

City of Weslaco

"The City on the Grow"



Miguel D. Wise, Mayor
John F. Cuellar, Mayor Pro-Tem, District 2
David R. Fox, Commissioner, District 1
Olga M. Noriega, Commissioner, District 3
Gerardo "Jerry" Tafolla, Commissioner, District 4
Lupe V. Rivera, Commissioner, District 5
Joe A. Martinez, Commissioner, District 6

Leonardo Olivares, City Manager

September 30, 2013

Monica Leal
Program Coordinator
Hidalgo County
Urban County Program

RE: City of Weslaco-Water/Sewer Improvements
Agenda Request

Dear Monica,

David Salinas, Public Utilities Director and City's engineer, Mardoqueo Hinojosa both reviewed specs and concurred with Raba Kistner's best and final offer. We request that it be put in CCC agenda for approval.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Olivares". The signature is fluid and cursive, written over the printed name below.

Leonardo Olivares
City Manager

CONTRACT AGREEMENT FOR MATERIAL TESTING SERVICES

BETWEEN

COUNTY OF HIDALGO- URBAN COUNTY PROGRAM

and

Raba Kistner Consultants, Inc.

APPROVED ON October 15, 2013

For

MATERIAL TESTING SERVICES

**City of Weslaco – Water/Sewer Improvements
12 inch RAW Waterline to Water Treatment Plant**

**CONTRACT AGREEMENT
MATERIAL TESTING SERVICES**

HIDALGO COUNTY-URBAN COUNTY PROGRAM

STATE OF TEXAS
COUNTY OF HIDALGO

PART I – PARTIES AND SERVICES

This agreement is made on October 15, in the year 2013, between County of Hidalgo-Urban County Program, hereinafter called the **Client**, and Raba Kistner Consultants, Inc., hereinafter called the **Consultant**, for **Construction Material 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 **Consultant** 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 **Consultant** 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 **Consultant** 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 **Consultant** 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 **Consultant** 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 – CONSULTANT SHALL:

- 1.0 Perform Geotechnical & Environmental Consulting 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 **Consultant**, lie within the technical and professional area of expertise of the **Consultant** and which **Consultant** 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 **Consultant'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 **Consultant**. The **Client** shall not re-use or make any modification to the reports without prior written authorization of the **Consultant**. Any unauthorized use reuse of the documents will be at the **Client's** sole risk.

1.8 **Consultant** 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 **Consultant** with all the plans, specifications, addenda's change orders, approved shop drawings and other information for the proper performance of the **Consultant**.
- 2.2 Designate in writing those persons or firms who are authorized to receive copies of **Consultant's** inspection and test reports.
- 2.3 Advise **Consultant** 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 **Consultant**.
- 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 **Consultant**, at no cost to **Consultant**, 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 **Consultant**, 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 **Consultant**, 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 **Consultant** 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 **Consultant**.
- 3.3 **Consultant** 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. **Consultant** 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, **Consultant** 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 **Consultant** 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 **Consultant** 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 **Consultant** 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 **Consultant** 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 **Consultant** 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 **Consultant**.

3.8 Non Binding Mediation

3.8.1 In the event of a dispute or claim between **Consultant** 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 **Consultant 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 Client will require the Consultant, 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 Consultant's negligence in the performance of the work described in this agreement.

ARTICLE 4. INSURANCE

The **Consultant** 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 **Consultant** for Services rendered while work is in progress as executed through a lump sum fee For each **Request for Payment**, the **Consultant** 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 **Consultant** 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 **Consultant** and supercedes all prior negotiations, representations or agreements, written or oral. The **Agreement** may be amended only by written instrument signed by **Client** and **Consultant**.

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:

Martin Vila
P.E.

Diana R. Serna
UCP Director

Raba Kistner Consultants, Inc.
800 East Hackberry
McAllen, Texas 78501

Hidalgo County-Urban County Program
3304 W. Alberta
Edinburg, Texas 78539

APPROVED AS TO FORM:

BY: STEVE CRAIN- ATLAS & HALL

DATE: 5-8-12



Proposal No.: PMD13-120-00
September 12, 2013

**Raba Kistner
Consultants, Inc.**
800 E. Hackberry
McAllen, TX 78501
www.rkci.com

Mr. David Salinas, Public Utilities Director
City of Weslaco - Public Utilities
255 South Kansas Avenue
Weslaco, Texas 78596

P 956 :: 682 :: 5332
F 956 :: 682 :: 5487
TBPE Firm F-3257

**RE: Construction Materials Observation and Testing Services
City of Weslaco 12 Inch Raw Waterline Water Treatment Plant Improvements
Weslaco, Hidalgo County, Texas**

Dear Mr. Salinas:

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

Our opinion of probable cost of services for this project is **\$6,306.85**.

Our proposed scope of services and estimated item quantities are based upon our interpretation of the project drawings received via electronic-mail transmittal from Mr. Emigdio "Milo" Salinas, P.E., with LeFevre Engineering & Management Consulting, LLC, the project's civil engineering firm, on Friday, September 6, 2013, and are without the aid of the general contractor's schedule. The scope and quantity of services provided will be dependent upon the actual services required/requested by you and/or your representatives. Charges will be assessed only for actual services rendered. All services authorized or requested by you and/or your representatives in excess of the quantities of 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 a 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 this contract upon acceptance will be performable in Bexar County, Texas. In the event that the 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 RKCI.




Proposal No. PMD13-120-00
September 12, 2013

We appreciate the opportunity of submitting this proposal and look forward to working with you during the construction of this project. Please return one signed copy of this letter proposal to provide written authorization for our firm to commence work on the services outlined herein. Please complete the attached Project Data Sheet for invoicing and reporting information.

Very truly yours,

RABA KISTNER Consultants, Inc.



Dennis C. Charkow
Supervisor, CME

DCC/rs
Attachments: Basic Charges
I- Standard Terms and Conditions
II- Schedules of Fees

Copies submitted: Above (1)

Accepted By _____
(Signature)

(Typed or Printed Name)

(Title)

Date _____



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) _____ 1.00 /hour(s)
Vehicle Trip Charge _____ \$ 45.00/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 observation 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. **RKCI** 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**. **RKCI** 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 **RKCI** for the project.
8. **RKCI** will utilize the on-site initial field curing facilities provided by the contractor. The cost of providing and maintaining these initial curing facilities is not included in our proposal.



Proposal No. PMD13-120-00
September 12, 2013

CONSTRUCTION MATERIALS TESTING UNIT RATES
City of Weslaco 12 Inch Raw Waterline Water Treatment Plant Improvements
Weslaco, Hidalgo County, Texas

SERVICE	UNIT RATE		QUANTITY	TOTAL
Utility Backfill Earthwork:				
1. Moisture-Density Relationship (Proctor)	\$214.75	each	2	\$429.50
2. Atterberg Limits Determinations (P.I.) (ASTM/AASHTO)	\$78.25	each	2	\$156.50
3. Sieve Analysis -200	\$53.00	each	2	\$106.00
4. Technician Time Sampling	\$46.00	hour	4	\$184.00
5. Field Density Test - Utility Backfill	\$19.75	each	56	\$1,106.00
6. Technician Time - Density Testing - Utility Backfill	\$46.00	hour	48	\$2,208.00
7. Vehicle Travel Charge	\$45.00	trip	26	\$1,170.00
Subtotal				\$5,360.00
Concrete: New Concrete Collar				
1. Concrete Compressive Strength Tests	\$14.50	each	5	\$72.50
2. Technician Time - Concrete Testing	\$46.00	hour	2	\$92.00
3. Air Content of Concrete	\$27.00	each	1	\$27.00
4. Technician Time - Pick-Up of Specimen(s)	\$46.00	hour	2	\$92.00
5. Vehicle Travel Charge	\$45.00	trip	2	\$90.00
Subtotal				\$373.50
Other:				
1. Project Administration(Markup of Invoiced Billing Cycle)	10%			\$573.35
Subtotal				\$573.35
GRAND TOTAL				\$6,306.85

Fees for Consulting & Coordination Services

- Principal Engineer
- Managing Engineer.....
- Staff Engineer
- Laboratory Manager.....
- Construction Services Manager
- Outside Professional Services & Reimbursable
- Additional Insured
- Report Preparation and Administration.....

Unit Fees

\$.....	135.00 to 250.00/hr
	95.00 to 200.00/hr
	70.00 to 200.00/hr
	65.00 to 150.00/hr
	65.00 to 90.00/hr
	Cost +15%
	160.00/ea
	38.00 to 75.00/hr



PROJECT DATA SHEET

Project Name: _____

Client Project No: _____ **Purchase Order No.:** _____

Invoicing Information: **Company Name:** _____

Address: _____

Attention: _____

Report Distribution Information (Please provide required report distribution and requested number of copies of each)

No. Copies () _____

Contact: _____ e-mail: _____

Phone No.: _____ Fax No.: _____

No. Copies () _____

Contact: _____ e-mail: _____

Phone No.: _____ Fax No.: _____

No. Copies () _____

Contact: _____ e-mail: _____

Phone No.: _____ Fax No.: _____

No. Copies () _____

Contact: _____ e-mail: _____

Phone No.: _____ Fax No.: _____

No. Copies () _____

Contact: _____ e-mail: _____

Phone No.: _____ Fax No.: _____





STANDARD TERMS AND CONDITIONS

1. **SERVICES.** Raba Kistner, Inc., by and through one of its subsidiaries (Raba Kistner Consultants, Inc., Raba Kistner Environmental, Inc., Raba Kistner Facilities, Inc. or Raba Kistner Infrastructure, Inc.) (the relevant subsidiary, being engaged to provide the services to CLIENT in connection with the delivery of this instrument, is referred to as "RK" herein) is being engaged by the CLIENT to render professional services ("Services") involving only RK's advice, judgment and opinion. RK may subcontract all or a portion of the Services performed hereunder. RK shall apply professional judgment in determining the extent to which RK complies with any given standard identified in RK's instruments of professional services. CLIENT expressly acknowledges that RK makes no warranties or guarantees, expressed or implied, regarding the Services.
2. **INFORMATION PROVIDED BY CLIENT.** CLIENT may provide or direct RK to utilize or rely upon certain information ("CLIENT Information") in the performance of RK's services. RK shall be entitled to rely upon such CLIENT Information. RK will not conduct an independent evaluation of the accuracy or completeness of such CLIENT Information and shall not be responsible for any errors or omissions in such information. RK's report, as well as any recommendations, findings, and conclusions made by RK, are dependent on information received from CLIENT. Changes or modifications to the information provided by CLIENT can affect RK's evaluation, recommendations, findings and conclusions, and CLIENT agrees—as a material term of this Agreement—to notify RK immediately, in writing, if CLIENT becomes aware of any such changes or modifications, including changes to the size, scope, location, or other material characteristics of CLIENT's project. The CLIENT shall be responsible for providing the location of all underground utilities and other structures in the vicinity of RK borings or excavations. RK will not accept responsibility and will not be liable for affecting or damaging any underground utility, underground storage tank, or other subsurface condition not previously identified and located, or improperly located, by the CLIENT, a utility, or a utility locating agency.
3. **SITE ACCESS AND SITE SAFETY.** CLIENT shall provide right-of-entry to the buildings and sites which are the subjects of RK'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. RK shall be responsible for supervision and site safety measures of its own employees and subconsultants, but shall not be responsible for the supervision or health and safety precautions of any other parties, including CLIENT, CLIENT'S contractors, subcontractors, or other parties present at the site.
4. **SUBSURFACE EXPLORATIONS.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. CLIENT understands RK's layout of boring and test locations is approximate and that RK may deviate a reasonable distance from those locations. RK will take reasonable precautions to reduce damage to the site when performing services; however, CLIENT accepts that invasive services such as drilling or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the scope of services.
5. **CHANGED CONDITIONS.** If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to RK are uncovered or revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, RK may call for renegotiation of appropriate portions of this Agreement. RK shall notify the CLIENT of the changed conditions necessitating renegotiation, and RK and the CLIENT shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If changes cannot be agreed to with respect to changed conditions, the parties shall utilize the Dispute Resolution/Litigation procedures in this Agreement.
6. **TESTING AND OBSERVATIONS.** CLIENT understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. RK will provide test results and opinions based on tests and field observations only for the work tested. CLIENT understands that testing and observation are not continuous or exhaustive, and are conducted to reduce – not eliminate – project risk. CLIENT agrees to the level or amount of testing performed and the associated risk. CLIENT is responsible (even if delegated to contractor) for notifying and scheduling RK so RK can perform these services. RK shall not be responsible for the quality and completeness of contractor's work or their adherence to the project documents, and RK's performance of testing and observation services shall not relieve contractor in any way from its responsibility for defects discovered in its work, or create a warranty or guarantee. CLIENT acknowledges that RK will not supervise or direct the work performed by contractor or its subcontractors and is not responsible for their means and methods.
7. **ESTIMATE OF FEES FOR CONSTRUCTION AND MATERIALS TESTING SERVICES.** If included as part of RK's proposal, RK will, to the best of its ability, perform the scope of services related to Construction and Materials Testing Services within the proposed fee estimate provided by RK. RK's proposal fees are based upon an estimate of the services required to meet the specifications for the project and following generally accepted engineering practices. The CLIENT recognizes that unforeseen circumstances along with changes in scope and project/contractor's schedules can influence the successful completion of the scope of services within the estimated proposed fees. Because the contractor has sole control over the project and determines the means and methods used to build/construct the project, RK's service fees are estimates and not lump sum or guaranteed maximum fees. The CLIENT is fully responsible for payment of all services provided, including retests of contractor's failed areas.
8. **REPORTS.** RK may provide CLIENT with written reports in connection with the Services performed. Such reports will present such findings and conclusions as RK may reasonably make with the information gathered while performing its services, and provided by CLIENT. The reports may be copied for inclusion in other documents related to the project provided it is reproduced in its entirety; however reports 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 others without the express written authorization of RK. Any unauthorized use or distribution shall be at the CLIENT's sole risk and without liability to RK.
9. **TOXIC AND HAZARDOUS MATERIALS.** CLIENT shall provide RK with all information within CLIENT'S possession or knowledge as to the potential or presence of toxic or hazardous materials or pollutants at the site. CLIENT agrees that RK neither created nor contributed to the creation or existence of any toxic or hazardous



Proposal No. PMD13-120-00
September 12, 2013

materials or pollutants. In no event shall RK be required to sign a hazardous waste manifest or take ownership of any toxic or hazardous materials or pollutants. If unanticipated toxic or hazardous materials or pollutants are encountered while performing RK's services, RK reserves the right to stop field operations and notify the CLIENT and CLIENT assumes responsibility to notify appropriate regulatory agencies. RK and CLIENT must mutually agree to remobilize.

10. **NO THIRD-PARTY BENEFICIARIES.** The services and any report(s) prepared under this Agreement are for the sole benefit and sole use of CLIENT and are not for the use of any other party or person. Only CLIENT may rely upon the services and any report or work product. Nothing in this Agreement, or any subsequent amendments or modifications, or in any report issued under this Agreement, shall create a contractual relationship with or a cause of action in the favor of any third party against either RK or CLIENT. If CLIENT provides a copy of any report prepared by RK to others, it shall advise the recipient that the information contained in the report is provided for information only and is not to be relied upon by third parties.
11. **LEED PROJECTS.** Unless specifically addressed elsewhere in this agreement, RK has no responsibility or liability, including duty to defend or duty to indemnify, any party (including but not limited to CLIENT, owner, owner's agents, architects, engineers, contractors, construction managers, subcontractors) for the LEED certification process including: developing, producing, or retaining any documentation relating to the calculation of LEED points; and attainment of LEED certification points or LEED ratings.
12. **STANDARD OF CARE.** RK shall perform its professional services in accordance with the standard of care and diligence normally practiced by professional firms in performing services of a similar nature, in the same locality, under similar circumstances. CLIENT expressly acknowledges that RK makes no other warranties or guarantees, expressed or implied, regarding its professional services or its work product.
13. **RISK ALLOCATION.** RK will be responsible only for its own work, and that of its sub-consultants, and not for defects in the work designed or built by others.
14. **LIMITATION OF LIABILITY.** CLIENT AND RK HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING RK'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF RK (AND ITS RELATED ENTITIES, EMPLOYEES, OWNERS, AGENTS, AND REPRESENTATIVES) TO CLIENT (AND THIRD PARTIES GRANTED RELIANCE ON RK'S WORK PRODUCT, OR OTHERWISE SEEKING RECOVERY UNDER THIS AGREEMENT) IS LIMITED TO THE GREATER OF \$100,000 OR THE FEE PAID RK UNDER THIS AGREEMENT, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF RK'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY,
15. **CONSEQUENTIAL DAMAGES.** Neither CLIENT nor RK will be liable to the other for any special, consequential, indirect, incidental or penal losses or damages of any kind, nor will CLIENT or RK be liable to the other for losses, damages, or claims, regardless of how defined, related to: lost profits; unavailability of property or facilities; shutdowns or service interruptions; loss of use, revenue, opportunity, or inventory; use charges, carrying costs, cost of substitute facilities, goods, or services; cost of capital, or claims of any other party and/or its customers.
16. **SUSPENSION OF SERVICES.** If the CLIENT fails to make payments when due or otherwise is in breach of this Agreement, RK may suspend performance of services upon seven (7) calendar days' notice to the CLIENT. RK shall have no liability whatsoever to the CLIENT for any costs or damages as a result of such

suspension. Upon payment in full by the CLIENT, RK may 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 RK to resume performance. Payment of invoices shall not be subject to any discounts or set-offs by the CLIENT unless agreed to in writing by RK. Payment to RK for services rendered and expenses incurred will be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.

17. **WAIVER OF SUBROGATION.** To the extent damages are covered by property insurance, or any other available insurance coverage, CLIENT and RK waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages. CLIENT agrees that CLIENT shall procure, or cause to be procured builder's risk insurance or other property insurance for its project. RK and CLIENT waive all rights against each other and any of their consultants, contractors, subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, flood, or other causes of loss to the extent covered by CLIENT's or CLIENT's Contractor's builder's risk insurance, or other available insurance coverage. The policies shall provide waivers of subrogation by endorsement or otherwise. CLIENT shall require of its contractors, consultants, agents and employees similar waivers in favor of RK and its subconsultants. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.
18. **OWNERSHIP OF DOCUMENTS.** R-K's reports, drawings, plans, specifications, and other documents and deliverables are instruments of professional service ("Instruments of Service") developed by RK in contemplation of a wide array of project-specific variables, including how the documents will be used and by whom. RK shall be the author, owner and custodian of the Instruments of Service, and shall retain all common law, statutory, and other reserved rights, including copyright. By execution of this Agreement, RK grants to CLIENT a limited, nonexclusive license to use the Instruments of Service for purposes of constructing, using, and maintaining the project for which the services are performed, provided CLIENT substantially performs its obligations, including prompt payment of all sums when due, under this agreement.

Upon completion of the services, and payment in full of all monies due RK, CLIENT may retain copies of all such documents. THE INSTRUMENTS OF SERVICE ARE NOT INTENDED NOR REPRESENTED TO BE SUITABLE FOR REUSE ON EXTENSIONS, MODIFICATIONS, OR ADAPTATIONS OF THE PROJECT, OR ANY OTHER PROJECT, ANY REUSE OF SUCH DOCUMENTS, WITHOUT WRITTEN VERIFICATION OR ADAPTATION BY RK FOR THE SPECIFIC PURPOSE INTENDED, WILL BE AT CLIENT'S SOLE RISK WITHOUT LIABILITY OR LEGAL EXPOSURE TO RK, AND CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY, DEFEND, AND HOLD HARMLESS RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND CONSULTANTS AGAINST ALL CLAIMS, DAMAGES, LOSSES, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, DEFENSE COSTS, AND COURT COSTS) ARISING FROM OR ALLEGEDLY ARISING FROM OR IN ANY WAY CONNECTED WITH THE UNAUTHORIZED REUSE OR MODIFICATION OF THE DOCUMENTS BY CLIENT OR ANY PERSON OR ENTITY THAT ACQUIRES OR OBTAINS THE DOCUMENTS FROM OR THROUGH THE CLIENT WITHOUT THE WRITTEN AUTHORIZATION OF R-K REGARDLESS OF WHETHER SUCH CLAIMS, DEMANDS, OR ACTIONS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED NEGLIGENCE OF RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR CONSULTANTS.

Parties other than CLIENT and RK may apply to use an instrument, using a form prepared by RK for that purpose. Others' use of an instrument shall be permitted only when CLIENT and RK 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 RK's professional judgment, such a contingency is necessary.

19. **DISPUTE RESOLUTION/LITIGATION.** All claims, disputes, and other controversy between RK and CLIENT arising out of or in any way related to the services provided by RK shall be submitted to 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, the CLIENT assents to personal jurisdiction in the State of Texas; the claim will be brought and tried in Bexar County, the county where RK's principal place of business is located, and CLIENT waives the right to remove or transfer the action to any other county or jurisdiction. The prevailing party will be entitled to recovery of all court costs, attorneys' fees, and other legally recoverable claim-related expenses. As a condition precedent to mediation of any claim arising out of the services provided under this Agreement, CLIENT shall obtain the written opinion from a registered, independent, and reputable professional engineer that RK has violated the standard of care applicable to RK's performance of services, in a form that meets the requirements of Texas Civil Practice & Remedies Code Chapter 150.
20. **TERMINATION OF CONTRACT.** CLIENT and RK may terminate services at any time upon ten (10) calendar days' written notice. In the event of termination, CLIENT agrees to fully compensate RK for services performed including reimbursable expenses through the termination date, as well as reasonable demobilization expenses. RK will terminate services without waiving any claims or incurring any liability.
21. **STATUTE OF LIMITATIONS.** Any applicable statute of limitations will commence to run and any cause of action shall be deemed to have accrued not later than the earlier of the following: (1) the date of the report issued by RK giving rise to the cause of action; (2) the date on which RK issues its last report under this Agreement; or (3) if RK is retained to perform construction observation, the date of substantial completion of the project.
22. **FORCE MAJEURE.** 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.
23. **NO ASSIGNMENT.** Neither RK nor CLIENT shall assign, sublet, or transfer its interest in this Agreement without the express written consent of the other.
24. **SEVERABILITY.** Each provision of this Agreement is intended to be severable. If any terms or provisions of this agreement shall be held to be invalid, illegal, or unenforceable for 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.
25. **ENTIRE AGREEMENT.** 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.





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 (RK) 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 RK equipment or for RK 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.



