

RO 418



**Erler &  
Kalinowski,  
Inc.**

Consulting Engineers and Scientists

1870 Ogden Drive  
Burlingame, CA 94010  
(650) 292-9100  
Fax: (650) 552-9012

10 October 2002

Mr. Barney Chan  
Alameda County Department of Environmental Health  
1131 Harbor Bay Parkway, #250  
Alameda, California 94502-6577

Alameda County  
OCT 16 2002  
Environmental Health

Subject: Request for High Priority Review for Underground  
Storage Tank Closure for the Property Located at  
3925 Alameda Avenue, Oakland, California  
(EKI 980074.02)

Dear Mr. Chan:

Erler and Kalinowski, Inc. ("EKI") is submitting this letter on behalf of its client Smooke & Sons Investment Co. ("Smooke & Sons") to request that high priority be given to the review for underground storage tank closure at 3925 Alameda Avenue, Oakland, California ("Site") as is outlined below.

The underground storage tank closure case has been open since 1988. During the past 14 years, the owner of the Site has been responsive and has provided the Alameda County Department of Environmental Health ("ACDEH") with all the information it has requested. Smooke & Sons removed the underground storage tanks from the Site in 1988; has installed monitoring wells; has been voluntarily conducting testing; and has been voluntarily providing other requested information and data to the ACDEH.

In March 2001, a member of the family died, and the family, which is the property owner, is in the process of closing the estate of the deceased family member. Accordingly, this involves a restructuring of the ownership interest in the Site. The property owner will have difficulty closing the estate until the underground tank case is resolved. There are no more underground storage tanks at the Site. Also, the existing tenant has moved from the Site, and a change of tenant(s) and occupancy(s) is anticipated in the very near future. The property owner anticipates that a new tenant will require environmental due diligence, which will be difficult to satisfy as long as the case is not closed.

We believe this request is reasonable under the circumstances and would appreciate your attention to this closure request so that Smooke & Sons may proceed with its pending transactions.

If you have any questions or wish to discuss this further, please call.

Very truly yours,

ERLER & KALINOWSKI, INC.

Steven G. Miller, P.E.  
Project Manager

cc: Smooke & Sons Investment Co.

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**FACSIMILE TRANSMISSION COVER SHEET**

DATE: 17 December 2003 CONTRACT NO: 980074.02

SUBJECT: 3925 Alameda Avenue, Oakland

Total Pages with Cover Sheet: 5

TO: Ms Donna Drogos Mr. Barney Chan  
Environmental Health Services, Environmental Health Services,  
Alameda County Alameda County  
FAX NO: 510-337-9335 510-337-9335

FROM: Steve Miller  
EKI

ENCLOSURES: Copy of a selected pages from the Purchase and Sale Agreement and Escrow Instructions related to sale of the property at 3925 Alameda Avenue, as follows:

- Page 12 of the Purchase and Sale Agreement and Escrow Instructions, which defines the closing date, and
- The First Amendment to the Purchase and Sale Agreement and Escrow Instructions, dated 12 December 2003, including signature pages.

REMARKS These documents are being provided as requested during our recent telephone conversation. The enclosed pages should be added to the pages of the Purchase and Sale Agreement and Escrow Instructions that were faxed to Mr. Chan on 6 November 2003. It is my understanding that the due diligence period ends on 15 January 2004 and closing will occur 30 days thereafter.

If there are any issues that you wish to discuss regarding this closure, I am available to meet with you in person or by telephone. We appreciate your prompt attention to this matter.

If enclosures are not as noted, please advise us at once. I can be reached at 650-292-9067. Thank you.

Cc: Richard Smooke (Fax 208-622-4612)  
Michael Smooke (Fax 213-680-4518)

issuer thereof precludes dissemination to third parties and (ii) Buyer's internal memoranda or reports, any financial projections, budgets or appraisals, or any other confidential, proprietary or privileged information. Seller acknowledges and agrees that any and all documents and reports delivered by Buyer to Seller with respect to the Property were obtained (or will be obtained) from a variety of sources, and that neither Buyer nor any of its representatives has made any independent investigation or verification of such information, and that Buyer makes no representations as to the accuracy or completeness of any such document or report. In the event of a breach or threatened breach by one party or its agents or representatives of this Paragraph 4(d), the other party shall be entitled to an injunction restraining the breaching party or its agents or representatives from disclosing, in whole or in part, such confidential information. Nothing herein shall be construed as prohibiting either party from pursuing any other available remedy at law or in equity for such breach or threatened breach. The provisions of this Paragraph 4(d) shall survive Closing.

(a) Seller Authority. Each entity comprising Seller hereby designates any of Michael Smooke, Barry Smooke or Richard Smooke, in each case acting alone, as such entity's representative(s) with respect to the matters set forth in this Agreement, each of whom, until further written notice to Buyer, shall have full authority and responsibility to act on behalf of the each of the entities comprising Seller. The term "Seller" as used in this Agreement may refer to either (i) Wicks, Smooke and Leandro, collectively, or (ii) any one or more of the entities that comprise Seller, as the context requires.

## 5. The Closing.

(a) The Closing Date. The consummation of the purchase and sale of all of the Properties ("Closing") or "Close of Escrow" shall occur on the thirtieth day following the expiration of the Due Diligence Period (the "Closing Date"); provided, however, that the Buyer shall have the right to extend the Closing for up to an additional thirty (30) days by written notice delivered to Seller no later than ten (10) days before the then scheduled Closing Date (in which event the extended date shall become the "Closing Date"). If the Closing Date falls on the first business day following a weekend or holiday, then the Closing Date shall be extended to the next business day.

(b) Deliveries through Escrow. Seller and Buyer shall each deliver to the other through Escrow such documents, instruments and funds consistent with this Agreement as are necessary to consummate the purchase and sale of the Property pursuant to this Agreement, including without limitation the following:

(i) Deliveries by Buyer. Buyer shall deliver the following:

(i) the balance of the Purchase Price in cash or other immediately available funds as provided in Paragraph 2(b);

(ii) an Assignment and Assumption for each Property in the form attached hereto as Exhibit "D"; provided, however, that said form shall be modified with respect to the Leasehold Interests as necessary to effectuate an assignment of said Leasehold Interests (the "Assignment and Assumption"), executed by Buyer;

FIRST AMENDMENT TO  
PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS

THIS FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT AND ESCROW INSTRUCTIONS (this "First Amendment") is made effective as of December 12, 2003, by and between SMOOKE & SONS INVESTMENT CO., a California limited liability company, WICKS BLVD. INVESTMENT CO., LLC, a California limited liability company, and SAN LEANDRO BLVD. INVESTMENT CO., LLC, a California limited liability company (collectively the "Seller"), and REXFORD INDUSTRIAL, LLC, a California limited liability company ("Buyer"), with reference to the following facts and circumstances:

RECITALS

A. Seller and Buyer entered into that certain Purchase and Sale Agreement and Escrow Instructions dated October 11, 2003 (the "Original Agreement"), pursuant to which Seller agreed to sell to Buyer, and Buyer agreed to buy from Seller those certain "Properties" described therein on the terms and conditions set forth therein.

B. Buyer and Seller desire to modify the Original Agreement as set forth herein.

NOW, THEREFORE, in consideration of the mutual undertakings of the parties hereto, it is hereby agreed as follows:

1. Defined Terms. Unless otherwise defined herein, capitalized terms used in this First Amendment shall have the meanings ascribed to such terms in the Original Agreement. From and after the date of this First Amendment, all references to the "Agreement" in the Original Agreement and in this First Amendment shall be deemed references to the Original Agreement as modified by this First Amendment.

2. Modification to Due Diligence Period. The Due Diligence Period shall expire at 5:00 p.m. Pacific Daylight Time on January 15, 2004.

3. No Further Changes. Except as expressly modified by this First Amendment, the Original Agreement remains in full force and effect without modification or impairment.

4. Counterparts; Facsimile. This First Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document. Any party may transmit its signature to this Agreement by facsimile, and such facsimile transmission shall constitute an original signature for all purposes.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, Buyer and Seller have duly executed and delivered this First Amendment as of the effective date first stated above.

**"SELLER"**

**"BUYER"**

**"SMOOKE"**

REXFORD INDUSTRIAL, LLC, a California limited liability company

SMOOKE & SONS INVESTMENT CO., LLC, a California limited liability company

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

By: *Michael Smooke*

Name Printed: Howard Schwimmer

Name Printed: *Michael Smooke*

Title: Manager

Title: *Manager*

**"LEANDRO"**

SAN LEANDRO BLVD. INVESTMENT CO., LLC, a California limited liability company

By: *Michael Smooke*

Name Printed: *Michael Smooke*

Title: *Manager*

**"WICKS"**

WICKS BLVD. INVESTMENT CO., LLC, a California limited liability company

By: *Michael Smooke*

Name Printed: *Michael Smooke*

Title: *Manager*

IN WITNESS WHEREOF, Buyer and Seller have duly executed and delivered this First Amendment as of the effective date first stated above.

"SELLER"

"BUYER"

"SMOOKE"

REXFORD INDUSTRIAL, LLC, a California limited liability company

SMOOKE & SONS INVESTMENT CO., LLC, a California limited liability company

By: 

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

Name Printed: Howard Schwimmer

Name Printed: \_\_\_\_\_

Title: Manager

Title: \_\_\_\_\_

"LEANDRO"

SAN LEANDRO BLVD. INVESTMENT CO., LLC, a California limited liability company

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

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

"WICKS"

WICKS BLVD. INVESTMENT CO., LLC, a California limited liability company

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

Name Printed: \_\_\_\_\_

Title: \_\_\_\_\_

11-24-03

Donna:

Enclosed in this closure request for RO0000418, 3925 Alameda Ave., Oakland 94601 is the following:

1. A copy of the sales agreement for the site. I have highlighted the contract date **October 17, 2003**, the due diligence date, sixty days after the Opening Date ie **December 17, 2003**. Section ii requiring seller to deliver to Buyer a No Further Action letter from ACDEH with respect to the property. The buyer appears to be Rexford Industrial LLC, contact is Howard Schwimmer, page 30.
2. Draft copy of the deed restriction including site specific information
3. Closure document.

PS I met with Chuck Headlee on this site and he believed that the release from the USTs was not connected with the contamination found near the SP RR tracks and on 569 High St.

Let me know when you want to discuss the site.

Barney

**Chan, Barney, Env. Health**

**From:** Smooke, Michael [msmooke@fulbright.com]  
**Sent:** Thursday, November 11, 2004 11:45 AM  
**To:** Chan, Barney, Env. Health  
**Cc:** howards@rexfordindustrial.com  
**Subject:** FW: information on property owners of 3925 Alameda Ave., oakland, CA

Mr. Chan - I am forwarding an email from the new owner, RIF I - Alameda, LLC. Their signature block follows.

I look forward to receiveing the revised deed restriction.

MS

-----Original Message-----

**From:** Howard Schwimmer [mailto:howards@rexfordindustrial.com]  
**Sent:** Thursday, November 11, 2004 11:28 AM  
**To:** Smooke, Michael  
**Subject:** information on property owners of 3925 Alameda Ave., oakland, CA

Mike, the ownership for the Oakland building is as follows.

RIF I - ALAMEDA, LLC, a  
California limited liability company

By: REXFORD INDUSTRIAL, LLC, a  
California limited liability company,  
Its Manager

By: \_\_\_\_\_  
Howard Schwimmer,  
Managing Member



Howard Schwimmer  
Managing Member  
11601 Wilshire Blvd., Suite 650  
Los Angeles, CA. 90025  
310-966-1680 ext.1  
310-966-1690 fax  
Email: [howards@rexfordindustrial.com](mailto:howards@rexfordindustrial.com)  
Website: [www.RexfordIndustrial.com](http://www.RexfordIndustrial.com)