

APPENDIX A

PBS Proposal/Contract to Provide a Phase One Environmental Site Assessment



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October 25, 2005

Lexmar Development Company
C/o Mr. Mark Donati
634 N. Santa Cruz Avenue, Suite 112
Los Gatos, California 95030-4361
(408) 375-8317

Via Email Only: lexmar002@aol.com

**PROPOSAL TO PROVIDE A PHASE ONE ENVIRONMENTAL SITE ASSESSMENT
22000 NE HALSEY
FAIRVIEW, OREGON**

Dear Mr. Donati:

PBS Engineering and Environmental (PBS) is pleased to submit this proposal to provide Phase One Environmental Site Assessment services for the above-referenced property. We understand that the property is approximately 14.5 acres, and contains one occupied residence and no other structures.

PROJECT APPROACH:

The purpose of the Phase One Environmental Site Assessment is to identify environmental concerns which may present a potential liability to the property owner/prospective purchaser under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), related state laws and regulations, and which may require further investigation. The scope of work is intended to identify what are termed *recognized environmental conditions* on the site, that is, to identify the "presence or likely presence" of subsurface contamination from hazardous substances at the site, including petroleum products.

Often building-related environmental conditions contribute to "business environmental risks", apart from CERCLA liability, such as asbestos, radon, wetlands, etc. Please note on the attached Proposal Checklist if you would like PBS to incorporate additional items that are not included in this proposal, and we will contact you to discuss scope and fee.

SCOPE OF SERVICES:

The scope of work for this project includes a review of applicable Federal and State databases, a review of readily available records to document the past and current uses of the subject property and adjoining properties, interviews with persons with knowledge of the site, a site reconnaissance, and a final report summarizing our findings and conclusions. The project will be performed in accordance with ASTM Standard 1527-00 *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*.

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Portland, OR 97219
503 248.1939 FAX
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ENGINEERING AND ENVIRONMENTAL

www.pbsenv.com

PBS will provide the following specific scope of services for the property:

1. **INITIAL MEETING:** Meet or talk with the property owner or other key personnel to further discuss the project and to obtain any information which may be relevant to the site or adjoining land. An environmental questionnaire will be submitted to the current owner for completion. It is understood that the client will provide all known environmental information, including former site use, hazardous wastes, etc.
2. **AGENCY FILE CHECK:** Using a commercial database search provider, obtain a search of regulatory agency listings per ASTM 1527-00 to identify known hazardous substance violations, contaminant discharges and other environmental problems for varying distances based upon their relative potential impact to the subject property.

In the event file review requires travel more than 30 miles from our nearest branch office, a travel time and mileage charge would be assessed.
3. **GEOLOGIC RESEARCH:** Review available soils, geology, engineering, groundwater or other reports regarding the property and the immediate vicinity.
4. **HISTORICAL REVIEW:** Review aerial photographs of the site and adjacent property to assess previous site conditions and operations (if available). Other historical information that may be reviewed includes Sanborn fire maps, city directories, building permits, or property title information (if provided by the client) to determine history of usage. Whenever feasible, the history of the property will be traced to 1940 or to a time prior to its earliest developed use, whichever is earlier.
5. **PHYSICAL INSPECTION:** Conduct one site visit, during which the property and any structures will be visually inspected for potentially hazardous materials, existing in the past or present. A field checklist will be completed, and pertinent observations related to potential environmental conditions will be recorded. Interviews with on-site personnel, tenants or other persons familiar with the history of the area may be conducted. It is assumed that the client will arrange for access during normal business days/hours.
6. **REPORT:** A final report will be prepared containing observations and conclusions relating to the apparent environmental conditions of the site. The report will include a description of site, CAD vicinity plan, conditions encountered, and documentation of resources including regulatory and historic records reviewed, opinion and conclusions. If appropriate, recommendations will be made in the text of the report, unless PBS is directed otherwise by the client.

LIMITATION OF SCOPE:

The purpose of this phase of the work is to determine if more in-depth studies are to be developed. Observations will be made based on the best available information by trained professionals. It is not intended to be a comprehensive determination of all potential liabilities associated with a particular property, nor is it represented as a legal opinion as to the client's performance of "due diligence" concerning the purchase of real estate. Unless otherwise specified, the scope of work does not include a review/opinion of legal instruments such as indemnification agreements, purchase and sale agreements, liens, etc. Its cursory nature is to be noted by all parties.

Unless otherwise specified in this proposal, the scope of work for the project does not address the following items: hazardous materials audit, environmental compliance (unless directly related to potential CERCLA liability); indoor air quality, mold or radon; asbestos-containing building materials, lead-based paint, wetlands and other land use issues, geotechnical or geologic hazards, nor does it include subsurface exploration or chemical screening of soil and groundwater beneath the site which is needed to determine site contamination with scientific certainty.

PBS will utilize a commercial database search provider in the conduct of this project. Their report is subject to the limitations, constraints, inaccuracies and incompleteness of government information and of computer mapping data and conventions.

The findings and conclusions of this report are not scientific certainties but, rather, probabilities based on professional judgement concerning the significance of the data gathered during the course of the study. PBS is not able to represent that the subject property or adjoining land contain no hazardous waste, oil or other latent condition beyond that detected or observed by PBS during the study. The possibility always exists for contaminants to migrate undetected through surface water, air or groundwater. The ability to accurately address the environmental risk associated with transport in these media is beyond the scope of this study.

FEE:

Phase One Environmental Site Assessment (Flat Fee)\$.

The cost of reproduction, disposable equipment, mileage and postage are included in the above flat fee. Two hardcopies of the final report will be provided; additional hardcopies can be provided at the rate of \$30.00/copy.

Additional Services

The following are not included in the above fee, and would be provided on a time and materials basis upon request:

- Providing a review hardcopy, or electronic draft via email or CD, of the report;
- Providing an electronic copy via email or CD of the final report;
- Providing a reliance letter to a third party or lender;

Lexmar Development Company
Re: 22000 NE Halsey, Fairview, OR
October 25, 2005
Page 5

Attachment: Proposal Checklist
General Terms and Conditions for Professional Services (9/2005)

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PROPOSAL CHECKLIST

22000 NE Halsey
Fairview, OR

I have requested this Phase One (check):

- to obtain financing;
- to refinance;
- prior to selling my property;
- other Feasibility Study

The lender is N/A; if there are special requirements, I have attached.

The report is to be addressed to (User's Name): Lexmar Development Co. LLC
41 East Main St.
Los Gatos, CA 95030

Two copies will be provided, please send them to: same as above

For site access/info, contact Mark Donati at (408) 395-8817

Enclosed is a tax map (or other) and legal description indicating the location and boundaries of the subject property. To be forwarded

Please review the following list of possible Business Environmental Risks, that may not be included in the proposal scope. If you have concerns that these or other issues may be present on the property, and we have not addressed the issue in our Proposal Scope of Work, please check the box or make note and we will contact you to discuss further. If you have no other concerns, please check the last box.

- | | |
|---|--|
| <input type="checkbox"/> Asbestos-containing materials | <input type="checkbox"/> Health and safety |
| <input type="checkbox"/> Lead-based paint | <input type="checkbox"/> Ecological resources |
| <input type="checkbox"/> Lead in drinking water | <input type="checkbox"/> Endangered species |
| <input type="checkbox"/> Radon | <input type="checkbox"/> High voltage powerlines |
| <input type="checkbox"/> Mold assessment/O&M Plan | <input type="checkbox"/> Wetland/stream protection |
| <input type="checkbox"/> Regulatory compliance | <input type="checkbox"/> Cultural and historic resources |
| <input type="checkbox"/> Onsite drywells: provide EPA-required registration | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Geotechnical evaluation for foundation design or slope stability | |

I understand the scope of the Phase One proposal, and am not interested in assessment of potential Business Environmental Risks at this time.

Signature: Mark Donati Date: 10/25/05



GENERAL TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

Attached to and part of our letter agreement to client outlining our specific scope of services:

The purpose of these General Terms and Conditions is to identify basic contractual obligations of PBS and Client for various professional consulting services, whereby PBS would be acting in the role of Consultant/Owner Representative for Client. Individual projects may require additional detailed descriptions of services to be provided as a supplement to this agreement.

- 1. RIGHT OF ENTRY:** Unless otherwise agreed, the Client will furnish PBS right-of-entry on real property and be responsible for the propriety of the time, place, and manner of our entry upon the real property where we are to perform our services. PBS will take reasonable precautions to minimize damage to the real property from use of equipment, but have not included in the fee the cost of restoration, unless specifically included in our scope of work. If the Client desires PBS to restore the real property to its approximate former condition, we will accomplish this and add the cost plus 15 percent to our fee.
- 2. BURIED UTILITIES:** PBS field personnel are trained to initiate field testing, drilling and/or sampling within a reasonable distance of each designated utility location. PBS field personnel will avoid hazards or utilities that are observed by them at the site. If PBS is advised in writing of the presence or potential presence of underground or overground obstructions, such as utilities, we will give special instructions to our field personnel. PBS is not responsible for any damage or loss due to undisclosed or unknown surface or subsurface conditions owned by client or third parties. The client will hold PBS and PBS subcontractors harmless from any loss resulting from inaccuracy of markings, of plans, or lack of plans, relating to the location of utilities. Note: Utility locates typically requires 2 full working days advance notice.
- 3. WORKER'S COMPENSATION INSURANCE:** PBS will provide Worker's Compensation insurance (and/or Employer's Liability insurance) as required by state statutes.
- 4. LIABILITY INSURANCE:** PBS carries comprehensive General Liability insurance which, subject to its terms and limits, may provide protection against liability arising out of bodily injury or property damage arising out of PBS operations. PBS makes no representations or warranties concerning the effect, applicability or scope of such insurance. Upon request in writing by Client to PBS, PBS will request its insurer to name Client as an additional insured on such policies and to issue certificates to Client to that effect. PBS makes no representations or warranties regarding any act by its insurer(s), and shall not be responsible for performing any act with respect to such insurance not specifically called for by this paragraph.
- 5. PROFESSIONAL LIABILITY AND LIMITATION THEREOF:** This paragraph relates only to Professional Liability and not General Liability. In performing our professional services, we will use that standard of care and skill ordinarily recognized under similar circumstances by members of our profession in the state and region at the time the services are performed. No other warranty, either expressed or implied, is made in connection with our rendering of professional services.
- 6. CONTRACTED WORK:** PBS, including its subconsultants, are retained hereunder for the limited purpose of performing certain environmental surveys, providing the results of such surveys to client, and making recommendations with respect to the data produced by the surveys. PBS is not responsible for the overall environmental status of Client's project, for the interpretation of the survey results by others, for any use of its reports by Client or others except as specifically set forth herein, or for any other matter not encompassed in the specific assignment given to PBS by Client. Any unauthorized use or distribution of PBS's work shall be at the Client and recipient's sole risk. If Client desires to release, or for PBS to provide, our report(s) to a third party not described above for that party's reliance, PBS will agree to such a release provided we receive written acceptance from such third party to be bound by acceptable terms and conditions similar to this agreement, in addition to a fee for extending our liability to a new party. The Client shall indemnify, defend and hold harmless PBS and its subconsultants from any claims, damages, costs, losses and expenses, including but not limited to attorney fees and costs on arbitration, trial or appeal arising out of unauthorized or third party use of PBS' reports.
- 7. SAMPLES:** All samples will be discarded 30 days after submission of our final report unless other arrangements are made.
- 8. PAYMENTS TO CONSULTANT:** Invoices will be submitted periodically for prior services. An account will become delinquent 30 days after date of billing. It is agreed that a late charge will be added to delinquent accounts at the rate of one-and-one-half percent (1-1/2%) for each thirty days delinquent (provided the rate of such late charge shall not exceed the maximum allowable by the laws of the state in which our office submitting the invoice is located).
- 9. RATE SCHEDULE:** Fees for services are based on the number of hours expended on the project, including travel, by PBS personnel plus any reimbursable expenses. Our hourly rates will be billed as stated in our proposal or at our current hourly rates (available upon request).





10. REIMBURSABLE EXPENSES:

- A. Outside Services. Subcontracted services such as subconsultants, labor, and technical services will be invoiced at cost plus 15 percent. Examples of services that may be subcontracted include other professional disciplines, soil boring, well installation, heavy and specialty equipment operators, geophysical surveys, and computer programming.
- B. Supplies. Charges for items not ordinarily furnished by PBS such as expendable equipment, rental equipment, subsistence, travel expenses, tolls, special fees, reproduction, permits, licenses, priority mail fees, and long-distance and wireless telephone calls will be invoiced at cost plus 10%.
- C. Equipment. Certain PBS-owned equipment (for sampling, testing, personal protective equipment, vehicle mileage, photocopying, etc.) may be required to complete the project. These will be invoiced at our standard rates without markup (rates available upon request).
- D. Laboratory. PBS utilizes both in-house and outside laboratories for sample analysis. We maintain a list of standard rates for sample analyses commonly utilized in conjunction with our services (available upon request).

11. OTHER PROVISIONS: Neither party shall hold the other responsible for delay in performance caused by acts of God, strikes, lockouts, weather, accidents, or other events beyond the control of the other or the other's employees and agents.

Waivers by either party of any provision, term, condition or covenant, shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party by providing written notice. This agreement supersedes any contract language which may be issued by client as a matter of standard purchasing protocol without regard to the unique nature of professional services.

An opinion of construction, remediation and restoration costs prepared by PBS represents our judgment as a professional. Since we have no control over the cost of labor and material, or over competitive bidding or market conditions, we do not guarantee the accuracy of our opinion as compared to contractor bids of actual cost to the Client.

It is understood and agreed by both parties that PBS, in performing professional services for the Client with respect to hazardous or microbial substances, will make recommendations to the Client but does not have the authority or responsibility to decide where disposal or treatment takes place, nor to designate how or by whom the hazardous or microbial substances are to be transported for disposal or treatment. It is understood that PBS is not the generator or site operator and does not own the hazardous waste discovered, handled or removed from the owner's property. Client agrees under advice from client's counsel to timely disclosure to appropriate public agencies as required by law; any information that may be necessary to prevent damage to human health, safety, or the environment. Client agrees that PBS and its consultants are not responsible for the creation of the condition(s) PBS is being asked to investigate and that it would be unfair for PBS to be exposed to claims of injury or damage as a result of the conditions. In addition, Client understands that it is possible that exploration and investigation may fail to reveal the presence, location or source of the condition(s) being investigated even when the condition(s) is assumed or expected to exist. Client understands that PBS's failure to discover and/or locate the condition(s) or the spread of the condition(s) through appropriate and mutually agreed upon techniques does not guarantee that the condition(s) does or does not exist. Client agrees that it would be unfair to hold PBS liable for creating the condition(s) or the spread of the condition(s) providing PBS meets a reasonable standard of care and/or as described by supplemental proposal. Accordingly, Client waives any resulting claims against PBS and its consultants, and agrees to defend, indemnify and hold harmless PBS and its consultants from any and all claims or liability for injury or loss arising from the creation of the original condition(s) or the unintentional exacerbation of the original condition(s) by PBS, the exacerbation of hazardous conditions by others, the discovery of any condition, location of any condition and/or allowing any condition to exist. Client also agrees to fairly compensate PBS and its consultants for any time spent and expenses incurred in the defense of any such claim.

PBS does not provide legal opinions, and recommends client seek legal counsel for advice on issues such as the appropriateness of a particular scope of work to minimize legal liability, potential cost recovery from responsible parties, and to assess the value of maintaining attorney/client privilege for work conducted under this agreement.

In the event there is a dispute between PBS and the Client concerning the performance of any provision in this agreement, the losing party shall pay the prevailing party reasonable attorney's fees and costs on trial or appeal. In addition, Client agrees to pay PBS for all employee time, costs, and witness costs incurred for collection activity.

This agreement can be terminated at any time by either party. If terminated prior to the completion of a scope of work, PBS shall be entitled to its portion of fees for any work performed in accordance with the above rate schedule.

