

**Master City of San José Consultant Agreement
Approved Service Order
(Non-Capital Projects)**

Cover Page

1a. Intentionally Omitted **1b.** AC Contract No.: 32009 (GILES OC-000373)

2. Approved Service Order No. 3

3. Consultant's Name: Kleinfelder, Inc. ("Consultant")

4. Project Name: Spartan Keyes Park Phase I ("Project")

5. Project Location: 100 – 149 Keyes Street, San Jose, CA 95112

6. The Consultant and the City will implement this Approved Service Order in accordance with the Master Agreement, this cover page and Attachments "A" (Tasks), "B" (Terms and Conditions), and "C" (Compensation Table), which are incorporated herein by references.

7. Budget/Fiscal:

a. Current unencumbered amount in Master Agreement:	\$	937,120
b. Maximum Service Order Compensation for this Approved Service Order:	\$	6,000
c. New unencumbered balance in Master Agreement (7.a – 7.b):	\$	931,120

d. **Appropriation Certification:** I certify that an unexpended appropriation in the amount of the Maximum Service Order Compensation is available in the following fund(s) and that such fund(s) will be encumbered to pay for this Approved Service Order.

Fund: 375

Appn: 404R

RC: 215791

Amount: \$6,000

Authorized Signature:

Date: _____

Pamela Velasco

Email: pamela.velasco@sanjoseca.gov
Date: 11/03/2022 GMT

8. Division Analyst Approval:

Date: _____

Sanjay Krishnaswamy

Email: sanjay.krishnaswamy@sanjoseca.gov
Date: 11/03/2022 GMT

9. Consultant Approval:

Date: _____

bhorwath@kleinfelder.com

Email: bhorwath@kleinfelder.com
Date: 11/02/2022 GMT

10. Approval as to Form (City Attorney):

Form Name: Master Consultant Agreement (Non-Capital Projects)
Service Order - Cover Page

Form/File No.: /T-32026

City Attorney Approval Date: April 2022

OC-000373-003

Page: 1 of 2

Service Order Form Approved by the Office of the City Attorney
(Maximum Service Order Compensation is \$100,000 or less, and the provisions of the service order form are not altered.)

Approved as to Form: _____ Date: _____
(Sr.) Deputy City Attorney

11. City Director Approval: _____ Date: _____

Cathy Correia

Email: cathy.correia@sanjoseca.gov
Date: 11/07/2022 GMT

Attachment A: Tasks

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract manager.

General Description of Project for which Consultant will Provide Services: The City purchased the 1.34-acre property associated with addresses 101-149 (odd numbers only) Keyes Street in 2015 for a future park site. As part of the City's environmental due diligence, a Phase I Environmental Site Assessment (ESA) and Phase II Soil and Groundwater Investigation were performed. The Phase I indicated a past history as a brick yard and a more recent history of auto repair businesses. The Phase II showed some detectable levels of motor oil and diesel above regulatory environmental screening levels at the time. The Phase II indicated a potential for a portion of the site to require soil remediation

The purpose of this Phase I ESA is to determine if there are any environmental conditions that need to be investigated prior constructing a park.

Task No. 1: Phase I Environmental Site Assessment

A. Services: Consultant will perform the following activities:

Regulatory Agency and Other Records Review

Consultant will review reasonably ascertainable records that will help identify Recognized Environmental Conditions (RECs) in connection with the Project Location. These records include Federal and State regulatory agency lists of tribal records (if any), hazardous waste generators, leaking underground storage tanks (USTs), landfills, military reservations, contaminated surface waters, and Superfund sites. These lists, as well as reasonably ascertainable existing documentation as cited below, will be reviewed to assess whether there were prior investigations or events and conditions, or institutional or engineering controls on the property and in the immediate vicinity, relating to spills, discharges, or other activities resulting in contamination or presence of hazardous substances and petroleum products. Consultant will contract with a database service to provide a search report for standard environmental record sources, which include published lists of regulatory agency investigations and/or enforcement actions, for facilities listed within the following distances of the Project Location perimeter:

FEDERAL:

- National Priorities List (NPL) within a 1-mile radius;
- Delisted NPL within a ½-mile radius;
- Superfund Enterprise Management System (SEMS), formerly the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) List within a ½-mile radius;
- SEMS-Archive, formerly the CERCLIS No Further Remedial Action Planned (NFRAP) List within a ½-mile radius;
- Resource Conservation and Recovery Act (RCRA) Corrective Actions Facilities (CORRACTS) List within a 1-mile radius;
- Non-CORRACTS Transportation, Storage and Disposal Facilities (TSD) List within a ½-mile radius;
- RCRA Generator List for the Project Location and adjoining properties.
- Institutional control/engineering control registries for the Project Location only; and

- Emergency Response Notification System (ERNS) List for the Project Location only.

STATE/TRIBAL:

- NPL-equivalent lists of hazardous waste sites identified for investigation or remediation within a 1-mile radius;
- SEMS-equivalent lists of hazardous waste sites identified for investigation or remediation within a ½-mile radius;
- Landfill and/or solid waste disposal site lists within a ½-mile radius;
- Leaking UST (LUST) lists within a ½-mile radius;
- Registered UST lists for the Project Location and adjoining properties;
- Institutional control/engineering control registries for the Project Location only;
- Voluntary cleanup sites within a ½-mile radius; and
- Brownfield sites within a ½-mile radius.

In addition, records from the database service will be evaluated for listings of environmental cleanup liens and activity and use limitations (AULs) against the properties that are filed or recorded under Federal, State, tribal, or local laws.

Consultant will enhance and supplement the American Society of the International Association for Testing and Materials (ASTM) Standard environmental record sources with local agency and/or additional State or tribal records when such additional records are readily ascertainable, sufficiently useful, accurate, and complete in light of the record review objective. Search distances for local records are generally not to be less than those specified for the equivalent Federal and State record sources. Such types of records may include:

- Brownfields lists;
- Lists of landfill/solid waste disposal sites;
- Lists of hazardous waste/contaminated sites;
- Lists of registered storage tanks;
- Land records, for activity and use limitations;
- Records of emergency release reports; and
- Records of contaminated public wells (e.g., public, domestic, agricultural, etc.).

Sources of such records may include the local department of health/environmental division, fire department, planning department, building permit/inspection department, local regional air pollution control agency, local/regional water control agency, local/regional public works department, State Fire Marshal, and local electric utility company (for records pertaining to polychlorinated biphenyls [PCBs]). Consultant may obtain this information from interviews of representatives from these departments or from records review.

Additionally, according to the ASTM Standard E1527-21, if a subject property or adjoining property is identified in any of the standard environmental sources (e.g., State and Federal regulatory databases) an agency file review should be performed. For the purposes of the cost estimate, Consultant has assumed the file reviews for the Project Location and adjoining properties will take no more than 4 hours. If additional time is required, or should additional file reviews be appropriate for the other regulatory listed facilities, additional costs will be incurred and Consultant will notify City prior to incurring those costs, and obtain approval from the City for any additional fees.

Physical Setting Review

The physical setting review is required by the ASTM Standard to include a current United States Geological Survey (USGS) 7.5 Minute Topographic Map. The review may also include discretionary physical setting sources for geologic and hydrogeologic information. This information may provide insight to the significance of off-site sources of contamination in relation to the Project Location. Where

discretionary hydrogeologic information is available and reviewed, Consultant will estimate the regional direction of groundwater flow and discuss how this may affect the potential for identified off-site sources of contamination to impact the Project Location. Specific sources of physical setting information may include:

- United States Geological Survey reports and maps;
- Information provided by public agencies (e.g., State Department of Water Resources, local flood control district, local or county water agency);
- Information from previous Consultant experience in the area; and
- Information provided by the City (e.g., reports of previous environmental investigations or geotechnical soils reports).

Historical Land Use Review

Consultant will research historical information sources to develop a history of the types of previous uses of the Project Location and surrounding area (e.g., office, retail, residential, industrial, and manufacturing). Obvious uses of the Project Location will be identified from the present back to the Project Location's first developed use, or back to 1940, whichever is earlier. The review will include ASTM Standard historical sources that are both reasonably ascertainable and likely to be useful. For the purpose of this review, "developed use" includes agricultural use and placement of fill soil.

The review will include documentation of gaps in the history of use. Consultant notes that review of historical sources at less than approximately 5-year intervals are not required by the ASTM Standard, and if the specific use of the property appears unchanged over a period longer than 5 years, research of the use during that period is not required.

The following information sources may be used, if readily available, to research the Project Location's history:

- Aerial photographs;
- USGS topographic maps;
- Fire insurance maps (e.g., The Sanborn Library, LLC Fire Insurance Maps);
- Local street directories;
- Property tax files;
- Recorded land title records (including Chain of Title if provided by Client);
- Building department records; and
- Zoning/land use records.

Site Reconnaissance

Consultant request that the City provide, prior to the time of the site reconnaissance, a completed copy of the User Questionnaire setting forth the User's obligations under ASTM E1527-21, with responses prepared to the best of their knowledge. The User is typically the purchasing party seeking to qualify for Landowner Liability Protections (LLPs) offered by the Federal Brownfield's Law. The City also needs to complete the Interview Questionnaire.

Consultant will perform a walking reconnaissance of the Project Location (i.e., a site visit or site reconnaissance) and associated structures to observe the property and evidence of its past use and its current use with the unaided eye and/or binoculars. Project Location conditions will be noted that indicate the likelihood of RECs in connection with the Project Location. The Project Location and structures located on the Project Location will be observed to the extent not obstructed by dense vegetation, bodies of water, adjacent buildings, or other physical obstacles. If Project Location access is not available, the periphery of the Project Location will be viewed from adjacent public thoroughfares.

If roads or paths with no apparent outlet are observed on the Project Location, the potential use of the road or path as an avenue for disposal of hazardous substances or petroleum products will be assessed. Accessible common areas of the interior of the commercial structures on the Project Location (e.g., lobbies, hallways, utility rooms, recreation areas, etc.), maintenance and repair areas including boiler rooms, and a representative sample of occupied tenant spaces will be observed, if applicable. Uses and environmental conditions of the Project Location will be noted and will be considered in the interviews of owners, operators, and occupants as discussed later in this proposal.

The following will be noted during the site visit:

- Geologic, hydrogeologic, hydrologic, and topographic conditions of the Project Location ;
- General description of structures or other improvements, including means of heating and cooling and fuel source;
- Public thoroughfares adjoining the Project Location and roads, streets, and parking facilities on the Project Location ;
- Current use(s) of the Project Location , especially with respect to use, treatment, storage, disposal, or generation of hazardous substances or petroleum products;
- Past use(s) of the Project Location and adjoining properties to the extent that past uses are visible (e.g., a structure or signs indicating a past use), especially with respect to use, treatment, storage, disposal, or generation of hazardous substances or petroleum products;
- Obvious location(s) of suspected past and present chemical storage, application, use, and disposal areas;
- Obvious location(s) of above-ground and USTs, drums, pipelines, wells, transformers and other electrical equipment or hydraulic equipment suspected to contain PCBs;
- Obvious environmental conditions as noted in the review of aerial photography or other historical sources;
- Pertinent information the City has or can obtain regarding as-built drawings or other similar documents for underground tanks or other structures;
- Source of potable water supply; and
- Sewage disposal system (and septic systems), to the extent visually observed.

Project Location conditions will be photographically documented at the time of the site visit.

Vicinity Survey

Consultant will perform an off-site driving reconnaissance of immediately adjoining properties to the Project Location to observe the properties' current use and past use(s) to the extent that past uses are apparent. This survey will be performed to note facilities that have an obvious potential to affect environmental conditions at the Project Location (e.g., surface water drainage onto the Project Location).

Interviews

Consultant will make a reasonable attempt to interview past and present owners, with the objective of obtaining information indicating RECs in connection with the Project Location. The City will be responsible for supplying the contact information, including names and telephone numbers.

In addition, the ASTM Standard requires that, prior to the site visit; the property owner, Key Site Manager, and User are to be asked if they know whether there are any specified "helpful documents." Such documents which will be requested include prior reports, permits, registrations, Safety Data Sheets, Hazardous Materials Business Plans, other regulatory reports, hydrogeologic and geotechnical reports, government notifications, risk assessments, and recorded AULs.

A reasonable attempt will be made to interview a reasonable number of Project Location occupants. Interviews with a past owner, operator, or occupant will be performed to the extent that they have

been identified and that the information likely to be obtained is not duplicative of information already obtained from other sources. Interview questions may be asked in person, by telephone, or in writing.

The City will be asked to provide Consultant with information regarding the relationship of the purchase price relative to its fair market value. The ASTM Standard does not require that a real estate appraisal be obtained to ascertain fair market value. If this information is not provided, Consultant will comment on the significance of the "data gap" relative to the ability to identify environmental conditions indicating a release or threatened release.

One or more interviews with officials or staff of relevant State/tribal and local environmental agencies or departments will be interviewed concerning the Project Location and the potential presence or presence of hazardous substance contaminants.

Phase I ESA Final Reports of Findings

The Phase I ESA report will include an evaluation of the information obtained from research performed and will list the Environmental Professional(s) who performed the Phase I ESA, site reconnaissance, and interviews. The report will include illustrations and pertinent regulatory agency documentation regarding the Project Location. The report will discuss findings and conclusions.

Additionally, the ASTM E1527-21 Standard Practice mandates that the Phase I ESA report identify vapor migration potential in subsurface soils and discuss "data gaps" in the records, including their significance. Should there be gaps in the Project Location history timeline and occupants identified for the Project Location, the report is required to identify sources consulted to address such data gaps and comment upon the significance of such data gaps with regard to the ability to identify conditions indicative of releases and threatened releases of hazardous substances on, at, in, or to the Project Location.

- B. Deliverable:** The Consultant will provide the following to the City's Contract Manager: Phase I ESA Report.
- C. Completion Time:** The Consultant must complete the services and deliverables for this task in accordance with whichever one of the following time is marked:
- On or before the following date: December 1, 2022.
- On or before ____ Business Days from _____.

Attachment B: Terms and Conditions

1. **City's Contract Manager:** The City's contract manager for this Approved Service Order is:

Name: Geoff Blair	Phone No.: (408) 975-2576
Department: Environmental Services	E-mail: geoffrey.blair@sanjoseca.gov
Address: 200 E. Santa Clara Street, 10 th Floor, San Jose, CA 95113	

2. **Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager for this Approved Service Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. ***If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must comply with the requirements of Subsection 17.2 of the Master Agreement, entitled "Filing Form 700."***

		<u>Required to File Form 700?</u>		
		Yes Already Filed (Date Filed)	Yes Need to File	No
<u>Consultant's Contract Manager</u>				
Name: Robert Horwath, Senior Project Manager	Phone No.: (510) 409-8599			X
Address: 380 N. 1 st Street, Suite A, San Jose, CA 95112	Email: bhorwath@kleinfelder.com			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>	<u>Email:</u>		
1. Victoria Golston, Professional	Phase I	vgolston@kleinfelder.com		X
2.				
3.				

3. Subconsultants: Whichever of the following is marked applies to this Approved Service Order:

- The Consultant can **not** use any subconsultants.
- The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

<u>Subconsultant's Name</u>	<u>Area of Work</u>
1.	
2.	
3.	

4. Reimbursable Expenses: If the Compensation Table set forth in **Attachment C** of this Approved Service Order states that the City will reimburse the Consultant for expenses, then only the expenses identified in Subsection 10.5.3 of the Master Agreement are Reimbursable Expenses unless the following box is marked and additional reimbursable expenses are set forth:

- In addition to the expenses identified in Subsection 10.5.3 of the Master Agreement, the following expenses are Reimbursable Expenses:

<u>Additional Reimbursable Expense(s)</u>	<u>Mark-up</u>
1. _____	_____
2. _____	_____
3. _____	_____

Notwithstanding the foregoing, any additional reimbursable expense(s) set forth in the above table will be disregarded if the Compensation Table states that the City will *not* reimburse the Consultant for any expenses.

Attachment C: Compensation Table

The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance this Compensation Table. This Compensation Table is subject to the terms and conditions set forth in the Master Agreement, including without limitation Section 10 of the Master Agreement.

Part 1 – Compensation for Services and Deliverables						
Column 1	Column 2		Column 3			Column 4
Task Nos. from Attachment A	Basis of Compensation		Invoice Period			Compensation
1	<input type="checkbox"/> Time & Materials	<input checked="" type="checkbox"/> Fixed Fee	<input checked="" type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$6,000
	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
	<input type="checkbox"/> Time & Materials	<input type="checkbox"/> Fixed Fee	<input type="checkbox"/> Monthly	<input type="checkbox"/> Completion of Task(s)	<input type="checkbox"/> Completion of Work	\$
Part 2 – Reimbursable Expenses						
<input checked="" type="checkbox"/> No expenses are separately reimbursable. The amount(s) in Column 4 of Part 1 include(s) payment for all expenses.			<input type="checkbox"/> Expenses are separately reimbursable in the maximum amount of:			\$
Part 3 – Subconsultant Costs						
<input checked="" type="checkbox"/> Subconsultant costs are not separately compensable. The amount(s) in Column 4 of Part 1 include(s) subconsultant costs.			<input type="checkbox"/> Subconsultant costs are separately compensable in the maximum amount of:			\$
Maximum Service Order Compensation (sum of Parts 1 through 3):						\$