

4848 / R0396 email

May 28, 2002
File No.: 04401PROP

Mr. Ted Dang
Commonwealth Companies
1305 Franklin Street, Suite 500
Oakland, California 94612

**Subject: Proposal for Environmental Sampling and Analytical Services,
2547 East 27th Street, Oakland, California**

Dear Mr. Dang:

Kleinfelder Inc. (Kleinfelder) is pleased to present the following proposal to perform environmental assessment services at the property located at 2547 27th Street in Oakland, California. This proposal was prepared following discussion with you by telephone, a brief reconnaissance visit to the site and a review of files concerning the site on record at the Alameda County Environmental Health Department.

BACKGROUND

The property at 2547 East 27th Street in Oakland (hereafter referred to as the site) was the prior location of a gas station and automotive repair shop possibly since 1927. In 1994 one 100-gallon steel oil waste underground storage tank (UST) and four 500-gallon steel gasoline USTs were removed from the site. At that time eight soil samples were taken from below the tanks and two were taken from the stockpiles of excavated soils. The soil samples were analyzed for petroleum hydrocarbons as both gasoline and diesel (EPA method 8015M) and for benzene, toluene, ethylbenzene, and total xylenes (EPA method 5520). Total petroleum hydrocarbons as gasoline were reported in concentrations as high as 930 ppm from the soil samples obtained from beneath the tanks and benzene, toluene, ethylbenzene, and total xylenes were reported in concentrations as high as 2.2 ppm, 2.2 ppm, 2.7 ppm, and 3.3 ppm, respectively. The presence of the analyte MTBE was not tested. After tank removal the excavations were lined with visqueen plastic and backfilled with the excavated material.

The former owner of the site was issued a Notice of Violation letter from Alameda County Environmental Health in 1996. Since that time a Phase I Environmental Site Assessment has been performed by the M.L. River Group, who recommended that the site be characterized to determine the extent of soil and ground water contamination by petroleum hydrocarbons, including semi-volatiles.

PURPOSE

The purpose of the proposed assessment is to identify the potential presence of petroleum hydrocarbons, including MTBE, as well as lead, in soil and ground water, and assess ground water quality. Also the purpose of the work is to characterize contamination of the backfill material and determine the direction of ground water movement.

SCOPE OF WORK

Kleinfelder proposes to drill three soil borings and install monitoring wells both on and in the vicinity of the former USTs to collect soil and ground water samples for the purpose of chemical analysis. The approximate locations of these borings are shown in the attached figure. The borings will be drilled to assess soil and ground water conditions beneath a potential release source area and to determine the extent and movement of the contamination. We will also survey the boring locations to an assumed datum in order to determine the direction of ground water flow.

Pre-Drilling Activities

Prior to initiation of field activities Kleinfelder will meet with the Commonwealth Companies to discuss the project, access, physical constraints and proposed investigation procedures. Prior to advancing soil borings at the site, drilling permits will be acquired as necessary. In addition, the proposed boring locations will be marked and underground utilities will be located. Underground utilities will be located by obtaining and reviewing available site utility maps, contacting Underground Service Alert (USA) and retaining a utility location service. Sewer lines and other utilities that transect the site will be located at this time. Abandoned utilities will also be located, if possible.

A health and safety plan will be prepared to provide health and safety guidance for performing the work.

Soil Borings, Sampling and Chemical Analyses

Three borings will be drilled to below ground water on and in the vicinity of the former USTs. The proposed locations of these borings is shown in Plate 1. The soil stratigraphy will be logged. Concentrations of volatile compounds in the soils will be gauged using an organic vapor detector and soil samples will be collected when contaminated soils are encountered. Soil samples will be submitted for chemical analysis from the backfill material and from beneath the locations of the former tanks. Ground water samples will also be collected. The borings will be drilled with the use of a mobile drilling rig using direct push techniques. Ground water monitoring well casings will be installed in each boring following completion of each borehole. We assume ground water will be encountered within about 20 feet below ground surface (bgs). The monitoring well installed on the sidewalk will be completed with a well cover that is flush to the sidewalk.

Following collection of the soil and ground water samples, the samples will be labeled and placed in a chilled cooler for transport to the analytical laboratory. A chain-of-custody form will accompany the samples to the laboratory. The soil and ground water samples collected will be analyzed at an analytical laboratory certified by the State of California to perform the analyses. The samples will be analyzed for total petroleum hydrocarbons as gasoline, diesel and motor oil, and the aromatic analytes, including MTBE using methods 8015C and 8020A.

Drilling derived wastes will be contained in a drum for subsequent disposal at a proper facility. Costs for disposal are not included, as the chemical quality and volume of the wastes is unknown. Kleinfelder can assist Commonwealth Companies in proper waste disposal following receipt of analytical results.

Preparation of a Report

Following completion of the selected site assessment alternative outlined above, a report will be prepared to document the work. The report will contain a description of the fieldwork and our observations, a tabulation of the analytical results and survey data, figures showing borehole locations, soil boring logs, and a ground water flow assessment. Appendices will include the laboratory analytical reports and chain-of-custody documentation. Conclusions and recommendations will also be presented in the report.

SCHEDULE

Following receipt of written authorization to proceed Kleinfelder anticipates that the scope of work can be performed over a four to five week time period. This schedule includes one week to mobilize, one day of field work, one to two weeks for chemical analyses, and one to two weeks for report preparation.

ESTIMATED FEE

Kleinfelder proposes to perform the work on a time and materials basis using Kleinfelder's 2002 fee schedule with a 10 percent discount. Our estimated fee is summarized below:

| | |
|---|-----------|
| Pre Drilling Activities | \$ 1,150 |
| Drilling, Soil and Ground Water Sampling, and Chemical Analysis | \$ 8,800 |
| Report Preparation | \$ 2,700 |
| Project Management | \$ 600 |
| TOTAL | \$ 13,250 |

CONDITIONS AND UNDERSTANDINGS

The proposed services and estimated budget are based on the following assumptions:

- Kleinfelder has free and timely access to the property for performing the work.
- Ground water is encountered within 20 feet of ground surface.
- Disposal of drilling derived wastes is not included in the cost estimate.
- Meeting with regulatory agencies is not included in the cost estimate.

As indicated above, Kleinfelder will take reasonable precautions that underground structures and utilities are not disturbed during drilling. However, the client should be aware that these measures cannot preclude impacts to under ground facilities and that our fee does not include the repair of any underground facilities.

Kleinfelder offers a range of assessment services to suit the needs of our clients. Although the risk can never be eliminated, more detailed and extensive assessments yield more information, which may help understand and manage the degree of risk. Since such detailed services involve greater expense, our clients participate in determining the level of service that provides adequate

information for their purposes at an acceptable risk. Acceptance of this proposal will indicate that the client has reviewed the proposal scope of service and determined that the client does not need or want more services than are being proposed at this time. Any exceptions should be noted and may result in a change in fees.

Kleinfelder will perform its services in a manner consistent with the standards of care and skill ordinarily exercised by members of the profession practicing under similar conditions in the geographic vicinity and at the time the services will be performed. No warranty or guarantee, expressed or implied, is part of the services offered by this proposal.

AUTHORIZATION

Attached to this proposal you will find Kleinfelder's Standard Engineering Services Agreement. If you are in agreement with this proposal, please execute and return the agreement form to Kleinfelder. An executed form will serve as our authorization to proceed.

CLOSING

Kleinfelder appreciates the opportunity to provide this proposal to Commonwealth Properties for the services listed above. If you have any questions or desire to initiate work, please do not hesitate to call.

Sincerely,

KLEINFELDER INC.

Graham Knopp PhD
Environmental Scientist

Charles Almestad R.G., C.HG.
Senior Client Manager

Attachments: Professional Service Agreement
Boring Location Map

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is entered into between **COMMONWEALTH COMPANIES** ("Client") and **KLEINFELDER, INC.** ("Consultant"):

COMMONWEALTH COMPANIES: ("Client")

Attn: Mr. Ted Dang
1305 Franklin Street, Suite 500
Oakland, California 94612

KLEINFELDER, INC.: ("Consultant")

Attn: Richard D. Short
1970 Broadway, Suite 710
Oakland, California 94612

Client engages Consultant to provide professional services ("Services") in connection with the following project ("Project"):

Project Name East 27th Street
Location East 27th Street
Oakland, California

SCOPE OF SERVICES: Consultant shall perform the following Services:

Perform Environmental Assessment Services at the property located at 2547 – East 27th Street, Oakland, California.

Client agrees that Services not specifically described above are not included in the Scope of Services provided by Consultant.

Services provided under this Agreement, including all reports, information, recommendations, or opinions prepared or issued by Consultant, are for the exclusive use and benefit of Client in connection with the Project, are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client for any purpose. Client will not distribute or convey such reports, information, recommendations, or opinions to any other persons or entities without Consultant's prior written consent.

COMPENSATION: Client shall compensate Consultant as follows:

Client agrees to compensate Consultant for such services on a time-and-materials basis with an estimated amount of thirteen thousand two hundred and fifty dollars (\$13,250) for the described scope of services in our proposal dated June 4, 2002.

The rates charged for Services are based on the current Consultant's Fee Schedule, which is modified periodically. All Services rendered after a new Fee Schedule is in effect shall be billed to Client at the new rates.

GENERAL CONDITIONS AND ADDENDA. NOTE: THE GENERAL CONDITIONS ATTACHED TO THIS PROFESSIONAL SERVICES AGREEMENT CONTAIN LIMITATION OF LIABILITY PROVISIONS AND OTHER IMPORTANT PROVISIONS AFFECTING THE LEGAL RIGHTS AND OBLIGATIONS OF THE PARTIES. Client and Consultant have each read, understand and agree to the General Conditions and any Addenda attached to this Agreement, and agree that the General Conditions and Addenda are incorporated into this Agreement by reference.

Neither Client nor Consultant shall assign its interest in this Agreement without the prior written consent of the other.

This Agreement is entered into at Oakland, California and is made effective _____.

COMMONWEALTH COMPANIES: ("Client")

KLEINFELDER, INC.: ("Consultant")

By: _____
Print Name: _____
Title: _____
Date Signed: _____

By: _____
Print Name: Richard Short, P.E., G.E.
Title: Area Manager
Date Signed: _____

GENERAL CONDITIONS (PROFESSIONAL SERVICES)

1. Client shall pay invoices upon receipt. Invoices not paid within thirty (30) days of the invoice date shall be subject to a late payment charge of 1-1/2 percent per month (or the maximum rate allowable by law, whichever is less). Invoice amounts shall be presumed to be correct unless Client notifies Consultant in writing within fourteen (14) days of receipt. Client agrees to pay all costs incurred with collection of past due accounts, including attorneys' fees. If Client fails to pay an invoice when due, Consultant may, upon five (5) calendar days notice to client, suspend all Services until paid in full, and may terminate the Agreement.
2. The Client agrees that any and all limitations of the Consultant's liability and indemnifications by the Client to the Consultant shall include and extend to those individuals and entities the Consultant retains for performance of the services under this Agreement, including but not limited to the Consultant's officers, partners and employees and their heirs and assigns, as well as the Consultant's subconsultants and their officers, employees, heirs and assigns.
3. Consultant shall perform the services in a manner consistent with the standard of care and skill ordinarily exercised by members of the profession practicing in the same or similar locality under similar circumstances at the time the services are performed. This Agreement creates no warranty or guarantee, express or implied, nor does it create a fiduciary responsibility to Client by Consultant.
4. Consultant's construction observation Services, if any, shall be limited to observation of construction operations to provide Client with an understanding of the general nature, progress and quality of the work. Unless otherwise agreed in writing, Consultant shall not be responsible for continuous or exhaustive inspection of the work. In no event shall Consultant be responsible for the means and methods of construction or for the safety procedures employed by Client's contractor. Client shall hold its contractor solely responsible for the quality and completion of the Project, including but not limited to its construction in accordance with the construction documents.
5. Consultant shall sign certifications only if Consultant approves the form of such certification prior to the commencement of Services, such certification is included in Consultant's scope of services, and provided such certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied.
6. Client shall notify Consultant at least twenty-four (24) hours in advance of any necessary tests and observations. If Client assigns this responsibility to a contractor, subcontractor, or other third party, or if Client fails to provide the proper notice, Consultant shall not be responsible for any damages resulting from improper notice.
7. All samples shall remain the property of the Client, and Client shall promptly at its cost remove and lawfully dispose of samples, cuttings and hazardous materials, unless otherwise agreed in writing. If appropriate, Consultant shall preserve samples obtained for the Project for not longer than sixty (60) days after the issuance of any document that includes the data obtained from those samples.
8. Client shall bear sole responsibility for notifying all prospective purchasers or other appropriate third parties including, but not limited to, all appropriate municipal, regional, state or federal agencies of the existence of any hazardous or dangerous materials located in or around the Project site.
9. Client shall provide Consultant with all information regarding existing conditions, including the existence of hazardous or dangerous materials, and proposed uses of the Project site and shall correctly designate the location of all property lines of the Project site and all subsurface installations, such as pipes, tanks, cables, electrical lines, telephone lines and utilities within the Project site. Client shall immediately provide Consultant with any new information, including any change in plans. Client releases Consultant from liability for any incorrect advice, judgment or decision based on any inaccurate information furnished by Client or others. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials, encountered on the site by Consultant, Consultant shall, upon recognizing the condition, immediately stop work in the affected area and report the condition to Client.
10. Consultant's reports, boring logs, maps, field data, drawings, test results and other work product are part of Consultant's professional services, and do not constitute goods or products. Consultant reserves the right to copyright such work; however, such copyright is not intended to limit the Client's use of the Services pursuant to this Agreement in connection with the Project.
11. Because data stored on electronic media can deteriorate undetected or be modified without Consultant's knowledge, the Client agrees that it will accept responsibility for the completeness, correctness, or readability of the electronic media after an acceptance period of 30 days after delivery of the electronic files.
12. Client shall cooperate with all reasonable requests by Consultant that are related to the performance of the Services, including but not limited to obtaining permission, at Client's sole cost, to allow Consultant access to the Project site.
13. Consultant's potential liability to Client and others is grossly disproportionate to Consultant's fee due to the size, scope, and value of the Project. Therefore, unless Client and Consultant otherwise agree in writing in consideration for an increase in Consultant's fee, Client agrees to (1) limit Consultant's liability to the greater of \$50,000.00 or the amount of Consultant's fee, and (2) indemnify Consultant against all claims, liability, damages, or expenses (except for Consultant's sole negligence or willful misconduct) arising out of or relating to all acts, failures to act, or other conduct of Consultant, including but not limited to, claims, liability, damages, or expenses arising out of or relating to the active negligence or other fault of Consultant. Client shall indemnify Consultant even if Client is partially or wholly without fault for such claims, liability, damages, or expenses even if liability is claimed to have arisen while Consultant was performing work outside the scope of services set forth on page 1.
14. All disputes between Consultant and Client, with the exception of non-payment issues, shall first be subject to non-binding mediation. Either party may demand mediation by serving a written notice stating the essential nature of the dispute and demanding that the mediation proceed within sixty (60) days of service of notice. The mediation shall be administered by the American Arbitration Association or by such other person or organization as the parties may agree upon. No action or suit may be commenced unless (1) the mediation does not occur within ninety (90) days after service of notice, (2) the mediation occurs within ninety (90) days after service of notice but does not resolve the dispute, or (3) a statute of limitation would elapse if suit was not filed prior to ninety (90) days after service of notice.
15. If Client insures property, real or personal, or both, at or adjacent to the Project by property insurance, whether during or after the completion of the construction of the Project, Client agrees to waive all subrogation claims against Consultant for damages caused by fire or other causes of loss to the extent covered by such property insurance.
16. Client waives all claims against Consultant for all claims, liabilities, losses, and expenses arising out of or relating to Client's failure to perform, in whole or in part, any of its obligations under this Agreement and any subsequent agreements.
17. Client shall be responsible for jobsite safety.
18. If during the course of performance of this Agreement conditions or circumstances are discovered which were not contemplated by Consultant at the commencement of this Agreement, Consultant shall notify Client in writing of the newly discovered conditions or circumstances, and Client and Consultant shall renegotiate, in good faith, the terms and conditions of this Agreement. If amended terms and conditions cannot be agreed upon within thirty (30) days after notice, Consultant may terminate this Agreement and Consultant shall be paid for its services through the date of termination.
19. Client shall furnish to Consultant within fifteen (15) days after receipt of a written request information necessary and relevant for the Consultant to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, the name of the Project lender, and the Client and/or Owner's interest therein.
20. Except for actions such as for enforcement of mechanic's liens which are required by statute to be brought in a specific venue, in the event that litigation is instituted under the terms of this Agreement, the same is to be brought and tried in the judicial jurisdiction of the court of the county in which this Agreement is made. Client waives the right to have the suit brought, or tried in, or removed to, any other county or judicial jurisdiction.
21. This Agreement, including Consultant's Addenda and Schedule of Fees, represents the entire Agreement and understanding between the parties, and supercedes any and all agreements, either oral or in writing, including any purchase order, between the parties. Any modification to this Agreement will be effective only if it is in writing signed by the party to be bound. One or more waivers of any term, condition or covenant by either party shall not be construed as a waiver of any other term, condition or covenant.
22. The laws of the State where the contract was entered into shall govern interpretation of this Agreement. If any term of this Agreement is deemed unenforceable, the remainder of the Agreement shall stay in full force and effect. If services of an attorney are required by any party to secure performance under this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.