

CONTRACT AGREEMENT FOR MATERIAL TESTING SERVICES

BETWEEN

COUNTY OF HIDALGO- URBAN COUNTY PROGRAM

and

Raba Kistner Consultants, Inc.

For

MATERIAL TESTING SERVICES

**South Fork Drain Project
Pharr, Texas**

**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 March 11, in the year 2014, between County of Hidalgo-Urban County Program, hereinafter called the **Client**, and Raba Kistner Consultants, Inc., hereinafter called the **Consultant**, for **Material Testing Services**, hereinafter called the **Services**.

Hidalgo County-Urban County Program has received flood and drainage improvement funds from the General Land Office (GLO) 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
427 E. Duranta Suite 107
Alamo, Texas 78516

APPROVED AS TO FORM:

BY: STEVE CRAIN- ATLAS & HALL

DATE: 5-8-12