

AGENDA

Notice of Regular Meeting, October 19, 2021 – 6:00 p.m.

Council Chambers, Kemah City Hall

1401 State Highway 146, Kemah, Texas 77565

Kemah Community Development Corporation Board of Directors

President (Position 5)

Position 1

Position 2

Position 3

Position 4

Position 6

Position 7

Isaac Saldana

Kristi Reiser

Kelley Dawson

Matt Wiggins

David Alcorn

Ree' Allen

Jacob Bigger

In accordance with the Texas Open Meetings Act the agenda is posted for public information, at all times, for at least 72 hours preceding the scheduled time of the meeting on the bulletin board located on the front exterior wall of the City Hall Building, except in case of emergency meetings or emergency items posted in accordance with law. This facility is wheelchair accessible and accessible parking spaces are available. Requests for other accommodations or interpretive services must be made 48 hours prior to this meeting. Please contact the City Secretary's Office at (281)334-1611 or Fax (281)334-6583 for further information.

Invitation to Address the Board of Directors

The subject matter of any comments under this agenda item shall be limited to items on the agenda. The privilege of speaking at this time is limited to the following persons: residents in the City of Kemah, persons having an ownership interest in property within Kemah or a business located within its jurisdiction, or their attorney(s). A statement of no more than 2 minutes may be made. There will be no yielding of time to another person. State law prohibits KCDC board members from commenting on any statement or engaging in dialogue without an appropriate agenda item being posted in accordance with the Texas Open Meetings Law. Comments should be directed to the entire KCDC board, not individual members. Engaging in verbal attacks or comments intended to insult, abuse, malign or slander any individual shall be cause for termination of time privileges and expulsion from the meeting. This section will be limited to a total time limit of 15 minutes, unless extended by the President of the KCDC board.

Order of Business

- 1. Call to Order & Determination of Quorum**
- 2. Presentations**
 - a. Annual Audit Presentation**
- 3. Invitation to Public to Address the Board of Directors**
- 4. President Saldana's Comments**
- 5. Vice-President Bigger's Comments**
- 6. Board Member's Comments**
- 7. New Business Spotlight**
- 8. Financials Review, Discussion and Possible Action**
 - a. Budget Review**
 - b. Financial Reports**
 - c. Five-Year Budget Plan**
- 9. Current Projects Review, Discussion and Possible Action**
 - a. Streets & Roads Projects**
 - i. Harris Street Project**
 - b. Parks**
 - i. 57 Acre Park Project**
- 10. Future Projects Review, Discussion and Possible Action**
 - a. Street and Roads Projects**
 - i. Texas Avenue Rehab due to TXDOT Damage**
 - ii. 3rd, 4th & 5th Streets**
 - b. Parking Projects**
 - c. Signage & Wayfinding Project**
 - d. Park Projects**
 - i. 6th Street Pier Park**
- 11. Business Development Review, Discussion and Possible Action**
 - a. Business Retention/Recruitment**
 - b. Marketing/Website**
 - c. Hotel Recruitment Project**
- 12. Beautification Projects Review, Discussion and Possible Action**
- 13. Old Business**
- 14. New Business/Future Agenda Items**

- a. **Discussion and Possible Action on new vendors or providers of accounting, auditing, marketing, website, legal, project management and administrative services.**
 - b. **Discussion and Possible Action on engaging a forensic accountant to examine KCDC accounting from 5/1/2015 to date.**
15. **Comments for the Good of the City**
 16. **Adjournment**

I certify this Notice of Meeting was posted on the outside bulletin board at 1401 Highway 146, Kemah, Texas on or before October 15, 2021 prior to 6:00 p.m.

Chandra Jobb 10/15/2021
Chandra Jobb, Interim City Secretary

Proposal No. PHA21-111-00 Revision No. 1
September 21, 2021

Mr. Walter Grant, City Administrator/Chief of Police
City of Kemah
1401 State Hwy 146
Kemah, Texas 77565

**Re: Revised Proposal for Geotechnical Engineering Services
57-Acre Kemah Nature Reserve
Northwest of State Hwy 146 and State Hwy 96
Kemah, Galveston County, Texas**

Dear Mr. Grant:

On the basis of the electronic transmittal received from LJA Engineering, the project's civil engineering firm, on Monday, January 18, 2021, **Raba Kistner Consultants, Inc. (RKCI)** is pleased to submit this proposal for Geotechnical Engineering Services to the City of Kemah (CLIENT) for the above-referenced project. The broad objectives of our study will be to determine subsurface conditions at the subject site and to determine the quality of the soil contained within the spoil berms and design recommendations for a new nature reserve at the subject site. Described in this contract are:

- our understanding of the project;
- our proposed scope for field and laboratory study;
- our proposed scope for engineering evaluation and reporting;
- our tentative project schedule; and
- our project lump sum fee.

Project Description

We understand that the objective is to evaluate the quality of the soil contained within the elevated berms that occupy a large portion of the 57-acre site, and how much of that soil can be used as imported fill within the adjacent 88-acre proposed residential development to the south. In addition, the project also includes the design and construction of a detention pond with a permanent pool and two pond outfalls. The site is situated about 0.5 miles west-northwest of the intersection of State Highway 146 and State Highway 96 in Kemah, Galveston County, Texas. Aerial imagery of the project site, obtained from Google Earth Pro and dated January 25, 2019, indicates that the site is undeveloped, with dense vegetation throughout. Spoil berms, approximately 8 to 12 feet tall, line the perimeter of the property and form finger peninsulas reaching from the perimeter berm into the interior. The western half of the site has an existing lake.

It is our understanding these berms are comprised of dredge spoils that were placed by the United States Army Corp of Engineers (USACE) sometime between the years 1995 and 2002, based on a review of the historical aerial photographs archived in Google Earth Pro.

Field Study

Based on proposed boring layout provided by CLIENT, the following drilling scheme is suggested in order to assess subsurface conditions at the subject site.

Proposed Structure	Number of Borings	Depth, ft*	Total Depth, ft*
Visitor's Center and Berm – Eastern Half	2	30	60
Detention Pond and Berms	8	45	360
Pond Outfalls	2	15	30
Total Drilling Footage			450

* below the existing ground surface elevation, or auger refusal, whichever occurs first.

RKCI will perform the necessary One-Call notifications prior to beginning the field drilling activities. The borings will be located in the field utilizing tape and right angle measurements from existing benchmarks and/or using recreational grade Global Positioning System (GPS). Our scope of services does not include surveying of the boring locations. However, **RKCI** will stake boring locations for surveying by the CLIENT or their representative.

All-terrain drilling equipment is anticipated to be used to access and traverse the job site. Soil samples will be taken at continuous 2-ft intervals to a depth of 20 feet and then at 5 foot intervals after that to the 30 and 45 foot boring completion depths. Soil samples will be recovered using conventional split-spoon and/or Shelby tube sampling techniques in general accordance with applicable American Society for Testing and Materials (ASTM) standards. Representative portions of the samples will be sealed, identified, packaged, and transported to our laboratory for subsequent testing and classification.

Water level readings will be recorded for the open boreholes during drilling and at drilling completion. **RKCI** will also note the depth that drilling transitions from dry auger to rotary wash, if applicable. If free water is encountered during drilling, the **RKCI** logger will temporarily suspend drilling operations and obtain water level measurements in the open borehole at 5-minute intervals over a 15-minute time interval. Water level measurements will also be recorded at completion of drilling prior to backfilling the boreholes with the auger cuttings and spoils generated during the drilling operations.

Laboratory Study

Upon completion of the subsurface exploration, a testing program will be designed to define the strength and classification characteristics of the foundation soils. The laboratory testing program is anticipated to include moisture content tests, Atterberg Limits (plasticity) tests, unconfined compressive and unconsolidated-undrained triaxial strengths; dry unit weight determinations, and grain size analyses. However, the actual type and number of laboratory tests will be based on the subsurface conditions

encountered in the borings. The laboratory testing will be performed in general accordance with applicable ASTM standards.

Engineering Analysis and Report

The field and laboratory phases of the study will be reviewed by our staff of engineers and geologists. The results of our review, together with the supporting field and laboratory data, will be presented in a written engineering report. An assessment of the soil engineering properties for use as fill material for support of residential slab foundations will also be provided. The Geotechnical Engineering Report may include the following information and recommendations, if applicable:

- A summary of the field and laboratory sampling and testing program;
- Boring logs and laboratory testing results;
- A review of the general site conditions including a description of the site, the subsurface stratigraphy, groundwater conditions, and the presence and condition of fill materials;
- Evaluation of berm soils for use as mass fill for residential slab foundations.
- Detention pond berm side slope gradient. Slope stability analyses will be conducted;
- Erosion control for berm/pond side slopes;
- Groundwater control during detention pond excavation, if applicable;
- Trench safety and groundwater control for new outfall structures; and,
- Bedding and backfill for new outfall structures.

Our scope of work does not include a geologic fault study nor does it include conducting test pits at the site.

A draft report will be submitted electronically to CLIENT for review. Comments to our draft report will then be incorporated into the final report. Both the draft and final reports will be submitted electronically.

Tentative Project Schedule

Based on our present workload and weather permitting, it is anticipated that the field exploration phase of this study can begin within five working days of receiving written authorization to proceed, provided that the site is accessible to our buggy-mounted drill rigs and the CLIENT has supplied us with all available information regarding existing utilities and below-grade structures on site (if any). The field exploration and laboratory testing phases of the study are expected to take approximately ten working days to complete. The engineering report will be submitted within an additional ten to fifteen working days following completion of the laboratory testing. The above schedule does not account for delays due to inclement weather. We will be pleased to provide the design team with verbal design information as the data becomes available.

Lump Sum Fee

The total lump sum cost for the study outlined herein is \$28,100. Should unusual subsurface conditions be encountered in the field indicating the desirability of significantly broadening the scope of the study, we will contact you to receive written authorization before proceeding with any additional work. Additional services will be billed on a unit basis in accordance with our standard fees as indicated on the attached Schedule of Fees for Professional Services.

RKCI has been provided by the CLIENT with a site plan of the project site, illustrating the layout of the existing berms and proposed park improvements and boring locations. It is our understanding that access to all boring locations for a conventional, buggy-mounted drilling rig will be provided by the CLIENT prior to our field exploration services.

Historically, the cost of our field services is about 45 percent of our total fee. These services are predominantly provided by subcontractors. In order to promptly pay our subcontractors and continue to be able to respond to your needs, we will send you an interim invoice for 45 percent as soon as the field exploration phase of our study is complete.

It should be noted that our study scope (and project cost) includes plan review, but not earthwork observations during the construction of the project. However, construction observation costs should be included in the project budget.

It should also be noted that our study scope (and project cost) do not include professional time or travel expenses for participation in design team meetings. If these services are required, they will be billed at our standard billing rates for professional time plus expenses.

Acceptance

We appreciate the opportunity of submitting this proposal and look forward to working with you in the development of this project, which will be carried out accordance with this letter and the following attachments:

<u>Attachment</u>	<u>Description</u>
I	Standard Terms and Conditions
II	Schedule of Fees for Professional Services

Please return one signed original of this contract to provide written authorization for our firm to commence work on the services outlined herein. Our invoices are due and payable upon receipt at P.O. Box 971037, Dallas, Dallas County, Texas 75397 1037.

RKCI considers the data and information contained in this proposal to be proprietary. This statement of qualifications and any information contained herein shall not be disclosed and shall not be duplicated or used in whole or in part for any purpose other than to evaluate this proposal.

RABA KISTNER CONSULTANTS, INC.



John D. Brown, P.E.
Manager, Geotechnical Services

Accepted By _____
(Signature)

(Typed or Printed Name)

(Title)

Date: _____

Attachments

JDB/hc



STANDARD TERMS AND CONDITIONS

1. Definitions.

1.1 RK. Raba Kistner, Inc., and / or one of its subsidiaries (Project Control of Texas, Inc. or PC Sports, Inc.) that is being engaged to provide the services to CLIENT in connection with the delivery of the proposal to which these Standard Terms and Conditions relate.

1.2 CLIENT. Person, entity or organization for which RK is rendering services regarding the Project.

1.3 PROJECT. The activity, venture, plan, building, site or investigation for which CLIENT has engaged RK to provide professional services.

1.4 CONTRACTOR. Person, entity or organization providing construction services, including labor and material for the Project.

1.5 SERVICES. The professional services to be performed by RK as set forth in the proposal or Agreement to which the Standard Terms and Conditions are attached.

1.6 AGREEMENT. RK's proposal accepted by CLIENT and these Standard Terms and Conditions which are incorporated into and made a part of the Agreement.

2. **SERVICES.** RK 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.

3. **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.

4. **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.

5. **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.

6. **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 require 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 attempt to renegotiate the terms of the agreement affected by the changed conditions. If changes cannot be agreed to with respect to the changed conditions, the parties shall utilize the Dispute Resolution/Litigation procedures in this Agreement.

7. **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 CLIENT delegates such responsibility to Contractor) for notifying and scheduling RK to perform these services. RK shall not be responsible for the quality and completeness of contractor's work or Contractor's adherence to the project plans,

specifications and other related documents. RK's performance of testing and observation services shall not relieve Contractor in any way from responsibility for defects discovered in Contractor's work or create a warranty or guarantee on the part of RK. 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.

8. **ESTIMATE OF FEES FOR SERVICES.** If included as part of RK's proposal, RK will, to the best of its ability, perform the scope of 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 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 for all services provided, including retests of areas or samples that failed to meet Project specifications. The Estimate of Fees is valid for a period of 60 days after RK's proposal is submitted to CLIENT. If RK's proposal is not accepted by CLIENT within 60 days after it is submitted to CLIENT, RK may modify the Estimate of Fees.
9. **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 they are reproduced in their entirety. 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 of RK's reports shall be at the CLIENT's sole risk and without liability to RK.
10. **TOXIC AND HAZARDOUS MATERIALS.** CLIENT shall provide RK with all information within CLIENT's possession or knowledge related to the potential or presence of toxic or hazardous materials or pollutants at the Project 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 RK is performing its services, RK reserves the right to stop field operations and notify CLIENT and CLIENT assumes responsibility to notify appropriate regulatory agencies. RK and CLIENT must mutually agree to remobilize.
11. **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.
12. **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.
13. **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.
14. **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.
15. **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.
16. **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.
17. **SUSPENSION OF SERVICES.** If 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 CLIENT. RK shall have no liability whatsoever to CLIENT for any costs or damages as a result of such suspension. Upon payment in full by 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 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. CLIENT shall not make any changes to RK's banking and deposit information or payment instructions unless CLIENT communicates the requested changes to RK orally and in writing and obtains written confirmation from an RK officer that the requested changes are legitimate and authorized by RK. If CLIENT makes a payment to a third party instead of to RK based on an unauthorized request to CLIENT for a change to RK's banking and deposit information or payment instructions and without obtaining written confirmation of the change from RK, CLIENT will remain liable to RK for payment of the amount of the unauthorized payment.

18. **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.
19. **OWNERSHIP OF DOCUMENTS.** RK'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. 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 CLIENT WITHOUT THE WRITTEN AUTHORIZATION OF RK 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, RK shall make its permission contingent upon the satisfaction of certain conditions when, in RK's professional judgment, such a contingency is necessary.

20. **DISPUTE RESOLUTION/LITIGATION.** All claims, disputes, and other controversies 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. Any litigation related to the Agreement or RK's performance of its professional services shall be commenced in a court in Bexar County, Texas. CLIENT consents to personal jurisdiction in the State of Texas and agrees that venue of any litigation shall be in Bexar County, the county where RK's principal place of business is located. CLIENT waives any objection to personal jurisdiction in Texas or to venue in Bexar County. The prevailing party in such litigation will be entitled to recover all court costs, attorneys' fees, and other legally recoverable claim-related expenses. As a condition precedent to mediation and / or litigation related to any claim arising out of the services provided under this Agreement, CLIENT shall obtain a written affidavit from a registered, independent, and reputable professional engineer describing any error, omission or other act by RK that allegedly failed to comply with the professional standard of care applicable to RK's performance of services and provide such affidavit to RK. The affidavit shall comply with the requirements of Texas Civil Practice & Remedies Code Chapter 150.
21. **TERMINATION OF CONTRACT.** CLIENT and RK may terminate RK's 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 its services without waiving any claims against or incurring any liability to CLIENT.
22. **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.

23. **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.
24. **NO ASSIGNMENT.** Neither RK nor CLIENT shall assign or transfer its interest in this Agreement without the express written consent of the other.
25. **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 provisions the maximum permissible effect and application intended.
26. **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

PERSONNEL:

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.