

**CITY OF NEWBERG**  
**AGREEMENT WITH KLEINFELDER, INC.**  
**TO PROVIDE CONSULTING SERVICES**  
**TO THE CITY OF NEWBERG**

THIS AGREEMENT is entered into this 27<sup>th</sup> day of March, 2001 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and Kleinfelder, Inc.

15050 SW Knoll Parkway, Suite L  
Beaverton, OR 97006-6028  
Phone (503) 644-9447  
Fax (503) 643-1905

hereinafter called **Consultant**.

**RECITALS:**

1. **City** has need for the services of a **Consultant** with particular training, ability, knowledge, expertise and experience possessed by **Consultant**.
2. **City** has chosen the **Consultant** using the Minimum Three Quotes method. All four firms responded and Kleinfelder, Inc. provided the second lowest price and however, twice the depth of soil exploration than that of the lowest price competitor.

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

1. **Effective Date and Duration:** This Agreement shall become effective on the date that this Agreement has been signed by every party hereto.

Unless, terminated or extended, this Agreement shall expire when the **City** accepts **Consultant's** completed performance or on April 9, 2001, whichever date occurs first. This fact notwithstanding, the services of **Consultant** shall be authorized and paid as described in Exhibit "A."

Expiration shall not extinguish or prejudice **City's** right to enforce this Agreement with respect to any breach of a **Consultant** warranty or any fault or defect in **Consultant's** performance that has not been cured.

2. **Termination:** This Agreement may be terminated at any time by mutual, written consent of the parties. The **City** may, at its sole discretion terminate this Agreement in whole or part upon a 30-day written notice to **Consultant**. The **City** may terminate immediately upon notice to the **Consultant** that the **City** does not have funding, appropriations, or other necessary expenditure authority to pay for **Consultant's** work. The **City** may terminate Agreement at any time for material breach. This Agreement may be terminated by either party at the end of a project phase as defined in Exhibit "A" or at any

time upon a 30-day written notice.

3. **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.

4. **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:

\$5,063.00

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 not-to-exceed 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.

**5. 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 instructions to proceed with work in the form of an Agreement 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 Agreement amendment, the **Consultant** waives any right to collect fees for work performed.

**6. Agreement Documents:** This Agreement consists of the following documents which are listed in descending order of preference:

This Agreement with attached Exhibits, (Exhibit "A" - the proposal of the **Consultant** and clarification of additional tests based on presence of clayey soils; and Exhibit "B" - background information). Work is 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.

**7. Benefits:** **Consultant** will not be eligible for any federal social security, state workers compensation, unemployment insurance, or public employees' retirement system benefits from the Agreement payment except as a self-employed individual.

**8. Federal Employment Status:** In the event any payment made pursuant to this Agreement 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. Consultant's Warranties:** The work to be performed by **Consultant** includes services generally performed by **Consultant** in his/her usual line of business. The work performed by the **Consultant** under this Agreement shall be performed in accordance with the professional standards of skill and care ordinarily exercised by members of that profession under similar conditions and circumstances. The **Consultant** shall, at all times, during the term of this Agreement, be qualified, be professionally competent, and duly licensed to perform the work.

**10. Indemnity:**

(a) Claims for Other than Professional Liability.

**Consultant** shall defend, save, and hold harmless **City**, its officers, agents and employees from all claims, suits, or actions of whatsoever nature, including intentional acts resulting from, or arising out of the activities of **Consultant**, or its subcontractors, agents or employees under this Agreement.

(b) Claims for Professional Liability.

**Consultant** shall defend, save, and hold harmless **City**, its officers, agents and employees from all claims, suits, or actions arising out of the professional negligent acts, errors or omissions of **Consultant**, or its subcontractors, agents or employees in performance of professional services under this Agreement.

**11. Independent Contractor:** **Consultant** is not currently employed by the **City**. The parties to this Agreement intend that the **Consultant** perform all work as an 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 Agreement; 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.

**12. Taxes:** **Consultant** will be responsible for any federal or state taxes applicable to payments received under this Agreement. **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.

**13. 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 Agreement, **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 \$1,000,000.00 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 \$2,000,000.00. The **City**, 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 \$500,000.00. 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 Agreement.

d) **Consultant** shall furnish the **City** with Certificates of Insurance upon execution of Agreement. Such Certificates of Insurance evidencing any policies required by this Agreement 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.

14. **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 Agreement as a whole without written consent of the other.

15. **Ownership of Work Product:** All original documents prepared by Consultant in performance of this 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. City shall indemnify and hold harmless Consultant and Consultant's independent professional associates or Subconsultants from all claims, damages, losses and expenses including attorney's fees arising out of any unauthorized use of any instruments of professional service.

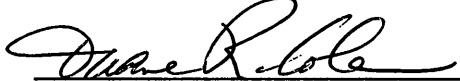
16. **Entire Agreement:** This Agreement constitutes the entire Agreement between the parties and supersedes all prior agreements, written and oral, courses of dealing, or other understanding between the parties. No modification of this Agreement shall be binding unless in writing and signed by both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

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

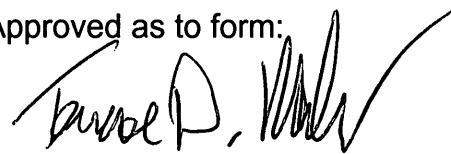
**CONSULTANT**

By:   
Name: Robert L. Stephens  
Title: Geotechnical Group Leader  
Date: 2 April 2001

**CITY OF NEWBERG**

By:   
Name: Duane R. Cole  
Title: City Manager  
Date: March 27, 2001

Approved as to form:

  
Terrence D. Mahr, City Attorney

# **Exhibit “A”**

## **Scope of Work**

**FAX TRANSMITTAL**

Geotechnical Engineering  
Materials Testing & Inspection  
Environmental Science & Engineering  
Water Resources  
Earthquake Engineering  
Air Quality

**Date:** March 8, 2001

**To:** Mr. Paul Chiu, P.E.

**Fax No.:** 503-537-1277

**From:** Robert L. Stephens  
Kleinfelder, Inc.

**Total number of pages including cover sheet:** 11

**Subject:** Proposed Scope of Services  
Geotechnical Exploration  
Mountainview Drive Between College and Villa Road  
Newberg, Oregon

**Remarks:**

Original to follow via U.S. Mail. If you have any questions do not hesitate to contact our office at (503) 644-9447.

Thank you,

Robert L. Stephens  
Geotechnical Group Leader

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March 8, 2001  
Proposal 60YP8554

City of Newberg  
Community Development Department  
P.O. Box 970  
Newberg, Oregon 97132

Attention: Mr. Paul Chiu, P.E.

Subject: **Proposed Scope of Services  
Geotechnical Exploration  
Mountainview Drive Between College and Villa Road  
Newberg, Oregon**

Mr. Chiu:

We are pleased to provide the City of Newberg Engineering Division (City) this proposal for geotechnical engineering services for the subject development. We appreciate your request for a proposal. The following paragraphs present our understanding of the project, our proposed scope of work, and our estimated schedule and cost for completing the study.

Kleinfelder, Inc. (Kleinfelder) is committed to providing quality service to our clients, commensurate with their wants, needs and desired level of risk. If a portion of this proposal does not meet the needs of the City, or if those needs have changed, we will be happy to make modifications, subject to the standards of care to which we adhere as professionals.

## QUALIFICATIONS

Kleinfelder is an employee-owned, engineering consulting firm specializing in geotechnical and environmental engineering, as well as construction management, materials engineering and testing. We are a leader in these fields, as evidenced by our ranking among the "Top 100" Engineering and Environmental Firms in the nation by The Engineering News Record. By providing a variety of in-house engineering disciplines, we are able to thoroughly understand all aspects of challenging projects from beginning to end. This understanding leads to innovative approaches, often resulting in substantial savings to our clients.

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Kleinfelder has been providing quality engineering consulting services since 1961. Our commitment to total quality management and responsive service has helped us grow to 1,400 employees with 57 offices throughout the western United States. Our size and geographic distribution allows us to provide a local presence to our projects, as well as bring the resources of a large firm to complex and demanding projects.

Kleinfelder began establishing itself throughout the Northwest in 1988 to provide its broad spectrum of technical services to private and public sector clients throughout Washington, Oregon, Idaho and Montana. Since that time Kleinfelder has completed more than 1400 projects from its Oregon offices alone.

Kleinfelder has recently performed geotechnical services for similar infrastructure projects for the clients listed in the following table. These projects have included new and widened city streets, underground utilities, retaining walls, and pavement design and evaluation.

| Project          | Client                                 | Contact                                |
|------------------|----------------------------------------|----------------------------------------|
| "A" Avenue       | City of Lake Oswego, OR                | John Lewis, Phone<br>503.635.0270      |
| Old River Road   | City of Lake Oswego, OR                | John Lewis, Phone<br>503.635.0270      |
| Foster Road      | City of Portland, OR                   | Brett Kesterson, Phone<br>503.823.7163 |
| Miami-Foley Road | Oregon Department of<br>Transportation | Chris Myers, Phone<br>503.986.3753     |

Geotechnical services for this project would be performed under the direction and supervision of Mr. Robert Stephens, PE, who has more than 22 years of geotechnical experience, including projects throughout Northwest Oregon, and has previously provided geotechnical recommendations for the projects described above.

## BACKGROUND AND PROJECT INFORMATION

Our understanding of the project is a result of review of the request for proposal (RFP) document dated February 28, 2001 and on our discussions with Mr. Paul Chiu and Mr. Ryan Truair of the City. The project is a proposed widening and extension of Mountainview Drive between College Street and North Villa Road. We understand that the proposed development includes approximately one-half mile of minor arterial road with water line relocation, and storm and sanitary sewer installation. A sound wall/visual barrier will be located along the north side of the proposed alignment. Kleinfelder has reviewed a preliminary plan and profile of the proposed development at this site provided by the City. From the profile provided, it appears that the project will require a net import of fill.

A site visit conducted by Kleinfelder indicates that the proposed alignment is currently occupied by residential structures, orchards, and other agricultural land. The topography is relatively flat, with vertical relief less than about five feet across the eastern portion of the proposed alignment.

The geologic references map the vicinity of the proposed road alignment as Quaternary Non-Marine Sediments, or Catastrophic Flood Deposits, which we expect to encounter at or near the ground surface. These materials are expected to consist of unconsolidated silt, sand, and gravel deposited by a series of glacial outburst floods from Lake Missoula.

## PURPOSE

The purpose of our work would be to provide subsurface explorations and geotechnical recommendations for road and utility construction.

Kleinfelder offers complete construction materials testing services and we would appreciate the opportunity to provide a separate proposal for these services, when construction plans are more fully developed.

## PROPOSED SCOPE

The following sections describe our proposed scope of work.

## DATA REVIEW/UTILITY CLEARANCE

We propose to begin our study with a review of existing published and unpublished literature from the United States Geological Survey, the Soil Conservation Service, local Building bureau records, and previous geotechnical reports in this area. We understand that the City will provide land owner permission for our access onto the project alignment. We have included a private

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MARCH 8, 2001

utility locate service because we assume that the borings would be on private property. Kleinfelder will also call the underground utility notification service for utility clearance in public right-of-ways.

### **GEOTECHNICAL SITE RECONNAISSANCE**

We would next perform a geotechnical reconnaissance to observe surface conditions. For this site the primary purpose of this work would be to attempt to identify areas of past grading or filling, and to review the proposed exploration locations.

### **FIELD EXPLORATION**

We propose to drill six solid-stem auger borings to 20-foot depths. Soil samples will be collected in the drilled borings at approximate 2.5-foot intervals to a depth of 10 feet, and then at 5-foot intervals or at changes in soil conditions, whichever is less, to the bottom of the borings. Upon completion of site exploration, soil samples will be transported to our laboratory for examination and selection of representative samples for testing. Soil samples will be collected using a standard split spoon (SPT) sampler in accordance with ASTM D-1586. Soil samples will be classified in accordance with ASTM D-2488. Borings will be backfilled at completion of work using bentonite chips. Drill cuttings and drill water will be spread on the ground around the borings.

An experienced member of our engineering or geological staff will supervise the field operations and will log the explorations. Selected bulk, disturbed, and intact samples will be retrieved, sealed and transported to our laboratory for further evaluation. The depth to groundwater, if encountered, will be measured and reported.

### **LABORATORY TESTING**

Laboratory testing will be performed on selected bulk, intact and remolded samples to check the field classifications and to provide estimates of engineering parameters necessary for geotechnical design. At the present time we estimate that testing will include:

- Two Atterberg Limits tests;
- Six moisture content tests (one per boring);
- One R-Value test.

This test schedule assumes that all soils encountered are primarily silty sand/sandy silt. If clayey soils (silty clay or clayey silt) are encountered, additional laboratory testing may be required. All tests will be performed in general accordance with relevant ASTM Standards.

#### **GEOTECHNICAL ANALYSIS AND REPORT**

Field and laboratory data will be analyzed in conjunction with available plans. We will evaluate potential construction considerations, including earthwork. Potential geologic hazards will be evaluated such as existing fills, deleterious soils, seismic ground shaking and liquefaction potential.

We anticipate that the report will include the following items:

- Site Plan and Vicinity Map showing the approximate boring locations;
- Logs of soil borings, including blow counts and groundwater elevations;
- Results of laboratory tests;
- Discussion of regional geology and seismicity;
- Discussion of groundwater and impacts to the proposed development;
- Discussion of general site surface and subsurface conditions encountered;
- Guidelines for earthwork construction including recommendations for site preparation, acceptable structural fill types, fill placement and compaction;
- Pavement section recommendations;
- Foundation recommendations for the sound wall, including allowable contact pressure, embedment depth, and resistance to lateral loads;
- Guidelines for temporary excavation support for utilities and protection of adjacent facilities;
- Mitigation of deleterious soil conditions, if appropriate;

We assume that an electronic copy of the proposed site plan would be available to Kleinfelder in preparation of our report. We would also need traffic data for pavement design.

Kleinfelder offers a range of engineering services to suit the varying needs of our clients. Although risk can never be eliminated, more detailed and extensive engineering yields more information, which may help understand and manage the degree of risk. Since such detailed services involve greater expense, our clients participate in determining the level of service which provides adequate information for their purposes at an acceptable level of risk. Acceptance of this proposal will indicate that you have reviewed the scope of services and determined that you do not need nor want more services than are being proposed at this time. If additional services or greater detail in exploring the site are desired we would be happy to modify our proposed scope of services to meet your needs. Any exceptions should be noted and may result in a change in fees.

Kleinfelder will perform its services in a manner consistent with the standards of skill ordinarily exercised by members of the profession practicing under similar conditions in the geographic vicinity and at the time the services will be performed. The Agreement neither makes nor intends a warranty or guarantee, express or implied, nor does it create a fiduciary responsibility to Client by Consultant.

## **SCHEDULE**

We are prepared to begin work promptly. It requires a minimum of three days after authorization to complete utility locating services. Drill rig availability is typically three to five days from notification to proceed. Field work will require one day for completion. Thus we anticipate completing our field explorations within one week after receiving your notice to proceed. We will be able to provide preliminary geotechnical information at that time. Some analyses and report preparation can be performed simultaneously with the laboratory testing, and laboratory testing can begin following completion of field work. Our final geotechnical report would be available by your requested date of April 2, 2001, provided we receive notice to proceed by March 14, 2001.

## **FEES**

For the scope of work outlined in this proposal we estimate that our fees would not exceed \$5,063. This price includes geotechnical investigation, including explorations, testing, and report preparation. Our cost estimates are attached. If, during the evaluation of the available data or during our field exploration, unanticipated subsurface conditions are revealed which would require a level of effort beyond the scope of our study, we would contact you immediately to discuss any necessary modifications to our scope of services and/or budget estimate.

The fees presented in this proposal are based on prompt payment for services presented in our standard invoicing format. Additional charges will be applied for specialized invoicing if backup documentation is needed. These special services will be charged on a time and expense basis. Late fees will be charged if payment is not received in accordance with terms contained in the attached standard form of agreement.

This proposal is valid for a period of 60 days from the date of the proposal. We reserve the right to review our scope and costs if an agreement to provide our services has not been reached within the 60-day period.

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We appreciate the opportunity to provide this proposal. If the terms of this agreement meet with your approval, please sign the attached agreement and return to our office. A fully executed copy will be returned to you. If you have any questions or need additional information, please contact the undersigned at 503-644-9447.

Very truly yours,

**KLEINFELDER, INC.**



Robert L. Stephens, PE  
Geotechnical Group Leader

Enclosures: Standard Form of Agreement  
Project Cost Estimate

**PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement ("Agreement") is entered into between Southwest Recreational Industries ("Client") and KLEINFELDER, INC. ("Consultant"). Client engages Consultant to provide professional services ("Services") in connection with the following project ("Project"):

**Mountainview Drive between College and Villa Road, Geotechnical Study**

**SCOPE OF SERVICES.** Consultant shall perform the following Services:

**Geotechnical Services in accordance with proposal 60YP8554, dated March 8, 2001**

Client agrees that services not specifically described above are not included in the Scope of Services provided by Consultant.

Services provided under this Agreement, including all reports, information, recommendations, or opinions prepared or issued by Consultant, are for the exclusive use and benefit of Client in connection with the project, are not intended to inform, guide or otherwise influence any other entities or persons with respect to any particular business transactions, and should not be relied upon by any entities or persons other than Client for any purpose. Client will not distribute or convey such reports, information, recommendations, or opinions to any other persons or entities without Consultant's prior written consent.

**COMPENSATION.** Client shall compensate Consultant as follows:

**In accordance with proposal 60YP8554, dated March 8, 2001, not to exceed \$5,063.00.**

The rates charged for Services are based on the current Consultant's Fee Schedule which is modified periodically. All Services rendered after a new Fee Schedule is in effect shall be billed to Client at the new rates.

**GENERAL CONDITIONS AND ADDENDA.** NOTE: THE GENERAL CONDITIONS ON THE REVERSE SIDE OF THIS PROFESSIONAL SERVICES AGREEMENT CONTAIN LIMITATION OF LIABILITY PROVISIONS AND OTHER IMPORTANT PROVISIONS AFFECTING THE LEGAL RIGHTS AND OBLIGATIONS OF THE PARTIES. Client and Consultant have each read, understand and agree to the General Conditions and any Addenda attached to this Agreement, and agree that the General Conditions and Addenda are incorporated into this Agreement by reference.

Neither Client nor Consultant shall assign its interest in this Agreement without the prior written consent of the other.

This Agreement is entered into at Washington County, Oregon \_\_\_\_\_ and is made effective \_\_\_\_\_.

Client: \_\_\_\_\_

KLEINFELDER, INC.

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

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

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

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

Date Signed: \_\_\_\_\_

Date Signed: \_\_\_\_\_

## GENERAL CONDITIONS (PROFESSIONAL SERVICES)

1. Client shall pay invoices upon receipt. Invoices not paid within thirty (30) days of the invoice date shall be subject to a late payment charge of 1-1/2 percent per month (or the maximum rate allowable by law, whichever is less). Invoice amounts shall be presumed to be correct unless Client notifies Consultant in writing within fourteen (14) days of receipt. Client agrees to pay all costs incurred with collection of past due accounts, including attorneys' fees. If Client fails to pay an invoice when due, Consultant may, upon five (5) calendar days notice to client, suspend all Services until paid in full, and may terminate the Agreement.
2. The Client agrees that any and all limitations of the Consultant's liability and indemnifications by the Client to the Consultant shall include and extend to those individuals and entities the Consultant retains for performance of the services under this Agreement, including but not limited to the Consultant's officers, partners and employees and their heirs and assigns, as well as the Consultant's subconsultants and their officers, employees, heirs and assigns.
3. Consultant shall perform the services in a manner consistent with the standard of care and skill ordinarily exercised by members of the profession practicing in the same or similar locality under similar circumstances at the time the services are performed. This Agreement creates no warranty or guarantee, express or implied, nor does it create a fiduciary responsibility to Client by Consultant.
4. Consultant's construction observation Services, if any, shall be limited to observation of construction operations to provide Client with an understanding of the general nature, progress and quality of the work. Unless otherwise agreed in writing, Consultant shall not be responsible for continuous or exhaustive inspection of the work. In no event shall Consultant be responsible for the means and methods of construction or for the safety procedures employed by Client's contractor. Client shall hold its contractor solely responsible for the quality and completion of the Project, including but not limited to its construction in accordance with the construction documents.
5. Consultant shall sign certifications only if Consultant approves the form of such certification prior to the commencement of Services, such certification is included in Consultant's scope of services, and provided such certification is limited to a statement of professional opinion and does not constitute a warranty or guarantee, express or implied.
6. Client shall notify Consultant at least twenty-four (24) hours in advance of any necessary tests and observations. If Client assigns this responsibility to a contractor, subcontractor, or other third party, or if Client fails to provide the proper notice, Consultant shall not be responsible for any damages resulting from improper notice.
7. All samples shall remain the property of the Client, and Client shall promptly at its cost remove and lawfully dispose of samples, cuttings and hazardous materials, unless otherwise agreed in writing. If appropriate, Consultant shall preserve samples obtained for the Project for not longer than sixty (60) days after the issuance of any document that includes the data obtained from those samples.
8. Client shall bear sole responsibility for notifying all prospective purchasers or other appropriate third parties including, but not limited to, all appropriate municipal, regional, state or federal agencies of the existence of any hazardous or dangerous materials located in or around the Project site.
9. Client shall provide Consultant with all information regarding existing conditions, including the existence of hazardous or dangerous materials, and proposed uses of the Project site and shall correctly designate the location of all property lines of the Project site and all subsurface installations, such as pipes, tanks, cables, electrical lines, telephone lines and utilities within the Project site. Client shall immediately provide Consultant with any new information, including any change in plans. Client releases Consultant from liability for any incorrect advice, judgment or decision based on any inaccurate information furnished by Client or others. If reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including hazardous materials, encountered on the site by Consultant, Consultant shall, upon recognizing the condition, immediately stop work in the affected area and report the condition to Client.
10. Consultant's reports, boring logs, maps, field data, drawings, test results and other work product are part of Consultant's professional services, and do not constitute goods or products. Consultant reserves the right to copyright such work; however, such copyright is not intended to limit the Client's use of the Services pursuant to this Agreement in connection with the Project.
11. Because data stored on electronic media can deteriorate undetected or be modified without Consultant's knowledge, the Client agrees that it will accept responsibility for the completeness, correctness, or readability of the electronic media after an acceptance period of 30 days after delivery of the electronic files.
12. Client shall cooperate with all reasonable requests by Consultant that are related to the performance of the Services, including but not limited to obtaining permission, at Client's sole cost, to allow Consultant access to the Project site.
13. Consultant's potential liability to Client and others is grossly disproportionate to Consultant's fee due to the size, scope, and value of the Project. Therefore, unless Client and Consultant otherwise agree in writing in consideration for an increase in Consultant's fee, Client agrees to (1) limit Consultant's liability to the greater of \$50,000.00 or the amount of Consultant's fee, and (2) indemnify Consultant against all claims, liability, damages, or expenses (except for Consultant's sole negligence or willful misconduct) arising out of or relating to all acts, failures to act, or other conduct of Consultant, including but not limited to, claims, liability, damages, or expenses arising out of or relating to the active negligence or other fault of Consultant. Client shall indemnify Consultant even if Client is partially or wholly without fault for such claims, liability, damages, or expenses even if liability is claimed to have arisen while Consultant was performing work outside the scope of services set forth on page 1.
14. All disputes between Consultant and Client, with the exception of non-payment issues, shall first be subject to non-binding mediation. Either party may demand mediation by serving a written notice stating the essential nature of the dispute and demanding that the mediation proceed within sixty (60) days of service of notice. The mediation shall be administered by the American Arbitration Association or by such other person or organization as the parties may agree upon. No action or suit may be commenced unless (1) the mediation does not occur within ninety (90) days after service of notice, (2) the mediation occurs within ninety (90) days after service of notice but does not resolve the dispute, or (3) a statute of limitation would elapse if suit was not filed prior to ninety (90) days after service of notice.
15. If Client insures property, real or personal, or both, at or adjacent to the Project by property insurance, whether during or after the completion of the construction of the Project, Client agrees to waive all subrogation claims against Consultant for damages caused by fire or other causes of loss to the extent covered by such property insurance.
16. Client waives all claims against Consultant for all claims, liabilities, losses, and expenses arising out of or relating to Client's failure to perform, in whole or in part, any of its obligations under this Agreement and any subsequent agreements.
17. Client shall be responsible for jobsite safety.
18. If during the course of performance of this Agreement conditions or circumstances are discovered which were not contemplated by Consultant at the commencement of this Agreement, Consultant shall notify Client in writing of the newly discovered conditions or circumstances, and Client and Consultant shall renegotiate, in good faith, the terms and conditions of this Agreement. If amended terms and conditions cannot be agreed upon within thirty (30) days after notice, Consultant may terminate this Agreement and Consultant shall be paid for its services through the date of termination.
19. Client shall furnish to Consultant within fifteen (15) days after receipt of a written request information necessary and relevant for the Consultant to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, the name of the Project lender, and the Client and/or Owner's interest therein.
20. Except for actions such as for enforcement of mechanic's liens which are required by statute to be brought in a specific venue, in the event that litigation is instituted under the terms of this Agreement, the same is to be brought and tried in the judicial jurisdiction of the court of the county in which this Agreement is made. Client waives the right to have the suit brought, or tried in, or removed to, any other county or judicial jurisdiction.
21. This Agreement, including Consultant's Addenda and Schedule of Fees, represents the entire Agreement and understanding between the parties, and supercedes any and all agreements, either oral or in writing, including any purchase order, between the parties. Any modification to this Agreement will be effective only if it is in writing signed by the party to be bound. One or more waivers of any term, condition or covenant by either party shall not be construed as a waiver of any other term, condition or covenant.
22. The laws of the State where the contract was entered into shall govern interpretation of this Agreement. If any term of this Agreement is deemed unenforceable, the remainder of the Agreement shall stay in full force and effect. If services of an attorney are required by any party to secure performance under this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

## PROJECT COST ESTIMATE

Geotechnical Engineering Exploration  
City of Newberg Engineering Division  
Mountainview Drive Between College and Villa  
Newberg, Oregon

Ref: 60YP8554  
Created: 2-Mar-01  
By: RLS  
Revised:

NOTE: Refer to Kleinfelder proposal dated March 8, 2001 for specific scope of work.

| WORK TASK<br>DESCRIPTION | PERSONNEL AND HOURLY RATES |              |             |             |          |              |          | TOTAL<br>HOURS | TOTAL<br>LABOR<br>AMOUNT |
|--------------------------|----------------------------|--------------|-------------|-------------|----------|--------------|----------|----------------|--------------------------|
|                          | Principal                  | Sr. Engineer | P. Engineer | S. Engineer | Engineer | Tech./Draft. | Clerical |                |                          |
|                          | \$150                      | \$120        | \$94        | \$80        | \$67     | \$42         | \$42     |                |                          |
| Data Collection/Review   | 0                          | 0            | 0           | 2           | 0        | 0            | 0        | 2              | \$160                    |
| Surface Reconnaissance   | 0                          | 0            | 0           | 3           | 0        | 0            | 0        | 3              | \$240                    |
| Field Exploration        | 0                          | 0            | 0           | 0           | 10       | 0            | 0        | 10             | \$670                    |
| Exploration Logs         | 0                          | 1            | 0           | 0           | 2        | 2            | 0        | 5              | \$338                    |
| Engineering Analyses     | 0                          | 0            | 0           | 4           | 0        | 0            | 0        | 4              | \$320                    |
| Report Preparation       | 0                          | 2            | 0           | 8           | 4        | 2            | 2        | 18             | \$1,316                  |
| Specifications Review    | 0                          | 0            | 0           | 0           | 0        | 0            | 0        | 0              | \$0                      |
| <b>TOTAL LABOR</b>       | 0                          | 3            | 0           | 17          | 16       | 4            | 2        | 42             | <b>\$3,044</b>           |

### DIRECT EXPENSES

|                             |              |
|-----------------------------|--------------|
| Vehicle/Mileage @ \$0.4/mi. | \$32         |
| Per Diem                    | \$0          |
| Laboratory Testing          | \$526        |
| Report Production           | \$20         |
| <b>Total:</b>               | <b>\$578</b> |

### SUBCONTRACTOR COSTS

|                        |                |
|------------------------|----------------|
| Utility Locate Service | \$110          |
| Drilling Subcontractor | \$1,200        |
| Backhoe Subcontractor  | \$0            |
| <b>Total:</b>          | <b>\$1,310</b> |

### PROJECT TOTALS AND SUMMARY

|                           |                |
|---------------------------|----------------|
| Total Labor Cost          | \$3,044        |
| Direct Expenses           | \$578          |
| Subcontractor Costs + 10% | \$1,441        |
| <b>PROJECT TOTAL</b>      | <b>\$5,063</b> |

KLEINFELDER, INC.

15050 SW KOLL PARKWAY, SUITE L  
6028

BEAVERTON, OREGON 97006-

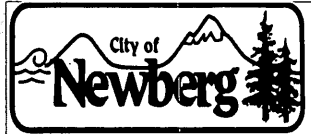
**FAX**Date: March 15, 2001Number of pages including cover sheet: 1**To:**Paul Chiu - City of NewbergPhone: 503.554.1751Fax: 503.537.1277CC:**From:**Bob StephensKLEINFELDERPhone: 503-644-9447Fax phone: 503-643-1905**REMARKS:**☒ Urgent☐ For your review☐ Reply ASAP☐ Please comment**Paul:**

As I stated in our telephone conversation this afternoon, the price for the work described in Kleinfelder's proposal 60YP8554 dated March 8, 2001 will remain unchanged, even if additional laboratory shrink-swell testing is required based on the presence of clayey soils.

**KLEINFELDER**

# **Exhibit "B"**

## **Background Information**

**Community Development Department****Engineering Division**

Lower Floor, City Hall

414 East First Street

P.O. Box 970, Newberg, Oregon 97132

Tel: 503-537-1240 Fax: 503-537-1277

Correspondence Correspondence Correspondence Correspondence Correspondence Correspondence

...from the desk of Paul Chiu, P.E.

February 28, 2001

**REQUEST FOR PRICE QUOTES**  
**Geotechnical Study For Road Construction Project**  
***"Mountainview Drive Between College & Villa Road"***

The City of Newberg is requesting price quotes from qualified consultants to perform geotechnical study on an unimproved section of Mountainview Drive between Highway 219 (College Street) on the west and Villa Road on the east. The study will be used to support the design of a new road, and footing design of *visual barrier* or "*sound wall*".

The project site is within the city limits. Construction as scheduled this summer, will include approximately one half of a mile of minor arterial road with waterline relocation, storm and sanitary sewer installation. Consultant tasks will include the following:

- Specify a reasonable number of soil borings and perform soil analysis;
- Verify the adequacy of 4" a. c. (type 'C' in 2 lifts) over 3" leveling rock (3/4" minus) over 12" base rock (1-1/2" minus) for the paving section;
- Determine suitability of native soil as fill material for road and ditch construction with the understanding that 10-inch of top soil will be stripped for application in private neighboring properties; and,
- Determine bearing capacity, and provide geotechnical data to support manufacturer or other consultant in the design of 8-foot high visual barrier or "*sound wall*" on the north side of road adjacent to existing residences.

The proposed work must be completed by April 2, 2001. The City will not consider any quotes over \$20,000 for the proposed work.

**Price quotes must be received by 5:00 p.m. on March 9, 2001.** Consultants should submit one reproducible copy of the price quote on 8-1/2" x 11" paper. The price quote may be delivered by the following methods: (1) mailed to the Newberg Community Development Office, P.O. Box 970, Newberg, OR 97132; (2) hand delivered to Newberg City Hall, 414 E. First Street; or, (3) faxed to 503-537-1277. Price quotes shall include: 1) statement of qualifications; 2) proposed work scope, methodology, and schedule; 3) description of products; and, 4) proposed itemized project budget.

Following receipt of proposals, the City will select a preferred consultant. The City and consultant will then develop a detailed project scope, schedule, and budget.

Questions regarding this request may be directed to Ryan Truair, *Engineering Technician* at 503-537-1236, or Paul Chiu, P.E., *Senior Engineer* at 503-554-1751.

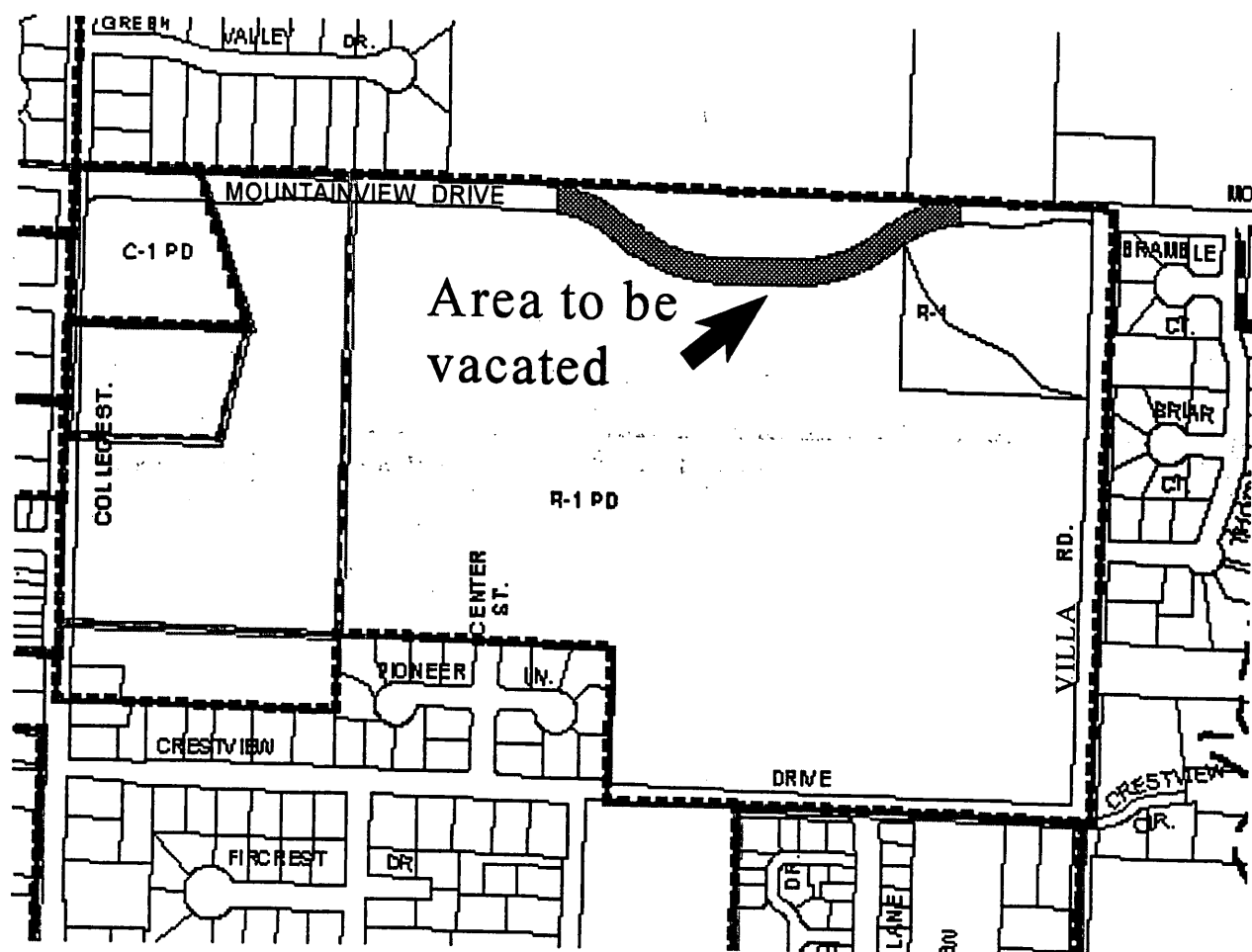
COLLEGE ST.  
HWY 219

MOUNTAINVIEW RD. (PROPOSED)



VILLA RD.

**BACKGROUND:** The City of Newberg is proposing to vacate that portion of Mountainview Drive located 327.7 feet West of Villa Road to a point 1021 feet West. The vacation of this portion of the street will remove two reverse curves in the street geometry which will be replaced with a tangent section to be dedicated by Kenneth and Joan Austin who are the owners of the property. This change will allow the street to be constructed in a straight alignment between the two streets mentioned. The property in question is currently an unimproved section of Mountainview Drive. There is a 12" water line that was installed in 1985 within the right of way to be vacated which is intended to be abandon in place and replaced with a new water line as part of the Mountainview Drive street improvement that is planned for construction in the Spring of 2001.



Description of a portion of Mountainview Dr. to be vacated:

Beginning at a point N 89( 43' 40" E 387.19 feet from the Northwest corner of Section 17 in Township 3 South Range 2 West of the Willamette Meridian in Yamhill County, Oregon, said point being the true point of beginning of the following tract of land; thence Southeasterly along the arc of a 330 foot radius curve to the right 232.73 feet (Long Chord bears S 70( 04'05" E 213.91 feet); thence Southeasterly along the arc of a 330 foot radius curve to the left 232.73 feet (Long Chord bears S 70( 04'05" E 213.91 feet); thence N 89( 43'40" E 158.00 feet; thence Northeasterly along the arc of a 350 foot radius curve to the left 243.03 feet (Long Chord bears N 69( 50' 09" E 238.17 feet); thence Northeasterly along the arc of a 330 foot radius curve to the right 229.14 feet (Long Chord bears N 69( 50' 09" E 224.56 feet); thence S 0( 16' 20" E 60.00 feet; thence Southwesterly along the arc of a 270 foot radius curve to the left 187.48 feet (Long Chord bears S 69( 50' 09" W 183.73 feet); thence Southwesterly along the arc of a 410 foot radius curve to the right 284.69 feet (Long Chord bears S 69( 50' 09" W 279.01 feet); thence S 89( 43' 40" W 158.00 feet; thence Northwesterly along the arc of a 390 foot radius curve to the right 275.05 feet (Long Chord bears N 70(04' 05" W 269.38 feet); thence Northwesterly along the arc of a 270 foot radius curve to the left 190.42 feet (Long Chord bears N 70(04' 05" W 186.50 feet); thence N 0( 16' 20" W 60.00 feet to the point of beginning.

Reserving unto the City of Newberg a temporary utility easement over the South thirty feet of the above described tract of land for a 12" water line. Said easement to be extinguished August 1, 2001.

