

Proposal No. PMD08-330-00
November 19, 2008



Raba-Kistner Consultants, Inc.
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Ms. Dena Garcia, City Secretary
City of Peñitas
c/o Hidalgo County Urban County Program
1916 Tesoro Boulevard
Pharr, Texas 78577

**Re: Construction Materials Engineering and Testing Services
City of Peñitas / Urban County Urban County Program
Camargo Subdivision – Sanitary Sewer, Water, Paving & Drainage Improvements
Peñitas, Hidalgo County, Texas**

Dear Ms. Garcia:

Raba-Kistner Consultants, Inc., (R-K), is pleased to have been selected to provide Construction Materials Engineering and Testing Services for the above-referenced project.

Our opinion of probable cost of services for this project is \$ 11,055.00. This amount should not be considered a maximum but is our estimate of the probable costs associated with implementing the work outlined on Page 4 of this document. The Contractor's means/methods, sequencing, and scheduling can significantly impact our estimate of the probable cost.


Included with this letter is our priced proposal giving the observation/testing item, a brief description and unit fee for each service, estimated item quantities, and cost extensions. Our proposed scope of services and estimated item quantities are based upon our review of the project plans and specifications received by our office from Javier Hinojosa Engineering, the project's engineering firm, on Wednesday, November 12, 2008. The scope and quantity of services provided will be dependent upon services actually required by you, your representatives, the design team and/or the General Contractor and its Subcontractors. Charges will be assessed only for actual services rendered. All services authorized or requested by you, your representatives, the design team and/or the General Contractor and its Subcontractors in excess of quantities for observation and testing services shown herein will be charged at the appropriate unit rate for such services. Charges will be invoiced on a monthly basis and will show computerized composite total of services rendered for each service category.

Invoices will be submitted monthly for work in progress in our standard format. Our Invoices are due and payable upon receipt at P.O. Box 971037, Dallas, Dallas County, Texas 75397-1037. All parties hereby agree that the contract upon acceptance will be performed in Bexar County, Texas. Past due invoices may be subject to late charges at an annual rate of eighteen (18) percent on any balances unpaid after thirty (30) days from issue. In the event that State of Texas legislates a sales tax on professional services, the amount of tax applicable will be added to the appropriate service rate charged by R-K.

We appreciate the opportunity of submitting this proposal and look forward to working with you during the construction of this project. *Please return a signed copy of this letter proposal to provide written authorization for our firm to commence work on the services outlined herein.*

Best regards,

RABA-KISTNER CONSULTANTS, INC.



Dennis C. Charkow
Supervisor, CME

Approved by: _____
(Signature)

Attachments: Basic Charges
I – Standard Terms and Conditions
II – Schedule of Fees

Approved by: _____
(Print or Type Name)

Date: _____

PLEASE FILL OUT FOR DISTRIBUTION OF TYPED REPORTS

COMPANY	CONTACT	ADDRESS	PHONE	FAX

PLEASE INDICATE NAME OF RESPONSIBLE PARTY FOR PAYMENT FOR THE ABOVE SERVICES:

PRINTED NAME			
COMPANY NAME			
COMPANY ADDRESS			
CITY, STATE, ZIP			
PHONE NUMBER		FAX:	
DATE			

**Construction Materials Engineering and Testing Services
City of Peñitas / Urban County Urban County Program
Camargo Subdivision – Sanitary Sewer, Water, Paving & Drainage Improvements
Peñitas, Hidalgo County, Texas**

Basic Charges

1. A vehicle travel charge will be assessed for round trip travel from our office to the project site, material supplier, etc. and back to our office. The charges for travel from our office to the project site and return to our office will be as follows:

Travel Time (round trip)	--	1.25 hour(s)
Vehicle Trip Charge		\$ 30.00\trip

2. Service Charges are based on the hourly rates stated herein and will be assessed from the time the Engineer or Technician leaves our office until he returns from the project.
3. Any engineering and/or technical services provided on Saturday, Sunday and all work in excess of "normal" work hours, as stated herein, Monday through Friday, will be charged at an overtime rate of 1.5 times the appropriate hourly rate. Our total cost of services is based upon the assumption most services will be provided during "normal" work hours. Providing an excessive amount of services during days and/or hours requiring overtime rates may significantly increase the total cost of services shown herein.
4. "Normal" work hours are between 7:00 a.m. and 6:00 p.m., including travel time to and from the site unless stated otherwise. Overtime charges will be assessed after eight (8) continuous hours of service rendered during "normal" work hours.
5. Minimum of 2 hours billing per visit to project site.
6. A ten (10) percent project management and administration cost will be added to all invoices.
7. Our opinion of probable cost for each proposal to be submitted is based upon an estimate of the construction materials engineering and testing services required to meet the project requirements. Because the general contractor has control over the project and determines the means and methods used to build/construct the project, our proposed scope of services is an estimate. On the basis of the general contractor's schedule, potential retesting of non-compliance items, weather related issues, the actual total services, and fees may be higher or lower than the estimates in our proposal. R-K will keep you CLIENT apprised of our billings in comparison to our opinion of probable cost (project budget) over the life of the project. All tests noted as retests of previously non-complaint areas will be billed to the CLIENT. R-K will invoice these tests separately to allow CLIENT to segregate the charges from our normal charges. This will allow CLIENT to back charge the general contractor as necessary. CLIENT will be responsible for payment of all services rendered by R-K for the project.

CONSTRUCTION MATERIALS TESTING UNIT RATES
City of Peñitas / Urban County Urban County Program
Camargo Subdivision – Sanitary Sewer, Water, Paving & Drainage Improvements
Peñitas, Hidalgo County, Texas

Internal Code		Description	Unit Fees		Estimated Quantity	Estimated Cost
5VRSF	1	Moisture/Density Relationship Proctor (ASTM/AASHTO)	\$ 194.75	ea.	3	\$ 584.25
5VRBG	2	Atterberg Limits Determinations (P.I.) (ASTM/AASHTO)	\$ 70.75	ea.	3	\$ 212.25
5WKR8	3	Sieve Analysis –200	\$ 47.75	ea.	2	\$ 95.50
5WKR5	4	Seive Analysis - Flex Base Material	\$ 47.75	ea.	1	\$ 47.75
5QT00	5	Technician Time – Sampling	\$ 41.60	hr.	6	\$ 249.60
5QOM0	6	Nuclear Field Density Tests	\$ 17.75	ea.	148	\$ 2,627.00
5QT05	7	Technician Time – Density Testing	\$ 41.60	hr.	66	\$ 2,745.60
5QFXE	8	Concrete Compressive Strength Tests	\$ 13.00	ea.	20	\$ 260.00
5QT06	9	Technician Time – Concrete Testing	\$ 41.60	hr.	10	\$ 416.00
5QBT0	10	Air Content	\$ 24.25	ea.	5	\$ 121.25
5Q055	11	Technician Time – Pick-Up of Specimen(s)	\$ 41.60	hr.	5	\$ 208.00
5RT01	12	Vehicle Travel Charge	\$ 30.00	trip	62	\$ 1,860.00
Q401	13	Asphaltic Concrete Laydown Observation	\$ 47.50	hr.	6	\$ 285.00
SUIBMH	14	Extraction, Gradation, Bitumen Content and Laboratory Density of Asphaltic Concrete	\$ 239.25	ea.	1	\$ 239.25
5UBSO	15	Maximum Theoretical Specific Gravity of Asphalt	\$ 98.25	ea.	1	\$ 98.25
5Z512	16	Project Administration (Markup of Invoiced Billing Cycle)	10%			\$ 1,004.97
Estimated Total Cost of Services						\$ 11,054.67

ATTACHMENT I

RABA-KISTNER COMPANIES

STANDARD TERMS AND CONDITIONS

1. RABA-KISTNER (Raba-Kistner Consultants, Inc.; Raba-Kistner Consultants (SW), Inc.; Raba-Kistner-Brytest, Inc.; Raba-Kistner Infrastructure, Inc.) is being engaged by the CLIENT to render professional services involving various aspects of design, construction observation, or the condition of various building, site, and/or environmental materials, which may contain or be contaminated by hazardous materials and asbestos containing materials (ACM).

Raba-Kistner (hereafter referred to as R-K) provides a wide variety of services. Services provided by different R-K companies or different departments therein, to the same Client, occasionally overlap. CLIENT acknowledges that R-K has no obligation to research prior work by R-K for CLIENT or others, or work performed by R-K or others at the proposed project site, regardless of the specific R-K companies, departments or office locations that will be involved in the proposed work.

2. R-K will perform its services in accordance with the standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the same locality, under similar circumstances. CLIENT expressly acknowledges that R-K makes no other warranties or guarantees, expressed or implied, regarding the services set forth herein. CLIENT expressly acknowledges that all of the services provided to it by R-K pursuant to this Agreement are professional services involving only R-K's advice, judgment and opinion. R-K will apply professional judgment in determining the extent to which R-K will comply with any given standard identified in R-K's instruments of professional services. Unless otherwise stated in writing, such compliance, referred to as "general compliance", specifically excludes consideration of any standard listed as a reference in the text of those standards cited by R-K.
3. CLIENT will provide right-of-entry to the buildings and sites which are the subjects of R-K's services. CLIENT represents that it possesses authority for such right-of-entry and that the building/site operator(s) possess the necessary permits and licenses for current activities at the site.
4. The CLIENT will be responsible for providing the location of all underground utilities and other structures in the vicinity of our borings. R-K cannot accept responsibility and will not be liable for penetrating any underground utility, underground storage tank, or other subsurface condition not previously identified and located, or improperly located, by the CLIENT or a utility agency.
5. If materials are encountered in the field which are judged to be potentially hazardous or a danger to our personnel, all field work will cease and the CLIENT will be notified. Subsequent work on the project will then be conducted only with specific additional authorization from the CLIENT and will be charged at appropriate revised unit rates. The scope of work and cost estimates does not include the cost of containerizing any waste or cuttings or their removal from the site. Such materials will be containerized and left at the site.

The results of sample analyses or other information will be used to render a professional opinion regarding the nature of materials left on site. If this information indicates the materials are hazardous or potentially hazardous, and if CLIENT does not wish the waste or drill cuttings to be left on site, R-K will have such materials transported to a licensed facility for final disposal using a manifest signed by the CLIENT as generator. CLIENT agrees to pay all costs associated with management, analyses, storage,

transportation, and disposal of materials. CLIENT recognizes and agrees that R-K at no time assumes ownership to said materials.

6. The scope of work and cost estimate does not include costs incurred to provide access to sites which are inaccessible to our truck-mounted drill rigs and support vehicles. They also do not include costs incurred due to delays caused by inclement weather.
7. All samples obtained at the site will be managed by R-K. R-K will retain preservable samples and the residues from testing of all samples that, in R-K's professional opinion, do not contain materials that are hazardous or potentially hazardous, for 30 days after submission of its report. The samples and residues will be disposed of at the end of the 30 day period.

In the event that in R-K's professional opinion, the samples contain potential constituents of concern, R-K will return such samples and residues to CLIENT, or, using a manifest signed by CLIENT as generator, R-K will have such samples transported to a licensed facility for final disposal. CLIENT agrees to pay all costs associated with management, analyses, storage, transportation, and disposal of materials. CLIENT recognizes and agrees that R-K at no time assumes ownership of said samples.

8. R-K will be compensated largely on the basis of the time required in rendering these professional services - not on the basis of potential legal liabilities created by any risks associated from the hazardous materials and ACM.

During its prime, asbestos was used in over 3,000 different products and can still be found in some products today. Consequently, attempts to locate and identify "all" asbestos in a survey would be both impractical and cost prohibitive. If retained to conduct an asbestos survey, R-K will direct its efforts at locating accessible, friable asbestos and non-friable asbestos which, in R-K's professional opinion, might become friable as a result of remodeling activities.

Likewise, several thousand chemicals, wastes, and other materials have been designated as hazardous or toxic by various laws and regulations. If retained to conduct a site assessment with respect to such materials, R-K will direct its efforts at locating the most significant sources, or potential sources, of such materials which, in R-K's professional opinion, have the potential for causing the most significant impact.

9. R-K may provide CLIENT with a written report in connection with the services performed. The report will present such findings and conclusions as R-K may reasonably make with the information gathered while performing its services. In preparing the report, R-K may review and interpret certain information provided to it by the CLIENT or by third parties. R-K will not conduct an independent evaluation of the accuracy or completeness of such information and shall not be responsible for any errors or omissions contained in such information. The report and other instruments of service are prepared for, and made available for the sole use of the CLIENT, and the contents thereof may not be used or relied upon by any other person without the express written authorization of R-K. Any unauthorized use or distribution shall be at the CLIENT's sole risk and without liability to R-K.

R-K's reports, drawings, plans, specifications, and other project related documents and deliverables are instruments of professional service ("instruments") developed by R-K in

contemplation of a wide array of project-specific variables, including how the documents will be used and by whom. R-K shall be the owner and custodian of the instruments, and shall take appropriate measures to help prevent unauthorized use of them. Accordingly, during development of the scope of service, CLIENT and R-K shall together identify those who, in addition to CLIENT, may use the various instruments and for what purposes, and R-K shall copyright the instruments to make illegal any unauthorized duplication, other reproduction or copying, quotation, or excerption of them.

Parties other than those identified by CLIENT and R-K may apply to use an instrument, using a form prepared by R-K for that purpose. Others' use of an instrument shall be permitted only when CLIENT and R-K both so agree; either shall have the right to forbid use by others. In addition, R-K shall make its permission contingent upon the satisfaction of certain conditions when, in R-K's professional judgment, such a contingency is necessary.

10. CLIENT will indemnify R-K against any claims or costs which exceed the limitation on R-K's liability provided for in this document, or result from acts or omissions of CLIENT. If litigation or threat of litigation ensues not involving R-K, CLIENT agrees to bear the full cost for R-K to comply with applicable State law and any court orders to provide access to R-K's files, personnel, facilities and equipment.
11. The person or entity responsible for performing the Work under the contract for Construction shall be defined as the Contractor. R-K's site safety responsibilities are solely limited to the activities of R-K and R-K's employees on the site. These responsibilities shall not be inferred by any party to mean that R-K has responsibility for site safety for any reason. Safety in, on or about the site is the sole and exclusive responsibility of the Contractor alone. The Contractor's methods of work performance, supervision of the Contractor's employees, and sequencing of construction are also the sole and exclusive responsibility of the Contractor alone. CLIENT warrants that these responsibilities will be made clear in CLIENT'S agreement with the Contractor; CLIENT'S agreement with the Contractor shall require the Contractor, to the extent of Contractor's negligence, to indemnify, defend and hold CLIENT and R-K harmless from any fine, penalty, claim, or liability for injury or loss arising from CLIENT's and R-K's alleged failure to exercise site safety responsibility; and CLIENT'S agreement with Contractor and all Subcontractors shall require the Contractor and Subcontractors to make CLIENT and R-K additional insureds under the Contractor's and all Subcontractor's general liability insurance policy, which insurance protection shall be primary protection for CLIENT and R-K, and shall hold CLIENT and R-K harmless from claims, losses, and defense arising from the negligence of Contractor or Subcontractor on any tier.
12. For any damage on account of any error, omission, or other professional negligence, R-K's liability to CLIENT, or to any third party, will be limited to a sum not to exceed \$50,000 or R-K's project fee for that portion of R-K's work found to be defective, whichever is greater. R-K's liability to CLIENT, or to any third party, for injury or damage to persons or property arising out of work performed for CLIENT and for which legal liability may be found to rest upon R-K, other than for professional errors and omissions, will be limited to R-K's available general liability insurance coverage of \$1,000,000.
13. Cancellation of the Agreement to which these terms and conditions apply may be made by either party for just cause after 30 days' written notification of intent of cancellation is provided to the other party. In the event the CLIENT elects to terminate the Agreement, R-K will be compensated in full for all services, materials, supplies, and expenses incurred prior to the actual cancellation date of the Agreement. The CLIENT shall in any event pay all amounts invoiced that the CLIENT does not dispute as provided herein.

14. If the Client fails to make payments when due or otherwise is in breach of this Agreement, R-K may suspend performance of services upon 7 calendar days' notice to the Client. R-K shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this Agreement by the Client. Upon payment in full by the Client, R-K shall resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for R-K to resume performance. If the Client fails to make payment to R-K in accordance with the payment terms herein, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by R-K. Payment of invoices shall not be subject to any discounts or set-offs by the Client unless agreed to in writing by R-K. Payment to R-K for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.

15. All claims, disputes, and other controversy between R-K and CLIENT arising out of or in any way related to the services provided by R-K will be submitted to "alternative dispute resolution" (ADR) such as mediation, before and as a condition precedent to other remedies provided by law. If a dispute at law arises related to these services and that dispute requires litigation as provided above, then; CLIENT assents to personal jurisdiction in the State of R-K's principal place of business; The claim will be brought and tried in judicial jurisdiction of the court of the county where R-K's principal place of business is located, and CLIENT waives the right to remove action to any other county or jurisdiction; and the prevailing party will be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' and expert witness fees, and other claim-related expenses.

16. Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control ("Force Majeure") including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. Force Majeure may not be claimed as a cause for delay in payment of money due and payable hereunder.

17. Each provision of this Agreement is intended to be several. If any terms or provisions of this agreement shall be held to be invalid, illegal, or unenforceable of any reason whatsoever, the validity, legality, and enforceability of the remaining provisions hereof shall remain in full force and effect and shall not in any way be affected or impaired thereby. Moreover, to the maximum extent allowed by law, the Parties hereto stipulate that any offending provisions will be modified or altered, as necessary, so as to give such provision the maximum permissible effect and application intended.

18. This Agreement, and all of its attachments, constitutes the entire, integrated Agreement between the Parties to it, and this Agreement supersedes all other Agreements, oral or written between the Parties, concerning the subject set forth in this Agreement. This Agreement may not be amended except in writing, with that amendment being signed by both Parties.

ATTACHMENT II

RABA-KISTNER CONSULTANTS, INC.

SCHEDULE OF FEES FOR PROFESSIONAL SERVICES

<u>PERSONNEL:</u> Principal.....	\$135 to \$250/hour
Professional	\$65 to \$200/hour
Auto Cad Operator.....	\$65 to \$110/hour
Technical/Clerical/Administrative	\$38 to \$75/hour

The specific hourly rate within each classification listed above depends on the experience, special training, and qualifications of the personnel needed for the project. For projects requiring work at any hazardous waste site, there will be a \$10 per hour surcharge added to the normal billing rate for all personnel. Consultants to Raba-Kistner (R-K) will be charged according to their professional classification.

EXPENSES: Use of company automobiles will be charged at \$1.00 per mile. Automobiles and light trucks assigned to field sites will be charged at \$70.00 per day, plus \$1.00 per mile over 50 miles per day. Copies will be charged at \$0.25 per page.

Other project specific charges for use of R-K equipment or for R-K testing will be in accordance with established fee schedules. All other project specific, third-party costs will be charged at cost plus 15 percent.

Invoices will be submitted monthly for work in progress in our standard format. They are due and payable upon receipt and become past due 30 days after the billing date. Past due invoices may be subject to late charges at the rate of 1-1/2 percent per month (18 percent per annum). In the event that the State of Texas legislates a sales tax on Professional Services, the amount of the tax will be PAYMENT added to the appropriate service rate charged. Our invoices are due and payable upon receipt at P.O. Box 971037, Dallas, Texas 75397-1037.

Preparation of non-standard invoice will be charged on a time and materials basis in accordance with the rates in this fee schedule.

CONDITIONS: Services will be performed in accordance with our Standard Terms and Conditions.

The proposal to which this schedule is an attachment is valid for 90 days from the date of the proposal.