

STATE OF TEXAS §

COUNTY OF WEBB §

**PROFESSIONAL SERVICES CONTRACT  
WITH RABA KISTNER CONSULTANTS, INC.  
FOR THE  
BUILDING ENVELOPE AND ROOF CONSULTING AND DESIGN SERVICES  
WEBB COUNTY JUSTICE CENTER ROOF PROJECT PHASE II**

This Contract is made and entered into in Laredo, Webb County, Texas between **Webb County**, a political subdivision of the State of Texas, hereinafter referred to as "County", and **Raba Kistner Consultants, Inc.**, a Texas For Profit Corporation, hereinafter referred to as "Consultant".

**NOW THEREFORE**, the parties agree as follows:

Consultant(s) represents that it is qualified, duly licensed, and practicing under the laws of the State of Texas, and capable of performing the services hereinafter set forth in connection with the above designated Project for Webb County.

**I. General Provisions:**

- A. Consultant shall NOT commence work on this Project until he has been thoroughly briefed on the scope of this Project and has been notified in writing to proceed.
- B. Consultant, in consideration of the compensation herein provided, shall render the services necessary for the development of the Project to final completion, including reports and special and general conditions or instructions as acceptable to County, or its duly authorized representative and subject to the provisions of this Contract.
- C. The Consultant shall be represented by a registered professional architect and/or engineer licensed to practice in the State of Texas concerning the Project, including but not limited to scope of services meetings, staff review meetings, and meetings for acceptance of the project, and for permits subject to the approval of municipal, State, and federal agencies, where applicable. All documents submitted for review shall bear the seal of a registered professional architect and/or engineer.

**II. Scope of Services:**

The Consultant shall perform his obligations and the services necessary for the development of the project as described in the Scope of Services attached hereto as Exhibit "A" and incorporated herein as if set out in full for all intents and purposes. The Scope of Services provides a description of tasks required to perform the project and is based on the understanding of County's desires and objectives for this project.

**III. Materials:**

Consultant shall furnish, at its own expense, all labor, materials, equipment, supplies and other items necessary to complete the services to be provided pursuant to this Agreement.

**IV. Subcontractor(s)/ Subconsultant(s) and Personnel:**

- A. Consultant designates the following subconsultants:
  - i. NONE

- B. The Consultant shall have sole responsibility for the management, direction, and control of each Subconsultant and shall be responsible and liable to County for the satisfactory performance and quality of work performed by Subconsultants under the terms and conditions of this Agreement. The Consultant shall include all the applicable terms and conditions of this Agreement in each Subconsultant Agreement between the Consultant and Subconsultant, and provide the County with a copy of each Subconsultant Agreement prior to the Subconsultant beginning work. No other Subconsultant shall be used by the Consultant without prior written consent by the County.
- C. The Consultant shall, upon requiring the services of various sub-consultants, be responsible for the integration of all sub-consultants' work into the documents and for all payments to such sub-consultants out of the lump sum fee agreed to unless otherwise provided for herein. Services rendered by the Consultant in connection with the coordination of any such sub-consultants or other personnel services shall be considered within the scope of the basic contract and no additional fee will be due the Consultant for such work.
- D. The Consultant represents that it has, or will secure at its own expense, all personnel and equipment required to perform the services for which it is responsible under this contract. Such personnel will not be employees of County.

**V. Period of Performance:**

- A. Whereas time is of the essence in the performance of this agreement the contract time for completion of the Work as set forth in Exhibit "A" is 120 calendar days after the issuance of a Notice to Proceed for the completion of the schematic design, design development and construction documents. If upon review of the Work, corrections, modifications and/or alterations are required of Consultant, these items shall be completed by Consultant before the Work is accepted. Working days shall be charged for this period when changes are being made. However, if circumstances dictate, County may authorize extensions of the time should there be delays due to reasons beyond the control of Consultant. Such time extensions shall be equivalent to the amount of delays incurred. Review time by County will not be charged against Consultant's contract time.
- B. The Consultant shall furnish upon completion of the work herein described in the "Scope of Services" five (5) sets of deliverables of the project for distribution by the County, unless otherwise specified herein.

**VI. Compensation and Payment:**

- A. County shall pay and the Consultant agrees to accept payment for the performance of services as set forth in this Contract, a fee not to exceed **Three Hundred Five Thousand Dollars (\$305,000.00)**.
- B. The Consultant will submit to County, for services rendered, an itemized billing statement showing charges for such services accompanied by any additional documentation requested by County. These statements shall be sworn to be true and correct by the Consultant, or an officer or agent thereof, having knowledge of the facts set forth. The Consultant shall not include on these statements any item payable or chargeable under any other agreement with County. Consultant shall not be entitled to any compensation or expense reimbursement other than as set forth in this Agreement. County shall review each statement and approve it with modifications, if any, as it may deem appropriate. County agrees to pay each statement plus all amounts payable within 30 days after County approves it. Further, the approval or payment of each statement shall not be considered evidence of performance by the Consultant to the point

indicated by such statement or of the receipt or acceptance by County of the work covered by the statement.

- C. Payments for completed phase, task or components of the Scope of Service are due and payable monthly on the basis of the Consultant's estimate of the percentage of completion of the phase or task.
- D. No payment request made under this clause shall exceed the estimated amount and value of the work and services performed by the Consultant under this Agreement. The Consultant shall prepare the estimates of work performed and shall supplement them with such supporting data as County may require.
- E. Upon satisfactory completion of the work performed under this Agreement, as a condition before final payment under this Agreement or as a termination settlement under this Agreement the Consultant shall execute and deliver to County a release of all claims against County arising under, or by virtue of, this Agreement, except claims which are specifically exempted by the Consultant to be set forth therein. Unless otherwise provided in this Agreement, by State law or otherwise expressly agreed to by the parties to this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of County's claims against the Consultant or its sureties under this Agreement.
- F. Final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of County's claims against the Consultant under this Agreement.

**VII. Additional Services:**

- A. All work performed by Consultant, which is either described in this paragraph or not included in the "Scope of Services" shall constitute additional services. These shall include:
  - i. Services not otherwise included in this contract.
- B. CONSULTANT SHALL NOT PERFORM ANY WORK WHICH CONSTITUTES ADDITIONAL SERVICES UNTIL A CONTRACT AMENDMENT HAS BEEN APPROVED IN WRITING BY THE PARTIES AND CONSULTANT HAS RECEIVED WRITTEN AUTHORIZATION TO PROCEED FROM COUNTY.

**VIII. Termination of Contract and/or Suspension of Work:**

- A. Disputes.
  - i. County and Consultant agree to negotiate reconciliation of any dispute between them in good faith for a period of thirty (30) days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated as described below. If mediation is unsuccessful, then the parties may exercise their rights at law.
  - ii. Mediation: If the parties fail to resolve a dispute through negotiated reconciliation, Consultant and County agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them, arising out of or relating to this Agreement or the breach thereof (collectively "Disputes"), to mediation conducted by a mediator selected through mutual agreement of both parties. County and Consultant agree to participate in the mediation process in good faith. The process shall be conducted on a confidential basis and shall be completed within one hundred twenty (120) days. If such mediation is unsuccessful in resolving a Dispute, then (a) the parties may mutually agree to a dispute resolution of their choice, or (b) either party may seek to have

the Dispute resolved by a court of competent jurisdiction.

B. Termination:

- i. This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no such termination may be effected unless the other party is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate and (2) an opportunity for consultation with the terminating party before termination.
- ii. This Agreement may be terminated in whole or in part in writing by County for its convenience, provided that the Consultant is given (1) not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate, and (2) an opportunity for consultation with County prior to termination.
- iii. If termination for default is effected by County, an equitable adjustment in the price provided for in this Agreement shall be made, but (1) no amount shall be allowed for anticipated profit on unperformed services or other work, and (2) any payment due to the Consultant at the time of termination may be adjusted to cover any additional costs to County because of the Consultant's default.
- iv. If termination for default is effected by the Consultant, or if termination for convenience is effected by County, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to the Consultant for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by the Consultant relating to commitments which had become firm prior to the termination.
- v. Upon receipt of a termination action under paragraphs (i.) or (ii.) above, the Consultant shall (1) promptly discontinue all affected work (unless the notice directs otherwise), (2) proceed to cancel promptly all existing orders and contracts insofar as these orders or contracts are chargeable to this agreement. As soon as practicable after receipt of notice of termination, the Consultant shall submit a statement showing in detail the services performed under this agreement to the date of termination and deliver or otherwise make available to County within ten (10) calendar days copies of all data, design drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process.
- vi. Upon termination under paragraphs (i.) or (ii.) above, County may take over the work and may award another party an Agreement to complete the work under this Agreement.
- vii. If, after termination for failure of the Consultant to fulfill contractual obligations, it is determined that the Consultant had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of County. In such event, adjustment of the Agreement price shall be made as provided in iv. above.
- viii. Copies of all data, design drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in performing this Agreement, whether completed or in process shall be delivered to County as a pre-condition to final payment.

- ix. Failure by the Consultant to comply with the submittal of data, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by the Consultant in performing this Agreement as required above shall constitute a waiver by the Consultant of any and all rights or claims to collect monies that Consultant may rightfully be entitled to for services performed under this Contract.
- x. Upon the above conditions having been met, the County shall promptly pay the Consultant that proportion of the prescribed fee which the services actually performed under this Contract bear to the total services called for under this Contract less previous payments of the fee.

C. Right of County to Suspend Giving Rise to Right of Consultant to Terminate:

- i. County reserves the right to suspend this Contract at the end of any Phase for any reason by issuing a signed, written notice of suspension (citing this paragraph) which shall take effect on the tenth day following receipt of said notice by the Consultant. The suspension notice will outline the reasons for the suspension and the anticipated duration of the suspension but will in no way guarantee the total number of days suspended.
- ii. The Consultant is hereby given the right to terminate his Agreement in the event that the County suspends this Contract. Consultant may exercise this right to terminate by issuing a signed, written notice of termination (citing this paragraph) to the County at any time after the effective suspension date. This termination shall be effective immediately upon receipt of said notice by the County.

D. Procedures Consultant to follow upon receipt of Notice of Suspension if issued by the County:

- i. Upon receipt of a notice of suspension and prior to the effective date of the suspension, the Consultant shall, unless the notice otherwise directs, immediately begin to phase-out and discontinue all services in connection with the performance of this Contract and shall proceed to promptly cancel all existing orders and contract insofar as such orders and contracts are chargeable to this Contract.
- ii. Consultant shall prepare a statement showing in detail the services performed under this Contract prior to the effective date of suspension.
- iii. Copies of all completed or partially completed studies, plans and specifications prepared under this Contract prior to the effective date of suspension shall be prepared for possible delivery to County but shall be retained by the Consultant until such time as Consultant may exercise the right to terminate.
- iv. During the period of suspension, Consultant shall have the option to at any time submit the above referenced statement to County for prompt payment of that proportion of the prescribed fee which the services actually performed under this Contract bear to the total services called for under this Contract, less previous payments of the fee.
- v. In the event that Consultant exercises his right to terminate at any time after the effective suspension date, within thirty (30) days after receipt by County of Consultant's notice of termination, Consultant shall submit (if he has not previously done so) the above referenced statement showing in detail the services performed under this Contract prior to the effective date of suspension.

- vi. Additionally, the above referenced copies of documents shall be delivered to County as a pre-condition to final payment.
- vii. Upon the above condition being met, County shall promptly pay the Consultant that proportion of the prescribed fee which the services actually performed under this Contract bear to the total services called for under this Contract, less previous payments of the fee.
- viii. Failure by the Consultant to comply with the submittal of the statement and documents as required above shall constitute a waiver by the Consultant of any and all rights or claims to collect monies that Consultant may rightfully be entitled to for services performed under this Contract.

**IX. Consultant's Insurance and Warranty:**

- A. Insurance: The Consultant shall procure and maintain insurance for protection from claims and workman's compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting there from. Consultant shall require and verify that all of its subconsultants of any tier provide insurance coverage and limits identical to the insurance required of the Consultant under this contract, unless this requirement is expressly modified or waived by the County.
- B. The Consultant shall provide and maintain, until the work covered in the contract is completed and accepted by the County of Webb, the minimum insurance coverages as follows:
  - i. Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/completed operation aggregate), and XCU (Explosion, Collapse, Underground) hazards. Coverage must be written on an occurrence form. Contractual Liability must be maintained covering the Consultants obligations contained in the contract.
  - ii. Workers Compensation insurance at statutory limits, including Employers Liability coverage of minimum limit of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
  - iii. Commercial Automobile Liability insurance at minimum combined single limits of 1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
  - iv. Umbrella Liability Insurance at a minimum combined single limit of \$2,000,000 per occurrence for bodily injury and property damage. (The limit may be adjusted upward depending on the size of the project.) The Umbrella Liability Insurance shall be applicable to all required coverages except professional liability.
  - v. Errors & Omissions coverage is be required for all services. The following conditions apply:
    - a. Professional Liability with minimum limits of \$2,000,000 or higher, depending on the type, size, and scope of services.

- b. This coverage must be maintained for at least two (2) years after the project is completed. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of the contract (or earlier) must be maintained during the full term the contract.

PLEASE NOTE: The required limits may be satisfied by any combination of primary, excess, or umbrella liability insurances, provided the primary policy complies with the above requirements and the excess umbrella is following-form. The Consultant may maintain reasonable and customary deductibles, subject to approval by the County of Webb.

- C. Any Subcontractor(s)/Subconsultant(s) hired by the Consultant shall maintain insurance coverage equal to that required of the Consultant. It is the responsibility of the Consultant to assure compliance with this provision. The County of Webb accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor/Subconsultant(s).
- D. A Comprehensive General Liability insurance form may be used in lieu of a Commercial General Liability insurance form. In this event, coverage must be written on an occurrence basis, at limits of \$1,000,000 each-occurrence, combined single limit, and coverage must include a broad form Comprehensive General Liability Endorsement, products/completed operations, XCU hazards, and contractual liability.
- E. With reference to the foregoing insurance requirement, Consultant shall specifically endorse applicable insurance policies as follows:
  - i. The County of Webb shall be named as an additional insured with respect to General Liability and Automobile Liability.
  - ii. All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
  - iii. A waiver of subrogation in favor of the County of Webb shall be contained in the Workers Compensation, and all liability policies.
  - iv. All insurance policies shall be endorsed to require the insurer to immediately notify the County of Webb of any material change in the insurance coverage.
  - v. All insurance policies shall be endorsed to the effect that the County of Webb will receive at least sixty- (60) days' notice prior to cancellation or non-renewal of the insurance.
  - vi. All insurance policies, which name the County of Webb as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.
  - vii. Required limits may be satisfied by any combination of primary and umbrella liability insurances.
  - viii. Consultant may maintain reasonable and customary deductibles, subject to approval by the County of Webb.
  - ix. Insurance must be purchased from insurers that are financially acceptable to the County of Webb.

- F. All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting the following:
- i. Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
  - ii. Shall specifically set forth the notice-of-cancellation or termination provisions to the County of Webb.
- G. Upon request, Consultant shall furnish the County of Webb with certified copies of all insurance policies.
- H. Warranty: The Consultant warrants that he has not employed or retained any company or person other than a bona fide employee working solely for the Consultant to solicit or secure this contract, and that he has not for the purpose of soliciting or securing this contract paid or agreed to pay any company or person, other than a bona fide employee working solely for the Consultant, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making of this contract. For breach of this warranty, County shall have the right to terminate this contract under the provisions of VIII above.
- X. Changes in Scope of Services:**  
County, may, from time to time, request changes in the Scope of Services to be performed by the Consultant hereunder and if such changes are agreed to by the Consultant, they shall be included as written amendments to this contract.
- XI. Assigning of Contract:**
- A. County does not allow, permit, negotiate, authorize nor approve any assignment of contract proceeds between County, Consultant, and/or with a bank, lending institution or any type of financial institution either before, during or after a contract award.
  - B. County agrees to pay Consultant for specified services as stated in the agreed contract. County does not agree to pay any additional party either jointly or separately for the contract.
- XII. Consultant's Responsibility & Liability:**
- A. Acceptance and approval of the final report(s) by the County Engineer shall not constitute nor be deemed a release of the responsibility and liability of the Consultant for the accuracy and competency of his report(s), or other documents and work performed under this contract. No approval or acceptance by or on behalf of the County shall be deemed to be an assumption of such responsibility by County for any defect, error, or omission in the said reports or other documents as prepared by the Consultant.
  - B. The Consultant further agrees to perform, at his sole cost and expense, any re-designs, required as a result of the Consultant's development of the designs, plans, specifications, or documents which are found to be in error.
- XIII. Indemnification:**  
**ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD OWNER, ITS OFFICERS, AGENTS, AND EMPLOYEES, HARMLESS AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH**



**RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS, THAT MAY ARISE OUT OF OR BE OCCASIONED BY ENGINEER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS CONTRACT, OR BY ANY NEGLIGENT ACT OR OMISSION OF ENGINEER, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, OR SUBCONSULTANTS, IN THE PERFORMANCE OF THIS CONTRACT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF OWNER, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH ENGINEER AND OWNER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY GOVERNMENTAL DEFENSE OF THE PARTIES UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES TO THIS CONTRACT AND ARE NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. THIS PROVISION SHALL SURVIVE TERMINATION OF THIS AGREEMENT.**

**XIV. Severability:**

If for any reason, any one or more paragraphs of this contract are held invalid, such judgment shall not affect, impair, or invalidate the remaining paragraphs of the contract but be confined in its operations to the specific section, sentences, clauses, or parts of this contract held invalid and the invalidity of any section, sentence, clause or parts of this contract in any one or more instance, shall not affect or prejudice in any way the validity of this contract in any other instance.

**XV. Interest of Consultant:**

The Consultant agrees that it has no interests, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract.

**XVI. Independent Consultant:**

Consultant, in the performance of this Agreement, shall be and act as an independent consultant. Consultant understands and agrees that it and all of its employees shall not be considered officers, employees, agents, partner, or joint venture of County, and are not entitled to benefits of any kind or nature normally provided employees of County and/or to which County's employees are normally entitled, including, but not limited to, State Unemployment Compensation or Workers' Compensation. Consultant shall assume full responsibility for payment of all federal, state and local taxes or contributions, including unemployment insurance, social security and income taxes with respect to Consultant's employees. In the performance of the work herein contemplated, Consultant is an independent consultant or business entity, with the sole authority for controlling and directing the performance of the details of the work, County being interested only in the results obtained.

**XVII. Owner of Documents:**

All documents including drawings, estimates, specifications, field notes and data will remain the property of the Consultant as instruments of service. However, it is to be understood that County shall have free access to all such information with the right to make and retain copies of drawings and all other documents including field notes and data. Any re-use without specific written verification or adaptation by Consultant will be County's sole risk and without liability or legal exposure to Consultant. Any such verification or adaptation may entitle Consultant to further compensation at rates to be agreed upon by County and Consultant.

**XVIII. Equal Employment Opportunity/Minority Business Enterprise:**

The Consultant agrees not to engage in employment practices which have the effect of discriminating against any employee or applicant for employment and will take affirmative steps to ensure that applicants and employees are treated during employment without regard to their race, color, religion, national origin, sex, age, handicap, or political belief or affiliation.

**XIX. Political Interests in this Contract:**

No employee of County shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; provided, however, that this provision shall not be constructed to extend to this contract if made with a corporation for its general benefit.

**XX. Force Majeure:**

A. Consultant shall not be liable or responsible for, and those shall be excluded from the computation of the aforesaid period of time, any delays due to strikes, riots, acts of God, national emergency, acts of the public enemy, governmental restrictions, laws, or regulations, or any other causes beyond Consultant's reasonable control. Within thirty (30) days from the occurrence of any event for which time for performance by Consultant should be significantly extended under this provision, Consultant may give written notice thereof to County stating the reason for such extension and the actual or estimated time thereon.

B. In the event either party invokes the preceding provision, this contract shall remain in force for a period which may reasonably be required for the completion of the project, including any extra work and required extensions thereon, unless discontinued as provided for elsewhere in this contract.

**XXI. Miscellaneous Provisions:**

A. Integration. This Contract represents the entire and integrated Contract between County and the Consultant and supersedes all prior negotiations, representations or contracts, either oral or written.

B. Amendment. This Contract may be amended only by written instrument signed by both County and Consultant.

C. No rights created. All other provision of this Agreement to the contrary notwithstanding, this Agreement shall not create any rights or benefits on behalf of any other person not a party to this Agreement, and this Agreement shall be effective only as between the parties hereto, their successors and permitted assigns.

D. Certification Regarding Ineligibility to Receive Payment – Child Support. Under Section 231.006, Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

E. Inconsistencies. Where there exists any inconsistency between this Agreement and other provisions of collateral contractual agreements that are made a part hereof by reference or otherwise, the provisions of this Agreement shall control.

F. Law of Texas. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas and shall be enforced in Webb County, Texas.

G. Confidentiality. Any confidential information provided to or developed by Consultant in the

performance of this Agreement shall be kept confidential, unless otherwise provided by law, and shall not be made available to any individual or organization without the prior approval of County.

- H. Headings. The headings used herein are for convenience of reference only and shall not constitute a part hereof or affect the construction or interpretation hereof.
- I. Waiver. The failure on the part of any party to exercise or to delay in exercising, and no course of dealing with respect to any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law or in equity, except as expressly set forth herein.
- J. Counterparts. This Agreement may be executed in any number of and by the different parties hereto on separate counterparts, each of which when so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same document.
- K. Terminology and Definitions. All personal pronouns used herein, whether used in the masculine, feminine, or neutral, shall include all other genders; the singular shall include the plural and the plural shall include the singular.
- L. Rule of Construction. The parties hereto acknowledge that each party and its legal counsel have reviewed and revised this agreement and the parties hereby agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this agreement or any amendments or exhibits hereto.
- M. Notices. Any notice pursuant to this Agreement shall be given in writing by (i) personal delivery, or (ii) reputable overnight delivery service with proof of delivery, or (iii) United States Mail, postage prepaid, registered or certified mail, return receipt requested, or (iv) legible facsimile transmission sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith, and shall be deemed to have been given either at the time of personal delivery, or in the case of expedited delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein, or, in the case of facsimile transmission, as of the date of the facsimile transmission provided that an original of such facsimile is also sent to the intended addressee by any of the means described in clauses (i), (ii) or (iii) above. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

County:  
Tano E. Tijerina  
Webb County Judge  
1000 Houston Street, 3<sup>rd</sup> Floor  
Laredo, Texas 78040

Consultant:  
Raba Kistner Consultants, Inc.  
David A. White, RRC, RWC, RRO, CEI, CIT-III, ABAA  
12821 W. Golden Lane  
San Antonio, TX 78249

And

Leroy Medford  
Webb County Administrator  
1000 Houston, 2<sup>nd</sup> Floor  
Laredo, Texas 78040

- N. **Signatory Warranty.** The undersigned signatory or signatories for the Consultant hereby represent and warrant that the signatory is an officer of the organization for which he or she has executed this contract and that he or she has full and complete authority to enter into this contract on behalf of the firm. The above-stated representations and warranties are made for the purpose of inducing County to enter into this contract.
- O. **Incorporation of Recitals and Exhibits.** The Recitals and each exhibit attached hereto are hereby incorporated herein by reference for all intents and purposes, provided however that in the event of a conflict between this Agreement and its Exhibits, this Agreement shall control to the extent of such conflict.
- P. **Effective Date.** This agreement is effective as of July 10, 2023, even if any signatures are made after that date.
- Q. **Immunity.** Webb County does not waive or relinquish any immunity or defense on behalf of themselves, their trustees, commissioners, offices, employees and agents as a result of the execution of this Agreement and performance of the functions and obligations described herein.
- R. **Execution of Documents.** This Agreement may be executed in one or more counterparts, each of which shall be an original as against any Party who signs it, and all of which shall constitute one and the same document. Signatures to this Agreement may be transmitted by facsimile or electronic mail/DocuSign/Adobe Sign and such signatures, and true and correct copies thereof (including any copy on physical paper or electronically stored in .pdf, .tiff., .jpg, etc. formats), shall be deemed effective as original signatures.

**[Signature Page follows]**

IN WITNESS HEREOF, County and the Consultant have executed these presents in duplicate originals.

County:  
Webb County

Consultant:  
Raba Kistner Consultants, Inc.

\_\_\_\_\_  
Tano E. Tijerina  
Webb County Judge

\_\_\_\_\_  
David A. White, RRC, RWC, RRO, CDT,  
CIT-III, ABAA  
Vice President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Margie Ramirez Ibarra  
Webb County Clerk

Approved as to Form:

\_\_\_\_\_  
Nathan R. Bratton  
General Counsel  
Civil Legal Division\*

\*The General Counsel, Civil Legal Division's office, may only advise or approve contracts or legal documents on behalf Webb County, its client. It may not advise or approve a contract or legal document on behalf of other parties. Our review of this document was conducted solely from the legal perspective of our client. Our approval of this document was offered solely for the benefit of our client. Other parties should not rely on this approval, and should seek review and approval of their own respective attorney(s).

PROPOSED

Exhibit A

**Scope of Work**

Provide a design for Building Envelope improvements that will address the deficiencies identified in the **Phase I Report ASB22-027-00, Dated February 10, 2023, prepared by Michael D. Hovar, AIA, RRO, LEED AP Senior Architect, Regional Manager, Building Envelope Services, Raba Kistner, Inc.**

**Phase II** will generally consist of the following:

***Phase II – Design & Construction***

1. *Prepare a set of construction documents including plans and specifications.*
2. *To the greatest extent possible, the specified manufacturer's and systems will not be proprietary, unless necessary to provided necessary value of performance for the project.*
3. *Prior to issuing Construction Documents, a 90% set will be submitted to Client/Owner for final review.*
4. *Prepare a list of qualified Contractors and invite them to bid.*
5. *Conduct a Pre-Bid Conference, issue any clarifications to bidders as needed and assist Client/Owner in ranking and selecting a Contractor.*
6. *Client/Owner in construction contract preparation, review submittals and address all requests for information.*
7. *Conduct periodic Field Observation Visits and issue a report after each visit, detailing all issues observed, construction progress and problems to be addressed.*
8. *Review and certify Contractor's Applications for Payments.*
9. *Assist Client/Owner with the project closeout procedure including final walkthrough and punch-list, warranties, as built-documents and release of liens and certification of the final Application for Payment.*

<b>Phase II   Design &amp; Construction</b>		
<b>Description</b>	<b>Unit</b>	<b>Total</b>
Design, Construction Design, Bidding & Construction Administration	Fixed Fee	\$305,000.00
Schematic Design/Design Development/Construction Documents	70% of Fee	\$213,500.00
Bidding and Negotiation	5% of Fee	\$15,250.00
Construction Administration	25% of Fee	\$76,250.00
	<b>Total Fee</b>	<b>\$305,000.00</b>

**The consulting work associated with Schematic Design/Design Development/Construction Documents will require a 120 day Period of Performance after the issuance of a Notice to Proceed by the County.**

***Note: The proposed fees for Phase II include all A/E expenses associated with the work. Other reimbursable expenses and mileage charges would only be incurred if the scope of the work is revised by CLIENT and such expenses and charges were agreed to by CLIENT.***