


**URBAN COUNTY**  
**PROGRAM**  
**Hidalgo County Commissioners' Court**  
**Agenda Request Form**

No. A150520  
P.R. Avila II

Date: July 16, 2015 Meeting Date Request: July 21, 2015  
 Deadline for Action: July 16, 2015 Contact Person: Diana R. Serna  
 Department: Urban County Program Phone: (956) 787-8127 Fax: (956) 318-2988

*Diana R. Serna, UCP Director* 

**Caption:**


1. Requesting exemption from competitive bidding requirements under the Texas Local Government Code 262.024 (a) (4) for **Construction Materials & Geo Technical Testing Services**;
2. Presentation of the scoring grid for the purposes of ranking by CC of at least three (3) Construction Materials & Geo Technical Testing Services firms from the County's approved "pool" as graded and evaluated by Precinct No. 1, Urban County Program, and Hidalgo County Purchasing Department, in connection with and funded through Hidalgo County Urban County Program GLO Contract No. 12-406-000-6453/DRS210068 Delta Area Connector/ East Lateral Drainage project, Phase I, II and III.

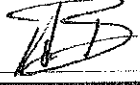
| Engineering Services              | Grade | Ranked |
|-----------------------------------|-------|--------|
| Raba Kistner Consultants          | 87.33 | 1      |
| Terracon Consulting & Engineering | 82.67 | 2      |
| PSI                               | 81.00 | 3      |

3. Authority to negotiate a professional engineering service contract with the No. 1 ranked firm of Raba-Kistner for the provision of **Construction Materials & Geo Technical Testing Services** for the Precinct No. 1 – Delta Area Connector/ East Lateral Drainage project, Phase I, II and III..

**Background:**

The three (3) Professional Engineering Services firms rated from the County's approved "pool" are: PSI, Raba Kistner Consultants and Terracon.

**APPROVED**  
County Commissioners' Court  
DATE: 7-01-15 

Deputy Director  Finance \_\_\_\_\_

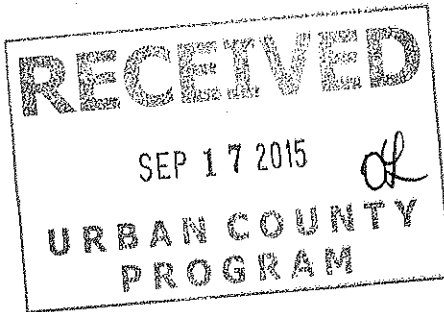
Please initial for approval:

Legal Counsel \_\_\_\_\_ Budget \_\_\_\_\_ Human Resources \_\_\_\_\_  
 Dept. /Fund No: \_\_\_\_\_ Amt. Expended: \$ \_\_\_\_\_ Funds/Staffing Budgeted: Yes \_\_\_\_\_ No \_\_\_\_\_  
 Account code: \_\_\_\_\_ Impact on Future budget: Yes \_\_\_\_\_ No \_\_\_\_\_

**Comments:**

Action taken by Commissioner's Court:

Approved \_\_\_\_\_ Tabled \_\_\_\_\_ Denied \_\_\_\_\_ Motion made by \_\_\_\_\_ Seconded \_\_\_\_\_ Vote \_\_\_\_\_



Proposal No. PMD15-085-00 (Revised)  
September 15, 2015

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

Mr. P.R. Avila II, Assistant Deputy Director  
Hidalgo County – Urban County Program  
427 E. Duranta Avenue  
Alamo, Texas 78516

**P 956.682.5332**  
**F 956.682.5487**  
TBPE Firm F-3257  
TBPLS Firm 10193784

**RE: Construction Materials Observation and Testing Services  
Hidalgo County Pct. 1 GLO Flood & Drainage Improvements Project Known as the  
Delta Area Connector / East Lateral Project Phases I, II, and III  
Hidalgo County, Texas**

Dear Mr. Avila:

**RABA KISTNER Consultants, Inc. (RKCI)** is pleased to have been selected to provide Construction Materials Observation and Testing Services for the above referenced project. **RKCI is the Geotechnical Engineer of record for this project and would be a valuable team member during the construction of this project.**

Our opinion of probable cost of services for this project is as follows:

|            |              |
|------------|--------------|
| Phase I:   | \$ 19,294.83 |
| Phase II:  | \$ 10,509.13 |
| Phase III: | \$ 13,611.68 |

Our proposed scope of services and estimated item quantities are based upon our interpretation of the project plans and specifications received via internet DropBox on Monday, August 3, 2015, from Mr. Oscar Cancino, P.E. with Dos Logistics, Inc., the civil engineering firm, and are without the aide of the general contractor's schedule. Please note that this proposal also reflects our understanding of the modification of the precast concrete type structures to the cast-in-place concrete type structures. The scope and quantity of services provided will be dependent upon services actually required by you or your representatives. Charges will be assessed only for actual services rendered. All services authorized or requested by you 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.

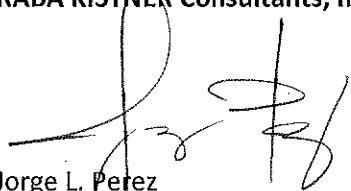
Invoices will be submitted monthly for work in progress in our standard format. Our invoices are due and payable within 30 days upon receipt at P.O. Box 971037, Dallas, Dallas County, Texas 75397-1037. All parties hereby agree that this contract upon acceptance will be performable in Hidalgo County, 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**.



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.**



Jorge L. Perez  
Supervisor, CME

JLP/KML

Accepted By \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or Printed Name)

\_\_\_\_\_  
(Title)

Date \_\_\_\_\_

- Attachments: Basic Charges  
Project Data Sheet  
Construction Materials Testing Unit Rates for Phases I, II, and III  
Standard Terms and Conditions  
Schedule of Fees

Copies submitted: Above (1)



**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 \_\_\_\_\_ \$ 46.75/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 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.



**CONSTRUCTION MATERIALS TESTING UNIT RATES**  
**Hidalgo County Pct. GLO Flood & Drainage Improvements Project Known as the**  
**Delta Area Connector / East Lateral Project Phase I**  
**Hidalgo County, Texas**

| SERVICE   | UNIT RATE |      | QUANTITY           | TOTAL              |
|---|-----------|------|--------------------|--------------------|
| <b>Civil Earthwork:</b>   |           |      |                    |                    |
| 1. Moisture-Density Relationship (Proctor)  | \$223.25  | each | 5                  | \$1,116.25         |
| 2. Atterberg Limits Determinations (P.I.) (ASTM/AASHTO)                                   | \$81.50   | each | 5                  | \$407.50           |
| 3. Sieve Analysis -200  | \$55.00   | each | 4                  | \$220.00           |
| 4. Sieve Analysis - Flexible Base Material  | \$55.00   | each | 1                  | \$55.00            |
| 5. Technician Time Sampling   | \$47.75   | hour | 14                 | \$668.50           |
| 6. Proof Rolling Observation  | \$47.75   | hour | 6                  | \$286.50           |
| 7. Field Density Test - Roadway Crossings<br>(Assume 12 Densities / Roadway Crossings)    | \$20.50   | each | 84                 | \$1,722.00         |
| 8. Technician Time - Density Testing - Roadway  | \$47.75   | hour | 42                 | \$2,005.50         |
| 9. Vehicle Travel Charge  | \$46.75   | trip | 28                 | \$1,309.00         |
| <b>Subtotal</b>   |           |      |                    | <b>\$7,790.25</b>  |
| <b>Concrete for CIP Structures (Headwalls &amp; Wingwalls)</b>                            |           |      |                    |                    |
| 1. Concrete Compressive Strength Tests  | \$15.00   | each | 60                 | \$900.00           |
| 2. Technician Time for Concrete Testing   | \$47.75   | hour | 36                 | \$1,719.00         |
| 3. Air Content  | \$28.00   | each | 12                 | \$336.00           |
| 4. Vehicle Travel Charge - Sampling   | \$46.75   | trip | 12                 | \$561.00           |
| 5. Technician Time - Pick Up Specimens  | \$47.75   | hour | 12                 | \$573.00           |
| 6. Vehicle Travel Charge - Pick Up  | \$46.75   | trip | 8                  | \$374.00           |
| <b>Subtotal</b>   |           |      |                    | <b>\$4,463.00</b>  |
| <b>Asphalt: Resurface and Recontruction</b>   |           |      |                    |                    |
| 1. Asphaltic Concrete Laydown Observation   | \$57.25   | hour | 48                 | \$2,748.00         |
| 2. Extraction, Gradation, Bitumen Content and Laboratory<br>Density of Asphaltic Concrete | \$275.50  | each | 6                  | \$1,653.00         |
| 3. Maximum Theoretical Specific Gravity of Asphalt  | \$101.00  | each | 6                  | \$606.00           |
| 4. Vehicle Travel Charge  | \$46.75   | trip | 6                  | \$280.50           |
| <b>Subtotal</b>   |           |      |                    | <b>\$5,287.50</b>  |
| <b>Other:</b>   |           |      |                    |                    |
| 1. Overtime Technician Charge   | \$71.63   | hour |                    |                    |
| 2. Project Administration(Markup of Invoiced Billing Cycle)                               | 10%       |      |                    | \$1,754.08         |
| <b>Subtotal</b>   |           |      |                    | <b>\$1,754.08</b>  |
|   |           |      | <b>GRAND TOTAL</b> | <b>\$19,294.83</b> |

**CONSTRUCTION MATERIALS TESTING UNIT RATES**  
**Hidalgo County Pct. GLO Flood & Drainage Improvements Project Known as the**  
**Delta Area Connector / East Lateral Project Phase II**  
**Hidalgo County, Texas**

| SERVICE   | UNIT RATE |      | QUANTITY           | TOTAL              |
|---|-----------|------|--------------------|--------------------|
| <b>Civil Earthwork:</b>   |           |      |                    |                    |
| 1. Moisture-Density Relationship (Proctor)  | \$223.25  | each | 3                  | \$669.75           |
| 2. Atterberg Limits Determinations (P.I.) (ASTM/AASHTO)                                   | \$81.50   | each | 3                  | \$244.50           |
| 3. Sieve Analysis -200  | \$55.00   | each | 2                  | \$110.00           |
| 4. Sieve Analysis - Flexible Base Material  | \$55.00   | each | 1                  | \$55.00            |
| 5. Technician Time Sampling   | \$47.75   | hour | 8                  | \$382.00           |
| 6. Proof Rolling Observation  | \$47.75   | hour | 6                  | \$286.50           |
| 7. Field Density Test - Roadway Crossings<br>(Assume 12 Densities / Roadway Crossings)    | \$20.50   | each | 36                 | \$738.00           |
| 8. Technician Time - Density Testing - Roadway  | \$47.75   | hour | 18                 | \$859.50           |
| 9. Vehicle Travel Charge  | \$46.75   | trip | 12                 | \$561.00           |
| <b>Subtotal</b>   |           |      |                    | <b>\$3,906.25</b>  |
| <b>Concrete for CIP Structures (Headwalls &amp; Wingwalls)</b>                            |           |      |                    |                    |
| 1. Concrete Compressive Strength Tests  | \$15.00   | each | 45                 | \$675.00           |
| 2. Technician Time for Concrete Testing   | \$47.75   | hour | 27                 | \$1,289.25         |
| 3. Air Content  | \$28.00   | each | 9                  | \$252.00           |
| 4. Vehicle Travel Charge - Sampling   | \$46.75   | trip | 9                  | \$420.75           |
| 5. Technician Time - Pick Up Specimens  | \$47.75   | hour | 9                  | \$429.75           |
| 6. Vehicle Travel Charge - Pick Up  | \$46.75   | trip | 6                  | \$280.50           |
| <b>Subtotal</b>   |           |      |                    | <b>\$3,347.25</b>  |
| <b>Asphalt: Resurface and Recontruction</b>   |           |      |                    |                    |
| 1. Asphaltic Concrete Laydown Observation   | \$57.25   | hour | 18                 | \$1,030.50         |
| 2. Extraction, Gradation, Bitumen Content and Laboratory<br>Density of Asphaltic Concrete | \$275.50  | each | 3                  | \$826.50           |
| 3. Maximum Theoretical Specific Gravity of Asphalt  | \$101.00  | each | 3                  | \$303.00           |
| 4. Vehicle Travel Charge  | \$46.75   | trip | 3                  | \$140.25           |
| <b>Subtotal</b>   |           |      |                    | <b>\$2,300.25</b>  |
| <b>Other:</b>   |           |      |                    |                    |
| 1. Overtime Technician Charge   | \$71.63   | hour |                    |                    |
| 2. Project Administration(Markup of Invoiced Billing Cycle)                               | 10%       |      |                    | \$955.38           |
| <b>Subtotal</b>   |           |      |                    | <b>\$955.38</b>    |
|   |           |      | <b>GRAND TOTAL</b> | <b>\$10,509.13</b> |



**CONSTRUCTION MATERIALS TESTING UNIT RATES**  
**Hidalgo County Pct. GLO Flood & Drainage Improvements Project Known as the**  
**Delta Area Connector / East Lateral Project Phase III**  
**Hidalgo County, Texas**

| SERVICE   | UNIT RATE |      | QUANTITY           | TOTAL              |
|---|-----------|------|--------------------|--------------------|
| <b>Civil Earthwork:</b>   |           |      |                    |                    |
| 1. Moisture-Density Relationship (Proctor)  | \$223.25  | each | 4                  | \$893.00           |
| 2. Atterberg Limits Determinations (P.I.) (ASTM/AASHTO)                                   | \$81.50   | each | 4                  | \$326.00           |
| 3. Sieve Analysis -200  | \$55.00   | each | 3                  | \$165.00           |
| 4. Sieve Analysis - Flexible Base Material  | \$55.00   | each | 1                  | \$55.00            |
| 5. Technician Time Sampling   | \$47.75   | hour | 9                  | \$429.75           |
| 6. Proof Rolling Observation  | \$47.75   | hour | 4                  | \$191.00           |
| 7. Field Density Test - Roadway Crossings<br>(Assume 12 Densities / Roadway Crossings)    | \$20.50   | each | 48                 | \$984.00           |
| 8. Technician Time - Density Testing - Roadway  | \$47.75   | hour | 24                 | \$1,146.00         |
| 9. Vehicle Travel Charge  | \$46.75   | trip | 14                 | \$654.50           |
| <b>Subtotal</b>   |           |      |                    | <b>\$4,844.25</b>  |
| <b>Concrete for CIP Structures (Headwalls &amp; Wingwalls)</b>                            |           |      |                    |                    |
| 1. Concrete Compressive Strength Tests  | \$15.00   | each | 60                 | \$900.00           |
| 2. Technician Time for Concrete Testing   | \$47.75   | hour | 36                 | \$1,719.00         |
| 3. Air Content  | \$28.00   | each | 12                 | \$336.00           |
| 4. Vehicle Travel Charge - Sampling   | \$46.75   | trip | 12                 | \$561.00           |
| 5. Technician Time - Pick Up Specimens  | \$47.75   | hour | 12                 | \$573.00           |
| 6. Vehicle Travel Charge - Pick Up  | \$46.75   | trip | 8                  | \$374.00           |
| <b>Subtotal</b>   |           |      |                    | <b>\$4,463.00</b>  |
| <b>Asphalt: Resurface and Recontruction</b>   |           |      |                    |                    |
| 1. Asphaltic Concrete Laydown Observation   | \$57.25   | hour | 24                 | \$1,374.00         |
| 2. Extraction, Gradation, Bitumen Content and Laboratory<br>Density of Asphaltic Concrete | \$275.50  | each | 4                  | \$1,102.00         |
| 3. Maximum Theoretical Specific Gravity of Asphalt  | \$101.00  | each | 4                  | \$404.00           |
| 4. Vehicle Travel Charge  | \$46.75   | trip | 4                  | \$187.00           |
| <b>Subtotal</b>   |           |      |                    | <b>\$3,067.00</b>  |
| <b>Other:</b>   |           |      |                    |                    |
| 1. Overtime Technician Charge   | \$71.63   | hour |                    |                    |
| 2. Project Administration(Markup of Invoiced Billing Cycle)                               | 10%       |      |                    | \$1,237.43         |
| <b>Subtotal</b>   |           |      |                    | <b>\$1,237.43</b>  |
|   |           |      | <b>GRAND TOTAL</b> | <b>\$13,611.68</b> |





## 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



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**

|  |                     |
|--|---------------------|
| <b><u>PERSONNEL:</u></b> 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.

