

AGREEMENT
for
Geotechnical Engineering Testing Services

This AGREEMENT is between the City of Corpus Christi, Texas, a Texas home-rule municipal corporation ("CITY"), acting through its duly authorized City Manager or designee ("City Engineer"), and **KLEINFELDER**, a Texas corporation or partnership ("LAB"), acting through its duly authorized representative who is **Emad Al Turk, P. E., Vice President** which agree as follows:

1. **DECLARATIONS:** "CITY" desires to engage "LAB" to provide services in connection with City's project, described as follows: **J. C. Elliott Landfill Groundwater Monitoring FY 2012-2013 (Project No. E12046)** ("PROJECT").

2. **SCOPE OF WORK:** "LAB" shall provide services to the PROJECT in accordance with the accompanying Scope of Services and Fee Schedule attached as "Exhibit A" and the Terms and Conditions to AGREEMENT attached as "Exhibit C".

3. **FEE:** The "CITY" agrees to pay the "LAB" for services provided in accordance with Exhibit "A", Scope of Services and Fee Schedule under this AGREEMENT, a total fee not to exceed **\$89,500.00 (Eighty Nine Thousand Five Hundred Dollars and Zero Cents)**.

4. **INDEMNIFICATION AND HOLD HARMLESS:** The Consultant agrees to indemnify, save harmless and defend the City of Corpus Christi, and its agents, servants, and employees as more fully set forth in Exhibit "B".

5. **CITY'S DISCLOSURE OF HAZARDOUS & TOXIC MATERIALS AND CONDITIONS AT THE PROJECT SITE.** To the best of the City's knowledge, based upon currently available information, the only hazardous or toxic materials, as defined by the laws and regulations of the Federal government, the state, and city which exist at the PROJECT SITE are as follows: None.

CITY OF CORPUS CHRISTI

Oscar R. Martinez, (Date)
Assistant City Manager

RECOMMENDED

Dese 5/23/12
Daniel Biles, P.E. (Date)
Interim Director of Engineering Services

Lawrence Mikolajczyk 05.23.2012
Operating Department (Date)

KLEINFELDER

Emad Al Turk for 5-21-12
Emad Al Turk, P. E., (Date)
Vice President
5002 Ambassador Row
Corpus Christi, TX 78416
(361) 854-4774 Office
(361) 854-4924 Fax

APPROVED AS TO FORM

Office of Management (Date)
and Budget

Nitin Das 5-23-12
Legal Department (Date)

Project No. E12046
Fund Source No. 530000-1020-12530-E12046
Encumbrance No. _____



April 27, 2012
Proposal No. 124942

City of Corpus Christi
2525 Hygeia
P.O. Box 9277
Corpus Christi, Texas 78469-9277
Attention: Mr. Lawrence Mikolajczyk
Director, Solid Waste Operations

**SUBJECT: 2012-2013 Groundwater Monitoring and Related Services
J. C. Elliott Landfill
Corpus Christi, Texas**

Dear Mr. Mikolajczyk:

We are pleased to submit the following proposal for professional environmental services. This proposal presents the scope of work for expanded groundwater monitoring, and was developed on the basis of our discussions and review of our scope of work/cost during the last two years of groundwater monitoring at the J. C. Elliott Landfill.

If a portion of this proposal does not meet your project needs, or if those needs have changed, Kleinfelder is prepared to consider appropriate modifications, subject to the standards of care to which we adhere as professionals. Modifications, such as changes in scope, methodology, scheduling, and contract terms may result in changes to the quality of the assessments, as well as adjustment to our fees.

SCOPE OF BASIC SERVICES

Performance Period

The services proposed herein will be performed for the City of Corpus Christi fiscal year beginning August 1, 2012 and ending July 31, 2013.

Project Summary

This is a proposal for ground water monitoring and related services at the J. C. Elliott Landfill. Kleinfelder will prepare the annual monitoring report for the monitoring year ending with the July 2011 detection monitoring event. For fiscal year 2013, Kleinfelder

will conduct two detection monitoring events of landfill monitor wells on a semi-annual schedule commencing in February 2013. Kleinfelder will conduct verification resampling of wells exceeding background limits, prepare notices of exceedances, and submit results of resampling or alternate source demonstrations as necessary.

2012 Reporting

The 2012 detection monitoring year will be completed with the July 2012 event. Kleinfelder will prepare and submit the annual ground water monitoring report for calendar year 2012 in accordance with TCEQ regulations and the Ground Water Sampling and Analysis Plan. This report is due 90 days after the last sampling event and is presently estimated for submittal in October, 2012.

Kleinfelder will transmit two paper copies and one electronic copy of the report to the City of Corpus Christi and 3 paper copies to the TCEQ.

The estimated cost of this activity is \$14,700.

Ground Water Monitoring

Table 1 shows the planned Detection Monitoring schedule for the performance period. Kleinfelder will sample the 23-well system for the total metals listed and volatile organic compounds specified in the current Groundwater Sampling and Analysis Plan (GWSAP).

Kleinfelder proposes to add the following to the analytical list: iron, manganese, alkalinity, nitrate-nitrogen, ammonia-nitrogen, and dissolved organic carbon. These will facilitate identification of geochemical processes that can mobilize metals, and may assist with preparing alternate source demonstrations when background is exceeded in a well. Kleinfelder also proposes to collect up to 4 samples from the landfill leachate collection system to characterize the waste in terms of monitored constituents. These data may also assist in preparation of alternate source demonstrations and contaminant fate and transport modeling, and to justify removal of monitored constituents that are not present in the waste leachate.

Following each detection monitoring event, Kleinfelder will compare the results with background values, and if exceedances occur, Kleinfelder will prepare notification reports to send to TCEQ.

The estimated cost of this activity is \$57,600.

Table 1 Planned 2012 Sampling Schedule

Event Type	January 2013	July 2013
Detection	Wells: MW 1-2, 4-5, 7, 12, 16-32	Wells MW 1-2, 4-5, 7, 12, 16-32
Total Sampled	23 wells	23 wells

Verification Re-sampling

After each detection monitoring event, Kleinfelder will evaluate data to determine if statistically significant increases (SSIs) have occurred. In the event that such changes have occurred, Kleinfelder will notify the TCEQ in accordance with the requirements as described above. Kleinfelder will conduct verification sampling of the well(s) in which SSIs occurred.

The proposed verification re-sampling budget allows for travel time and up to 1 day of sampling per re-sampling event (up to two annually) and an analytical budget of up to \$500 per event.

The estimated cost for this activity is \$12,200.

Consulting Services

Consulting Services includes activities not specifically related to the collection, analysis, and reporting of data, such as permit modifications, alternate source demonstrations, and responding to TCEQ inquiries, notices of deficiency, notices of violation, or other unanticipated. In addition, Kleinfelder may lend its expertise in others matters related to groundwater, as requested by the City of Corpus Christi.

The estimated cost for these services is \$ 5,000.

Schedule

This proposal is for continuation of work initiated under an existing contract with the City of Corpus Christi. The approximate schedule of events by quarter is presented in Table 2.

Table 2 – Schedule

Fiscal Year	Quarter	Planned Activity
2012 (current contract)	4, May-July 2012	Conduct semiannual sampling event in July, completing FY 2012 contract activity
2013 (this proposal)	1, Aug-Oct, 2012	Evaluate data; conduct notification and verification sampling / alternate source demonstration as necessary. Prepare annual monitoring report.
	2, Nov 2012-Jan 2013	1 st semiannual detection monitoring event of FY 2013 contract in January 2013
	3, Feb-Apr 2013	Evaluate data; conduct notification and verification sampling / alternate source demonstration as necessary.
	4, May - July 2013	2 nd semiannual detection monitoring event in July 2013

Assumptions and Exclusions

1. Sampling labor estimates for detection monitoring are based on sampling all wells in 5 days. The assumed sampling rate may or may not be realized due to weather delays, equipment failures, or other unforeseen events.
2. The extent of Consulting Services required during the project year cannot be fully anticipated. The budget should be understood to mean that Kleinfelder will provide these services up to the budgeted amount at our rates existing at the time of the service.
3. The budget does not include meetings. Costs for time spent, travel, and preparation for meetings are an additional expense.
4. The budget anticipates a limited amount of time to respond to comments and requests for additional information from TCEQ. Excessive requests for information will be an additional expense.

ADDITIONAL SERVICES

The following services are not included in the *Basic Services* and will be considered as *Additional Services*, if required or requested:

- Meetings/interviews other than those described in the *Basic Services*.
- The services of specialty subconsultants or other special outside services other than those described in *Basic Services*.
- Any other services not specifically included in *Basic Services*.

DELIVERABLES

Two signed, bound copies and one electronic copy of the annual report will be prepared and transmitted to the City of Corpus Christi. In addition, we will submit three copies of the annual report to the TCEQ.

COMPENSATION

Kleinfelder proposes to perform the *Basic Services* on a **Time and Materials** basis for **\$89,500**. This amount will not be exceeded without prior approval. The Client and Kleinfelder may subsequently agree in writing to provide for additional services to be rendered under this agreement for additional, negotiated compensation.

LIMITATIONS

Our work will be performed in a manner consistent with that level of care and skill ordinarily exercised by other members of Kleinfelder's profession practicing in the same locality, under similar conditions and at the date the services are provided. Our conclusions, opinions and recommendations will be based on a limited number of observations and data. It is possible that conditions could vary between or beyond the data evaluated. Kleinfelder makes no guarantee or warranty, express or implied, regarding the services, communication (oral or written), report, opinion, or instrument of service provided.

This proposal was prepared specifically for the client and its designated representatives and may not be provided to *others without Kleinfelder's express permission*.

AUTHORIZATION

Your standard service agreement can be used to authorize these services. We appreciate the opportunity to submit this proposal and look forward to working with you on this project. If you have any questions or need additional information, please do not hesitate to call. We are committed to assist the City to ensure the success of this project.

Sincerely,

KLEINFELDER CENTRAL, INC.

Texas Registered Engineering Firm – F5592



Henry L. Fleischhauer, P.G.
Field Project Manager



Winfield L. McAtee, P.G.
Project Manager

Exhibit B

Mandatory Requirements

INDEMNIFICATION AND HOLD HARMLESS

Consultant agrees to indemnify, save harmless and defend the City of Corpus Christi, and its officers, agents, servants and employees, and each of them against and hold it and them harmless from any and all lawsuits, claims, demands, liabilities, losses and expenses, including court costs and reasonable attorneys' fees, for or on account of any injury to any person, or any death at any time resulting from such injury, or any damage to any property, to the extent caused by Consultant's negligent or alleged negligent performance of services covered by this contract. The foregoing indemnity shall apply except if such injury, death or damage is caused by the sole or concurrent negligence of the City of Corpus Christi, its officers, agents, servants, or employees, or any other person indemnified hereunder, but in no event shall Consultant be required to indemnify, save harmless and defend the City of Corpus Christi for its sole or concurrent negligence.

Neither party shall be liable to the other for consequential damages, including but not limited to loss of profits, loss of use, incidental, indirect, collateral, punitive, exemplary, multiple or other special damages.

TERMS AND CONDITIONS TO AGREEMENT

ARTICLE 1. SERVICES: "LAB" will:

- 1.1 Provide only those services requested by "CITY ENGINEER" that, in the opinion of "LAB", lie within the technical or professional areas of expertise of "LAB" and which "LAB" is adequately staffed and equipped to perform.
- 1.2 Perform technical services under the supervision of a licensed professional engineer and in compliance with the basic requirements of the appropriate standards of the American Society for Testing and Materials, where applicable, and other standards designated in writing by the "CITY ENGINEER."
- 1.3 Promptly submit formal reports (printed and electronic copies) of tests, inspections and services performed indicating, where applicable, compliance with the PROJECT specifications or other contract documents. Such reports must be complete and factual, citing the tests performed, methods employed, values obtained, and parts of the structure of THE PROJECT area subjected to any testing.
- 1.4 Utilize testing equipment which has been calibrated according to applicable standards and, upon request, submit to the "CITY ENGINEER", or his authorized representative, documentation of such calibration.

Secure representative samples of those materials that the City's Contractor proposes to use which require testing, together with relevant data concerning such materials including the point of origin and supplier.
- 1.5 Consider reports to be confidential, and distribute reports only to those persons, organizations or agencies specifically designated in writing by the "CITY ENGINEER".
- 1.6 Retain records relating to services performed for "CITY" for a period of two years following submission of any reports, during which period the records will be made available to the "CITY" at all reasonable times.
- 1.7 Pay salaries, wages, expenses, social security taxes, federal and state unemployment taxes, and any other similar payroll taxes relating to the services.

ARTICLE 2. CITY RESPONSIBILITIES: City Engineer or authorized representative will:

- 2.1 Provide "LAB" with all plans, specifications, addenda, change orders, approved shop drawings and other information for the proper performance of services by "LAB".
- 2.2 Issue authorization in writing giving "LAB" free access to THE PROJECT site, and to all shops or yards where materials are prepared or stored.
- 2.3 Designate in writing those persons or firms which will act as the "CITY's" representative with respect to "LAB'S" services to be performed under this AGREEMENT and which must be promptly notified by "LAB" when it appears that materials tested or inspected are in non-compliance. Only the "CITY ENGINEER" or his designated representative have authority to transmit instructions, receive information and data, interpret and define the CITY's policies and decisions with respect to THE PROJECT. "LAB" acknowledges that certain "CITY" representatives may have different types of authority concerning THE PROJECT.
- 2.4 Advise "LAB" sufficiently in advance of any operations so as to allow for assignment of personnel by "LAB" for completion of the required services. Such advance notice will be in accordance with that established by mutual agreement of the parties.

- 2.5 Direct THE PROJECT contractor, either by the Construction Contract or direct written order to:
- (a) Stop work at the appropriate times for "LAB" to perform contracted services;
 - (b) Furnish such labor and all facilities needed by "LAB" to obtain and handle samples at THE PROJECT and to facilitate the specified inspection and tests;
 - (c) Provide and maintain for use of "LAB" adequate space at THE PROJECT for safe storage and proper curing of test specimens which must remain on THE PROJECT site prior to, during, and up to 60 days after testing.

ARTICLE 3. GENERAL CONDITIONS

- 3.1 "LAB", by the performance of services covered hereunder, does not in any way assume, abridge or abrogate any of those duties, responsibilities or authorities with regard to THE PROJECT which, by custom or contract, are vested in THE PROJECT architects, design engineers, or any other design agencies or authorities.
- 3.2 "LAB" is not authorized to supervise, alter, relax, enlarge or release any requirement of THE PROJECT specifications or other contract documents nor to approve or accept any portion of the work. "LAB" does not have the right of rejection or the right to stop the work. "CITY ENGINEER" will direct THE PROJECT contractor to stop work at appropriate times for "LAB" to conduct the sampling, testing, or inspection of operations covered by the AGREEMENT.

ARTICLE 4. FIELD MONITORING AND TESTING

- 4.1 "CITY" and "LAB" agree that "LAB" will be on-site to perform inspections for contracted services. The "CITY" and "LAB" also agree that "LAB" will not assume responsibility for PROJECT Contractor's means, methods, techniques, sequences or procedures of construction, and it is understood that the final services provided by "LAB" will not relieve the PROJECT Contractor of his responsibilities for performing the work in accordance with THE PROJECT plans and specifications. For the purposes of this AGREEMENT, the word "inspection" is used to mean periodic observation of the work and the conducting of tests by "LAB" as specified in the AGREEMENT. Continuous monitoring by "LAB" or its subcontractors does not mean that "LAB" is approving placement of materials. Inspection is not and should not be construed to be a warranty by "LAB" to the "CITY" or any other party.
- 4.2 Samples collected or tested by "LAB" remain the property of the "CITY" while in the custody of the "LAB". "LAB" will retain the samples for a period of 60 days following the date of submission of any report related to the sample. Following the retention period, "LAB" will dispose of non-hazardous samples, and return hazardous, acutely toxic, or radioactive samples and samples containers and residues to "CITY". "CITY" agrees to accept such samples and samples containers.

ARTICLE 5. STANDARD OF CARE AND WARRANTY

Services performed by "LAB" will be conducted in a manner consistent with that level of care and skill ordinarily exercised by reputable members of the profession currently practicing under similar conditions in the same locality. No other warranty either expressed or implied is made or intended by the AGREEMENT or any reports. "LAB" will not be responsible for the interpretation or use by others of data developed by "LAB".

ARTICLE 6. SAFETY

"CITY" and "LAB" agree that, in accordance with the generally accepted construction practice, the PROJECT'S general contractor will be solely and completely responsible for working conditions on THE PROJECT, including safety of all persons and property during the performance of the work, and for

compliance with all municipal, state, and federal laws, rules and regulations, including OSHA. The duty of "LAB" in providing services is not, therefore, to include any review of, or responsibility for, the adequacy of the PROJECT'S general contractor's safety measures in, on, or near THE PROJECT site.

ARTICLE 7. INVOICES AND PAYMENT

"LAB" will submit progress invoices to "CITY ENGINEER" monthly and final invoice upon completion of services. Each invoice is due and payable by "CITY" within 30 days of receipt and approval to pay by the City Engineer.

ARTICLE 8. EXTENT OF AGREEMENT

- 8.1 This AGREEMENT, including Exhibit "A" and these terms and conditions, represents the entire AGREEMENT between "CITY" and "LAB" and supersedes all prior negotiation, representations or agreements, written or oral. This AGREEMENT may be amended only by a written instrument signed by duly authorized representative of "CITY" and "LAB". If any conflict occurs between these terms and conditions and this AGREEMENT, these terms and conditions are controlling.
- 8.2 In the event that any one or more of the provisions contained in this AGREEMENT are for any reason held invalid, illegal or unenforceable in any respect, the remaining terms will be in full effect and this AGREEMENT will be construed as if the invalid or unenforceable matters were never included in this AGREEMENT. No waiver of any default will be a waiver of any future default.
- 8.3 Neither party will assign this AGREEMENT without the express written approval of the other, but "LAB" may subcontract laboratory procedures as "LAB" deems necessary to meet the obligations of this AGREEMENT.



SUPPLIER NUMBER _____
TO BE ASSIGNED BY CITY
PURCHASING DIVISION

CITY OF CORPUS CHRISTI DISCLOSURE OF INTEREST

City of Corpus Christi Ordinance 17112, as amended, requires all persons or firms seeking to do business with the City to provide the following information. Every question must be answered. If the question is not applicable, answer with "NA". See reverse side for Filing Requirements, Certifications and definitions.

COMPANY NAME: Kleinfelder

P. O. BOX: _____

STREET ADDRESS: 5002 Ambassador Row **CITY:** Corpus Christi **ZIP:** 78416

FIRM IS: 1. Corporation 2. Partnership 3. Sole Owner
4. Association 5. Other

DISCLOSURE QUESTIONS

If additional space is necessary, please use the reverse side of this page or attach separate sheet.

1. State the names of each "employee" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Department (if known)	Job Title	and City
<u>N/A</u>			
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

2. State the names of each "official" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Title
<u>N/A</u>	
_____	_____
_____	_____
_____	_____

3. State the names of each "board member" of the City of Corpus Christi having an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Board, Commission or Committee
<u>N/A</u>	
_____	_____
_____	_____
_____	_____

4. State the names of each employee or officer of a "consultant" for the City of Corpus Christi who worked on any matter related to the subject of this contract and has an "ownership interest" constituting 3% or more of the ownership in the above named "firm."

Name	Consultant
<u>N/A</u>	
_____	_____
_____	_____
_____	_____

FILING REQUIREMENTS

If a person who requests official action on a matter knows that the requested action will confer an economic benefit on any City official or employee that is distinguishable from the effect that the action will have on members of the public in general or a substantial segment thereof, you shall disclose that fact in a signed writing to the City official, employee or body that has been requested to act in the matter, unless the interest of the City official or employee in the matter is apparent. The disclosure shall also be made in a signed writing filed with the City Secretary. [Ethics Ordinance Section 2-349 (d)]

CERTIFICATION

I certify that all information provided is true and correct as of the date of this statement, that I have not knowingly withheld disclosure of any information requested; and that supplemental statements will be promptly submitted to the City of Corpus Christi, Texas as changes occur.

Certifying Person: Emad Al Turk, P. E. Title: Vice President
(Type or Print)

Signature of Certifying Person:  for Date: 2-10-12

DEFINITIONS

- a. "Board member." A member of any board, commission, or committee appointed by the City Council of the City of Corpus Christi, Texas.
- b. "Economic benefit". An action that is likely to affect an economic interest if it is likely to have an effect on that interest that is distinguishable from its effect on members of the public in general or a substantial segment thereof.
- c. "Employee." Any person employed by the City of Corpus Christi, Texas either on a full or part-time basis, but not as an independent contractor.
- d. "Firm." Any entity operated for economic gain, whether professional, industrial or commercial, and whether established to produce or deal with a product or service, including but not limited to, entities operated in the form of sole proprietorship, as self-employed person, partnership, corporation, joint stock company, joint venture, receivership or trust, and entities which for purposes of taxation are treated as non-profit organizations.
- e. "Official." The Mayor, members of the City Council, City Manager, Deputy City Manager, Assistant City Managers, Department and Division Heads, and Municipal Court Judges of the City of Corpus Christi, Texas.
- f. "Ownership Interest." Legal or equitable interest, whether actually or constructively held, in a firm, including when such interest is held through an agent, trust, estate, or holding entity. "Constructively held" refers to holdings or control established through voting trusts, proxies, or special terms of venture or partnership agreements."
- g. "Consultant." Any person or firm, such as engineers and architects, hired by the City of Corpus Christi for the purpose of professional consultation and recommendation.