# CITY OF EL PASO, TEXAS
# DEPARTMENT HEAD'S SUMMARY REQUEST FOR COUNCIL ACTION (RCA)

**DEPARTMENT:** Engineering

**AGENDA DATE:** November 11, 2008

**CONTACT PERSON/PHONE:** R. Alan Shubert, City Engineer (X4423)

**DISTRICT(S) AFFECTED:** Citywide

**SUBJECT:**

That the City Manager be authorized to sign an agreement for engineering services by and between the **CITY OF EL PASO** and **RABA-KISTNER CONSULTANTS, INC.,** for a project known as **"ENVIRONMENTAL ENGINEERING CONSULTANT SERVICES",** for a two year contract in an amount not to exceed SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($750,000.00) [not to exceed the amount of three hundred seventy-five thousand dollars and no/100 dollars ($375,000.00) per year for two years] with two one-year options, with each option year not to exceed THREE HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS ($375,000.00).

**BACKGROUND / DISCUSSION:**

The City of El Paso requires specialized environmental engineering services that are not readily available from internal expertise. Typical of these services are: surveys of petroleum and leaking petroleum storage tanks, Brownfield site investigations, asbestos surveys, mold surveys, lead-based paint investigations, National Environmental Policy Act clearances, archeological investigations, hazardous waste management, Section 404 permitting, analytical laboratory services, etc. The initial contract term is for two years with a limit of $375,000 per year the City Council has the option to renew the contract for two additional one-year terms. The applicable projects are required to fund each task. Approval of this contract will give Environmental Services two specialized environmental engineering contractors. More than one firm is required due to an anticipated large workload requiring rapid turn-around.

**PRIOR COUNCIL ACTION:**

None

**AMOUNT AND SOURCE OF FUNDING:**

Funding to be provided by each project requiring service.

**BOARD / COMMISSION ACTION:**

N/A

********** REQUIRED AUTHORIZATION **********

**LEGAL:** (if required)_____ **FINANCE:** (if required)_____

**DEPARTMENT HEAD:** _____

(Example: if RCA is initiated by Engineering, client department should sign also)

***Information copy to appropriate Deputy City Manager***

**APPROVED FOR AGENDA:**

**CITY MANAGER:** _____ **DATE:**_____

# RESOLUTION

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

That the City Manager be authorized to sign an agreement for engineering services by and between the **CITY OF EL PASO** and **RABA-KISTNER CONSULTANTS, INC.,** for a project known as **"ENVIRONMENTAL ENGINEERING CONSULTANT SERVICES"**, for a two year contract in an amount not to exceed SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS ($750,000.00) [not to exceed the amount of three hundred seventy-five thousand dollars and no/100 dollars ($375,000.00) per year for two years] with two one-year options, with each option year not to exceed THREE HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS ($375,000.00).

**ADOPTED THIS _____ DAY OF _____ 2008.**

APPROVED AS TO CONTENT:

_____
John F. Cook, Mayor

ATTEST:

_____
Richarda Duffy Momsen, City Clerk

APPROVED AS TO FORM:

Mark Shoesmith
Assistant City Attorney

APPROVED AS TO CONTENT

R. Alan Shubert, P.E.
City Engineer

**Summary**

**Project Name:** **Environmental Engineering Consultant Services**
**District:** **City Wide**
**Scope of work:**

# Scope of Services

Projects performed under the Environmental Engineering Consultant Services contract may include, but are not limited to the following types of services. This scope of services is intended to represent the types of projects that may arise during the term of the contract; however, not all of these services may be required of the Consultant during the contract term. The Consultant may supplement their in-house capabilities through teaming arrangements with other firms.

## Petroleum Storage Tank (PST) and Leaking Petroleum Storage Tank (LPST) Sites

Consultant may be required to conduct the removal or abandonment of PST facilities on City properties in accordance with TCEQ requirements; therefore, consultant may be required to obtain the services of a Registered Underground Storage Tank (UST) Contractor. The Consultant may be required to conduct all phases of assessment or corrective action at LPST sites and shall maintain registration as a LPST Corrective Action Specialist (CAS) as well as provide a registered LPST Corrective Action Project Manager (CAPM) in accordance with Title 30, Texas Administrative Code, Chapter 334, Subchapter J. LPST assessments may require the drilling and installation of monitoring wells by a licensed environmental driller and the collection of soil and ground water samples for analysis by an analytical laboratory. Consultant shall have a minimum of two years of experience providing PST and LPST services as described above.

## Brownfields

The Consultant may be required to perform services related to the City of El Paso Brownfields Redevelopment Program. These services may include conducting Phase I or Phase II Environmental Site Assessments (ESAs) of Brownfield properties or other properties and preparation of Quality Assurance Project Plans for EPA approval. A Phase I ESA shall be conducted in accordance with ASTM E1527-05, *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.* Consultant shall provide qualified Environmental Professionals to perform and/or oversee the preparation of all Phase I or Phase II ESAs and shall demonstrate experience assessing a variety of property and industry types. Consultant shall have a minimum of three years experience conducting Phase I and Phase II ESAs, as well as experience with a Brownfields program.

Consultant may also be required to conduct assessments and/or clean-up activities in accordance with Texas Risk Reduction Program (TRRP) rules and the TCEQ Voluntary

Cleanup Program (VCP). Consultant shall have a minimum of two years experience with TRRP and the VCP.

**Asbestos**

The Consultant must have the appropriate knowledge and understanding of Federal and State regulations governing the management of regulated asbestos containing materials (RACM). The Consultant may be required to perform asbestos surveys, prepare abatement project specifications, and oversee abatement activities. The Consultant shall provide a Licensed Asbestos Consultant Agency and a Licensed Asbestos Individual Consultant to perform or oversee these services. The Consultant shall have a minimum of two years experience conducting asbestos related services.

**Mold**

The consultant must have the appropriate knowledge and understanding of Federal and State regulations governing the management of mold assessment and remediation. The Consultant shall provide an individual Licensed Mold Assessment Consultant to perform all mold assessment and remediation management activities. The Consultant shall have a minimum of two years experience managing mold assessment and abatement activities.

**Lead-Based Paint**

The Consultant shall have the appropriate knowledge and understanding of Federal and State regulations governing the management of lead-based paint. The Consultant may be required to perform lead-based paint assessments and manage abatement activities and shall have a minimum of two years of experience in this field.

**National Environmental Policy Act Documentation**

National Environmental Policy Act (NEPA) documentation is typically required for projects that involve federal funding, such as, projects involving certain roadway, bridge, and airport projects. Consultant may be required to prepare environmental assessments, environmental impact statements, or other NEPA documentation for these types of projects. Consultant shall have a range of staff capable of performing biological surveys, archaeological surveys, and other environmental assessment activities required during the preparation of NEPA documentation. Consultant shall have a minimum of four years experience preparing NEPA documentation and shall have successfully completed a number of NEPA projects.

**Archaeological Investigations**

The consultant must have the appropriate knowledge and expertise to perform archaeological investigations including records research, field reconnaissance, pedestrian surveys, National Register Testing, other assessment, and mitigation. In addition, the work may include providing an Archaeological Monitor to be present on-site during

construction activities to monitor excavations to determine archaeological significance. All activities shall comply with the National Historic Preservation Act of 1966, as amended, and with the Texas Historical Commission requirements.

**Hazardous Waste Management**

The Consultant must have a good knowledge of the Federal (40 CFR, Chapter I, Parts 265 to 299) and State (30 TAC Chapter 335) environmental regulations governing the management of industrial solid waste and municipal hazardous waste. The Consultant may be required to provide the following types of hazardous waste management services:

- Prepare annual waste reports.
- Provide training to City of El Paso personnel regarding hazardous waste management activities.
- Assist the City of El Paso in the classification and proper disposal of hazardous waste.

Consultant shall have a minimum of two years experience related to hazardous waste services.

**Storm Water Management**

The Consultant may be required to prepare or update industrial storm water pollution prevention plans (SWP3) for City facilities in accordance with the Texas Pollutant Discharge Elimination System (TPDES) General Permit for industrial discharges. The Consultant may be required to design and implement best management practices for improving storm water quality. The Consultant may also conduct storm water monitoring, training, and inspections of City facilities in relation to an industrial SWP3 or the City's municipal separate storm sewer system permit requirements. Consultant shall have a minimum of two years experience with Storm Water Management practices.

**General Environmental Services**

Consultant may be required to provide a range of environmental services that are not described in the above categories. These services may include, but are not limited to:

- Provide environmental training to City of El Paso personnel, including 40-hour OSHA Hazardous Waste Operations and Emergency Response (HAZWOPER) training and 8-hour HAZWOPER refresher or awareness training.
- Prepare Spill Prevention Control and Countermeasure (SPCC) Plans for City facilities.
- Prepare the annual Tier II Chemical Inventory report for City facilities.
- Assist the City of El Paso in the management of spill clean-up activities in accordance with TCEQ requirements.
- Assist the City of El Paso with Clean Water Act (CWA) – Section 404 permitting or coordination with the Army Corps of Engineer for projects involving waters of the U.S.

- Assist the City of El Paso with GIS mapping and updating GIS databases related to environmental features or programs.
- Assist the City of El Paso with implementing and maintaining an Environmental Management System (EMS) for environmental compliance management at City facilities.
- Provide strategic planning and feasibility study services.

**Analytical Laboratory Services**

The City expects that analytical laboratory services will be required for this contract in support of the above mentioned environmental services. The laboratory services provided under this contract shall be provided by a NELAC (National Environmental Laboratory Accreditation Conference) accredited laboratory under the Texas Laboratory Accreditation Program.

## OBJECTIVE:

The primary objective is to provide environmental engineering consulting services city wide.

**Department Requesting Service:** Engineering/Environmental Services Department

**Procurement Type:** Architect/Engineer Selection Process (Qualification based)

**Request for Qualification Notification Date:** June 12, 2008

**Firms that were notified:** All pre-qualified architect/engineer firms

**Request for Qualification Due Date:** June 25, 2008

**Architect/Engineer firms that submitted RFQ packages:**

Sun City
Raba Kistner
Encon
PSI
Ninyo & Moore
Viva
Malcolm Pirnie

**Architect Engineer Selection Committee Members (Shortlist committee)**

Javier Reyes, Engineering Division Manager
Johanes Makahaube, Engineering Division Manager

Valerie Joosten , Environmental Engineer
Christian Benavides, Associate Engineer
Elda Rodriguez-Hefner, Air Quality Manager

**Date shortlist ranking was submitted:** **July 9, 2008**

**Shortlist Ranking of Firms:**

| Firm | Rank | Outcome |
|---|---|---|
| **Raba Kistner** | **1** | **Shortlisted** |
| **Encon** | **2** | **Shortlisted** |
| **PSI** | **3** | **Shortlisted** |
| Ninyo & Moore | 4 | Non shortlisted |
| Sun City | 5 | Non short listed |
| Viva | 6 | Non short listed |
| Malcolm Pirnie | 7 | Non short listed |
| | | |
| | | |

**Date firms were notified of results:** **July 17, 2008**

**Architect Engineer Selection Oral Presentation Date:** **July 23, 2008**

**Architect Engineer Selection Committee Members (Oral presentation committee)**

Ellen Smyth, Director of Environmental Services Department
Irene Ramirez, Assistant City Engineer, Engineering Department
Sam Rodriguez, Engineer Division Manager
John Garza, Engineering Division Manager

**Final Ranking of Firms**

| Firm | Rank | Outcome |
|---|---|---|
| Raba Kistner | 1 | **Selected** |
| Encon | 2 | **Not Selected** |
| PSI | 3 | **Not Selected** |

**Date firms were notified in writing of final selection: July 24, 2008 Selected firm and non selected firms**

ON-CALL CONTRACTS LISTING 10-24-08

| Year | Vendor | Contract PO | Services | Contract Amount not to exceed | Available Capacity | Expiration |
|---|---|---|---|---|---|---|
| 2006 | AMEC EARTH & ENVIRONMENTAL, INC. | AMEC-TESTING-06 | (DRAINAGE) Geotechnical & Material TESTING Services | $675,000.00 | $561,046 | 01/21/09 |
| 2006 | SOUTHWEST ABATEMENT | ERI-ENV-06-09 | Asbestos Abatement Services | $1,065,045.00 | $844,518 | 09/29/09 |
| 2008 | PARKHILL, SMITH & COOPER, INC. | PSC-EPIA-CNSTMGT | Construction Management Services - EPIA Capital I mprovement Plan | $750,000.00 | $310,422 | 01/22/10 |
| 2008 | PARAGON PROJECT RESOURCES, INC. | PARAGON-EPIA-CNSTMGT | Construction Management Services - EPIA Capital Improvement Plan | $750,000.00 | $173,315 | 01/22/10 |
| 2006 | ECM INTERNATIONAL, INC. | | Construction Management Services - SUN METRO Facilities Assigments | $1,305,676.60 | $842,757 | OPEN |
| 2006 | EL PASO REPROGRAPHICS | EP REPROGRAPHICS-CBS-06 | Duplication Services | $360,000.00 | $116,354 | 08/26/09 |
| 2008 | AMEC EARTH & ENVIRONMENTAL , INC. | AMEC-ENVENG-08-09 | Environmental Engineering Consulting Services | $750,000.00 | $722,210 | 03/09/10 |
| 2006 | ARCHANA, INC. | ARCHANA-ENV-07-08 | Environmental Engineering Services | $1,000,000.00 | $390,282 | 12/25/08 |
| 2008 | LICON ENGINEERING COMPANY INC | LICON-TEST-08 | Geotechnical & Material Testing Services | $400,000.00 | $375,332 | 05/13/10 |
| 2008 | PROFESSIONAL SERVICE INDUSTRIES, INC. | PSI-TESTING-08 | Geotechnical & Material Testing Services | 400,000.00 | $239,366 | 05/13/10 |
| 2008 | AMEC EARTH & ENVIRONMENTAL, INC. | AMEC-TEST-08-10 | Geotechnical & Material TESTING Services | $400,000.00 | $140,275 | 04/06/10 |
| 2008 | PARKHILL, SMITH & COOPER, INC. | PSC-SW-ENGSRVCS | Municipal Solid Waste and Household Hazardous Waste Engineering Services | 750,000.00 | $750,000 | 02/12/10 |
| 2008 | R.W. BECK, INC. | ENV-RWBECK-08-09 | Municipal Solid Waste and Household Hazardous Waste Engineering Services | 750,000.00 | $750,000 | 02/12/10 |
| 2007 | FRANK X. SPENCER & ASSOC, INC. | FXSPENCER SRVY ENG | Surveying Consulting Services | $1,000,000.00 | $923,989 | 08/26/09 |
| 2008 | DORADO ENGINEERING, INC. | DORADO-SURV-08-09 | Surveying Consulting Services | $1,000,000.00 | $972,222 | 08/26/09 |

**THE STATE OF TEXAS** )
)
**COUNTY OF EL PASO** )

**AN AGREEMENT FOR PROFESSIONAL SERVICES**
(Agreements over $100,000.00)

This Agreement is made this **_____ day of _____, 2008** by and between the **CITY OF EL PASO**, a municipal corporation organized and existing under the laws of the State of Texas, hereinafter referred to as the **"Owner"**, and **RABA-KISTNER CONSULTANTS, INC.** a Texas Corporation, hereinafter referred to as the **"Consultant"**.

**WHEREAS,** the Owner intends to engage the Consultant to perform professional services for a project known as **" ENVIRONMENTAL ENGINEERING CONSULTANT SERVICES,"** hereinafter referred to as the **"Project"**, as further described in **Attachment "A"**; and

**WHEREAS,** the Consultant has been selected to perform such services as required by the Owner, and the Consultant was selected through the Owner's selection procedure, in accordance with all applicable state and local laws and ordinances;

**NOW, THEREFORE,** for the consideration set forth in this Agreement and its attachments, the Owner and Consultant agree as follows:

## ARTICLE I.
## ATTACHMENTS

**1.1** The attachments listed herein and attached to this Agreement are incorporated herein by reference for all purposes.

| | |
|---|---|
| Attachment "A" | Scope of Services and Project Budget |
| Attachment "B" | Consultant's Fee Proposal and Hourly Rates |
| Attachment "C" | Consultant's Basic and Additional Services |
| Attachment "D" | Payment and Deliverable Schedules |

## ARTICLE II.
## PROJECT

**2.1** The Owner hereby agrees to retain the Consultant and the Consultant agrees to perform professional services for the Project as professional consultant for the Project. The Project shall consist of the Consultant's completion of the Scope of Services as further described in **Attachment "A".** Such Scope of Services shall be completed in accordance with the identified phases described in **Attachment "D"**.

**2.2** In completion of such phases, the Consultant shall comply with the City of El Paso Engineering Department Construction Document Guidelines in effect on the execution date of

this Agreement in the performance of the services requested under the Design Phase of this Agreement. Such Guidelines are available in the Engineering Department.

**2.3** The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies and shall give consultation and advice to the Owner during the performance of services.

**2.4** The Owner shall provide all available information to the Consultant, as to the Owner's requirements for each construction contract. The Owner shall also provide to the Consultant, all known information pertinent to the Project site, including previous reports and other data relative to design, such as "as-built" drawings or physical conditions now existing at the Project site. In performing its services, the Consultant will be entitled to rely upon the accuracy of the Owner provided information.

**2.5** The Owner hereby designates the City Engineer of the City of El Paso as the Owner's representative with respect to the professional services to be provided by the Consultant pursuant to this Agreement. The City Engineer shall have complete authority to transmit instructions, receive information, interpret and define Owner's policies, and decisions with respect to materials, equipment, elements, and systems pertinent to the work covered by this Agreement. City Engineer will render written decisions within a five working days time period.

## ARTICLE III.
## CONSULTANT FEES AND PROJECT BUDGET

**3.1 PAYMENT TO CONSULTANT.** The Owner shall pay to the Consultant an amount not to exceed THREE HUNDRED SEVENTY-FIVE THOUSAND **AND 00/100 DOLLARS ($375,000.00) per year for two years and not to exceed THREE HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS ($375,000.00) per year for two one-year options that may be exercised by the Owner** for all basic services and reimbursables performed pursuant to this Agreement. The Consultant's fee proposal for the performance of all Basic Services and reimbursables is attached hereto as **Attachment "B"**. Payments to the Consultant shall be made pursuant to the schedule enumerated within **Attachment "D"**.

**3.2 CONSULTANT'S SERVICES.** The Basic Services to be provided by the Consultant for this Agreement are attached hereto as **Attachment "C".** If authorized by the City Engineer, prior to the performance of such services, the Consultant may perform such Additional Services as also enumerated within **Attachment "C"** in an amount not to exceed $50,000.00. Additional Services exceeding $50.000.00 must have prior approval by City Council through written amendment to this Agreement. Owner shall make payment for such Basic and Additional Services at the rates established by Consultant within **Attachment "B".**

**3.3 CONSULTANT'S INVOICES.** The Consultant shall bill the Owner not more often than monthly, through written invoices pursuant to the schedule established in **Attachment "D"**. Invoices shall indicate the costs for outside consultants with copies of their invoices as back-up materials as well as other authorized direct costs for hourly rate contracts. All invoices shall be

made in writing. Within ninety days of substantial completion of construction, all outstanding invoices for all work completed to date by the Consultant shall be submitted to the Owner.

**3.3.1** Each invoice shall contain a brief summary indicating, at a minimum, the total Project budget, the total amount authorized for the Consultant, the current invoiced amount and the amount billed to date. In addition to the Summary, each invoice shall provide a Progress Report. The Progress Report shall describe, at a minimum, the progress of the Project to date also indicating the percentage of completion of each phase. The established schedule for completion shall not be revised except by written amendment to this Agreement, executed by both parties.

**3.3.2** The Owner agrees to pay invoices for all services performed as soon as reasonably possible but not later than thirty (30) days from receipt. Upon dispute, however, the Owner may, upon notice to the Consultant, withhold payment to the Consultant for the amount in dispute only, until such time as the exact amount of the disputed amount due the Consultant is determined. The total amount paid to Consultant shall not exceed Consultant's fee proposal, except by written amendment to this Agreement, executed by both parties.

**3.4 PROJECT CONSTRUCTION BUDGET.** The Consultant acknowledges that the construction budget for this Project allocates **N/A AND 00/100 DOLLARS N/A** for the award of a construction contract base bid, which is to include all features essential to the operation of the Project for its intended use as described in the Scope of Services and Project budget in **Attachment "A"**. The Consultant does hereby agree to design the Project such that the Consultant's final agreed cost opinions for the construction of the Project, including all features essential to its intended use, is within the above budgeted amount for the base bid. If the Consultant's cost opinions exceed the Project Budget at any time, the Consultant shall make recommendations to the Owner to adjust the Project's size or quality and the Owner shall cooperate with the Consultant to adjust the scope of the Project. If all responsible bids exceed the City approved Consultant's final cost opinions by more than **ten percent (10%)**, the Consultant agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations.

**3.5 COSTS NOT ENUMERATED.** Except as specifically set forth in this Agreement and its attachments, all costs related to the completion of the services requested herein shall be borne by the Consultant and not passed on to the Owner or otherwise paid by the Owner, unless a written amendment to this Agreement is executed by both parties allowing for additional costs.

## ARTICLE IV.
## PERIOD OF SERVICE AND TERMINATION

**4.1 PERIOD OF SERVICE.** The services called for by each phase shall begin upon the issuance of a Notice to Proceed from the City Engineer. The Consultant shall complete the requested services in accordance with the timelines and schedules outlined in **Attachments "C" and "D"**. **FOR REQUIREMENTS CONTRACTS ONLY:** The term of this Agreement shall

be for a period not to exceed TWO YEARS WITH THE OPTION TO RENEW FOR TWO ADDITIONAL ONE-YEAR TERMS (730) **consecutive calendar days**, except as specifically noted herein.

**4.2 SUSPENSION.** Barring an early termination as provided herein, this Agreement shall remain in force: a) For a period which may reasonably be required for the design, award of construction contracts, and construction of the improvements included in all construction contracts, including extra work and required extensions thereto; or b) Unless construction has not begun within a period of **twelve (12) months** after the completion of the services called for in that phase of work last authorized. However, should the Consultant's services be suspended for a period longer than six months, the City and Consultant may renegotiate remaining fees due to changes in salaries or increased costs that may occur during the suspension period. The Owner may determine that this Agreement will remain in full force past the twelve-month period noted above. Such a determination will be based upon the individual circumstances of this Project and this Agreement.

**4.3 TERMINATION.** This Agreement may be terminated as provided herein.

**4.3.1 TERMINATION BY OWNER.** It is mutually understood and agreed by the Consultant and Owner that the Owner may terminate this Agreement, in whole or in part for the convenience of the Owner, upon **fourteen (14) consecutive calendar days** written notice. It is also understood and agreed that upon such notice of termination, the Consultant shall cease the performance of services under this Agreement. Upon such termination, the Consultant shall provide one final invoice for all services completed and reimbursable expenses incurred prior to the Owner's notice of termination. Owner shall compensate Consultant in accordance with this Agreement; however, the Owner may withhold any payment to the Consultant that is held to be in dispute for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined. Nothing contained herein, or elsewhere in this Agreement shall require the Owner to pay for any services that are not in compliance with the terms of this Agreement and its attachments.

**4.3.2 TERMINATION BY EITHER PARTY.** It is further understood and agreed by the Consultant and Owner that either party may terminate this Agreement in whole or in part. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate enumerating the failures for which the termination is being sought; b) a minimum of **seven (7) consecutive calendar days** to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination. However, the Owner retains the right to immediately terminate this Agreement for default if the Consultant violates any local, state, or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the Owner pursuant to this subsection, the Owner may withhold payments to the Consultant for the purpose of setoff until such time as the exact amount due the Consultant from the Owner is determined.

**4.3.3 TERMINATION SHALL NOT BE CONSTRUED AS RELEASE.** Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminated party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

## ARTICLE V.
## INSURANCE AND INDEMNIFICATION

**5.1 INSURANCE.** The Consultant shall have **seven (7) calendar days** from date of award to obtain sufficient insurance as required herein. Consultant shall not commence work under this Agreement until the Consultant has obtained the required insurance and such insurance has been approved by the Owner. The Consultant shall maintain the required insurance throughout the term of this Agreement. Failure to maintain said insurance shall be considered a material breach of this Agreement.

**5.1.1 WORKERS' COMPENSATION INSURANCE.** The Consultant shall procure and shall maintain during the life of this Agreement, Workers' Compensation Insurance as required by applicable Texas law for all of the Consultant's employees to be engaged in work under this Agreement. The Consultant shall provide the following endorsement:

> "The policy is endorsed to provide that insurer waives any right of subrogation it may acquire against the Owner, its partners, agents and employees by reason of any payment made on or account of injury, including death resulting therefrom, sustained by any employee of the insured."

**5.1.2 COMMERCIAL LIABILITY, PROPERTY DAMAGE LIABILITY AND AUTOMOBILE LIABILITY INSURANCE.** The Consultant shall procure and shall maintain during the life of this Agreement such Commercial General Liability, Property Damage Liability and Automobile Liability Insurance as shall protect the Consultant and the Consultant's employees performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from operations under this contract, whether such operations be by the Consultant or by anyone directly or indirectly employed by the Consultant. The minimum limits of liability and coverages shall be as follows:

a) **COMMERCIAL GENERAL LIABILITY**

**Personal Injury or Death**
$500,000.00 for one person or occurrence
$1,000,000.00 for two or more persons or occurrences

**Property Damage**
$500,000.00 per occurrence

**General Aggregate**
$1,000,000.00

b) **AUTOMOBILE LIABILITY**
**Combined Single Limit**
$1,000,000.00 per accident

**5.1.3 PROFESSIONAL LIABILITY INSURANCE.** The Consultant shall procure and shall maintain, at the Consultant's sole expense, Professional Liability Insurance for the benefit of the Owner to cover the errors and omissions of the Consultant, its principals or officers, agents or employees in the performance of this Agreement with a limit of ONE MILLION AND 00/100 DOLLARS ($1,000,000.00) on a claims made basis.

**5.1.4 OWNER AS ADDITIONAL INSURED.** The Owner shall be named as an Additional Insured on all of the Consultant's Insurance Policies, with the exception of Workers' Compensation and Professional Liability Insurance required by this Contract.

**5.1.5 PROOF OF INSURANCE.** The Consultant shall furnish the City Engineer with certificates showing the type of insurance coverages, limits on each insurance policy, class of operations covered under each insurance policy, effective dates and expiration dates of policies, insurance companies providing the insurance coverages, name of agent/broker and include confirmation of any endorsement(s) required in this agreement.

**5.1.6 GENERAL INSURANCE PROVISIONS.** All certificates required herein shall be attached hereto and incorporated for all purposes as **Attachment "E"**. All certificates shall also include the name of the project on the corresponding insurance certificate. Further, each certificate shall contain the following statement:

> "The insurance covered by this certificate will not be canceled, and there will be no change in coverage or deductibles, except after thirty (30) consecutive calendar days written notice of intent to cancel or change said insurance has been provided to the City of El Paso.

**5.2 INDEMNIFICATION.** To the fullest extent permitted by law, Consultant shall indemnify and hold harmless Owner, and Owner's officers, directors, partners, agents consultants, and employees from and against any claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by any negligent act or omission of Consultant or Consultant's officers, directors, partners, agents, consultants or employees. This indemnification provision is subject to and limited by the provisions agreed to by Owner and Consultant, as noted below. The Consultant shall not be responsible for any acts of any of the City's Independent Project Managers.

To the extent allowed by state law, the Owner will be responsible for its own actions.

**5.2.1 CONSULTANT'S LIABILITY LIMITED TO AMOUNT OF INSURANCE REQUIREMENTS.** Consultant shall procure and maintain insurance as required by and set forth in the terms and conditions of this Agreement. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and Consultant's officers, directors, partners, employees, agents, and consultants (hereafter referred to collectively as "Consultant"), to Owner and anyone claiming by through, or under Owner for any and all claims, losses, costs, or damages, whatsoever arising out of, resulting from or in any way related to the Project or the Agreement from any cause or causes, including but not limited to the negligence, professional errors or omissions, strict liability or breach of contract, or warranty express or implied of Consultant (hereafter "Owner's Claims"), shall not exceed the total insurance proceeds paid on behalf of or to Consultant by Consultant's insurers in settlement or satisfaction of Owner's Claims under the terms and conditions of Consultant's insurance policies applicable thereto (excluding fees, costs and expenses of investigation, claims adjustment, defense, and appeal). If no such insurance coverage is provided with respect to Owner's Claims, then the total liability, in the aggregate, of Consultant to Owner and anyone claiming by, through, or under Owner for any and all such uninsured Owner's claims shall not exceed $250,000.00 per person or $500,000.00 per incident with property damage liability limited to $100,000.00 per incident.

## ARTICLE VI.
## FEDERAL PROVISIONS

### 6.1 COMPLIANCE WITH APPLICABLE LAWS - FEDERAL FUNDING REQUIREMENTS

Consultant, at Consultant's sole expense, agrees that it will operate and perform its responsibilities and covenants under this Agreement in accordance with applicable laws, rules, orders, ordinances, directions, regulations and requirements of federal, state, county and municipal authorities, now in force or which may hereafter be in force, including, but not limited to, those which shall impose any duty upon the Owner or Consultant with respect to the use of federal funds and nondiscrimination in the administration of contracts which are funded, in whole or in part, with federal funds.

Specifically, and not in limitation of the foregoing, Consultant agrees that to the extent required by any agreement between the Owner and any Federal agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project, **including but not limited to:**

--The Federal Transit Administration (FTA) through a Grant Agreement or Cooperative Agreement with the Owner, or supported by FTA through a Loan, Loan Guarantee, or Line of Credit with the Owner.

--The Department of Housing and Urban Development through a Grant Agreement or Cooperative Agreement with the Owner.

--The Federal Aviation Administration through a Grant Agreement or Cooperative Agreement with the Owner.

Copies of grant assurances will be made available to Consultant. However, provided copies shall in no way be a limitation on the Consultant's obligation to comply with any Federal agency, the laws of the federal government of the United States of America and the rules and regulations of any regulatory body or officer having jurisdiction over this Project.

**6.1.1 CONTRACT ASSURANCE.** The Consultant or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

**6.1.2 DBE GOOD FAITH EFFORTS.** The requirements of 49 CFR Part 26, regulations of the U.S. DOT, applies to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex or national origin in the award of performance of this contract. All firms qualifying under this solicitation are encouraged to submit proposals. Award of this contract will be conditioned upon satisfying the requirements of this proposal. These requirements apply to all offerors, including those who qualify as a DBE. A DBE contract goal of N/Ahas been established for this contract. The offeror shall make good faith efforts, as defined in Appendix A, 40 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) written documentation of the offeror's commitment to use a DBE subconsultant whose participation it submits to meet the contract goal; (5) written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts. The offeror shall submit the information with its proposal as a condition of responsiveness.

DBE participation in this contract may be in the form of a prime contract, subcontract, joint venture, or other arrangement that qualifies under 49 CFR Section 26.55 or 26.53(g), both of which will be submitted on a Letter of Intent to the Owner.

## 6.2 TERMINATION FOR CANCELLATION OF GRANT.

Should this Agreement be terminated as a result of cancellation of federal funds covering this Project, the Owner shall promptly notify the Consultant of the cancellation by certified mail-return receipt requested, whereupon the Consultant shall immediately, on receipt of the letter, cease and desist from performing any other work or services hereunder. In such an event, the

Consultant will be paid for professional services performed to such date, upon furnishing the Owner a progress report and an invoice to such date, and upon acceptance of the work by the Owner.

## ARTICLE VII.
## GENERAL PROVISIONS

**7.1 CONTRACT TIME.** Consultant understands and agrees to provide all professional services and deliverables requested herein, as expeditiously as is consistent with professional skill and care, and to use its best efforts to complete all phases of this Agreement within the time schedules indicated within **Attachment "D"**. It is acknowledged that the Consultant does not have control over all aspects of the design and construction process and cannot warrant that it will complete all services and deliverables by a certain date. The Consultant shall timely notify the City Engineer of any delay beyond its control and the City Engineer shall extend the time schedule in the event of delays which the City Engineer reasonably determines are beyond the control of the Consultant. The Consultant will perform these services with reasonable diligence and expediency consistent with sound professional practices and consistent with the schedule provided in **Attachment "D"**.

**7.2 OPINION OF PROBABLE COST.** As a design professional practicing in El Paso the Consultant is expected to be familiar with the cost of construction, labor, and materials in the El Paso area and of bidding and market trends. The cost opinions of construction cost provided by the Consultant, as required herein, are to be made in light of such familiarity and are expected to be within **ten percent (10%)** of the bid for the base bid item expected from the lowest responsible bidder.

The Consultant's final cost opinions for the construction of the Project, shall take into account labor costs which shall be based on the current City of El Paso prevailing wage rates as adopted by the City Council. In the event that the Project is funded with federal funds, the higher of the City of El Paso prevailing wage rates or the Davis-Bacon wage rates shall be utilized by the Consultant in compiling a final cost opinions for the Project.

If the Consultant's most recent cost opinion for any construction contract is in excess of the Project construction budget, the Owner shall give written approval of an increase in the limit, or shall cooperate in revising the Project's scope or quality, or both, to reduce the cost as required. Such revisions shall be made, and Drawings and Specifications modified by the Consultant without further compensation.

As noted herein, if all responsible bids exceed the final cost opinion by more than **ten percent (10%)**, the Consultant agrees, at the direction of the Owner, to redesign the Project without additional charge to the Owner in order to bring the Project within the budgetary limitations.

**7.3 CONSULTANT'S QUALITY OF WORK.** The Owner's review of any documents prepared by the Consultant is only general in nature and its option to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in its professional service. The Consultant's services shall be performed as expeditiously as is consistent with professional skill and care and the orderly progress of the Project and in

accordance with the time periods established in **Attachment "D"** and which shall be adjusted, if necessary, as the project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the project. The identified time limits shall not, except for reasonable cause, be exceeded by the Consultant or Owner. Services provided by the Consultant under this Agreement shall be performed in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing under similar circumstances.

**7.4 COPYRIGHT AND REPRODUCTION RIGHTS.** Upon payment of amounts due, the Drawings, Specifications, concepts and design, and other documents prepared by the Consultant for this Project including, without limitation, those in electronic form (sometimes referred to as the "Instruments of Service") are the property of the Owner, who shall be vested with all common law and statutory rights. The Owner shall have the right to the use of the Drawings, Specifications and other documents for the maintenance, repair, remodeling and renovation of the Project; provided however the Consultant shall have no liability for any use of one or more of the Instruments of Service by the Owner for maintenance, repair, remodeling and renovation of the project. The Owner shall have the consent of the Consultant, provided, however, the Consultant shall have no liability or responsibility for such use of the Drawings, Specifications, concepts and design, and other documents. The rights granted to the Owner herein for the use of the Drawings, Specifications and other documents for additional projects shall not grant the Owner any right to rely upon the Consultant's seal on the Drawings and Specifications or to hold the Consultant responsible for any subsequent use of the Drawings, Specifications and documents. The Consultant shall provide the Owner with copies of the Instruments of Service in both electronic form and in hard copy.

**7.5 AUDITING RECORDS FOR THE SPECIFIC PROJECT.** Consultant's records subject to audit shall include but not be limited to records which, in the Owner's discretion, have a bearing on matters of interest to the Owner in connection with the Consultant's work on this Project for the Owner and shall be open to inspection and subject to audit and/or reproduction by Owner's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of (a) Consultant's compliance with contract requirements, and (b) compliance with provisions for computing Direct Personnel Expense with reimbursables, if applicable.

Such records subject to audit shall also include those records necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this Agreement. In those situations where Consultant's records have been generated from computerized data, Consultant agrees to provide Owner's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer data exchange format.

The Owner or its designee shall be entitled, at its expense, to audit all of the Consultant's records related to this Project, and shall be allowed to interview any of the Consultant's employees, pursuant to the provisions of this section throughout the term of this contract and for a period of **three (3) years** after final payment or longer if required by law. Such audits may require

inspection and photo copying of selected documents from time to time at reasonable times and places.

**7.6 SUCCESSORS AND ASSIGNS.** This Agreement shall be binding on the Owner and the Consultant, their successors and assigns. Neither party may assign, sublet, or transfer its interest in this Agreement without the written consent of the other.

**7.7 VENUE.** For the purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

**7.8 GOVERNING LAW.** The Consultant shall comply with applicable Federal, State and local laws and ordinances applicable to the work contemplated herein.

**7.9 CAPTIONS.** The captions of this Agreement are for information purposes only, and shall in no way affect the substantive terms or conditions of this Agreement.

**7.10 SEVERABILITY.** Should any section, paragraph or other provision of this Agreement be found invalid, such invalidity shall not affect the remaining provisions of this Agreement.

**7.11 NOTICES.** Any notice, demand, request, consent or approval that either party may or is required to provide to the other shall be in writing and either personally delivered or sent via certified mail, return receipt, to the following addresses:

| | |
|---|---|
| To the Owner: | The City of El Paso<br>Attn: City Manager<br>2 Civic Center Plaza<br>El Paso, Texas 79901 |
| With a Copy to: | The City of El Paso<br>Attn: City Engineer<br>2 Civic Center Plaza<br>El Paso, Texas 79901 |
| To the Consultant: | RABA-KISTNER CONSULTANTS, INC.<br>Attn: Steve Jones, Exec VP<br>70022 Commerce<br>El Paso, Texas 79915 |

Changes may be made to the names and addresses noted herein through timely, written notice to the other party.

**7.12 CONFLICTING PROVISIONS.** Any provision contained in any Attachments to this Agreement, which may be in conflict or inconsistent with any of the provisions in this Agreement shall be void to the extent of such conflict or inconsistency.

**7.13 ENTIRE AGREEMENT.** This Agreement, including attachments, constitutes and expresses the entire agreement between the parties and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement shall not be amended or modified, except by written amendment, executed by both parties.

**WITNESS THE FOLLOWING SIGNATURES AND/OR SEALS:**

**CITY OF EL PASO:**

Joyce Wilson, City Manager

**CONSULTANT:**
RABA-KISTNER CONSULTANTS, INC.

By: Steven E. Jones
Title: Sr. VP

APPROVED AS TO FORM:

Mark Shoesmith
Assistant City Attorney

APPROVED AS TO CONTENT:

R. Alan Shubert, P.E.
City Engineer

(Acknowledgements on following page)

## ACKNOWLEDGEMENTS

**THE STATE OF TEXAS** §
§
**COUNTY OF EL PASO** §

This instrument was acknowledged before me on this _____ day of _____, 2008, by **Joyce A. Wilson,** as **City Manager** of the **City of El Paso, Texas.**

_____
**Notary Public, State of Texas**

**My commission expires:**

_____

**THE STATE OF TEXAS** §
§
**COUNTY OF El PASO** §

This instrument was acknowledged before me on this 23rd day of OCTOBER, 2008, by **Steve Jones,** as ~~**Executive**~~ Senior **Vice-president** of **Raba-Kistner Consultants, Inc.**.

Barbara Camarco
**Notary Public, State of Texas**

**My commission expires:**

January 21, 2011

BARBARA CAMARCO
My Commission Expires
January 21, 2011

ATTACHMENT "A"

# PROJECT SCOPE

**TITLE:** **Environmental Engineering Consultant Services**

**BUDGET:** $375,000 per year for 2 years; with an option to renew for two additional 1-year terms

**GENERAL DESCRIPTION:** See included Scope of Services

**SERVICES REQUIRED:**

| | | | |
|---|---|---|---|
| (X) | Environmental Services | (X) | Planning |
| (X) | Investigation | (X) | Soil Investigation |
| (X) | Bidding & Construction | (X) | Historical, Archeological Services |

**PRODUCTS REQUIRED:**

| | | | |
|---|---|---|---|
| (X) | Study / Report | (X) | Plans, Specifications, Estimates |

**GENERAL REQUIREMENTS AND CRITERIA:**

1. Work must comply with all applicable City Codes.
2. Work must comply with Environmental Services or User Department Guidelines.
3. Work must comply with all local, state, and federal laws and regulations, including but not limited to Texas Commission on Environmental Quality (TCEQ) and U.S. Environmental Protection Agency (EPA) regulations.

**OTHER CONSIDERATIONS:**

The project services shall be coordinated with Environmental Services and User Department.

**PROJECT SCHEDULE:** (Consecutive Calendar Days)

Project schedules will be developed for each assignment, as needed, by Environmental Services and User Department. This contract will be for a period of two years with fees not to exceed $750,000 with the option to renew for two (2) additional one-year terms.

**NOTE:** Consultants must provide copies of the following licenses or registrations for the firm and firm's project personnel:

1. Registered Professional Engineer
2. Registered Professional Geologist
3. Individual Asbestos Consultant
4. Asbestos Consultant Agency
5. Corrective Action Project Manager
6. Corrective Action Specialist
7. Licensed Mold Assessment Consultant

8. American Association for Laboratory Accreditation (A2LA) or other acceptable laboratory accreditation

# Scope of Services

Projects performed under the Environmental Engineering Consultant Services contract may include, but are not limited to the following types of services. This scope of services is intended to represent the types of projects that may arise during the term of the contract; however, not all of these services may be required of the Consultant during the contract term. The Consultant may supplement their in-house capabilities through teaming arrangements with other firms.

## Petroleum Storage Tank (PST) and Leaking Petroleum Storage Tank (LPST) Sites

Consultant may be required to conduct the removal or abandonment of PST facilities on City properties in accordance with TCEQ requirements; therefore, consultant may be required to obtain the services of a Registered Underground Storage Tank (UST) Contractor. The Consultant may be required to conduct all phases of assessment or corrective action at LPST sites and shall maintain registration as a LPST Corrective Action Specialist (CAS) as well as provide a registered LPST Corrective Action Project Manager (CAPM) in accordance with Title 30, Texas Administrative Code, Chapter 334, Subchapter J. LPST assessments may require the drilling and installation of monitoring wells by a licensed environmental driller and the collection of soil and ground water samples for analysis by an analytical laboratory. Consultant shall have a minimum of two years of experience providing PST and LPST services as described above.

## Brownfields

The Consultant may be required to perform services related to the City of El Paso Brownfields Redevelopment Program. These services may include conducting Phase I or Phase II Environmental Site Assessments (ESAs) of Brownfield properties or other properties and preparation of Quality Assurance Project Plans for EPA approval. A Phase I ESA shall be conducted in accordance with ASTM E1527-05, *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*. Consultant shall provide qualified Environmental Professionals to perform and/or oversee the preparation of all Phase I or Phase II ESAs and shall demonstrate experience assessing a variety of property and industry types. Consultant shall have a minimum of three years experience conducting Phase I and Phase II ESAs, as well as experience with a Brownfields program.

Consultant may also be required to conduct assessments and/or clean-up activities in accordance with Texas Risk Reduction Program (TRRP) rules and the TCEQ Voluntary Cleanup Program (VCP). Consultant shall have a minimum of two years experience with TRRP and the VCP.

## Asbestos

The Consultant must have the appropriate knowledge and understanding of Federal and State regulations governing the management of regulated asbestos containing materials (RACM). The Consultant may be required to perform asbestos surveys, prepare abatement project specifications, and oversee abatement activities. The Consultant shall provide a Licensed Asbestos Consultant Agency and a Licensed Asbestos Individual Consultant to perform or

oversee these services. The Consultant shall have a minimum of two years experience conducting asbestos related services.

## Mold

The consultant must have the appropriate knowledge and understanding of Federal and State regulations governing the management of mold assessment and remediation. The Consultant shall provide an individual Licensed Mold Assessment Consultant to perform all mold assessment and remediation management activities. The Consultant shall have a minimum of two years experience managing mold assessment and abatement activities.

## Lead-Based Paint

The Consultant shall have the appropriate knowledge and understanding of Federal and State regulations governing the management of lead-based paint. The Consultant may be required to perform lead-based paint assessments and manage abatement activities and shall have a minimum of two years of experience in this field.

## National Environmental Policy Act Documentation

National Environmental Policy Act (NEPA) documentation is typically required for projects that involve federal funding, such as, projects involving certain roadway, bridge, and airport projects. Consultant may be required to prepare environmental assessments, environmental impact statements, or other NEPA documentation for these types of projects. Consultant shall have a range of staff capable of performing biological surveys, archaeological surveys, and other environmental assessment activities required during the preparation of NEPA documentation. Consultant shall have a minimum of four years experience preparing NEPA documentation and shall have successfully completed a number of NEPA projects.

## Archaeological Investigations

The consultant must have the appropriate knowledge and expertise to perform archaeological investigations including records research, field reconnaissance, pedestrian surveys, National Register Testing, other assessment, and mitigation. In addition, the work may include providing an Archaeological Monitor to be present on-site during construction activities to monitor excavations to determine archaeological significance. All activities shall comply with the National Historic Preservation Act of 1966, as amended, and with the Texas Historical Commission requirements.

## Hazardous Waste Management

The Consultant must have a good knowledge of the Federal (40 CFR, Chapter I, Parts 265 to 299) and State (30 TAC Chapter 335) environmental regulations governing the management of industrial solid waste and municipal hazardous waste. The Consultant may be required to provide the following types of hazardous waste management services:

- Prepare annual waste reports.

- Provide training to City of El Paso personnel regarding hazardous waste management activities.
- Assist the City of El Paso in the classification and proper disposal of hazardous waste.

Consultant shall have a minimum of two years experience related to hazardous waste services.

**Storm Water Management**

The Consultant may be required to prepare or update industrial storm water pollution prevention plans (SWP3) for City facilities in accordance with the Texas Pollutant Discharge Elimination System (TPDES) General Permit for industrial discharges. The Consultant may be required to design and implement best management practices for improving storm water quality. The Consultant may also conduct storm water monitoring, training, and inspections of City facilities in relation to an industrial SWP3 or the City's municipal separate storm sewer system permit requirements. Consultant shall have a minimum of two years experience with Storm Water Management practices.

**General Environmental Services**

Consultant may be required to provide a range of environmental services that are not described in the above categories. These services may include, but are not limited to:

- Provide environmental training to City of El Paso personnel, including 40-hour OSHA Hazardous Waste Operations and Emergency Response (HAZWOPER) training and 8-hour HAZWOPER refresher or awareness training.
- Prepare Spill Prevention Control and Countermeasure (SPCC) Plans for City facilities.
- Prepare the annual Tier II Chemical Inventory report for City facilities.
- Assist the City of El Paso in the management of spill clean-up activities in accordance with TCEQ requirements.
- Assist the City of El Paso with Clean Water Act (CWA) – Section 404 permitting or coordination with the Army Corps of Engineer for projects involving waters of the U.S.
- Assist the City of El Paso with GIS mapping and updating GIS databases related to environmental features or programs.
- Assist the City of El Paso with implementing and maintaining an Environmental Management System (EMS) for environmental compliance management at City facilities.
- Provide strategic planning and feasibility study services.

**Analytical Laboratory Services**

The City expects that analytical laboratory services will be required for this contract in support of the above mentioned environmental services. The laboratory services provided under this contract shall be provided by a NELAC (National Environmental Laboratory Accreditation Conference) accredited laboratory under the Texas Laboratory Accreditation Program.

ATTACHMENT "B"



Raba Kistner

**Raba-Kistner Consultants, Inc.**
12821 W. Golden Lane
P.O. Box 690287, San Antonio, TX 78269-0287
(210) 699-9090 • FAX (210) 699-6426
www.rkci.com

August 29, 2008

Mr. John Garza, P.E.
City of El Paso
Assistant Director, Environmental Services
7969 San Paulo
El Paso, TX 79907

RE: Environmental Engineering Consultant Services
Revised Proposed Fee Schedules
Raba-Kistner Consultants, Inc.

Dear Mr. Garza:

Attached please find our revised proposed fee schedule submission per our August 28, 2008 telephone negotiations. The revised proposed fee submission includes labor rates, direct expense rates, and sub-consultant team member rates.

Very truly yours,

**RABA-KISTNER CONSULTANTS, INC.**

Robert R. Costigan, Ph.D., P.E.
Senior Vice President
Chief Operating Officer

Enclosures

ATTACHMENT "B"

**City of El Paso - Environmental Engineering Consultant Services**
**Raba-Kistner Fee Proposal**
**Revised August 29, 2008**

| | August 29, 2008 R-K Revised Proposed Labor Rates (See Notes 1, 2 and 3) | | |
|---|---|---|---|
| | Year 1 | Year 2 | Option Year 3 |
| Labor Category | Oct 1, 2008 - Sept 30, 2009 | Oct 1, 2009 - Sept 30, 2010 | Oct 1, 2010 - Sept 30, 2011 |
| Principal | $227.60 | $234.43 | $241.46 |
| Project Manager | $150.00 | $154.50 | $159.14 |
| Engineer, PE (Senior) | $161.25 | $166.09 | $171.07 |
| Engineer, PE. (Junior) | $125.00 | $128.75 | $132.61 |
| Engineer, EIT | $90.00 | $92.70 | $95.48 |
| Biologist | $83.88 | $86.40 | $88.99 |
| Env. Planner | $127.00 | $130.81 | $134.73 |
| Sr. Env. Scientist | $104.71 | $107.85 | $111.09 |
| Env. Scientist | $78.54 | $80.90 | $83.32 |
| Archeologist, PI | $130.89 | $134.81 | $138.86 |
| Archeologist | $75.47 | $77.73 | $80.07 |
| Sr. Geologist | $132.92 | $136.90 | $141.01 |
| Geologist | $87.26 | $89.88 | $92.58 |
| Asbestos Prof, IAC | $108.00 | $111.24 | $114.58 |
| Asbestos Tech | $55.00 | $56.65 | $58.35 |
| Env. Tech | $55.00 | $56.65 | $58.35 |
| Admin Asst | $50.00 | $51.50 | $53.05 |
| Clerical | $50.00 | $51.50 | $53.05 |
| CADD/GIS | $60.00 | $61.80 | $63.65 |

**Notes:**

1. Rates for work performed in contract year Year 2 and the Option Year will increase by 3.0% from previous year.

2. Raba-Kistner's Direct Labor Indirect Rate for 2008 is 179.77% per DCAA Audit No. 3521-2008J27000002, December 6, 2007.

3. Allowable 10 percent profit rate per City of El Paso. Profit rate is applied to the sum of the direct labor rate times the indirect rate on direct labor.

Robert R. Costigan, Ph.D., P.E., Senior Vice President and COO

**City of El Paso - Environmental Engineering Consulting Services**
**Raba-Kistner Direct Expense Costs**
**August 28, 2008**

| DIRECT EXPENSE ITEM | UNIT | YEAR 1 (Oct. 1, 2008 - Sept. 30, 2009) | YEAR 2 (Oct. 1, 2009 - Sept. 30, 2010) | Option Year (Oct. 1, 2010 - Sept. 30, 2011) |
|---|---|---|---|---|
| Truck Usage | per day | 55.00 | 56.65 | 58.35 |
| PID | per day | 75.00 | 77.25 | 79.57 |
| Electronic Water Level Indicator | per day | 15.00 | 15.45 | 15.91 |
| Oil/Water Interface Probe | per day | 35.00 | 36.05 | 37.13 |
| Camera Usage | per day | 12.00 | 12.36 | 12.73 |
| Asbestos Microscope | per day | 45.00 | 46.35 | 47.74 |
| High-Volume Air Sampling Pumps | per day | 10.00 | 10.30 | 10.61 |
| Rotometer | per day | 5.00 | 5.15 | 5.30 |
| Mileage | per mile | *See Note #2* | *See Note #2* | *See Note #2* |
| Copies (B&W) | per 8-1/2 x 11 | 0.25 | 0.26 | 0.27 |
| Copies (B&W) | per 11 x 17 | 0.50 | 0.52 | 0.53 |
| Copies (B&W) | per 24 x 36 | 1.25 | 1.29 | 1.33 |
| Copies (Color) | per 8-1/2 x 11 | 1.25 | 1.29 | 1.33 |
| Copies (Color) | per 11 x 17 | 2.50 | 2.58 | 2.65 |
| Copies (Color) | per 24 x 36 | 6.25 | 6.44 | 6.63 |
| Other: | - | - | - | - |
| - Ice | per 10 lb bag | cost plus 10% | cost plus 10% | cost plus 10% |
| - Zip Lock Bags | per box of 38 1 gallon bags | cost plus 10% | cost plus 10% | cost plus 10% |
| - Liquinox | per quart of concentrated Liquinox | cost plus 10% | cost plus 10% | cost plus 10% |
| Miscellaneous Direct Expenses (i.e., PPE, rope, field log notebook, etc.) | per item | cost plus 10% | cost plus 10% | cost plus 10% |

**Raba-Kistner Notes to Spreadsheet (August 28, 2008)**

1. Costs in Year 1 are based on the 2008 Raba-Kistner Schedule of Fees and costs in contract Year 2 and the Option Year will increase by 3.0% from previous year.
2. The mileage rate for company/personal vehicle travel expenses will be adjusted each year (including Year 1) to match the Federal Government mileage rate.



ATTACHMENT "B"

**Archana USA, Inc.**

ENVIRONMENTAL LABORATORY FEE SCHEDULE DATED 08-26-2008
SUBMITTED TO THE CITY OF EL PASO, TEXAS
ENVIRONMENTAL CONSULTING SERVICES STATE AND FEDERAL

Date 08-28-2008

| PARAMETER | METHOD | YEAR 1 STANDARD 10-15 WORKING DAYS | YEAR 1 RUSH 5 WORKING DAYS | YEAR 2 STANDARD 10-15 WORKING DAYS | YEAR 2 RUSH 5 WORKING DAYS | OPTION YEAR 3 STANDARD 10-15 WORKING DAYS | OPTION YEAR 3 RUSH 5 WORKING DAYS |
|---|---|---|---|---|---|---|---|
| Note: Prices for Water and Soil are the Same | | | | | | | |
| *Organic Testing* | | | | | | | |
| Total Petroleum Hydrocarbons | | | | | | | |
| TPH (GC) | TX 1005 | $63.65 | $79.56 | $65.56 | $81.95 | $67.53 | $84.41 |
| Methyl-tert-Butyl Ether | | | | | | | |
| MTBE | EPA 8021B | $63.65 | $79.56 | $65.56 | $81.95 | $67.53 | $84.41 |
| Benzene, Toluene, Ethylbenzene, Xylene | | | | | | | |
| BTEX (GC) | EPA 8021B | $63.65 | $79.56 | $65.56 | $81.95 | $67.53 | $84.41 |
| Organic Compounds (OC) | | | | | | | |
| Volatile OC (GC/MS) - Soil | EPA 8260B | $212.18 | $265.23 | $218.55 | $273.18 | $225.10 | $281.38 |
| Semi-volatile OC (GC/MS) - Soil | EPA 8270 | $477.41 | $596.76 | $491.73 | $614.67 | $506.48 | $633.11 |
| Volatile OC (GC/MS) - Wastewater | EPA 624 | $212.18 | $265.23 | $218.55 | $273.18 | $225.10 | $281.38 |
| Semi-volatile OC (GC/MS) - Wastewater | EPA 625 | $477.41 | $596.76 | $491.73 | $614.67 | $506.48 | $633.11 |
| Poly-chlorinated Biphenyls | | | | | | | |
| PCB (in oil) | EPA 8082 | $79.56 | $99.45 | $81.95 | $102.43 | $84.41 | $105.51 |
| PCB (in water/wipes) | EPA 8082 | $159.13 | $198.91 | $163.90 | $204.88 | $168.82 | $211.03 |
| PCB (in soil/sludge) | EPA 8082 | $159.13 | $198.91 | $163.90 | $204.88 | $168.82 | $211.03 |
| Pesticides | | | | | | | |
| Chlorinated compounds | EPA 8081A | $212.18 | $265.23 | $218.55 | $273.18 | $225.10 | $281.38 |
| Herbicides | | | $0.00 | | | | |
| Herbicide compounds | EPA 8151 | $212.18 | $265.23 | $218.55 | $273.18 | $225.10 | $281.38 |

ATTACHMENT "B"

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Phenols | EPA 8270 | $212.18 | $265.23 | $218.55 | $273.18 | $225.10 | $281.38 |
| *Toxicity Characteristic Leaching Procedure (TCLP)*<br>*(specified in 40 CFR 261.24, Table 1)*<br><br>Cost of TCLP includes leaching, extraction and analysis of grouped parameters.<br>Leaching & Extraction Method: EPA 1311 | | | | | | | |
| Full-array TCLP<br>*Metals (8), Volatile OC, Semi-volatile OC, Pesticides, and Herbicides* | Various | $1,273.08 | $1,591.35 | $1,311.27 | $1,639.09 | $1,350.61 | $1,688.26 |
| Typical-array TCLP<br>*Metals (8), Volatile OC and Semi-volatile OC* | Various | $1,060.90 | $1,326.13 | $1,092.73 | $1,365.91 | $1,125.51 | $1,406.89 |
| TCLP Metals (8)<br>*Listed metals: Arsenic, Barium, Cadmium, Chromium, Lead, Mercury, Selenium, Silver* | | $212.18 | $265.23 | $218.55 | $273.18 | $225.10 | $281.38 |
| **Note: Prices for Water and Soil are the Same** | | | | | | | |
| *Waste Characterization*<br>*(As specified in 40 CFR 261, Subpart C)* | | | | | | | |
| Reactive , sulfide | EPA 9010 | $63.65 | $79.56 | $65.56 | $81.95 | $67.53 | $84.41 |
| Reactive , cyanide | EPA 9030 | $63.65 | $79.56 | $65.56 | $81.95 | $67.53 | $84.41 |
| Corrosive (pH) | EPA 150.1 | $37.13 | $46.41 | $38.24 | $47.80 | $39.39 | $49.24 |
| Ignitability | EPA 1010 | $63.65 | $79.56 | $65.56 | $81.95 | $67.53 | $84.41 |
| RCI (Reactivity, Corrosivity, Ignitability) | Various | $212.18 | $265.23 | $218.55 | $273.18 | $225.10 | $281.38 |
| Paint Filter (as free liquid) | EPA 9095 | $37.13 | $46.41 | $38.24 | $47.80 | $39.39 | $49.24 |
| Cyanide (Total) | | $63.65 | $79.56 | $65.56 | $81.95 | $67.53 | $84.41 |
| Cyanide (Ameniable) | | $63.65 | $79.56 | $65.56 | $81.95 | $67.53 | $84.41 |
| *Water & Wastewater Analysis Schedule* | | | | | | | |
| Demand | | | | | | | |
| Biological Oxygen Demand (BOD) | EPA 405.1 | $37.13 | $46.41 | $38.24 | $47.80 | $39.39 | $49.24 |
| Chemical Oxygen Demand (COD)<br>*(HACH Method/EPA approved for NPDES reporting)* | EPA 405.1 | $37.13 | $46.41 | $38.24 | $47.80 | $39.39 | $49.24 |

ATTACHMENT "B"

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Residuals | | | | | | | |
| | Dissolved Solids, Total (TDS) | EPA 160.1 | $26.52 | $33.15 | $27.32 | $34.14 | $28.14 | $35.17 |
| | Suspended Solids, Total (TSS) | EPA 160.2 | $26.52 | $33.15 | $27.32 | $34.14 | $28.14 | $35.17 |
| | Suspended Solids, Volatile (VSS) | EPA 160.2 | $26.52 | $33.15 | $27.32 | $34.14 | $28.14 | $35.17 |
| | Settable Solids (SS) | | $26.52 | $33.15 | $27.32 | $34.14 | $28.14 | $35.17 |
| | Ash (% content) | | $37.13 | $46.41 | $38.24 | $47.80 | $39.39 | $49.24 |
| Oil & Grease (as HEM) | | EPA 1664 | $79.56 | $99.45 | $81.95 | $102.43 | $84.41 | $105.51 |
| Conductivity | | EPA 120.1 | $15.91 | $19.89 | $16.39 | $20.48 | $16.88 | $21.10 |
| pH (field measurement or in-house lab) | | EPA 150.2 | $15.91 | $19.89 | $16.39 | $20.48 | $16.88 | $21.10 |
| Chlorine | | | | | | | | |
| | Chlorine, Total | | $26.52 | $33.15 | $27.32 | $34.14 | $28.14 | $35.17 |
| | Chlorine, Residual | | $26.52 | $33.15 | $27.32 | $34.14 | $28.14 | $35.17 |
| Alkalinity | | | | | | | | |
| | Alkalinity, Phenolpthalein | EPA 301.1 | $26.52 | $33.15 | $27.32 | $34.14 | $28.14 | $35.17 |
| | Alkalinity, Total | EPA 301.1 | $26.52 | $33.15 | $27.32 | $34.14 | $28.14 | $35.17 |
| Hardness | | | | | | | | |
| | Hardness, Calcium or Magnesium | EPA 314A | $26.52 | $33.15 | $27.32 | $34.14 | $28.14 | $35.17 |
| | Hardness, Total | EPA 314A | $26.52 | $33.15 | $27.32 | $34.14 | $28.14 | $35.17 |
| **Note:** Prices for Water and Soil are the Same | | | | | | | | |
| Nitrogen | | | | | | | | |
| | Nitrogen, Organic (TKN) | EPA 351.2 | $63.65 | $79.56 | $65.56 | $81.95 | $67.53 | $84.41 |
| | Nitrogen, Nitrate-Nitrite | EPA 353.2 | $37.13 | $46.41 | $38.24 | $47.80 | $39.39 | $49.24 |
| | Nitrogen, Ammonia (NH4) | EPA 350.1 | $47.75 | $59.69 | $49.18 | $61.48 | $50.66 | $63.32 |
| | Nitrogen, Nitrite (NO2) | EPA 354.1 | $37.13 | $46.41 | $38.24 | $47.80 | $39.39 | $49.24 |
| Oxygen, dissolved (DO) | | EPA 360.1 | $15.91 | $19.89 | $16.39 | $20.48 | $16.88 | $21.10 |
| Sulfur | | | | | | | | |
| | Sulfur, Sulfate (NPDWS approved) | | $37.13 | $46.41 | $38.24 | $47.80 | $39.39 | $49.24 |
| | Sulfur, Sulfide (S-) | | | | | | | |
| Turbidity (Nephalometry) | | EPA 180.1 | $15.91 | $19.89 | $16.39 | $20.48 | $16.88 | $21.10 |
| Lead in Paint | | EPA 6010 | $37.13 | $46.41 | $38.24 | $47.80 | $39.39 | $49.24 |
| Metals, Total (includes sample digestion and extraction) | | | | | | | | |
| | Metals, (ICP-AES) | EPA 6010 | $26.52 | $33.15 | $27.32 | $34.14 | $28.14 | $35.17 |

ATTACHMENT "B"

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | | EPA 200.7 | | | | | | |
| Metals, (GFAA Spectrophotometry) Series | | Various | $37.13 | $46.41 | $38.24 | $47.80 | $39.39 | $49.24 |
| RCRA (8) Metals (As specified in 40 CFR) *(As, Ba, Cd, Cr, Pb, Hg, Se, Ag)* | | EPA 6010 EPA 200.7 | $212.13 | $265.16 | $218.49 | $273.12 | $225.05 | $281.31 |
| Mercury (Hg), cold-vapor | | EPA 245.1 | $37.13 | $46.41 | $38.24 | $47.80 | $39.39 | $49.24 |
| Metals, Soluble/Dissolved (sample filtration < 1.0 NTU) Metals, (ICP-AES) | | EPA 200.7 | $26.52 | $33.15 | $27.32 | $34.14 | $28.14 | $35.17 |
| Additional Services | | | | | | | | |
| Water / Wastewater Sampling (Tech time) | | | | | | | | |
| | Grab sample | per hour | $63.65 | | $65.56 | | $67.53 | |
| | Composite sample (incl. compositer set-up and sampling) | per hour | $63.65 | | $65.56 | | $67.53 | |
| Groundwater Sampling (Tech time) | | | | | | | | |
| | Well purge/sample | per hour | $63.65 | | $65.56 | | $67.53 | |
| | Self-purging | per hour | $63.65 | | $65.56 | | $67.53 | |
| Soil Sampling (Tech time) | | | | | | | | |
| | Grab sample | per hour | $63.65 | | $65.56 | | $67.53 | |
| | Composite sample | per hour | $63.65 | | $65.56 | | $67.53 | |
| Air Monitoring/Sampling | | | $63.65 | | $65.56 | | $67.53 | |
| Air Monitoring/Sampling Equipment (incl. Air monitoring cassette) | | | | | | | | |
| | Rental of unit | per day | $63.65 | | $65.56 | | $67.53 | |
| Autosampler (Compositer) | | | | | | | | |
| | Rental of unit (battery, bottles, ice) | per day | $159.13 | | $163.90 | | $168.82 | |

ATTACHMENT "B"

Pratap G. Reddy, Ph.D., P.E.
President
Archana USA, Inc.

ATTACHMENT "B"

**Archana USA, Inc.**

FEE SCHEDULE DATED 08-26-2008

TO THE CITY OF EL PASO, TEXAS

FOR ENVIRONMENTAL CONSULTING SERVICES

| LABOR CATEGORY | RATE PER HOUR | | |
|---|---|---|---|
| | YEAR 1 | YEAR 2 | OPTION YEAR 3 |
| **ENGINEERING AND ENVIRONMENTAL** | | | |
| Principle Project Manager | $167.09 | $172.10 | $177.27 |
| Principal: Engineer, Scientist, Geologist | $155.95 | $160.63 | $165.45 |
| Senior: Engineer, Scientist, Geologist | $144.81 | $149.15 | $153.63 |
| Project: Engineer, Scientist, Geologist | $133.67 | $137.68 | $141.81 |
| Staff: Engineer, Scientist, Geologist | $77.98 | $80.32 | $82.73 |
| **INDUSTRIAL HYGIENE** | | | |
| Certified Industrial Hygienist | $144.81 | $149.15 | $153.63 |
| Asbestos/Lead Based Paint/Mold Assessor and Project Designer | $100.26 | $103.27 | $106.37 |
| Asbestos/Lead Based Paint/Mold Project Manager | $89.12 | $91.79 | $94.55 |
| Asbestos/Lead Inspector | $73.52 | $75.73 | $78.00 |
| Asbestos and Lead Air Monitoring Professional | $62.38 | $64.25 | $66.18 |
| **TECHNICAL SUPPORT** | | | |
| Senior Auto CADD Technician | $44.56 | $45.90 | $47.27 |
| Junior Auto CADD Technician | $40.10 | $41.30 | $42.54 |
| Senior Environmental Technician | $66.84 | $68.85 | $70.91 |
| Project Technician | $55.70 | $57.37 | $59.09 |
| Associate Technician | $44.56 | $45.90 | $47.27 |
| **ADMINISTRATIVE SUPPORT** | | | |
| Administrative Assistant | $44.56 | $45.90 | $47.27 |
| Clerical Assistant | $35.65 | $36.72 | $37.82 |

# SCHEDULE OF FEES
# BAER ENGINEERING AND ENVIRONMENTAL CONSULTING, INC.
# CITY OF EL PASO

| ENGINEERING AND ENVIRONMENTAL | | 2008 | 2009 | 2010 |
|---|---|---|---|---|
| **Principal** | Engineer, Geologist, Scientist, Consultant | $145.00/hr | $150.00/hr | $155.00/hr |
| **Senior** | Engineer, Geologist, Scientist, Consultant, Mgr. | $125.00/hr | $130.00/hr | $135.00/hr |
| **Project** | Engineer, Geologist, Scientist, Manager | $105.00/hr | $110.00/hr | $115.00/hr |
| **Staff** | Engineer, Geologist, Scientist | $92.50/hr | $95.00/hr | $100.00/hr |
| **Field** | Engineer, Geologist, Scientist | $82.50/hr | $85.00/hr | $ 87.50/hr |
| **INDUSTRIAL HYGIENE** | | | | |
| Certified Industrial Hygienist, Lead/ Mold Assessment Consultant | | $145.00/hr | $150.00/hr | $155.00/hr |
| Asbestos Consultant, Lead Project Designer | | $100.00/hr | $105.00/hr | $110.00/hr |
| Asbestos Management Planner, Lead Assessor, Mold Assessment Consultant | | $90.00/hr | $95.00/hr | $100.00/hr |
| Asbestos Project Manager/ Air Monitoring Professional | | $66.50/hr | $68.00/hr | $69.50/hr |
| Asbestos/Lead Inspector, Air Monitoring Professional | | $56.50/hr | $58.00/hr | $59.50/hr |
| **TECHNICAL SUPPORT** | | | | |
| CADD Operator/Drafter, Information Technology | | $66.50/hr | $68.00/hr | $69.50/hr |
| Senior Technician | | $66.50/hr | $68.00/hr | $69.50/hr |
| Project Technician | | $51.50/hr | $53.00/hr | $54.50/hr |
| Associate Technician | | $41.50/hr | $43.00/hr | $44.50/hr |
| **ADMINISTRATIVE SUPPORT** | | | | |
| Administrative Assistant | | $41.50/hr | $45.00/hr | $48.00/hr |
| Clerical Assistant | | $36.00/hr | $37.00//hr | $38.00/hr |
| Company/personal vehicle travel expenses | | $0.50/mi | $0.50/mi* | $0.50/mi* |

*Adjusted each year to match Federal government mileage rate

Charges will be made at the rates listed above for time spent in project management, consultation or meetings related to the project, conducting field surveys, sampling, evaluations, review and analysis of field and laboratory data, report preparation and review, design, travel time, etc.

Time spent on projects in litigations, in depositions, and providing expert testimony will be charged at the standard rate times: 1.5

Technician and Support Personnel time for work over 8 hours per day and on holidays, Saturday and Sunday will be charged at the standard rate times: 1.5

**EXPENSES**

Per diem expenses when required to remain overnight outside Austin metropolitan area, and common carrier or car rental costs will be charged at cost multiplied by: 1.10

Special equipment or supplies, laboratory charges, permits, shipping charges, special printing or other items not customarily provided by Baer Engineering will be charged at cost multiplied by: 1.10

Subcontract services (if required) will be invoiced at our cost multiplied by: 1.10

**ATTACHMENT "C"**
**CONSULTANT'S BASIC AND ADDITIONAL SERVICES**

(Agreements over $100,000.00)

For the Project known as "**(Environmental Engineering Consultant Services)**," hereinafter referred to as the Project, the Consultant will provide the Basic and Additional Services as noted herein.

## BASIC SERVICES OF THE CONSULTANT

### GENERAL

1. The Consultant agrees to perform professional services in connection with the Project as hereinafter stated.

2. The Consultant shall comply with the City of El Paso Engineering Department Construction Document Guidelines, which are in effect at the time of this Agreement and are available in the City Engineering Department, in the performance of the services requested under the design phases of this Agreement.

3. The Consultant shall serve as the Owner's professional representative in those phases of the Project to which this Agreement applies, and shall give consultation and advice to the Owner during the performance of services.

4. The Owner is relying upon the skill, reasonable care and knowledge of the Consultant to furnish the Owner with a project within the allocated budget. The Owner's review of any documents prepared by the Consultant is only general in nature and its obligation to approve and accept the work in no way relieves the Consultant of responsibility for any specific deficiencies in the project.

### REPORT PHASE

1. Upon receipt of the Owner's written authorization to proceed with the **Report Phase**, the Consultant shall:

   **a.** Consult with the Owner to determine the requirements of the Project and together with the Owner develop a mutually acceptable scope for the Project.

   **b.** Provide preliminary investigations, studies, topographic surveys including ties to known monuments of right-of-way lines, general supervision of any other services obtained as described in Part 1.c. of this section and interpreting or incorporating results of any such services for inclusion in the Preliminary Study and Report referred to in Part 1.d. of this section.

   **c.** (1) Provide consultation and advice as to the necessity of providing or obtaining other services such as: (a) Property surveys, boundary surveys, right-of-way surveys, and utility surveys, (b) Core borings, probings, and hydrographic surveys, (c) Laboratory

testing, and (d) Inspection or other special consultation; (2) Act as the Owner's representative in connection with such services; and (3) If concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.

**d.** Prepare a Preliminary Study and Report on the Project based on the mutually accepted program in sufficient detail to indicate clearly the problems involved and the alternative solutions available to the Owner, to include schematic layouts, sketches, flow diagrams and reports of studies, and a general opinion of probable construction costs for such of the above listed improvements to be included in the Project, and to set forth the Consultant's recommendations.

**e.** As per Attachment "D", furnish the Preliminary Study and Report and a general opinion of probable construction cost opinion to the Owner.

**2.** Upon receipt of the Preliminary Study and Report and before the Consultant is authorized to proceed with the Preliminary Design Phase, the Owner at its option may designate in writing various construction contracts into which the Project shall be divided, each of which may include one or more of the above listed improvements to be constructed. If the Owner designates various construction contracts into which the Project is to be divided, the Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, and final design drawings, specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.

**3.** As identified in the Scope of Work in Attachment "A", the Consultant shall investigate the extent and character of any potential soil or water contamination on the properties identified in the Scope of Work, conduct asbestos investigations, environmental site assessments, and provide other environmental engineering services as required and authorized. Services not included in the original scope of work shall be considered Additional Services. The Consultant shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement, applicable Texas Commission on Environmental Quality and Texas Department of State Health Services Regulations, and any and all applicable state, federal and local laws. The Consultant shall develop an Investigation Plan for the identified properties. Upon approval of the Investigation Plan by the City, the City shall arrange to issue a Notice to Proceed for the Consultant to proceed in relation to an identified property.

**PHASE I - PRELIMINARY DESIGN PHASE**

Upon receipt of the Owner's written authorization to proceed with the **Preliminary Design Phase**, the Consultant shall do the following separately for each construction contract:

## ATTACHMENT "C"
## CONSULTANT'S BASIC AND ADDITIONAL SERVICES

1. Consult with the Owner to determine the Owner's requirements for the Project.

2. Provide at the Consultant's sole expense right-of-way surveys, boundary surveys, topographic surveys, drainage surveys, and soil investigations as needed to design the Project and as required by the Scope of Work of the Agreement; obtain all available information from all utility companies and other affected agencies including, but not limited to, the Texas Department of Transportation and the U.S. Department of Interior, Bureau of Reclamation, as needed to complete the proper design. This does not, however, include property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

3. Obtain all available horizontal and vertical locations of public utilities, and fully coordinate design of the Project with public utilities in an effort to minimize relocation of utilities as much as possible.

4. Make drawings from field measurements of existing construction when required for planning additions or alterations thereto.

5. Provide consultation and advice as to the necessity of providing or obtaining other services such as the types described herein, and act as the Owner's representative in connection with any such services, and if concurred with and authorized by the Owner, provide, procure, or assist in procuring such Additional Services.

6. Review with the Owner alternative approaches in regard to the construction of the Project. The Owner at its option may designate in writing various construction contracts into which the Project shall be divided. The Consultant may request additional reasonable compensation if the Owner designates various construction contracts into which the Project is to be divided. The Consultant shall thereafter treat each construction contract as a separate Project under this Agreement. Each construction contract shall be separately bid and the Consultant shall prepare separate preliminary design, pre-final design, and final design specifications, proposal forms, notices to bidders, construction contract documents, and other required documents for each construction contract.

7. Prepare for approval by the Owner preliminary design documents consisting of evaluation of existing structural report, design criteria, drawings, and outline specifications to develop, and establish the scope of each construction contract.

8. Prepare a detailed opinion of probable construction costs for each construction contract containing the main construction components, based on the information given in the preliminary design documents.

9. As per Attachment "D", furnish copies of the above preliminary design documents and opinion of probable construction costs for each construction contract. If the above

preliminary design documents are not approved by the Owner, the Consultant shall furnish copies of the resubmitted preliminary design documents at no additional cost to the Owner.

**PHASE II - PRE-FINAL DESIGN PHASE**

Upon receipt of the Owner's written authorization to proceed with the Pre-Final Design Phase, the Consultant shall do the following separately for each construction contract:

1. Prepare required documents and assist the Owner in obtaining approval of such governmental authorities as may have jurisdiction over the design criteria applicable to each construction contract. The Consultant's assistance in obtaining such approvals shall include participation in submissions to and negotiations with the appropriate authorities. The Consultant shall be fully responsible for coordination with all utility companies to resolve conflicts pertaining to location of utility lines and shall exercise customary and usual professional care for obtaining utility clearances. Since some utility locations may not be recorded or mapped, additional efforts to locate utilities maybe required as an additional service upon written approval of the Owner.

2. On the basis of the approved preliminary design documents and subject to approval of design criteria, prepare for incorporation in the construction contract documents detailed drawings and plans, hereinafter called the **"Drawings,"** to show the character and scope of the work to be performed by construction contractors on each construction contract, instructions to bidders, general conditions, special conditions, and technical provisions, hereinafter called **"Specifications."** These plans shall include the required cross sections from actual fieldwork for estimated earthwork quantities.

3. Advise the Owner of any adjustment to the Consultant's previous opinion of probable construction costs for each construction contract caused by changes in scope, design requirements, general market conditions, or construction costs and furnish a revised opinion of probable construction costs, based on the completed Drawings and Specifications. The Consultant expressly authorizes any person designated by the Owner to review at any time prior to the Bidding Phase any opinion of probable construction costs made by the Consultant. The Consultant agrees to cooperate fully in such review, and shall furnish the access to all pertinent information upon which the Consultant's cost opinions were based. In addition, detailed estimates to include orderly presented takeoff sheets, summary and main summary sheets are to be provided to the Owner. Nothing in this provision shall be construed as limiting or waiving the right of the Owner to obtain such information at any other time, or as relieving the Consultant of the responsibility of preparing opinions of probable construction costs. The Owner understands that the Consultant has no control over the cost of availability of labor, equipment, market conditions, or the contractor's method of pricing and that the Consultant's opinion of probable construction costs are made on the basis of professional judgment and

experience. The Consultant makes no warranty that the bids will not vary from the opinion of probable construction costs.

4. Prepare proposal forms.

5. As per Attachment "D", furnish to the Owner copies of the Drawings for review by the Owner, other governmental authorities, and the public utilities. If the Drawings are not approved by the Owner, the Consultant shall furnish copies of the resubmitted Drawings at no additional cost to the Owner. Furnish to the Owner copies of the Specifications and copies of the design analysis showing all engineering calculations for review by the Owner, other governmental authorities who may have jurisdiction over each construction contract, and the public utilities.

**PHASE III - FINAL DESIGN PHASE**

Upon receipt of the Owner's written authorization to proceed with the Final Design Phase, the Consultant shall do the following separately for each construction contract:

1. Incorporate changes requested by the Owner and other governmental authorities after review of pre-final design documents and perform redesign necessitated by public utility conflicts.

2. Coordinate closely with utility companies during the Preliminary Design and Pre-Final Design Phases. The amount of redesign necessary to accommodate utility company comments on the pre-final design drawings is expected to be in proportion to the effectiveness of that coordination and is to be performed by the Consultant as part of the Final Design Phase of this Agreement. The Consultant shall obtain written utility clearance from all utility companies affected by the scope of this Project as part of the Final Design Phase of this Agreement.

3. Submit to the Texas Department of Licensing and Regulation, or a State Certified ADA consultant, a set of Final Design Drawings for ADA review and approval.

4. As per Attachment "D", furnish to the Owner copies of final design Drawings and Specifications for review and approval prior to the reproduction for bidding purposes.

5. As per Attachment "D", furnish to the Owner copies of the Drawings and Specifications in final approved form for bidding purposes for each construction contract.

6. Additional copies of the drawings and specifications beyond those identified in Attachment "D", required for public utilities and other agencies, will be provided by the Consultant as an Additional Service.

**BIDDING PHASE**

## ATTACHMENT "C"
## CONSULTANT'S BASIC AND ADDITIONAL SERVICES

Upon receipt of Owner's written request, the Consultant shall provide any of the following services during the Bidding Phase:

1. Assist the Owner in the determination of the bidding period and bid date and provide necessary data for preparation of the notice to bidders by the Owner as required for advertising purposes.

2. Assist the Owner in responding to all questions from prospective bidders concerning the Drawings and Specifications.

3. Attend a pre-bid conference, if any, to explain the Project and to answer questions regarding the Project.

4. Prepare addenda to the Drawings and Specifications as may be required during the advertising period. Any addenda issued shall be approved by all agencies having approval authority over the Drawings and Specifications. As per Attachment "D", deliver copies of all addenda to the Owner for appropriate action.

5. As identified in Attachment "A", assist the Owner in evaluating bids, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the three lowest responsible bidders or assist the Owner in rating all bidders using Best Value Evaluation Criteria provided by the Owner, including obtaining and providing to the Owner reasonably available information as to the quality, ability, and performance record of the bidders. If Best Value Evaluation Criteria are required after the consulting fees have been negotiated and accepted, Consultant may request Additional Services fees.

6. Advise the Owner concerning the acceptability of subcontractors and other persons and organizations proposed by the general construction contractor for those portions of the work for which such acceptability is required by the construction contract documents.

**CONSTRUCTION PHASE**

At Owner's request, the Consultant shall provide any of the following services associated with the Construction Phase:

1. Attend the pre-construction conference to assist the Owner in responding to all questions from the construction contractor.

2. Advise and consult with the Owner and act as the Owner's representative as provided in the general conditions of the Agreement included in the construction contract. Such general conditions shall be the Owner's standard general conditions for construction projects, with such changes and modifications as may be made in such general conditions being agreed to by both the Consultant and the Owner.

## ATTACHMENT "C"
## CONSULTANT'S BASIC AND ADDITIONAL SERVICES

3. Unless otherwise stipulated in Attachment "A", Scope of Services, the Consultant will stake one set of control stakes for the construction contractor.

4. Visit each construction site at least once each week or more frequently, if necessary, to observe the progress and quality of the executed work and to determine if such work meets the essential performance and design features and the technical and functional requirements of the construction contract documents. The Consultant shall provide the Owner with typed or printed field notes for each construction site visit. On the basis of these on-site observations, the Consultant shall endeavor to guard the Owner against apparent defects and deficiencies in the permanent work constructed by the construction contractor. The Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the work, and shall not be responsible for the construction means, methods, techniques, sequences, or procedures, or the safety precautions incident thereto. The Consultant's efforts shall be directed toward providing assurance for the Owner that each completed construction contract shall conform to the engineering requirements of the construction contract documents. However, the Consultant shall not be responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

   Nothing in this Agreement shall be construed as requiring the Consultant to assume responsibility for or to guarantee the complete adherence of the construction contractor to the Drawings and Specifications and the construction contract documents.

5. Review shop drawings diagrams, illustrations, brochures, catalog data, schedules, and samples, the results of tests and inspections and other data which the construction contractor is required to submit, for conformance with the design concept of each construction contract and compliance with the information given in the construction contract documents. **Such review must be complete within ten City working days following receipt of submittal documents.** The Consultant shall also assemble maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, and other documents that the construction contractor is required to submit in accordance with the construction contract documents.

6. Issue the Owner's instructions to the construction contractor when required to do so, prepare routine change orders to include independent detailed opinion of probable construction cost for the Owner's approval as required after securing approval of all agencies having approval authority over each construction contract. The Consultant shall require, as the Owner's representative and subject to the written concurrence by the Owner, special inspection or testing of the work, whether or not fabricated, installed, or completed and shall act as interpreter of the terms and conditions of the construction contract documents, subject to the Owner's interpretation of such terms and conditions.

If the Owner authorizes such testing, it shall be addressed under the provisions of Additional Services of the Consultant.

7. Based on the Consultant's on-site observations as an experienced and qualified design professional and on review of the construction contractor's applications for payment and supporting data, determine the amount owing to the construction contractor and recommend in writing payment to the construction contractor in such amounts; such recommendation of payment to constitute a representation to the Owner, based on such observations and review, that the work has progressed to the point indicated and that, to the best of the Consultant's knowledge, information and belief, the quality of the work is in accordance with the construction contract documents, subject to an evaluation of the work as a functioning project upon substantial completion, to the results of any subsequent tests called for in the construction contract documents and to any qualifications stated in his approval. By recommending an application for payment, the Consultant shall not be deemed to have represented that the Consultant has made any examination to determine how or for what purposes the construction contractor has used the monies paid on account of each construction contract price.

8. Conduct with the Owner and construction contractor no more **than two brief preliminary inspections**, at times requested by the construction contractor to determine if the Project is ready for final inspection.

9. Schedule and conduct with the Owner, including representative of the City Engineer and the user department, the State ADA inspector or State certified ADA consultant, and the construction contractor, a final inspection of the Project and prepare and publish a "punch list" of minor deficiencies to be corrected prior to final payment to the construction contractor. The **"punch list"** shall be furnished to the construction contractor and the Owner within **two City working days** after the final inspection.

10. Issue a "Certificate of Substantial Completion" using EJCDC document 1910-8-D (1983 version) when the final inspection reveals that the Project is substantially complete and fully usable for its intended purpose with only minor deficiencies to be corrected. The certificate shall be issued within **two City working days** after the final inspection.

11. Monitor and verify proper correction of all punch list deficiencies. Notify the Owner in writing when all deficiencies have been corrected, and when warranty, maintenance, and operating instructions and other documents have been submitted by the construction contractor. Act on and forward the construction contractor's final invoice for payment.

12. Furnish the Owner one set of reproducible **(D format)** "record" drawings **on Mylar** showing changes made during the construction process, based on the marked-up prints, drawings, and other data furnished by the construction contractor to the Consultant. Also provide project documents in acceptable electronic media format

## ATTACHMENT "C"
## CONSULTANT'S BASIC AND ADDITIONAL SERVICES

13. Make written recommendations to the Owner on all claims relating to the execution and progress of the construction work.

14. Notify the Owner of all permanent work which does not conform to the result required in each construction contract; prepare a written report describing any apparent nonconforming permanent work, and make recommendations to the Owner for its correction and, at the Owner's request, have recommendations implemented by the construction contractor.

15. Furnish property surveys and legal descriptions as needed to acquire additional right-of-way or additional property.

16. Revise previously approved studies, reports, design documents, drawings, or specifications, except when said revisions are required as a result of errors, negligence, or other fault on the part of the Consultant.

17. Prepare documents for alternate bids requested by the Owner for construction work for which bids have not been awarded.

18. If Best Value Evaluation Criteria are required after the Consulting fees have been negotiated and accepted, the Consultant may request Additional Service fees.

19. Prepare detailed renderings, exhibits, or scale models for the Project, except as otherwise required herein.

20. Furnish additional tests and inspections, in excess of those required herein during the Construction Phase.

21. Prepare change orders requiring additional significant design changes not provided for in the Agreement, requested by the Owner.

22. Inspect each construction contract site prior to expiration of the guarantee period and report, in written form, observed discrepancies under guarantees provided by the construction contractor.

23. Provide additional or extended services during construction made necessary by: **a)** work damaged by fire or other cause during construction; **b)** prolongation of the construction contract time by more than **twenty-five percent** provided that such prolongation is not caused by errors, negligence, or other fault on the part of the Consultant; **c)** Acceleration of the work schedule involving services beyond normal city working hours; or **d)** the construction contractor's default under the construction contract due to delinquency or insolvency.

## ATTACHMENT "C"
## CONSULTANT'S BASIC AND ADDITIONAL SERVICES

24. Provide extensive assistance in the initial start-up and test operation of equipment or devices and the preparation of manuals of operation and maintenance.

25. Serve as an expert witness for the Owner in any litigation or other proceeding involving the Project.

## ADDITIONAL SERVICES OF THE CONSULTANT

### GENERAL

If authorized in writing by the Owner, through written amendment, the Consultant shall perform or obtain Additional Services noted below, which are not covered within the Agreement. No claim for Additional Services or cost shall be allowed unless the same was done pursuant to a written authorization dated prior to the Additional Services or cost and which was authorized pursuant to the policies and procedures of the Owner (i.e., passage by City Council). The Owner shall pay for such Additional Services as indicated in the Agreement.

1. Furnish core borings, probings, and hydrographic surveys; laboratory testing; inspection of samples or materials; and other special consultations.

2. Provide Additional Services due to significant changes in the general scope of the Project or its design including, but not limited to, changes in size, complexity, or character of construction if the changes are inconsistent with approvals or instructions previously given by the Owner including revisions made necessary by adjustments in the Owner's scope or budget, except where the Consultant's preliminary study and report, preliminary design, pre-final design, or final design cost opinions exceed the budgeted amount, or in the case where all responsible bids exceed the Consultant's final design cost opinions by **ten percent** or more.

3. Furnish additional copies of studies, reports, and additional prints of Drawings and Specifications in excess of those required herein.

4. Provide investigations involving detailed consideration of operation, maintenance, and overhead expenses as well as the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals and valuations, detailed quantity surveys of material or labor.

5. Provide Additional Services in connection with the Project not otherwise provided for in this Agreement, except where those services are required as a result of negligence or other fault on the part of the Consultant.

### RESIDENT PROJECT SERVICES

## ATTACHMENT "C"
## CONSULTANT'S BASIC AND ADDITIONAL SERVICES

1. If directed in writing by the Owner, one or more full-time Resident Project Representatives shall be furnished and directed by the Consultant in order to provide more extensive representation at each construction site during the Construction Phase. Such resident project representation shall be paid for by the Owner.

2. The duties and responsibilities and the limitations on the authority of the Resident Project Representative shall be as set forth in writing by the City Engineer before such services begin.

3. Through the continuous on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative, the Consultant shall endeavor to provide further protection for the Owner against defects and deficiencies in the work of the construction contractors, but the furnishings of such resident project representation shall not make the Consultant responsible for the construction contractor's failure to perform the construction work in accordance with the construction contract documents.

## ATTACHMENT "D"
## PAYMENT AND DELIVERABLE SCHEDULES

For the Project known as ("ENVIRONMENTAL ENGINEERING CONSULTANT SERVICES"), hereafter referred to as the "Project", the Owner will compensate the Consultant an amount not to exceed **THREE HUNDRED SEVENTY-FIVE THOUSAND) DOLLARS ($375,000.00) PER YEAR FOR TWO YEARS WITH THE OPTION TO RENEW FOR TWO ADDITIONAL ONE-YEAR TERMS** for all Basic Services and reimbursables noted within the Agreement and its attachments.

### PAYMENT SCHEDULE

Owner may assign more than one project to Consultant under this Contract. The compensation for each phase of the basic services on each project shall be made in proportion to the services performed for that project's phase.

Payment for each phase shall be made on a monthly basis. The Owner shall make payments upon the written presentation by the Consultant to Owner of a detailed invoice and accompanying Summary and Progress Report and the Owner's written approval of the invoice and Report.

### DELIVERABLE SCHEDULE

The Owner shall specify the time schedule and deliverables for each project. For each project, the Owner and Consultant shall enter into a written agreement specifying the fee for deliverables prior to Consultant's commencement of services for the project.