CMJ Engineering, Inc. Terms for Construction materials Testing.
2. The Terms for Construction Materials Testing Services and Cost Estimates attached thereto.

2.1

This Agreement will be governed by and construed according to the laws of the **State of Texas**. Venue for any action or claim arising out of the Agreement must be in the state district courts in **Johnson County, Texas** or the federal district courts in Dallas County, Texas. Any provision stating that County agrees to waive any right to trial by jury is hereby deleted.

2.2

Limitations for the right to bring an action, regardless of form, shall be governed by the laws of the State of Texas, Texas Civil Practice and Remedies Code §16.070, as amended, and any provision to the contrary is hereby deleted.

2.3

Under Texas law, a contract with a governmental entity that contains a claim against future revenues is void; therefore, any term which provides for such a claim is hereby deleted. Johnson County will, upon request of a party to the contract, certify the funds available to fulfill the terms of this Agreement.

3.1

The Parties agree that under the Constitution and laws of the State of Texas, Johnson County cannot enter into an agreement whereby Johnson County agrees to indemnify or hold harmless any other party; therefore, all references of any kind to Johnson County indemnifying and holding harmless any individuals or entities for any reason whatsoever are hereby deleted.

3.2

Article XI, Section 7(a) of the Texas constitution provides in relevant part:

... But no debt for any purpose shall ever be incurred in any manner by any city or county unless provision is made, at the time of creating the same, for levying and collecting a sufficient tax to pay the interest thereon and provide at least two per cent (2%) as a sinking fund, except as provided by Subsection (b) ...

This provision is interpreted with respect to contractual obligations of Texas county and city government entities to prohibit such government entities from entering into an indemnity agreement and to nullify such agreement provisions.

4.1

The Parties agree and understand that County is a political subdivision of the State of Texas, and therefore has certain governmental immunity, sovereign immunity and limitations on liability, and that County's general liability and vehicle insurance coverage is with the Texas Association of Counties Risk Pool and said "insurance coverage" is limited to the statutory maximum limits of the Texas Tort Claims Act; therefore, any provisions to the contrary are hereby deleted. The Parties agree and understand that County does not waive any of its common law, statutory or constitutional defenses to which it may be entitled.

4.2

The Parties agree and understand that County will not agree to waive any rights and remedies available to County under the Uniform Commercial Code ("UCC"); therefore, any provision to the contrary is hereby deleted.

4.3

The Parties agree and understand that County will not agree to be responsible for any sales tax, use tax, or any other taxes, fees, fines or penalties that may be imposed, levied or assessed by any federal, state or local government or agency which relates to the Agreement, the equipment or its use; therefore, any provision to the contrary is hereby deleted.

4.4

The Parties agree and understand that County will provide statutory workers compensation for its employees; however, County does not agree to include a waiver of subrogation, and therefore any provisions to the contrary are hereby deleted.

5.1

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment by a governmental entity under a contract is overdue on the 31st day after the later of:

- a. the date the governmental entity receives the goods under the contract;
- b. the date the performance of the service under the contract is completed; or
- c. the date the governmental entity receives an invoice for the goods or service.

Pursuant to Texas Government Code Section 2251.021 and this Agreement, a payment begins to accrue interest on the date the payment becomes overdue. The rate of interest that accrues on an overdue payment is the rate in effect on September 1 of the fiscal year in which the payment becomes overdue. The rate in effect on September 1 is equal to the sum of: (1) one percent; and (2) the prime rate as published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday. Interest on an overdue payment stops accruing on the date the governmental entity or vendor mailed or electronically transmits the payment. Therefore, all provisions to the contrary are hereby deleted.

6.1

No officer, member or employee of County, and no member of its governing body and no other public officials of the governing body of the locality or localities in which the project is situated or being carried out who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Agreement which affects his/her personal interest, have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof.

6.2

To the extent, if any, that any provision in this Agreement is in conflict with Texas Government Code §552.001 *et seq.*, as amended (the "Public Information Act"), the same shall be of no force and effect. Furthermore, it is expressly understood and agreed that Johnson County, its officers and employees may request advice, decisions and opinions of the Attorney General of the State of Texas in regard to the application of the Public Information Act. In the event of a request for documents or materials pursuant to the Texas Public Information Act (Texas Government Code Chapter 552) or similar law pertaining to documents or information County reasonably believes that any other Party might lawfully seek to claim as confidential, then County will forward the request to such Party. It shall be the obligation of such Party to prepare and submit to the Texas Attorney General's Office any claim and supporting brief or materials necessary to assert a claim that the documents or materials may be withheld pursuant to Texas Government Code Chapter 552 or other applicable law. County will cooperate with such Party in making such submission to the Texas Attorney General's Office. **The Parties acknowledges and understands that contracts, agreements, payment and revenue of a political subdivision of the State of Texas are public information and are not confidential.**

6.3

Services provided under the Agreement shall be provided in accordance with all applicable state and federal laws.

6.4

Under the Constitution and laws of the State of Texas, public property is exempt from forced sales and liens may not attach thereto.

6.5

IT IS UNDERSTOOD AND AGREED THAT JOHNSON COUNTY WILL NOT BE SUBJECT TO ARBITRATION; THEREFORE, ANY PARAGRAPH OR PROVISION REQUIRING ARBITRATION IS HEREBY DELETED.

6.6

Johnson County shall be responsible for the acts or failure to act of its employees, agents or servants, provided; however, its responsibility shall be subject to the terms, provisions and limitations of the Constitution and laws of the State of Texas, particularly the Texas Tort Claims Act.

7.1

If the Agreement provides for the continuation of this Agreement from year to year, then continuation is subject to current funds available for the Agreement, the allocation of funds to meet the terms of this Agreement, and subject to the approval of the Johnson County Commissioners Court. However, this Agreement need not be specifically identified in the annual budget or budget process. Utilization of the equipment or services provided by the other Party or Parties pursuant to the terms of this Agreement by County will constitute the County's action and intent to continue this Agreement barring a specific written notice to the contrary.

7.2

CMJ Engineering, Inc. certifies that pursuant to Section 231.006 of the Texas Family Code that the individual or business entity named in this contract is not ineligible to receive the specified payment(s) and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. CMJ Engineering, Inc states that it is not ineligible to receive State or Federal funds due to child support arrearages.

7.3

CONSTRUCTION MANAGER, CONTRACTOR OR SUBCONTRACTOR verifies that it does not boycott Israel and will not boycott Israel during the term of this contract. The

term "boycott Israel" is as defined by Texas Government Code Section 808.001, effective September 1, 2017. CONSTRUCTION MANAGER, CONTRACTOR OR SUBCONTRACTOR further verifies that it is not engaged in business with Iran, Sudan, or any foreign terrorist organization. The term "foreign terrorist organization" means an organization designated as foreign terrorist organization by the United States Secretary of State as authorized by 8 U.S.C. Section 1189.

7.4

Notwithstanding any other provisions contained in the contract documents, the Commissioners Court of Johnson County, Texas must specifically approve any amendment to the terms of the contract.

7.5


COUNTY shall be entitled to copies of all construction documents and drawings utilized in the construction of the Project for COUNTY'S use in operating, maintaining and securing the building. Such documents and drawings shall not be used by COUNTY for any other building.

8.1

In the event of any conflict between the terms and provisions of this Addendum and the terms and provisions of those contractual provisions tendered to Johnson County in the Agreement, this Addendum shall control and amend the contractual provisions of the Agreement and any provision to the contrary is hereby deleted. *THE TERMS OF THIS ADDENDUM SHALL BE FULLY OPERATIVE AND HAVE PRIORITY OVER ALL OTHER DOCUMENTS AND TERMS AND ANY TERM TO THE CONTRARY IN OTHER DOCUMENTS PUT FORTH BY CMJ ENGINEERING, INC. IS HEREBY DELETED.*

APPROVED AS TO FORM AND CONTENT:

JOHNSON COUNTY:


Roger Harmon

January 25, 2021
Date

Terms for Construction Materials Testing, CMJ Engineering, Inc.
Addendum Terms CMJ Engineering Burl SubCths WRD1

As Johnson County Judge



Attest:

Becky Mey
County Clerk, Johnson County

1-25-2021
Date

CMJ Engineering, Inc.:

Angie M. McCullough
Authorized Representative of
CMJ, engineering, Inc.
Angie M. McCullough
Vice President

1/15/2021
Date