

March 19, 2009



Raba-Kistner Consultants, Inc.
800 E. Hackberry
McAllen, Texas 78501
(956) 682-5332 • FAX (956) 682-5487
www.rkci.com

Mr. Anthony Covacevich, City Manager
City of Weslaco
255 South Kansas Avenue
Weslaco, Texas 78596

Re: Construction Materials Observation & Testing Services
Water & Sewer Improvements from Los Toritos Street to Hidalgo Street
Weslaco, Hidalgo County, Texas

Dear Mr. Covacevich:

Raba-Kistner Consultants, Inc., (R-K), has provided a proposal to perform construction materials observation and testing services to the City of Weslaco on an on call basis for the above referenced project. The proposal is dated March 06, 2009, and is R-K Proposal number PMD09-071-01. The estimated cost of services as indicated in this proposal is \$ 7,529.00. This amount constitutes the best and final offer by Raba-Kistner Consultants, Inc.

We thank you for the opportunity to be a member of the project team on this important project. If you should have any questions pertaining this matter or if we may be of additional assistance please do not hesitate to call.

Very truly yours,

RABA-KISTNER CONSULTANTS, INC.

for 
Dennis Charkow
Supervisor, CME

Copies submitted: Above (1)



CONTRACT AGREEMENT FOR ENGINEERING SERVICES
BETWEEN
COUNTY OF HIDALGO- URBAN COUNTY PROGRAM
and
Raba-Kistner Consultants, Inc.
PREPARED ON (3-31-09)
For
GEOTECHNICAL ENGINEERING AND CONSTRUCTION
MATERIALS TESTING SERVICES
(WESLACO - Year 21 (2008) WATER/SEWER IMP.
at Alley Between Del Cedro & Las Palmas Street

**CONTRACT AGREEMENT
FOR
GEOTECHNICAL ENGINEERING AND CONSTRUCTION
MATERIALS TESTING SERVICES
WELSACO- YEAR 21, (2008) Water/Sewer Imp.
At alley between Del Cedro & Las Palmas Street.
HIDALGO COUNTY-URBAN COUNTY PROGRAM**

**STATE OF TEXAS
COUNTY OF HIDALGO**

PART I – PARTIES AND SERVICES

This agreement is made on March 31st, in the year 2009, between County of Hidalgo-Urban County Program, hereinafter called the Client, and Raba-Kistner Consultants, Inc., hereinafter called the Laboratory, for Geotechnical and Construction Materials Testing Services, hereinafter called the Services.

Hidalgo County-Urban County Program has received CDBG funds from the U.S. Dept. of Housing and Urban Development to be used by Urban County Participants. It is understood and agreed that the Party's obligation under this Agreement is contingent upon the actual receipt of adequate federal funds to meet the liabilities under this Agreement.

The **Laboratory** agrees to compliance with the following Executive orders, Titles and Program Regulations, including any additional requirements that may be set forth by the Party.

- a. Title VI of the Civil Rights Act - requires that no one may be denied access to benefits from projects which receive federal assistance.
- b. Section 109 of the Housing and Community Development Act of 1974 - Nondiscrimination related to benefits from projects funded specifically under Title I of the Act.
- c. Section 3 of the HUD Act of 1968 - requires that maximum effort be made to provide employment, training, and business opportunities to low income families and/or residents of the project area.
- d. The **Laboratory** shall give the United States Department of Housing and Urban Development, the Inspector General, the Comptroller General of the United States, the Auditor of the State of Texas, access to and the right

to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by Laboratory pertaining to this Agreement. Such rights to access shall continue as long as the records are retained by Engineer. Engineer agrees to maintain such records in an accessible location for a period of three (3) years.

- e. Executive Order 11246 (paragraph a-c for contracts under \$10,000; paragraphs a-g for contracts over \$10,000) - Equal Employment Opportunity.

Executive Order 11246. Executive Order 11246 and the regulations issued pursuant thereto (24 CFR Part 130) which provides that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of federal or federally assisted contracts. Such consultants or subcontractors shall take affirmative action to ensure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination rates of pay or other forms of compensation and selection for training and apprenticeship.

Equal Employment Opportunity for Activities and Contracts not Subject to Executive Order 11246, as amended. In carrying out the program, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The Laboratory shall take affirmative action to ensure that applicants for employment are employed and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Such action shall include, but not limited to the following: Employment, upgrading, demotion, or transfer; recruitment or other forms of compensation; and selection for training, including apprenticeship. The Engineer shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this paragraph in all of its contracts for program work and will require all of its consultants for such work to incorporate such requirements in all subcontracts for program.

Interest of Certain Federal Officials: No member of or Delegate to the Congress of the United States and no Resident Commissioner, shall be admitted to any share or part of this Agreement or to any benefit to arise from the same.

Interest of Members, Officers, or Employees of Public Body, Member of Local Governing Body, or other Public Officials: No member, officer, or employee of the County or City, or its designees or agents, no member of the governing body of the locality in which the program is situated, and no other public official of such locality or localities who exercises any functions or responsibilities with respect to the program during his tenure for one year thereafter, shall have any interest, direct or indirect, to be performed in connection with the program assisted under the Agreement. The Laboratory shall incorporate or cause to be incorporated in all such interest pursuant to the purpose of this Section.

PART II – FEES

The fees for Services rendered shall be in accordance with the attached Attachment B, entitled “Schedule of Fees for Professional Services.”

PART III – TERMS AND CONDITIONS

ARTICLE 1. SERVICES – LABORATORY SHALL:

- 1.0 Perform Geotechnical & Construction Material Testing Services for Hidalgo County –Urban County Program as identified in Attachment A “Scope of Services”.
- 1.1 Act for the Client in a professional manner, using the degree of care and skill ordinarily exercised by, and consistent with the standards of the Profession.
- 1.2 Provide only those Services that, in the opinion of the Laboratory, lie within the technical and professional area of expertise of the Laboratory and which Laboratory is adequately staffed and equipped to perform.
- 1.3 Perform all technical services under the general direction of a Licensed Professional Engineer registered in the State of Texas and in substantial accordance with the basic requirements of the appropriate Standards of the American Society for Testing and Materials, where applicable, or other standards as designated by the Client.
- 1.4 Promptly submit all formal construction materials test reports for all tests, observations and services performed indicating where applicable, compliance with project specifications or other documents. Such reports shall be complete and factual. Such reports shall cite the test performed, methodology employed, test values obtained, and locations where tests were performed.
- 1.5 Promptly submit formal geotechnical reports for geotechnical explorations requested by the Client. Such reports shall contain a site plan with the boring locations indicated, boring logs, a report of the results of laboratory testing, and contain design recommendations pertaining to the planned construction.

- 1.6 **Employ testing equipment and machines which have been calibrated within a period not exceeding twelve (12) months from the time of use by devices of accuracy traceable to the National Institute for Standards and Technology (NIST) of the United States Department of Commerce, and submit upon request by the Client, documentation of such calibration.**
- 1.7 **Report Distribution and Ownership**
 - 1.7.1 **Laboratory will consider all reports to be the confidential property of the Client, and will distribute reports only to those persons, organizations or agencies as designated in writing by the Client and its authorized representative.**
 - 1.7.2 **Client acknowledges the Laboratory's documents as instruments of Professional service. Nevertheless, the plans and specifications prepared under this agreement shall become the property of the Client upon completion of the work and payment will be made in full of all monies due to the Laboratory. The Client shall not re-use or make any modification to the reports without prior written authorization of the Laboratory. Any unauthorized use reuse of the documents will be at the Client's sole risk.**
- 1.8 **Laboratory will retain all pertinent records relating to services performed for a period of 5 years following submission of all reports, during which period the records will be made available to the Client within a reasonable time.**

ARTICLE 2. CLIENT'S RESPONSIBILITIES-Client or its authorized representative shall:

- 2.1 **Provide the Laboratory with all the plans, specifications, addenda's change orders, approved shop drawings and other information for the proper performance of the Laboratory.**
- 2.2 **Designate in writing those persons or firms who are authorized to receive copies of Laboratory's inspection and test reports.**
- 2.3 **Advise Laboratory sufficiently in advance of any operations so as to allow for assignment of personnel by the Laboratory for completion of the required service. Such advance notice shall be in accordance with that established by mutual agreement of the Client and Laboratory.**
- 2.4 **Direct any Contractor where testing is to take place, either by construction contract or direct written order to:**

- (a) Secure and deliver to **Laboratory**, at no cost to **Laboratory**, preliminary representative samples of materials it proposes to use which require laboratory testing.
- (b) Furnish such casual labor and all facilities needed by the **Laboratory** to obtain and handle samples at the testing site and to facilitate the specified inspection of tests.
- (c) Provide and maintain for the use of the **Laboratory**, adequate space at the material testing site for safe and secure storage and proper curing of test specimens that must remain on the project site prior to laboratory testing.

ARTICLE 3. GENERAL CONDITIONS

- 3.1 **Laboratory**, by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities with regard to construction materials testing customarily vested in applicable project architects or engineers, or any other design professionals, agencies or authorities.
- 3.2 **Laboratory** shall not be responsible for acts of omissions of any party or parties involved in the design of any project where material testing is to take place or the failure of any Contractor or Subcontractor to construct any aspect of such project in accordance with recommendations contained in any correspondence or verbal recommendation issued by **Laboratory**.
- 3.3 **Laboratory** is not authorized to revoke, alter or relax, enlarge or release any requirements of the Client's specifications or other documents nor to approve or accept any portion of the work, unless specifically authorized in writing by Client or his authorized representative. **Laboratory** shall not have the right of rejection or the right to stop the work, except for such periods as may be required to conduct sampling, testing, or inspection of operations covered by the **Agreement**.
- 3.4 Either party may terminate this **Agreement** on thirty (30) days written notice or by mutual agreement. If this **Agreement** is terminated by either party, **Laboratory** shall be paid in full for all services performed through the termination date, and the **Client** shall be provided with a complete report of the results of tests and analysis conducted prior to termination of **Agreement**.

- 3.5 Neither **Client** nor **Laboratory** may delegate, assign, sublet or transfer his duties or interest in this Agreement without the written consent the other party.
- 3.6 The only warranty made by **Laboratory** in connection with its service performed hereunder is that it will use the degree of care and skill as set in Article I above. No other warranty, expressed or implied, is made or intended for services provided hereunder or furnishing oral or written reports of findings made.
- 3.7 **Successors and Assigns.**
- 3.7.1 **Client and Laboratory** each binds themselves and their partners, successors, executors, administrators, assign legal representative to the other party to this Agreement and to the partners, successors, executors, administrator, assigns and legal representative of such other party in respect to all covenants, agreements, and obligations of this Agreement.
- 3.7.2 Neither **Client** or **Laboratory** shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other except as stated in paragraph 3.7.1 and except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an Assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this Paragraph shall prevent **Laboratory** from employing such independent Consultants, associates and subcontractors, as he may deem appropriate to assist him in the performance of services hereunder.
- 3.7.3 Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than the **Client** and **Laboratory**.
- 3.8 **Non Binding Mediation**
- 3.8.1 In the event of a dispute or claim between **Laboratory** and **Client** arising out of or related to this Agreement, both parties agree to submit to a Non-Binding Mediation with the hope of achieving a satisfactory resolution prior to proceeding with formal litigation processes, including the filing of claims against parties (unless a failure to file causes waiver or loss of rights or subsequent action).
- 3.8.2 Such Non-Binding Mediation shall be conducted by a mediator and rules agreed to by both parties. Both parties shall mediate through a selected and mutually agreed to senior representative of each respective party.

3.8.3 Both the **Laboratory and Client** will bind their respective consultants, contractors, vendors, fabricators, and suppliers involved in this Project to contracts which will provide similar Non-Binding Mediation as the primary dispute resolution method to other agreements.

3.9 Indemnity

3.9.1 The Owner will require the Laboratory, in connection with work produced under this agreement, to hold harmless and indemnify the Client, and each of its officers, agents and employees, from any and all liability claims, losses, or damage arising out of or alleged to arise from Laboratory's negligence in the performance of the work described in this agreement.

ARTICLE 4. INSURANCE

The **Laboratory** shall obtain and keep in force during the term of its engagement on the Project, the insurance as follows:

- 4.1 Automobile liability insurance policy with limits of at least Three Hundred Thousand Dollars (\$300,000.00) per person and Five Hundred Thousand Dollars (\$500,000.00) per occurrence. Coverage should include injury to or death of persons and property damage claims with limits up to Five Hundred Thousand Dollars (\$500,000.00) arising out of the services provided to Hidalgo County-Urban County Program.
- 4.2 Uninsured/Underinsured motorist coverage in an amount equal to the bodily injury limits set forth immediately above;
- 4.3 A Five Hundred Thousand Dollar (\$500,000.00) Comprehensive General Liability Insurance Policy providing additional coverage to all underlying liabilities of County consistent with potential exposure of County under the Texas Tort Claims Act;
- 4.4 Workers Compensation Insurance in amount established by Texas law, under the bidder is specifically exempted from the Texas Worker's Compensation Act, Texas Labor Code Chapter 401, et. seq.
- 4.5 All insurance policies must be written by an insurance company or companies acceptable to the Party.
- 4.6 Professional liability insurance policy with limits of at least One Million Dollars (\$1,000,000.00) per occurrence, or limited to claims made, include at least a five (5) year extended reporting period.

ARTICLE 5. PAYMENTS:

- 5.1 **Client will pay Laboratory for Services rendered while work is in progress as executed through a lump sum fee For each Request for Payment, the Laboratory shall prepare and submit to the Client monthly progress reports in sufficient detail to support the progress of the work done.**

ARTICLE 6. EXTENT OF AGREEMENT:

- 6.0 **After execution of this Agreement, the Laboratory shall proceed with work, only as authorized by the Client through a formal NOTICE TO PROCEED.**
- 6.1 **The Agreement, including these terms and conditions, represents the entire agreement between the Client and Laboratory and supercedes all prior negotiations, representations or agreements, written or oral. The Agreement may be amended only by written instrument signed by Client and Laboratory.**
- 6.2 **The Agreement shall remain in force for the duration of the project from the date this agreement is signed by all parties.**

ARTICLE 7. APPLICABLE LAW:

- 7.1 **The laws of the State of Texas shall govern the Agreement. Venue shall be in County of Hidalgo.**

ARTICLE 8. ATTORNEY FEES:

- 8.1 **In the unlikely event that a dispute occurs and is litigated, or a cause of action in the law or equity is filed concerning the operation, construction interpretation or enforcement of this agreement, the losing party shall bear the cost of the attorney's fees incurred by the prevailing party and any and all costs applicable thereto, including but not limited to court costs, deposition fees, and expert witness fees, out of pocket expenses and travel expenses which are incurred by the prevailing party.**

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

LABORATORY:

CLIENT:

Dennis C. Charkow

Diana R. Serna, UCP Director

Raba-Kistner Consultants, Inc.
800 E. Hackberry
McAllen, Texas 78501

Hidalgo County-Urban County Program
1916 Tesoro Blvd.
Pharr, TX 78577

APPROVED AS TO FORM:

BY: STEVE CRAIN- ATLAS & HALL
DATE: : 2-19-2008

Proposal No. PMD09-071-01 (Revised)
March 06, 2009



Raba-Kistner Consultants, Inc.
800 E. Hackberry
McAllen, Texas 78501
(956) 682-5332 • FAX (956) 682-5487
www.rkci.com

ATTACHMENT "A"

Mr. Anthony Covacevich, City Administrator
City of Weslaco
255 South Kansas Avenue
Weslaco, Texas 78596

**Re: Construction Materials Engineering and Testing Services
Water & Sewer Improvements from Los Toritos Street to Hidalgo Street
Weslaco, Hidalgo County, Texas**

Dear Mr. Covacevich:

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 \$ 7,529.00. 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 on Wednesday, February 25, 2009, from S & B Infrastructure, LTD., the project's engineering firm. 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.

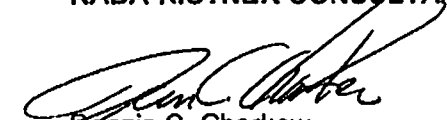
Invoices will be submitted monthly for work in progress in our standard format. Our invoices are due and payable upon receipt at P.O. Box 971037, Dallas, Dallas County, Texas 75397-1037. All parties hereby agree that the contract upon acceptance will be performed in Bexar County, Texas. Past due invoices 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.



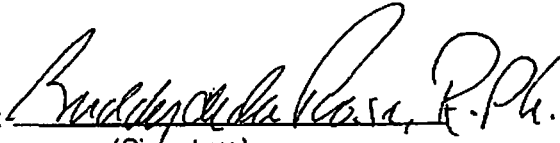
We appreciate the opportunity of submitting this proposal and look forward to working with you during the construction of this project. *Please return a signed copy of this letter proposal to provide written authorization for our firm to commence work on the services outlined herein.*

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: Buddy de la Rosa, R.PH.
 (Print or Type Name)

Date: 3-20-09
 ATTEST:

PLEASE FILL OUT FOR DISTRIBUTION OF TYPED REPORTS Amanda C. Elizondo, CITY SECRETARY

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			

APPROVED AS TO FORM:



W:\Active Proposals\McAllen\2009 Proposal Log\PMD09-071-01 (Revised)\Proposal City of Weslaco.doc **Ramon Vela, CITY ATTORNEY**

ATTACHMENT "B"

**Construction Materials Engineering and Testing Services
Water & Sewer Improvements from Los Toritos Street to Hidalgo Street
Weslaco, 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 \$ 29.75\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
Water & Sewer Improvements from Los Toritos Street to Hidalgo Street
Weslaco, Hidalgo County, Texas

Internal Codes		Description	Unit Fees		Estimated Quantity	Estimated Cost
5VRSF	1	Molsture/Density Relationship Proctor (ASTM/AASHTO)	\$ 202.50	ea.	3	\$ 607.50
5VR8G	2	Alterberg Limits Determinations (P.I.) (ASTM/AASHTO)	\$ 73.50	ea.	3	\$ 220.50
5WKR8	3	Sieve Analysis -200	\$ 49.50	ea.	2	\$ 99.00
5WKRS	4	Sieve Analysis - Flexible Base Material	\$ 49.50	ea.	1	\$ 49.50
5QT00	5	Technician Time - Sampling	\$ 43.25	hr.	8	\$ 346.00
5QOM0	6	Nuclear Field Density Tests	\$ 18.50	ea.	33	\$ 610.50
5QT05	7	Technician Time - Density Testing	\$ 43.25	hr.	33	\$ 1,427.25
5QFXE	8	Concrete Compressive Strength Tests	\$ 13.50	ea.	30	\$ 405.00
5QT06	9	Technician Time - Concrete Testing	\$ 43.25	hr.	12	\$ 519.00
5QBT0	10	Air Content of Concrete	\$ 25.25	ea.	6	\$ 151.50
5Q055	11	Technician Time - Pick-Up of Specimen(s)	\$ 43.25	hr.	6	\$ 259.50
5RT01	12	Vehicle Travel Charge	\$ 29.75	trip	42	\$ 1,249.50
Q401	13	Asphaltic Concrete Laydown Observation	\$ 49.50	hr.	4	\$ 198.00
5UIBMH	14	Extraction, Gradation, Bitumen Content and Laboratory Density of Asphaltic Concrete	\$ 248.75	ea.	2	\$ 497.50
5UBSO	15	Maximum Theoretical Specific Gravity of Asphalt	\$ 102.25	ea.	2	\$ 204.50
5Z512	16	Project Administration (Markup of Invoiced Billing Cycle)	10%			\$ 684.48
Estimated Total Cost of Services						\$ 7,529.23

--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 estimate 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	\$70 to \$200/hour
Auto Cad Operator.....	\$65 to \$110/hour
Technical/Clerical/Administrative	\$40 to \$80/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.

City of Weslaco

"The City on the Grow"



Buddy de la Rosa, Mayor
John F. Cuellar, Mayor Pro-Tem, Dist. 2
Soyla R. Gonzalez, Commissioner, Dist. 1
Rene Rodriguez, Jr., Commissioner, Dist. 3
Adrian Gonzalez, Commissioner, Dist. 4
Lupe V. Rivera, Commissioner, Dist. 5
Patrick B. Kennedy, Commissioner, Dist. 6

Anthony Covacovich, City Manager

CERTIFICATE

I, Amanda C. Elizondo, City Secretary of the City of Weslaco, Texas, **DO HEREBY CERTIFY**, that the Weslaco City Commission at their Regular Meeting of March 17, 2009 approved the scope of service and engineering fees from Raba-Kistner Consultants, Inc. for testing services for the Sewer Line Improvements Project at the alley between Calle Las Palmas and Calle del Cedro from Toritos Street to Southside of Cavazos Park in the amount of \$7,529.00, funding source Urban County Program Year 21 (2008). That such action of the Weslaco City Commission is recorded in Volume 46 of the Weslaco Minute Book.

DATED this 20th day of March, 2009.

CITY OF WESLACO

Handwritten signature of Amanda C. Elizondo in black ink.

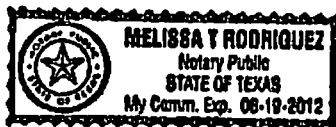
Amanda C. Elizondo
City Secretary

NOTARY

SWORN AND SUBSCRIBED before me, this 20th day of March, 2009 and that the above facts are true and correct to the best of her knowledge.

Handwritten signature of Melissa T. Rodriguez in black ink.

Melissa T. Rodriguez, Notary Public
My Commission expires: 06/19/12



STATE OF TEXAS COUNTY OF HIDALGO