

CONWAY LAW, PLLC

JESSE D. CONWAY ♦ ♦
JOSHUA L. VOLVOVIC

ATTORNEYS AT LAW
1014 FRANKLIN STREET, SUITE 106
VANCOUVER, WA 98660
(360) 906-1007
FAX: (360) 906-8155
WWW.CONWAYLAW.NET

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VIA EMAIL AND REGULAR MAIL

July 20, 2020

Curleigh "Jim" Carothers
City of Camas
616 NE 4th Avenue
Camas, Washington 98607
jcarothers@cityofcamas.us

Re: NE 3rd Avenue Bridge Seismic Retrofit Project
City Project Number: T1010
Notice of Protest

Dear Mr. Carothers:

I represent Conway Construction, Inc. ("Conway"). This letter is in response to a July 14, 2020 protest letter from Stellar J Corporation ("Stellar J"). Stellar J did not provide us this letter until today. It is my understanding that at 7 pm tonight the City will deliberate award of the above reference project. Please advise if we will be allowed to offer comments at this meeting.

As previously noted in its July 1st letter, Stellar J acknowledges that Conway is the low bidder for the NE 3rd Avenue Bridge Seismic Retrofit Project but repeats its claim that Conway's bid is nonresponsive. Stellar J is asking the City to reject Conway's bid and requests award of the contract.

Yet, as documented in Conway's July 15th response, Stellar J's fails to present any evidence to support their allegations. Stellar J still has failed to provide any evidence or legal support and merely repeats factual inaccuracies, speculations, and incorrect assumptions. Conway's bid is responsive, and they should be awarded the contract.

After receiving Conway's July 15 response, Stellar J tries again by launching a cursory "investigation" into PLI's qualifications that was limited to placing a few calls and checking a few websites. Stellar J again fails to provide any evidence and instead submits hearsay testimony as to comments allegedly made by third parties. It is interesting to not that Stellar J had no qualms with PLI's qualifications when it called them afterwards to complain about not receiving a quote prior to the bid price opening. Stellar J does not refute this.

Stellar J then pivots to claim that Conway is not a responsible bidder because Mr. Bandimere is an employee of Bandimere Grouting Consulting Services. Nowhere does the solicitation forbid a

bidder's proposed employment of employees, subcontractors, or consultants. We have included a documents submitted Mr. Bandimere that demonstrate his long list of qualifications.

Bidders and contractors view projects differently. Value to owners is delivered by contractors who creatively develop networks to timely construct quality projects. In any case, Conway satisfied the purpose of the solicitation.

Moreover, Stellar J's bid is nonresponsive. Note that the solicitation includes the following:

8-05.1(2), Design Build Approach

This Section includes minimum requirements for the ground improvement Specialty Contractor to follow for the "design-build" process, including:

1. Minimum performance criteria for the ground system.
2. Minimum requirements and considerations for the **design of the ground improvement system.**
3. Minimum requirements for installation of the ground improvement system.

8-05.1(2)A Scope of Work

1. **Work by the Specialty Contractor shall consist of designing, furnishing, installing, monitoring, and testing the ground improvement system as outlined in this Section and as shown and discussed on the plans and in the Geotechnical Report.**
2. **It shall be the Specialty Contractor's responsibility to determine and implement the systems and criteria to ensure that the specified performance is achieved.**
3. The Contractor shall conduct a site inspection and review available subsurface information prior to submitting a bid to verify the suitability of their proposed ground improvement system. (Emphasis of design and performance mine.)

Stellar J's bid includes the use of Condon-Johnson Associates (CJA) for performing the ground improvement work. Attached is a copy of CJA's proposal for this work dated June 29. In the second paragraph of this proposal CJA states the following:

CJA proposes utilization of jet grout columns to provide the minimum required shear resistance with friction angle of 38°, to be verified and accepted by the Geotechnical Engineer of Record (GEOR). **CJA has not planned on performing any design work regarding the performance of the jet grout columns under the static conditions and during the design earthquake.** (Emphasis mine.)

CJA's exclusion is not boilerplate. It is custom written and placed front-and-center in its proposal right above its pricing. CJA explicitly excludes explicit requirements of the solicitation. Stellar J's bid lists CJA as its Specialty Subcontractor and is therefore nonresponsive.

On the other hand, while Conway has yet to receive award of the contract, they have already visited the jobsite, met with its subcontractor, consulted with its consultant, and submitted a design for the ground improvement work. This design is complete, and it better addresses the actual site conditions.

After initially casting a round of discredited accusations and aspersions against Conway, Stellar J returns to rehash its claims and to further inflate them. Meanwhile, it is Stellar J which has tendered a nonresponsive bid. Now it asks for the City's trust with award of the contract.

Conway has assembled a competent team that will timely deliver to the City a quality project. Conway remains the lowest, responsible bidder. Stellar J's bid is nonresponsive, and its protest is baseless. Conway confirms its bid and requests award of the contract. Thank you in advance for the City's consideration.

Sincerely,



Jesse D. Conway
Attorney at Law

cc: R. Bryce Sinner (via email and regular mail)
Email: bryce.sinner@landerholm.com
805 Broadway Street, Suite 1000
P.O. Box 1086
Vancouver, WA 98666

Encls.

SAM BANDIMERE'S RESUME/BIOGRAPHY

Synopsis:

- 1965 High School Graduate
- 1968 Honorable Discharge from U.S. Navy, Vietnam Veteran
- 1969-1975 President and CEO, Harvest Homes Inc. Land development and home builder, Arvada, Colorado.
- 1975-1980 President and CEO, Denver Metro Mudjack Inc. Started with local work, grew to regional mudjacking/grouting company. Re-incorporated as Denver Grouting Services, January, 1980
- 1980-1996 President and CEO, Denver Grouting Services, Inc. Took (DGS) from a regional grouting company to a National and International company with Denver System rigs in Japan, Korea, South America and ready to make the European jump. Sold DGS March 1996.
- 1996-1999 Denver Grouting Services, Retained as a special consultant for transition period.
- 1999-2001 Specialized Technical Consultant to; Hayward Baker, Inc.
- 2001-Present Grouting Consultant to Grouting Industry as a whole.
- 2002-Present Bandimere Geothermal Drilling Systems, have been extensively involved in developing specialized drilling techniques for the installation of Ground Source Heat Pump loop systems for the HVAC Industry.

Bibliography;

Mr. Bandimere's involvement with the grouting industry started as a result of purchasing a defunct mudjacking company for the purpose of mudjacking patio's driveways and other concrete flatwork associated with Mr. Bandimere's land development and home building enterprise known as Harvest Homes Inc. 1968-1975

Due to Mr. Bandimere's initial fascination with the mudjacking application, it soon became apparent that mudjacking and grouting posed a greater challenge to his mechanical and innate business abilities than the land development and home building business. Thus, began his personal quest of working with the engineering community to develop innovative and accurate ways of using grouting as an engineering tool.

Because Mr. Bandimere did not have a technical background it was imperative that he and his staff work very close with "Engineers Of Record" on each and every project making sure Denver Grouting's equipment and technicians were prepared to meet the challenges and technical issues demanded of them.

As Mr. Bandimere's reputation grew among the Engineering Community, he was invited to attend the first Continuing Education Grouting Course held at the University of Missouri-Rolla in 1979. It was there that Mr. Bandimere's interests were challenged and became convinced that any technological advancements he could contribute needed to be on an open forum and information shared with the Engineering Community.

As a result of that first grouting course, Mr. Bandimere began a career of developing new grouting equipment, writing case histories, technical papers, periodical articles etc. all in an effort of providing the Engineering Community with more reliable, cost effective and technologically advanced Ground Improvement Systems for their clients needs.

Since 1980, Mr. Bandimere has been an active member of ASCE's GeoInstitutes Grouting Committee, American Concrete Institutes (ACI) Grouting Committee 552 and founded the grouting committee with the International Concrete Repair Institute (ICRI).

Mr. Bandimere's company Denver Grouting Services, Inc. (DGS) developed equipment that became known on an International basis as the "Denver System" for performing Compaction Grouting. His writings and lectures are considered landmark papers and some of the most well attended presentations in the Industry today. i.e. "Compaction Grouting State Of The Practice" GeoLogan 1997. Presentations at the annual Fundamentals of Grouting Course now sponsored by the University of Texas, Austin www.groutingfundamentals.com "Short Courses and Conferences" just to name a few.

Mr. Bandimere has had the unique opportunity of working with geotechnical and structural engineering firms all over the U.S. (and world for that matter) with the focused purpose of providing clients with Ground Improvement solutions for difficult problems. This has resulted in a unique assimilation of "practical" knowledge and experience that has enhanced the capabilities of contractors and Engineering Firms in providing their clients with cost effective solution to otherwise impossible situations.

While Mr. Bandimere's career forte has been to provide specialized contractual services in performing procedural operations, his resultant exposure to numerous Engineering Firms that have unique Engineering Specialists has become invaluable. Knowing when, where and how to bring different expert services and talents to the attention of a current "Engineers of Record" during the process of defining a client's problem has proven to be critical to the success of many projects.

Consulting Services;

In an effort to continue providing Engineers, Contractors and Owners with procedural and contractual expertise in the performance of specialized grouting projects, Mr. Bandimere's services are available on a consultant basis. Mr. Bandimere's commitment is to work with Owners, Engineers and

Contractors in bringing “Practical knowledge” and specialty consultants, specialized equipment etc. together at critical stages of projects. Mr. Bandimere can also help with suggested specifications and bidding document outlines and/or field operations.

The years have provided Mr Bandimere with opportunities of serving the Grouting Industry with challenging projects in the U.S.(including Alaska and Hawaii), Canada, Korea, Japan, Australia, New Zealand, Thailand, American Samoa, Oman, Russia, Germany, Mexico and Columbia. 2020 has been an exciting year of challenging projects despite the Covid19 epidemic. Sam is continuing the work of Chairing the ASCE/GI Grouting sub-committee with updates to the Compaction Grouting Consensus Guide and submitting articles to such publications as the Geotechnical News “Grout line”

I trust you find this information helpful and if I can be of any further assistance please let me know. You can contact Mr. Bandimere as follows.

Phone; (303) 881-8622

Email; sbandimere@msn.com

7404 W. 70th Ave.
Arvada, CO. 80003

July 20, 2020

To: PLI Systems, Inc.

From: Sam Bandimere

Attn: Manuel Castaneda

Re: NE 3rd Avenue Bridge Seismic Retrofit Project City Project Number: T1010 Protest

Manuel:

Regarding the question of qualification for the above referenced project due to the question of my employment with PLI Systems. As you know, I have been consulting with PLI Systems for many years with recommendations and project involvements. The most recent being the Hampton Inn project in Tigard, OR.

Seems to me that whether I am a weekly employee or an "as needed" temporary employee status is not a disqualifying issue. It is obvious the reason I am on an "as needed" employment situation is because of the specialized nature of my employment engagement and will be on-site during PLI's portion of the above referenced job.

If my location is the determining factor to whether I am PLI Systems employee or not, I would say that in today's world employees are remotely located all the time and companies use routinely use specialists on an as-needed basis all the time.

Whether I am on a weekly payroll or as-needed payroll it does not affect my qualifications. In fact, it enhances it due to the "specialized nature" this work requires and especially as it relates to the above reference project because it your portion of the work is based on a "performance requirement" as opposed to a procedural process.

I trust the above information is helpful and if I can be of any further assistance in the matter please let me know.

Sincerely

Sam Bandimere



June 29, 2020

GENERAL CONTRACTOR

Attn: Estimator

**Re: COST PROPOSAL – Ground Improvement Construction, SP 8-05
 NE 3rd Avenue Bridge Seismic Retrofit Project, Camas, WA**

Condon-Johnson and Associates, Inc. (CJA) is pleased to offer the following cost proposal for Building Ground Improvements on the above referenced project. CJA will supply all labor, equipment and materials to perform the work in accordance with the current plans, specifications, and scope of work as listed and identified herein.

CJA proposes utilization of jet grout columns to provide the minimum required shear resistance with friction angle of 38°, to be verified and accepted by the Geotechnical Engineer of Record (GEOR). CJA has not planned on performing any design work regarding the performance of the jet grout columns under the static conditions and during the design earthquake.

CJA has relied only upon the attached documents in Exhibit A to develop this proposal. CJA has not considered any other documents in preparation of this proposal. Provisions of the Prime Contract between Owner and General Contractor only apply as they directly relate to the scope of this proposal.

Pricing:

The work scope described in this proposal can be completed for the following unit prices.

Item	Description	Quant.	Unit	Unit Price	Total
51	Ground Improvement Design & Mobilization	1	LS	\$ 150,850	\$ 150,850
52	Grout for Ground Improvement	1	LS	\$ 271,500	\$ 271,500
53	Ground Improvement Testing	1	LS	\$ 7,500	\$ 7,500
Total Price					\$ 429,850

Sales tax included on permanent materials
Cost escalation on labor included thru May 31, 2021
Cost escalation on materials included thru Dec 31, 2020

CDSM Scope of Work & Assumptions:

1. Mobilize crew and Jet Grout equipment to the project site.
2. A full time onsite Quality Control Technician will be provided as part of CJA’s crew.

480 Roland Way, Suite 200
 Oakland, CA 94621
 Tel: (510) 636-2100
 Fax: (510) 568-9316

1100 Wilshire Boulevard, Suite 400
 Los Angeles, CA 90017
 Tel: (909) 390-0268
 Fax: (909) 605-7629

9012 South 208th Street
 Kent, WA 98031
 Tel: (425) 988-2150
 Fax: (425) 988-2151

3434 Grove Street
 Lemon Grove, CA 91945
 Tel: (858) 530-9165
 Fax: (858) 530-9171

1239 NE 92nd Avenue
 Portland, OR 97220
 Tel: (503) 455-8550
 Fax: (503) 647-1968

3. CJA will provide an operated excavator as part of the working crew to “assist” in conveying Jet Grout spoils to adjacent containment pits. Digging pits, removal and maintenance of jet grout spoils is not a part of CJA’s scope.
4. Assumed working surface elevation to allow site access with a minimum 16-ft overhead clearance for work beneath the bridge.
5. Install a series of Jet Grout test columns for verification purposes.
6. Upon approval of the test columns – complete Jet Grout installations throughout the improvement zone.
7. Quality Assurance testing performed to verify mixing continuity. Wet sampling and casting of test cylinders will be performed to verify unconfined compressive strength.

Specific Exclusions (To be provided by client at no cost to CJA):

1. **Any design and engineering work**
2. Level access shall be provided for track mounted drilling equipment and wheeled and/or track mounted support equipment throughout the duration of our work. Working surface to accommodate tracked drill access without use of crane mats or trench plates. All clearing required for access and site leveling.
3. Contained batch plant staging area within 500ft of the improvement zone. Access to batch plant staging will allow for bulk cement truck delivery by truck and double trailers.
4. Provision of berms / ramps to allow access for track mounted equipment under its own power. Ramps shall have gradients less than 8%.
5. Site fencing and establishing/maintaining site erosion control measures. Management of process and storm water from ground improvement work area. Site water storage, treatment and discharge. All measures to contain the jet grout and drill spoils from breaching the site limits.
6. Handling and removal of Jet Grout spoils on a fulltime/daily basis at a rate as to not impede the work progress. Export and legal disposal of any cement soil mixed spoils with elevated pH will be by others. Expected quantity of Jet Grout spoils to be approximately ± 500 cyds.
7. Removal of buried obstructions and rip rap to permit unobstructed drilling for jet grout columns.
8. Dedicated water supply to the batch plant location.
9. Potholing, protection measures and monitoring of adjacent utilities (buried or overhead).
10. All in-water work and providing USL&H insurance.

Schedule Provisions:

1. This cost proposal is based on performing work 5 days per week, 1 shift per day, 8-10 hours per shift, Monday through Friday.
2. This proposal is based on performing work in one continuous, uninterrupted operation with only one move on and off site. Additional mobilizations, if required, to be billed and paid at the above listed mobilization rate.
3. When the progress of the subcontractor work is interrupted for reasons beyond its control, CJA will bill and be paid stand-by rates for each individual production unit affected by the interruption.

4. CJA will require 3 weeks to complete engineering to provide a Ground Improvement Design Submittal.
5. CJA will require 4-6 weeks to schedule crew/equipment resources after receipt of an executed subcontract.
6. Expected duration of Ground Improvement installation: 3 weeks, excluding mobilization and testing.
7. CJA will require approximately 2 weeks to review Subcontract.

Your attention is directed to the CJA "Letter of Conditions" attached to and made part of this proposal. Pay particular attention to the section identifying services and/or facilities that you are to provide at no cost to us.

CJA shall adhere to all Federal, State, and Local ordinances and regulations related to the COVID-19, Corona Virus. Be advised the COVID 19 crisis may affect availability of materials, workforce, delivery times, and schedule. CJA shall not be responsible for additional costs or schedule impacts related to the COVID 19 crisis beyond its control.

We thank you for the opportunity to submit this proposal and look forward to the possibility of working with you on this project. If you have any questions or require further clarification, please do not hesitate to contact me at (206) 462-8666 or by email RHanke@condon-johnson.com

Regards,
CONDON-JOHNSON & ASSOCIATES, INC.



Rick Hanke, PEng
Director of Ground Improvement

Attached: CJA Letter of Conditions

EXHIBIT A: Bid Document Summary

1. Plan Drawings C3-C5 and BR01, dated 3/11/2020
2. Project Specification – SP 8-05 Ground Improvement Construction
3. Geotechnical Engineering Report, by Hart Crowser, dated Oct 14, 2019
4. Project Addendum No. 2



LETTER OF CONDITIONS

This Proposal, in its entirety, shall be made an integral part of and be incorporated into any contract agreement and shall take precedence should there be any conflict with any terms included in the host document. CJA reserves the right to amend and negotiate any provisions of any contract agreement. Should there be a conflict between CJA's Proposal and this Letter of Conditions, the terms and conditions of the Proposal shall take precedence.

Payment Terms:

Progress payments will be due thirty days after Client receives monthly progress estimate from Condon-Johnson & Associates, Inc. (hereafter referred to as CJA). Retention (not to exceed 5%) shall be released thirty-five days after substantial completion of CJA scope of work. Interest will be charged on all past due accounts at 2% per month or the highest rate allowed by law. In the event legal action must be instituted to enforce payment, Client agrees to pay CJA for all attorney fees and court costs.

Insurance and Indemnification Terms:

CJA shall maintain in place, throughout the duration of the work, workers compensation insurance coverage as required by law and commercial liability insurance for bodily and property damage as well as automobile, contractors equipment and riggers liability. Higher limits than currently in place, or additional policies not currently carried by CJA, are available at the Client's sole expense. The insurance certificate issued by CJA will not be altered or amended in any manner that might be construed to assume any liability other than CJA's negligence.

CJA shall defend and indemnify Owner and Contractor with respect to any claim that arises from the negligence or fault, if any, of CJA in the performance of its work hereunder, but the extent of such indemnity shall be limited to CJA's proportionate share of the total fault, as agreed between the parties or as determined by a court of competent jurisdiction, causing the loss or damage on which the claim is based. CJA shall have no other responsibility to defend, pay for, or indemnify Owner and/or Contractor or its agents with respect to claims arising from or related to CJA's work hereunder.

Notwithstanding any provisions of the OCIP/CCIP for the project to the contrary, neither CJA nor its insurer(s) shall be obligated to contribute to any claim made to or under the OCIP/CCIP. Contractor or Owner shall represent CJA in connection with any claim(s) to or under the OCIP/CCIP. Further, should the OCIP/CCIP be cancelled, or not afford coverage for a claim, neither CJA nor its insurer(s) shall be obligated to contribute to the defense or indemnification of Contractor or Owner on any basis, whether primary or excess. Specifically, neither CJA nor its insurer(s) shall have any obligation to defend or indemnify Contractor or Owner against any claim that is not covered by the OCIP/CCIP or any claim(s) that are covered by the OCIP/CCIP or any claim(s) that would have been covered by the OCIP for the project but for its termination, cancellation or exhaustion.

CJA excludes Builders Risk insurance; Owner and/or General Contractor shall obtain Builders Risk insurance for the project and CJA shall be named additional insured.

If this proposal includes design build services, CJA includes E&O Coverage of \$1 Million for 3 (three) years of Post Completion Coverage. Indemnity for design work is limited to insurance provided.

Schedule Terms:

CJA and Client shall mutually develop and agree to a baseline CPM schedule prior to start of work and mutually update it through completion of CJA's work. Schedule is based on performing work five days a week, 8 hours a shift, Monday through Friday, during daylight hours. All of CJA's work will be completed in a substantial and workmanlike manner according to standard practices, barring an act of God, labor strikes or labor disputes, or other causes beyond CJA's control. CJA will not accept liability for any liquidated or consequential damages. CJA will not accept "no damage for delay" contract provisions.

To be Furnished by Client for CJA:

1. A level, all-weather work and staging area with no headroom restrictions. Working platform shall permit unobstructed travel of track mounted equipment, drilling equipment and concrete trucks, and, maintenance thereof throughout the duration of our work. Working areas shall be capable of withstanding loads applied on it during all construction operations including hoisting operations. Use of mats is specifically not included in proposal and will be charged as extra work if required.

2. Clear and unobstructed access to the work and staging areas, for CJA's personnel and equipment. Any access ramps to or from the work area shall have a gradient less than 10%.
3. Monitoring of noise, vibration, settlement or air quality. CJA has not made any allowance to minimize vibration, dust and/or noise during performance of our work.
4. Locating, potholing, protection, removal, relocation, replacement and/or support of all utilities existing, abandoned, or new, above or below the ground that may interfere with our work.
5. Protection and repair of any existing surfaces, structures, improvements, or works effected by CJA operations.
6. Provisions for vehicular and pedestrian traffic control and maintenance and movement thereof, including all necessary signs, markers, barriers, barricades, crossings and/or flagmen.
7. The control, collection, removal, and disposal of drill spoils including drill cuttings, ground water, drill water, and liquid or dry cement waste.
8. Installation of trenches, as necessary with traffic bearing covers for slurry pipelines at street crossings and other locations to avoid interference with traffic and pedestrians, and restoration of trenched areas at the completion of our work.
9. Surveying services for layout, elevation control of work, or "as-builts". Layout to include center point and two offsets for all drill locations.
10. All required site-specific licenses, permits, inspections, observations, monitoring, materials design, surveys, as-built drawings, easements, and laboratory or field-testing and inspection reports.
11. All site security provisions, including required fencing, barricades, security, and guard services.
12. Demolition, removal and disposal of any existing foundations or other manmade structures in, on, or above the ground that may otherwise impede CJA's work.
13. All mass excavation, trimming of earth and concrete.
14. Any reinstatement and/or restoration of work or staging areas upon completion of CJA's work.
15. SWPP, dust and erosion control plans, provisions, and execution.
16. Protection of work in place.
17. Any and all labor, equipment, inspection, and/or removal of hazardous materials. Hazardous materials identified or known to exist before the start of CJA's work will be removed before CJA arrives on site.
18. If hazardous and/or contaminated materials are encountered, the provision of a Health and Safety Plan that protects CJA workers from contaminated soils and payment for all cost associated with implementing this plan.
19. Any and all types of dewatering (both surface and below grade). Any dewatering system shall be coordinated with CJA's works.
20. Supply of construction water, including permits and fees, for on-site use at a rate required for performance of the work. Minimum requirements shall be 100GPM at 100psi within 100ft of CJA working area.
21. Furnishing, maintaining, and removal/disposal of concrete and/or grout washouts for CJA concrete operations, including, but not limited to, concrete truck and pump washout, and concrete over-pour removal.
22. Sandblasting, protection, cleanup, placement of dowels, anchor bolts, keys, or any form work above or below existing grade unless specifically identified in CJA's scope of work.
23. Should settling tanks or desilting basins be required, they are to be furnished and cleaned by others.

General Conditions of this Proposal:

1. Should conditions be encountered in the performance of CJA's work which differ from (A), those indicated by the contract documents or soils data furnished to CJA, or (B), those ordinarily encountered and generally recognized as inherent in the work of the character provided in the contract, an equitable adjustment will be made to cover the resulting costs and an appropriate time extension shall be made.
2. CJA has relied on the information provided in the geotechnical or subsurface report as being accurate, regardless of any disclaimers. CJA will require that the report(s) be made a part of any contract signed.
3. CJA excludes the cost of bonds. If required, all cost of bonds shall be borne by others.
4. If this proposal includes design build services, the included price is based on acceptance of CJA's design without changes or exceptions.
5. The pricing provided in this proposal represents a total package. No reduction in scope or breakout of pricing is permitted without CJA's prior approval.
6. Modifications or exclusions to these conditions must be specifically described in the description of work or initialed by an authorized representative of CJA.
7. This offer is valid for 30 days from the date of the proposal, unless specified otherwise.
8. **This proposal is for the exclusive use of the addressee and shall not be shared with any other parties without the express written permission of CJA.**