

**CITY OF NEWBERG
AGREEMENT WITH Alder Geotechnical Services
TO PROVIDE CONSULTING SERVICES
TO THE CITY OF NEWBERG**

THIS CONTRACT is entered into this 1st day of September, 1999 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and **Alder Geotechnical Services**

(Consultant's name)

3910 NE 10th Avenue

(Address)

Portland, OR 97212

282-7482

(Phone)

282-7402

(Fax)

hereinafter called **Consultant**.

RECITAL

1. **City** has need for the services of a consultant with particular training, ability, knowledge, expertise and experience possessed by **Consultant**.

NOW, THEREFORE, in consideration of mutual promises, covenants and agreements of the parties, it is agreed as follows.

1. **Scope of Work:** The **Consultant** agrees to provide the services provided in the Scope of Work which is Exhibit "A" and attached hereto and incorporated by this reference. The **Consultant** represents and warrants to the **City** that the **Consultant** can perform the work outlined in the Scope of Work for the fee proposal amount.

2. **Compensation:** The **Consultant** agrees to perform the work for a not-to-exceed fee as indicated in their professional fee proposal obtained in the Scope of Work. The not-to-exceed figure is as follows:

\$1,800.00

The **Consultant** shall not exceed the fee for any task included in the fee proposal amount. If the **Consultant** sees that the fee is going to exceed the not-to-exceed figure because the task has changed or is outside the scope, the **Consultant** shall notify the **City** in writing of the circumstances with an estimated amount that the fee is to be exceeded. The **Consultant** shall obtain written permission from the **City** before exceeding the maximum fee amount. If the **Consultant** does work that exceeds the maximum fee amount prior to obtaining the written permission, the **Consultant** waives any right to collect that fee amount.

3. **Additional Work Not Shown Within The Scope of Work:** If **City** requests or requires work to be done not within the Scope of Work of this project, the **Consultant** shall notify the **City** of such work, provide an estimated fee amount, and obtain written

7. **Benefits:** **Consultant** will not be eligible for any federal social security, state workers compensation,

instructions to proceed with work in the form of a contract amendment prior to proceeding with work and incurring any costs on behalf of the **City**. If **Consultant** proceeds with work prior to obtaining permission and/or contract amendment, the **Consultant** waives any right to collect fees for work performed.

4. **Status:** **Consultant** is not currently employed by the **City**. The parties to this contract intend that the relationship between them created by this contract is that of an employer-independent contractor. No agent, employee, or servant of **Consultant** shall be or shall be deemed to be the employee, agent or servant of **City**. **City** is interested only in the results obtained under this contract; the manner and means of conducting the work are under the sole control of **Consultant**, however, the work contemplated herein must meet the approval of the **City** and shall be subject to **City's** general right of inspection and supervision to secure the satisfactory performance thereof.

5. **Work Performed:** The work to be performed by **Consultant** includes services generally performed by **Consultant** in his or her usual line of business.

6. **Taxes:** **Consultant** will be responsible for any federal or state taxes applicable to payments received under this contract. **City** will report the total of all payments to **Consultant**, including any expenses, in accordance with the Federal Internal Revenue Service and the State of Oregon Department of Revenue regulations.

unemployment insurance, or public employees' retirement system benefits from the contract payment

except as a self-employed individual.

8. **Federal Employment Status:** In the event any payment made pursuant to this contract is to be charged against federal funds, **Consultant** certifies that he or she is not currently employed by the federal government and the amount charged does not exceed his or her normal charge for the type of services provided.

9. **Hold Harmless:** **Consultant** shall defend, indemnify and hold harmless **City** from and against all liability or loss and against all claims or actions based upon or arising out of damage or injury to persons or property caused by or sustained in connection with the negligent acts, errors, and omissions of the **Consultant**.

10. **Insurance:**

a) **Consultant**, its subconsultants, if any, and all employers working under this agreement are subject employers under the Oregon Workers' Compensation Law and shall comply with ORS 656.017, which requires them to provide workers' compensation coverage for all their subject workers; or by signing this contract, **Consultant** represents that he or she is a sole proprietor and is exempt from the laws requiring workers' compensation coverage.

b) **Consultant** will at all times carry a Comprehensive General Liability insurance policy for at least \$1,000,000 combined single limits per occurrence for Bodily Injury, Property Damage, and Personal Injury. If the policy is written on the new occurrence form then the aggregate limit shall be \$2,000,000. The City of Newberg, its agents, employees and officials all while acting within their official capacity as such, shall be named as an additional insured on the insurance specified in this paragraph.

c) **Consultant** will at all times carry a Professional Liability/Errors and Omission type policy with limits of at least \$500,000. If this policy is a "claims made" type policy, the policy type and company shall be approved by the City Manager prior to commencement of any work under this contract.

d) **Consultant** shall furnish the **City** with Certificates of Insurance upon execution of contract. Such certificates of insurance evidencing any policies required by this contract shall be delivered to the **City** prior to the commencement of any work. A 30-day notice of cancellation clause shall be included in said certificate. The **City** has the right to reject any certificate for unacceptable coverage and/or companies.

11. **Indemnification:**

a) **Consultant** agrees to indemnify **City** for any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage or bodily

injury, including death, to the proportionate extent caused by the negligence or willful misconduct of the **Consultant**, **Consultant's** employees, affiliated corporations, and subcontractors in connection with the Project.

b) **City** agrees to indemnify **Consultant** for any claims, damages, losses, and costs, including, but not limited to, attorney's fees and litigation costs, arising out of claims by third parties for property damage or bodily injury, including death, to the proportionate extent caused by the negligence or willful misconduct of the **City**, its employees or contractors in connection with the Project.

12. **Employees' Taxes:** **Consultant** shall also defend, indemnify and hold harmless **City** against all liability and loss in connection with and shall assume full responsibility for, payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security and income tax laws, with respect to **Consultant's** employees engaged in the performance of this contract.

13. **Termination:** This contract may be terminated by either party at the end of a project phase as defined in Exhibit "A" or at any time upon 30 days written notice.

14. **Contract Duration:** Except as provided for under paragraph 3, the duration of this contract shall be in accordance with Exhibit "A" or until project completion, whichever comes first. This fact notwithstanding, the services of **Consultant** shall be authorized and paid on a phase-by-phase basis as described in Exhibit "A".

15. **Assignment:** The parties hereto each bind themselves, their partners, successors, assigns and legal representatives of such other party in respect to all terms of this Agreement. Neither party shall assign the contract as a whole without written consent of the other.

16. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, written and oral, courses of dealing, or other understanding between the parties. No modification of this Agreement shall be binding unless in writing and signed by both parties.

17. **Additional Services:** If the project is materially changed, or if **City** desires other professional services not already included in this Agreement or not customarily furnished as part of the agreed upon services, then additional consideration shall be paid to **Consultant** which shall be subject to negotiation by both parties, however, such services shall be furnished per the direct labor rate outlined in the professional fee proposal in the scope of work. Indirect labor costs and fixed fee shall be applied to the direct labor costs for these extra services in accordance with this agreement. The terms of this agreement shall apply to such additional services.

18. **Documents:** All original documents prepared by **Consultant** in performance of this Professional Services Agreement, including but not limited to original maps, plans, drawing and specifications are the property of **City** unless otherwise agreed in writing. Quality reproducible records copies shall be provided to **City** at **City's** expense, upon request. Any reuse, change or alteration to original documents prepared by **Consultant** is not permitted without written verification

or adaption by **Consultant**. **City** shall indemnify and hold harmless **Consultant** and **Consultant** independent professional associates or consultants from all claims, damages, losses and expenses including attorney's fees arising out of any unauthorized use of any instruments of professional service.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above mentioned.

CONSULTANT

By:

John Cunningham

Name:

John Cunningham

Title:

Owner

Date:

September
August 2, 1999

CITY OF NEWBERG

By:

Duane R. Gole

Name:

Duane R. Gole

Title:

City Manager

Date:

Sept. 8, 1999

Approved as to form:

Terrence D. Mahr

Terrence D. Mahr, City Attorney



3910 NE 10th Avenue
Portland, Oregon 97212
503.282.7482 Fax: 282.7402

September 1, 1999

Exhibit "A"

City of Newberg
Office: 719 East First Street
Mail: 414 East First Street
Newberg, OR 97132

Attn: Mr. Mike Soderquist, Community Development Director

**RE: Fatal Flaw Geologic & Geotechnical Evaluation
Proposed Eastside Four Million Gallon Water Reservoir
Roshak Property, 31451 NE Corral Creek Road
Newberg, Oregon**

Dear Mr. Soderquist:

In accordance with your request, Alder Geotechnical Services (AGS) is please to provide you with this proposal to perform a fatal flaw geologic and geotechnical evaluation for the proposed eastside location of a new four million gallon water reservoir for the City of Newberg, Oregon. Our proposal includes a scope of services, time schedule, cost estimate, and a fatal flaw geotechnical evaluation for the proposed water reservoir location. It is our understanding that our geotechnical evaluation will be used for the feasibility of the proposed location and design for the future eastside reservoir location.

Project Understanding

It is our understanding that the City of Newberg proposes to construct a four million-gallon water reservoir on the Roshak property, land that could be purchased by the City. The subject property is located at 31451 NE Corral Creek Road, Newberg, Oregon. The property includes part of a ridgeline with a northwest-facing slope located in the lower hills east of the City. Topographic relief across the sloping property appears to be approximately 150 feet.

Proposed Water Reservoir & Location

Although the final water reservoir location has not yet been selected, it is our understanding that the preferred location of the proposed reservoir would be at the southern (upper) part of the property. This would allow a configuration similar to the City's existing reservoirs and at the same overflow elevation. In addition, we understand the reservoir is planned to be a four million

September 1, 1999
Newberg Water Reservoir

gallon concrete reservoir. For this evaluation, we will utilize the estimated size for a four million gallon reservoir as 30-feet high and 151-feet in diameter.

Scope of Services

Based on the above discussion, the scope of our services will include the following:

- Review available published geologic and geotechnical literature, historic topographic maps, historic stereo aerial photographs, and available water well logs for the area. The purpose of this phase is to identify possible geologic or geotechnical "fatal flaws" which may affect development of the proposed water reservoir. These fatal flaws include: areas of known landsliding, faulting, groundwater, bedrock or soil, and/or areas of deep man-made fills.
- Visit the site and perform a visual engineering geologic reconnaissance of the property to observe geologic and topographic features.
- Prepare a letter report and provide four copies presenting our research, observations, and recommendations for development of the proposed water reservoir location. The report will be signed and stamped by a certified engineering geologist and a registered professional engineer with a specialty in geotechnical engineering. The report will include a general description of the site, a site plan showing location, discussion of geologic hazards and general recommendations for the feasibility of construction of the proposed water reservoir.

Fees

Based on our current understanding of the project, we propose to complete the above scope of work for a lump sum not-to exceed fee of \$1,800. We propose to provide these services on a time and expenses basis in accordance with the following fees.

Geologic & Geotechnical Services	Estimated Fees
Geologic Background and Air Photo Review	\$800
Visual Site Reconnaissance	\$400
Letter Report Preparation	\$600
Total Lump Sum Not-to Exceed Fee	\$1800.00

Alder Geotechnical Services

September 1, 1999
Newberg Water Reservoir

Page 3

AGS has based our estimated fee for services on preliminary information regarding the location of the proposed reservoir and the possible foundation type. It is possible that after completing the above scope of work, additional effort may be necessary to respond to conditions or events that are unforeseen at this time. Additional meetings or services and consultation requested during our evaluation or after submittal of our final letter report will be charged for on a time and expenses basis using the following fees:

Engineering Geologist.....	\$60/hr.
Geotechnical Engineer	\$75/hr.
AutoCAD Drafter.....	\$40/hr.
Mileage	\$0.40/mile.
Typical expenses (maps, film, photocopies, phone, postage, delivery).....	Cost.
Sub-Contractor expenses such as laboratory testing, or other specialized sub-consultants.....	Cost + 15% handling.

NOTE: Sub-Contractor expenses such as backhoes and drilling rigs will be provided by the CLIENT or billed directly to the CLIENT.

We understood that the City will provide a topographic base map and any additional maps or information that may be available for the subject property.

Schedule

We can begin the research and fieldwork on the project as soon as we are authorized. Our final written report can be provided to you within approximately two weeks of receiving a signed copy of your contract.

Thank you for the opportunity to propose on this project. If you have any questions or comments regarding this proposal, please feel free to give us a call. Please contact John Cunningham at 503-282-7482, and Diane or Monte Murbach at 503-538-8352.

Sincerely,



John N. Cunningham, P.E.
Geotechnical Engineer
Alder Geotechnical Services



Diane Murbach, C.E.G.
Principal Engineering Geologist
Murbach Geotech

② Addressee