



July 8, 2025

Mr. Paul Barwick  
City of Boerne  
447 N. Main Street  
Boerne, TX 78006

**Re: Recommendation: Materials Testing Services  
Boerne Northside Park**

Dear Mr. Barwick,

Please find the enclosed Estimate No. PSD25-018-00 from Raba Kistner, Inc. dated June 26, 2025, for performing materials observation and testing services for the referenced project. The scope of work is based upon interpretation of Luck Design drawings and specifications, and additional information provided by Waterman Construction.

The proposal includes an opinion of probable cost of \$104,571.50 for the following scope:

- Soils field testing/observation, and lab testing
- Reinforcing steel field observation and testing
- Concrete field testing/observation, and lab testing
- Pier field testing/observation, and lab testing
- Masonry field testing/observation, and lab testing
- Fire resistive materials field testing/observation, and lab testing
- Welded pipe field testing/observation
- Asphalt field testing/observation, and lab testing
- Post-tension stressing field testing/observation
- Wood framing inspections
- Floor levelness field testing/observation
- Project administration

Project Control has reviewed the scope of work proposed and the associated fee for completeness and competitiveness.

Project Control recommends approval of this proposal for a cost not to exceed \$104,571.50.

Upon your satisfactory review, please sign and return a copy to me.

Please contact me with any questions or concerns at 210-862-2242.

Regards,

John Sharpstene  
Senior Project Manager

Enclosure: Raba Kistner Proposal No. PSD25-018-00

File 24-031/362

Estimate No. PSD25-018-00

June 26, 2025



Raba Kistner, Inc.

12821 W. Golden Lane

San Antonio, TX 78249

P.O. Box 690287

San Antonio, TX 78269-0287

www.rkci.com

P 210.699.9090

F 210.699.6426

TBPE Firm F-3257

Mr. Paul Barwick  
City of Boerne  
447 N. Main Street  
Boerne, Texas 78006

**RE: Construction Materials Observation and Testing Services  
Northside Community Park  
Boerne, Texas**

Dear Mr. Barwick:

Raba Kistner, Inc. (RKI) is pleased to submit this proposal to provide Construction Materials Observation and Testing Services for the above referenced project. Our opinion of probable cost of services for this project is **\$104,571.50**.

Our proposed scope of services and estimated item quantities are based upon our interpretation of the project plans and specifications, and additional information provided to us by Mr. Arthur Waterman on February 6, 2025. The scope and quantity of services provided will be dependent upon services actually required by you or your representatives. Charges will be assessed only for actual services rendered. All services authorized and requested by you or your representatives in excess of the quantities of observation and testing services shown herein will be charged at the appropriate unit rate for such services. Charges will be invoiced on a monthly basis and will show a summary total of services rendered for each service category.

Invoices will be submitted monthly for work in progress in our standard format. All parties hereby agree that this contract upon acceptance will be performable in Bexar and Kendall Counties, Texas.

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

<u>Attachment</u>	<u>Description</u>
I	Fee Structure and Standard Charges
II	Fee Estimate Breakdown
III	Report Distribution List
IV	Standard Terms and Conditions

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

Very truly yours,

**RABA KISTNER, INC.**



R. Blake Wright, PE  
Vice President

RBW/ds

Attachments

Accepted By: \_\_\_\_\_

(Signature)

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

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

\_\_\_\_\_  
(Date)

**FEE STRUCTURE AND STANDARD CHARGES**

Proposed Materials and Observation Services for  
**Northside Community Park**  
**Boerne, Texas**

**Basic Charges**

1. A vehicle travel charge will be assessed for round trip travel from our office to the project site, material supplier, etc. and back to our office. The charges for travel from our office to the project site and return to our office will be as follows:

Travel Time (Round Trip).....	1.0 Hour
Vehicle Travel Charge.....	\$ 56.00/Trip

2. Service charges are based on the hourly rates stated herein and will be assessed from the time the Engineer or Technician leaves our office until he returns from the project.
3. Overtime charges will be assessed after eight (8) continuous hours of services rendered on the project. Overtime charges will also be assessed for any engineering and/or technical services provided on Saturday, Sunday, and/or Holidays.
4. A minimum 4.0 hours will be billed per visit to the project site for Certified Welding Inspectors. A minimum of 2.0 hours will be billed per visit to the project site for all other technicians.
5. RKI will utilize the on-site initial field curing facilities provided by the contractor. The cost of providing and maintaining these initial curing facilities is not included in our proposal.
6. A ten (10) percent technical review and administration cost will be added to all invoices.

### FEE ESTIMATE BREAKDOWN

<b>Project Name: Northside Community Park</b>				
<b>Project Location: Boerne, Texas</b>				
<b>Contact: Mr. Paul Barwick</b>				
<b>Client: City of Boerne</b>				
<b>Address: 447 N. Main Street</b>				
<b>City/State/Zip: Boerne, Texas 78006</b>				
<b>Phone Number: 830-248-1601</b>				
<b>Email: pbarwick@ci.boerne.tx.us</b>				
TESTING/OBSERVATION ITEM	UNIT COST	UNIT	ESTIMATED QUANTITY	ESTIMATED FEE
<b>SOILS</b>				
<b>Laboratory Testing</b>				
Moisture Density Relationship (TxDOT or ASTM)	\$410.00	each	6	\$2,460.00
Lime Series Curve (Tex-121-E, Part II)	\$466.00	each	0	\$0.00
Atterberg Limits	\$138.00	each	6	\$828.00
Sieve Analysis	\$138.00	each	6	\$828.00
<b>Field Testing/Observation</b>				
In-Place Nuclear Densities (Per Test)	\$39.00	each	523	\$20,397.00
Materials Technician	\$76.00	hour	426	\$32,376.00
Materials Technician (overtime)	\$110.00	hour	0	\$0.00
Vehicle Travel Charge	\$56.00	trip	142	\$7,952.00
<b>Subtotal</b>				<b>\$64,841.00</b>
<b>REINFORCING STEEL OBSERVATIONS</b>				
<b>Field Observation/Testing</b>				
Materials Technician	\$76.00	hour	18	\$1,368.00
Vehicle Travel Charge	\$56.00	trip	6	\$336.00
<b>Subtotal</b>				<b>\$1,704.00</b>
<b>CONCRETE</b>				
<b>Laboratory Testing</b>				
Concrete Compressive Strength Cylinders	\$34.00	each	120	\$4,080.00
<b>Field Testing/Observation</b>				
Materials Technician	\$76.00	hour	114	\$8,664.00
Materials Technician (overtime)	\$110.00	hour	10	\$1,100.00
Vehicle Travel Charge	\$56.00	trip	40	\$2,240.00
<b>Subtotal</b>				<b>\$16,084.00</b>
<b>PIER OBSERVATIONS</b>				
<b>Laboratory Testing</b>				
Concrete Compressive Strength Cylinders	\$34.00	each	0	\$0.00
<b>Field Testing/Observation</b>				
Materials Technician	\$76.00	hour	0	\$0.00
Materials Technician (overtime)	\$110.00	hour	0	\$0.00
Geotechnical Engineer	\$195.00	hour	0	\$0.00
Vehicle Travel Charge	\$56.00	trip	0	\$0.00
<b>Subtotal</b>				<b>\$0.00</b>

June 26, 2025

**FEE ESTIMATE BREAKDOWN**

TESTING/OBSERVATION ITEM	UNIT COST	UNIT	ESTIMATED QUANTITY	ESTIMATED FEE
<b>MASONRY</b>				
<b>Laboratory Testing</b>				
Mortar Cubes	\$34.00	each	18	\$612.00
Compressive Strength Grout	\$34.00	each	12	\$408.00
Prism	\$325.00	each	0	\$0.00
<b>Field Testing/Observation</b>				
Materials Technician	\$76.00	hour	21	\$1,596.00
Materials Technician (overtime)	\$110.00	hour	0	\$0.00
Vehicle Travel Charge	\$56.00	trip	6	\$336.00
<b>Subtotal</b>				<b>\$2,952.00</b>
<b>THROUGH WALL FIRESTOP CAULKING PENETRATION OBSERVATIONS</b>				
<b>Field Testing/Observation</b>				
Materials Technician	\$76.00	hour	0	\$0.00
Vehicle Travel Charge	\$56.00	trip	0	\$0.00
<b>Subtotal</b>				<b>\$0.00</b>
<b>SPRAY-ON FIRE RESISTIVE MATERIALS</b>				
<b>Laboratory Testing</b>				
Determination of Density	\$71.00	each	0	\$0.00
<b>Field Testing/Observation</b>				
Materials Technician (Thickness Measurements & Adhesion Testing)	\$76.00	hour	0	\$0.00
Vehicle Travel Charge	\$56.00	trip	0	\$0.00
<b>Subtotal</b>				<b>\$0.00</b>
<b>STRUCTURAL STEEL INSPECTION (4 Hour Minimum Trip Charge for CWI)</b>				
<b>Field Testing/Observation</b>				
CWI Inspector	\$149.00	hour	20	\$2,980.00
CWI Inspector (overtime)	\$177.00	hour	0	\$0.00
Ultrasonic Testing - Daily Equipment	\$71.00	day	0	\$0.00
Radiographic Testing	\$0.00	Cost + 15%	0	\$0.00
Vehicle Travel Charge	\$56.00	trip	5	\$280.00
<b>Subtotal</b>				<b>\$3,260.00</b>
<b>WELDED PIPE INSPECTION (4 Hour Minimum Trip Charge for CWI)</b>				
<b>Field Testing/Observation</b>				
CWI Inspector	\$149.00	hour	0	\$0.00
CWI Inspector (overtime)	\$177.00	hour	0	\$0.00
Ultrasonic Testing - Daily Equipment	\$71.00	day	0	\$0.00
Radiographic Testing	\$0.00	Cost + 15%	0	\$0.00
Vehicle Travel Charge	\$56.00	trip	0	\$0.00
<b>Subtotal</b>				<b>\$0.00</b>

June 26, 2025

**FEE ESTIMATE BREAKDOWN**

TESTING/OBSERVATION ITEM	UNIT COST	UNIT	ESTIMATED QUANTITY	ESTIMATED FEE
<b>ASPHALT</b>				
<b>Laboratory Testing</b>				
Bag Sample (gradation, asphalt content, molding specimens, density of molded specimens, maximum theoretical specific gravity)	\$700.00	each	4	\$2,800.00
Density of Asphalt Cores	\$93.00	each	8	\$744.00
<b>Field Testing/Observation</b>				
In-Place Nuclear Densities (Per Test)	\$39.00	each	0	\$0.00
Generator for Coring	\$155.00	day	0	\$0.00
Coring Rig	\$150.00	day	0	\$0.00
Materials Technician	\$76.00	hour	16	\$1,216.00
Materials Technician (overtime)	\$110.00	hour	0	\$0.00
Vehicle Travel Charge	\$56.00	trip	4	\$224.00
<b>Subtotal</b>				<b>\$4,984.00</b>
<b>POST TENSION STRESSING OBSERVATION</b>				
<b>Field Testing/Observation</b>				
Materials Technician	\$76.00	hour	0	\$0.00
Materials Technician (Overtime)	\$110.00	hour	0	\$0.00
Vehicle Travel Charge	\$56.00	trip	0	\$0.00
<b>Subtotal</b>				<b>\$0.00</b>
<b>WOOD FRAMING INSPECTIONS</b>				
<b>Field Observation/Testing</b>				
Materials Technician	\$76.00	hour	0	\$0.00
Materials Technician (Overtime)	\$110.00	hour	0	\$0.00
Vehicle Travel Charge	\$56.00	trip	0	\$0.00
<b>Subtotal</b>				<b>\$0.00</b>
<b>FLOOR FLATNESS/FLOOR LEVELNESS TESTING (minimum quantity charge of 12,000 ft<sup>2</sup> per trip to the site)</b>				
<b>Field Testing/Observation</b>				
Floor Flatness/Floor Levelness Testing	\$0.045	ft <sup>2</sup>	0	\$0.00
Estimated Number of Trips	0			
Total Miles (Round-Trip) Per Trip	0			
Subcontractor Mobilization	\$1.00	mile	0	\$0.00
<b>Subtotal</b>				<b>\$0.00</b>



### FEE ESTIMATE BREAKDOWN

TESTING/OBSERVATION ITEM	UNIT COST	UNIT	ESTIMATED QUANTITY	ESTIMATED FEE
PROJECT ADMINISTRATION				
Project Manager	\$155.00	hour	8	\$1,240.00
Senior Project Manager	\$175.00	hour	0	\$0.00
Project Engineer (EIT)	\$115.00	hour	0	\$0.00
Project Engineer (PE)	\$135.00	hour	0	\$0.00
Geotechnical/Materials Engineer	\$195.00	hour	0	\$0.00
Vehicle Travel Charge	\$56.00	trip	0	\$0.00
Project Completion Letter	\$195.00	hour	0	\$0.00
Subtotal				\$1,240.00
Technical Review & Administrative Fee	10% of total cost			\$9,506.50
TOTAL ESTIMATED FEE				\$104,571.50

**REPORT DISTRIBUTION LIST**

**Project Name:** \_\_\_\_\_

**Client Project No.:** \_\_\_\_\_ **Purchase Order No.:** \_\_\_\_\_

**Invoicing Information:**      **Company Name:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Attention:** \_\_\_\_\_

Please provide required report distribution (hard copies can be provided upon request):

**Contact:** \_\_\_\_\_ **Company:** \_\_\_\_\_

**Phone No.:** \_\_\_\_\_ **Email:** \_\_\_\_\_

**Contact:** \_\_\_\_\_ **Company:** \_\_\_\_\_

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**Contact:** \_\_\_\_\_ **Company:** \_\_\_\_\_

**Phone No.:** \_\_\_\_\_ **Email:** \_\_\_\_\_



## **STANDARD TERMS AND CONDITIONS**

1. **DEFINITIONS.**

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

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

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

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

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

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

2. **SERVICES.** RK is being engaged by the CLIENT to render professional services ("Services") involving only RK's advice, judgment and opinion. RK may subcontract all or a portion of the Services performed hereunder. RK shall apply professional judgment in determining the extent to which RK complies with any given standard identified in RK's instruments of professional services. CLIENT expressly acknowledges that RK makes no warranties or guarantees, expressed or implied, regarding the Services.

3. **INFORMATION PROVIDED BY CLIENT.** CLIENT may provide or direct RK to utilize or rely upon certain information ("CLIENT Information") in the performance of RK's services. RK shall be entitled to rely upon such CLIENT Information. RK will not conduct an independent evaluation of the accuracy or completeness of such CLIENT Information and shall not be responsible for any errors or omissions in such information. RK's report, as well as any recommendations, findings, and conclusions made by RK, are dependent on information received from CLIENT. Changes or modifications to the information provided by CLIENT can affect RK's evaluation, recommendations, findings and conclusions, and CLIENT agrees—as a material term of this Agreement—to notify RK immediately, in writing, if CLIENT becomes aware of any such changes or modifications, including changes to the size, scope, location, or other material characteristics of CLIENT's project. The CLIENT shall be responsible for providing

the location of all underground utilities and other structures in the vicinity of RK borings or excavations. RK will not accept responsibility and will not be liable for affecting or damaging any underground utility, underground storage tank, or other subsurface condition not previously identified and located, or improperly located, by the CLIENT, a utility, or a utility locating agency.

4. **SITE ACCESS AND SITE SAFETY.** CLIENT shall provide right-of-entry to the buildings and sites which are the subjects of RK's services. CLIENT represents that it possesses authority for such right-of-entry and that the building/site operator(s) possess the necessary permits and licenses for current activities at the site. RK shall be responsible for supervision and site safety measures of its own employees and subconsultants, but shall not be responsible for the supervision or health and safety precautions of any other parties, including CLIENT, CLIENT's contractors, subcontractors, or other parties present at the site.

5. **SUBSURFACE EXPLORATIONS.** Subsurface conditions throughout the site may vary from those depicted on logs of discrete borings, test pits, or other exploratory services. CLIENT understands RK's layout of boring and test locations is approximate and that RK may deviate a reasonable distance from those locations. RK will take reasonable precautions to reduce damage to the site when performing services; however, CLIENT accepts that invasive services such as drilling, or sampling may damage or alter the site. Site restoration is not provided unless specifically included in the scope of services.

6. **CHANGED CONDITIONS.** If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to RK are uncovered or revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, RK may require renegotiation of appropriate portions of this Agreement. RK shall notify the CLIENT of the changed conditions necessitating renegotiation, and RK and the CLIENT shall promptly and in good faith attempt to renegotiate the terms of the agreement affected by the changed conditions. If changes cannot be agreed to with respect to the changed conditions, the parties shall utilize the Dispute Resolution/Litigation procedures in this Agreement.

7. **TESTING AND OBSERVATIONS.** CLIENT understands that testing and observation are discrete sampling procedures, and that such procedures indicate conditions only at the depths, locations, and times the procedures were performed. RK will provide test results and opinions based on tests and field observations only for the work tested. CLIENT understands that testing and observation are not continuous or exhaustive and are conducted to reduce – not eliminate – project risk. CLIENT agrees to the level or amount of testing performed and the associated risk. CLIENT is responsible (even if CLIENT delegates such responsibility to Contractor) for notifying and scheduling RK to perform these services. RK shall not be responsible for the quality and completeness of contractor's work or Contractor's adherence to the project plans, specifications and other related documents. RK's performance of testing and observation services shall not relieve Contractor in any way from responsibility for defects discovered in Contractor's work or create a

warranty or guarantee on the part of RK. CLIENT acknowledges that RK will not supervise or direct the work performed by Contractor or its subcontractors and is not responsible for their means and methods.

8. **ESTIMATE OF FEES FOR SERVICES.** If included as part of RK's proposal, RK will, to the best of its ability, perform the scope of services within the proposed fee estimate provided by RK. RK's proposal fees are based upon an estimate of the services required to meet the specifications for the project and following generally accepted engineering practices. The CLIENT recognizes that unforeseen circumstances along with changes in scope and project/contractor's schedules can influence the successful completion of the scope of services within the estimated proposed fees. Because Contractor has sole control over the project and determines the means and methods used to build/construct the project, RK's service fees are estimates and not lump sum or guaranteed maximum fees. The CLIENT is fully responsible for payment for all services provided, including retests of areas or samples that failed to meet Project specifications. The Estimate of Fees is valid for a period of 60 days after RK's proposal is submitted to CLIENT. If RK's proposal is not accepted by CLIENT within 60 days after it is submitted to CLIENT, RK may modify the Estimate of Fees.
9. **REPORTS.** RK may provide CLIENT with written reports in connection with the Services performed. Such reports will present such findings and conclusions as RK may reasonably make with the information gathered while performing its services and provided by CLIENT. The reports may be copied for inclusion in other documents related to the project provided they are reproduced in their entirety. Reports and other instruments of service are prepared for, and made available for, the sole use of the CLIENT, and the contents thereof may not be used or relied upon by others without the express written authorization of RK. Any unauthorized use or distribution of RK's reports shall be at the CLIENT's sole risk and without liability to RK.
10. **TOXIC AND HAZARDOUS MATERIALS.** CLIENT shall provide RK with all information within CLIENT's possession or knowledge related to the potential or presence of toxic or hazardous materials or pollutants at the Project site. CLIENT agrees that RK neither created nor contributed to the creation or existence of any toxic or hazardous materials or pollutants. In no event shall RK be required to sign a hazardous waste manifest or take ownership of any toxic or hazardous materials or pollutants. If unanticipated toxic or hazardous materials or pollutants are encountered while RK is performing its services, RK reserves the right to stop field operations and notify CLIENT and CLIENT assumes responsibility to notify appropriate regulatory agencies. RK and CLIENT must mutually agree to remobilize.
11. **NO THIRD-PARTY BENEFICIARIES.** The services and any report(s) prepared under this Agreement are for the sole benefit and sole use of CLIENT and are not for the use of any other party or person. Only CLIENT may rely upon the services and any report or work product. Nothing in this Agreement, or any subsequent amendments or modifications, or in any report issued under this Agreement, shall create a contractual relationship with

or a cause of action in the favor of any third party against either RK or CLIENT. If CLIENT provides a copy of any report prepared by RK to others, it shall advise the recipient that the information contained in the report is provided for information only and is not to be relied upon by third parties.

12. **LEED PROJECTS.** Unless specifically addressed elsewhere in this agreement, RK has no responsibility or liability, including duty to defend or duty to indemnify, any party (including but not limited to CLIENT, owner, owner's agents, architects, engineers, contractors, construction managers, subcontractors) for the LEED certification process including: developing, producing, or retaining any documentation relating to the calculation of LEED points; and attainment of LEED certification points or LEED ratings.
13. **STANDARD OF CARE.** RK shall perform its professional services in accordance with the standard of care and diligence normally practiced by professional firms in performing services of a similar nature, in the same locality, under similar circumstances. CLIENT expressly acknowledges that RK makes no other warranties or guarantees, expressed or implied, regarding its professional services or its work product.
14. **RISK ALLOCATION.** RK will be responsible only for its own work, and that of its sub-consultants, and not for defects in the work designed or built by others.
15. **LIMITATION OF LIABILITY.** CLIENT AND RK HAVE EVALUATED THE RISKS AND REWARDS ASSOCIATED WITH THIS PROJECT, INCLUDING RK'S FEE RELATIVE TO THE RISKS ASSUMED, AND AGREE TO ALLOCATE CERTAIN OF THE RISKS SO, TO THE FULLEST EXTENT PERMITTED BY LAW, THE TOTAL AGGREGATE LIABILITY OF RK (AND ITS RELATED ENTITIES, EMPLOYEES, OWNERS, AGENTS, AND REPRESENTATIVES) TO CLIENT (AND THIRD PARTIES GRANTED RELIANCE ON RK'S WORK PRODUCT, OR OTHERWISE SEEKING RECOVERY UNDER THIS AGREEMENT) IS LIMITED TO THE GREATER OF \$100,000 OR THE FEE PAID RK UNDER THIS AGREEMENT, FOR ANY AND ALL INJURIES, DAMAGES, CLAIMS, LOSSES, OR EXPENSES (INCLUDING ATTORNEY AND EXPERT FEES) ARISING OUT OF RK'S SERVICES OR THIS AGREEMENT REGARDLESS OF CAUSE(S) OR THE THEORY OF LIABILITY.
16. **CONSEQUENTIAL DAMAGES.** Neither CLIENT nor RK will be liable to the other for any special, consequential, indirect, incidental or penal losses or damages of any kind, nor will CLIENT or RK be liable to the other for losses, damages, or claims, regardless of how defined, related to: lost profits; unavailability of property or facilities; shutdowns or service interruptions; loss of use, revenue, opportunity, or inventory; use charges, carrying costs, cost of substitute facilities, goods, or services; cost of capital, or claims of any other party and/or its customers.
17. **SUSPENSION OF SERVICES.** If CLIENT fails to make payments when due or otherwise is in breach of this Agreement, RK may suspend performance of services upon seven (7) calendar days' notice to CLIENT. RK shall have no liability whatsoever to CLIENT for any costs or damages as a result of such suspension. Upon payment in full by CLIENT, RK may resume services under this Agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for RK to resume performance. Payment of invoices shall not be subject to any discounts or set-offs by CLIENT unless agreed to in writing by RK. Payment to RK for services rendered and expenses incurred will be due and payable regardless of any subsequent suspension or termination of this Agreement by either party. CLIENT shall not make any changes to RK's banking and deposit information or payment instructions unless CLIENT

communicates the requested changes to RK orally and in writing and obtains written confirmation from an RK officer that the requested changes are legitimate and authorized by RK. If CLIENT makes a payment to a third party instead of to RK based on an unauthorized request to CLIENT for a change to RK's banking and deposit information or payment instructions and without obtaining written confirmation of the change from RK, CLIENT will remain liable to RK for payment of the amount of the unauthorized payment.

18. **WAIVER OF SUBROGATION.** To the extent damages are covered by property insurance, or any other available insurance coverage, CLIENT and RK waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages. CLIENT agrees that CLIENT shall procure or cause to be procured builder's risk insurance or other property insurance for its project. RK and CLIENT waive all rights against each other and any of their consultants, contractors, subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, flood, or other causes of loss to the extent covered by CLIENT's or CLIENT's Contractor's builder's risk insurance, or other available insurance coverage. The policies shall provide waivers of subrogation by endorsement or otherwise. CLIENT shall require of its contractors, consultants, agents and employees similar waivers in favor of RK and its subconsultants. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

19. **OWNERSHIP OF DOCUMENTS.** RK's reports, drawings, plans, specifications, and other documents and deliverables are instruments of professional service ("Instruments of Service") developed by RK in contemplation of a wide array of project-specific variables, including how the documents will be used and by whom. RK shall be the author, owner and custodian of the Instruments of Service, and shall retain all common law, statutory, and other reserved rights, including copyright. By execution of this Agreement, RK grants to CLIENT a limited, nonexclusive license to use the Instruments of Service for purposes of constructing, using, and maintaining the project for which the services are performed, provided CLIENT substantially performs its obligations, including prompt payment of all sums when due, under this agreement.

Upon completion of the services, and payment in full of all monies due RK, CLIENT may retain copies of all such documents. **THE INSTRUMENTS OF SERVICE ARE NOT INTENDED NOR REPRESENTED TO BE SUITABLE FOR REUSE ON EXTENSIONS, MODIFICATIONS, OR ADAPTATIONS OF THE PROJECT, OR ANY OTHER PROJECT. ANY REUSE OF SUCH DOCUMENTS, WITHOUT WRITTEN VERIFICATION OR ADAPTATION BY RK FOR THE SPECIFIC PURPOSE INTENDED, WILL BE AT CLIENT'S SOLE RISK WITHOUT LIABILITY OR LEGAL EXPOSURE TO RK. CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY, DEFEND, AND HOLD HARMLESS RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND CONSULTANTS AGAINST ALL CLAIMS,**

**DAMAGES, LOSSES, AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES, DEFENSE COSTS, AND COURT COSTS) ARISING FROM, OR ALLEGEDLY ARISING FROM, OR IN ANY WAY CONNECTED WITH, THE UNAUTHORIZED REUSE OR MODIFICATION OF THE DOCUMENTS BY CLIENT OR ANY PERSON OR ENTITY THAT ACQUIRES OR OBTAINS THE DOCUMENTS FROM OR THROUGH CLIENT WITHOUT THE WRITTEN AUTHORIZATION OF RK REGARDLESS OF WHETHER SUCH CLAIMS, DEMANDS, OR ACTIONS ARE FOUNDED IN WHOLE OR IN PART UPON ALLEGED NEGLIGENCE OF RK, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR CONSULTANTS.**

Parties other than CLIENT and RK may apply to use an instrument, using a form prepared by RK for that purpose. Others' use of an instrument shall be permitted only when CLIENT and RK both so agree; either shall have the right to forbid use by others. In addition, RK shall make its permission contingent upon the satisfaction of certain conditions when, in RK's professional judgment, such a contingency is necessary.

20. **DISPUTE RESOLUTION/LITIGATION.** All claims, disputes, and other controversies between RK and CLIENT arising out of, or in any way related to, the services provided by RK shall be submitted to mediation, before and as a condition precedent to, other remedies provided by law. Any litigation related to the Agreement or RK's performance of its professional services shall be commenced in a court in Bexar County, Texas. CLIENT consents to personal jurisdiction in the State of Texas and agrees that venue of any litigation shall be in Bexar County, the county where RK's principal place of business is located. CLIENT waives any objection to personal jurisdiction in Texas or to venue in Bexar County. The prevailing party in such litigation will be entitled to recover all court costs, attorneys' fees, and other legally recoverable claim-related expenses. As a condition precedent to mediation and / or litigation related to any claim arising out of the services provided under this Agreement, CLIENT shall obtain a written affidavit from a registered, independent, and reputable professional engineer describing any error, omission or other act by RK that allegedly failed to comply with the professional standard of care applicable to RK's performance of services and provide such affidavit to RK. The affidavit shall comply with the requirements of Texas Civil Practice & Remedies Code Chapter 150.
21. **TERMINATION OF CONTRACT.** CLIENT and RK may terminate RK's services at any time upon ten (10) calendar days' written notice. In the event of termination, CLIENT agrees to fully compensate RK for services performed including reimbursable expenses through the termination date, as well as reasonable demobilization expenses. RK will terminate its services without waiving any claims against or incurring any liability to CLIENT.
22. **STATUTE OF LIMITATIONS.** Any applicable statute of limitations will commence to run and any cause of action shall be deemed to have accrued not later than the earlier of the following: (1) the date of the report issued by RK giving rise to the cause of action; (2) the date on which RK issues its last report under this Agreement; or (3) if RK is retained to perform construction observation, the date of substantial completion of the project.
23. **FORCE MAJEURE.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control ("Force Majeure") including, but not limited to Acts of God, Government restrictions (including the denial or cancellation of any export or other necessary license), wars, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected. Force Majeure may not be claimed as a cause for delay in payment of money due and payable hereunder.

24. **NO ASSIGNMENT.** Neither RK nor CLIENT shall assign or transfer its interest in this Agreement without the express written consent of the other.
25. **SEVERABILITY.** Each provision of this Agreement is intended to be severable. If any terms or provisions of this agreement shall be held to be invalid, illegal, or unenforceable for any reason whatsoever, the validity, legality, and enforceability of the remaining provisions hereof shall remain in full force and effect and shall not in any way be affected or impaired thereby. Moreover, to the maximum extent allowed by law, the Parties hereto stipulate that any offending provisions will be modified or altered, as necessary, so as to give such provisions the maximum permissible effect and application intended.
26. **ENTIRE AGREEMENT.** This Agreement, and all of its attachments, constitutes the entire, integrated Agreement between the Parties to it, and this Agreement supersedes all other Agreements, oral or written between the Parties, concerning the subject set forth in this Agreement. This Agreement may not be amended except in writing, with that amendment being signed by both Parties.