



January 20 2011  
Proposal DFW11P021

City of McKinney  
Ms. Patricia L. Jackson, P.E.  
221 North Tennessee Street  
P.O. Box 517  
McKinney, Texas 75069

**Subject: Construction Materials Testing Proposal  
The Courts at Gabe Nesbit Park  
McKinney, Texas**

Dear Ms. Jackson:

As you requested, Kleinfelder is pleased to submit this proposal for construction materials testing and/or observation services for the referenced project. The project is located at Gabe Nesbit Community Park in McKinney, Texas and consists of the following proposed structures:

- A Tennis Pro Shop with a plan area of approximately 2,500 square feet
- Eleven (11) tennis courts
- A concrete parking lot

A detailed scope of services is provided below.

## **PROJECT INFORMATION**

Based on our review of the project's preliminary site and grading plans provided by La Terra Studio, Inc. (dated January 4, 2011), we understand that the project will consist of the following:

- Tennis Pro Shop:
  - Three to five feet of moisture conditioned fill
  - Eighteen inches of select fill
  - Post tension concrete slab-on-grade
  - Structural wood and metal framing
  - Associated utilities with compacted backfill

- Eleven Tennis Courts:
  - Various depths of cut and fills
  - Post Tension concrete
- Concrete Paving:
  - Scarified and recompacted lime-treated subgrade
- Associated utilities with compacted backfill

## **SCOPE OF SERVICES**

The following scope of services is based, in part, on the project's preliminary site and grading plans and specification requirements and prior conversations with a representative with City of McKinney and is limited to providing testing and/or observations for the previously mentioned construction quantities. As such, we agree to provide a technician to provide the construction materials services as follows. *We do request that your construction representative provide us with a 24-hour notice for scheduling purposes.*

### Earthwork

- Obtain and perform laboratory moisture/density relations (standard proctor-ASTM D698) and soil classification tests (liquid limit, plastic limit and percent finer than No. 200 sieve analysis) for each soil type
- Perform in-place moisture/density tests at the rate of 1 per 2,500 square feet for building pad areas, 1 per 5,000 square feet for paving areas, and 1 per 150 linear-feet for utility backfill areas

### Reinforcing Steel

Perform reinforcing steel observation which will include:

- Record number and size of bars
- Record clearance between bars and spacing
- Record securing, tying and chairing of bars

### Post Tension Cables

Perform post tension observation which will include:

- Pre-pour observation of cable placement
- Record number of cables
- Record securing, tying and chairing of cable
- Observe and document stressing operations of cables

## Cast-In-Place Concrete

Perform testing during concrete placements, which will include:

- Ambient and concrete temperature determinations
- Air content determination
- Slump determination
- Cast 4-by-8-inch concrete test cylinders at the rate of 4 per 100 cubic yards of concrete placed, or fraction thereof placed each day
- Compressive strength determination of concrete test cylinders with one tested at 7 days and two tested at 28 days. The remaining cylinder will serve as hold specimen in the event that additional testing is required or if the 28 day design strength is not met.

## Structural Steel

- Perform visual observation of field welded and bolted connections on an as-called basis

## **COMPENSATION**

While testing is dependent on the construction sequence, weather conditions, and the actual testing performed, we estimate a **budget of \$32,000**. The invoicing for this project will use the attached Schedule of Fees and *the actual quantity of work performed*. This amount will not be exceeded without prior approval. City of McKinney 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 upon 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 is valid for a period of 45 days from the date of this proposal, unless a longer period is specifically required by the RFP in which case that time frame will apply. 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

Please indicate your approval of the proposal by signing the attached Master Services Agreement and Work Order and returning the entire original document to our office. A fully executed copy will be returned to you. Any modifications of the attached language must be accepted by both parties, and may result in an increase in scope and compensation. Acceptance of the proposal indicates City of McKinney review and understanding of the scope of services, budget and terms. City of McKinney and Kleinfelder may subsequently agree in writing to provide for additional services to be rendered under this agreement for additional, negotiated compensation.

\* \* \*

We appreciate the continued opportunity to provide you with our services. If you have any questions or wish to discuss any aspect of our proposal, please call us. Following your authorization, we are ready to begin work and look forward to another successful project.

Sincerely,

**KLEINFELDER CENTRAL, INC.**  
Texas Registered Engineering Firm F-5592

  
Mickey Lawson  
DFW Construction Service Manager

  
Bill Campbell, Jr., P.E.  
Project Manager

Attachments:  
Schedule of Fees  
Master Services Agreement  
Work Order  
Basis of Charges



**The Courts at Gabe Nesbit Park  
McKinney, Texas  
Proposal DFW11P021**

| Activity  | Invoice Name *              | Est. Units | Unit Fee | Estimated Cost   |
|---|-----------------------------|------------|----------|------------------|
| <b>Compaction Testing of Fill Materials, Subgrade, and Base</b>     |                             |            |          |                  |
| Engineering Technician, per hour (2-hr. min.)                       | Soil Services               | 80 hrs     | \$ 49    | \$ 3,920         |
| Standard Proctor, 4" Mold, each                                     | Standard Proctor, 4"        | 5 ea       | \$ 242   | \$ 1,210         |
| Atterberg Limits, Multiple Point, each                              | Atterberg Limits, Multi Pt. | 5 ea       | \$ 79    | \$ 395           |
| Sieve Analysis, -200 Wash, each                                     | Sieve Analysis, -200        | 5 ea       | \$ 78    | \$ 390           |
| In-Place Nuclear Density Tests, each (min. 3 per trip)              | Nuclear Gauge Test          | 100 ea     | \$ 26    | \$ 2,600         |
| Eades and Grim Test, each   | Eades and Grim Test         | 1 ea       | \$ 154   | \$ 154           |
| Lime Gradation, each  | In-Place Sieve Test         | 10 ea      | \$ 39    | \$ 390           |
| Lime Depth Check, each  | Depth Check, Lime           | 10 ea      | \$ 27    | \$ 270           |
| Vehicle Charge, each (per trip)                                     | Vehicle Charge/Trip         | 20 trips   | \$ 50    | \$ 1,000         |
| <b>Subtotal</b>   |                             |            |          | <b>\$ 10,329</b> |
| <b>Concrete Testing</b>   |                             |            |          |                  |
| Engineering Technician, per hour (2-hr. min.)                       | Concrete Services           | 70 hrs     | \$ 49    | \$ 3,430         |
| Reinforcing Steel Placement Observation, per hour (2-hr. min.)      | Rebar Plcmt Observation     | 10 hrs     | \$ 49    | \$ 490           |
| Sample Pick-Up/Delivery, per hour (2-hr. min.)                      | Sample Pick-Up/Delivery     | 20 hrs     | \$ 49    | \$ 980           |
| Concrete Compression, each  | Concrete Compression        | 100 ea     | \$ 21    | \$ 2,100         |
| Vehicle Charge, each (per trip)                                     | Vehicle Charge/Trip         | 35 trips   | \$ 50    | \$ 1,750         |
| <b>Subtotal</b>   |                             |            |          | <b>\$ 8,750</b>  |
| <b>Post Tension Cable Observation and Testing</b>                   |                             |            |          |                  |
| Pre-Pour Observations, per hour (2-hr. min.)                        | PT Stressing Observation    | 35 hrs     | \$ 49    | \$ 1,715         |
| Post Tension Cable Stressing Observation, per hour (2-hr. min.)     | PT Stressing Observation    | 45 hrs     | \$ 49    | \$ 2,205         |
| Vehicle Charge, each (per trip)                                     | Vehicle Charge/Trip         | 10 trips   | \$ 50    | \$ 500           |
| <b>Subtotal</b>   |                             |            |          | <b>\$ 4,420</b>  |
| <b>Structural Steel Welding and Bolting Observation and Testing</b> |                             |            |          |                  |
| AWS Certified Welding Inspector, per hour (4-hr. min.)              | Steel Services              | 10 hrs     | \$ 79    | \$ 790           |
| Vehicle Charge, each (per trip)                                     | Vehicle Charge/Trip         | 2 trips    | \$ 50    | \$ 100           |
| <b>Subtotal</b>   |                             |            |          | <b>\$ 890</b>    |
| <b>Project Management / Administration</b>                          |                             |            |          |                  |
| Project Management  | Project Management          | 15 hrs     | \$ 137   | \$ 2,055         |
| Senior Technician/Dispatcher  | Field Coordination/Sched    | 6 hrs      | \$ 75    | \$ 450           |
| Vehicle Charge, each (per trip)                                     | Vehicle Charge/Trip         | 5 trips    | \$ 50    | \$ 250           |
| Administration  | Administration              | 12 hrs     | \$ 56    | \$ 672           |
| <b>Subtotal</b>   |                             |            |          | <b>\$ 3,427</b>  |
| <b>TOTAL ESTIMATED COST:</b>  |                             |            |          | <b>\$ 27,816</b> |
| <b>Appx. 15% Contingency Estimate</b>                               |                             |            |          | <b>\$ 4,184</b>  |
| <b>TOTAL RECOMMENDED BUDGET:</b>                                    |                             |            |          | <b>\$ 32,000</b> |

\*Invoice Name is the terminology that will appear on each invoice.

## CLIENT MASTER SERVICES AGREEMENT

This Client Master Services Agreement (Agreement) is made by and between Kleinfelder Central Inc. (KLEINFELDER) with an address at 7805 Mesquite Bend Drive, Suite 100, Irving, Texas 75063 and City of McKinney with an address at 221 North Tennessee Street, PO Box 517, McKinney, Texas 75069 (hereinafter referred to as CLIENT). This Agreement consists of the following documents incorporated herein by reference:

- KLEINFELDER's Proposal to CLIENT dated January 20, 2011
- Any and all Amendments and subsequent Work Orders
- CLIENT's Agreement with OWNER (Prime Agreement), to the extent that the CLIENT has provided KLEINFELDER with the Prime Agreement (and any Amendments to the Prime Agreement) and identified the provisions which apply to KLEINFELDER.

In the event of any conflict in terms between this Agreement and any Prime Agreement specifically incorporated herein, the provisions of this Agreement shall prevail.

NOW, THEREFORE, in consideration of the mutual undertakings set forth below, the Parties agree as follows:

**1. WORK ORDERS AND SCOPE OF SERVICES:** This Agreement anticipates the execution of various written Work Orders and sets forth the terms and conditions pursuant to which KLEINFELDER will provide CLIENT the services (Services) specified in KLEINFELDER's Proposal and in each Work Order. By executing this Agreement, CLIENT does not guarantee any future work, nor does KLEINFELDER commit to performing any specific future Work Order. Each Work Order shall define the scope of Services to be performed, the location of CLIENT's project for providing such Services, the time period for performance, the agreed-upon fees, and additional provisions, if any, applicable to such Services.

**2. STANDARD OF CARE:** KLEINFELDER will perform its Services 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. No level of assessment can conclusively determine whether a property or its structures are completely free of geotechnical hazards or hazardous substances (including mold). CLIENT is advised to carefully review any limitations described in KLEINFELDER's Proposal or in the Scope of Services. KLEINFELDER will not be responsible for constant or exhaustive inspection of the work, the means and methods of construction or the safety procedures employed by other than its own employees and subcontractors. Even with diligent observation, some construction defects, deficiencies, or omissions may occur. The Parties agree that, before exercising any other remedy for any alleged breach by KLEINFELDER of the standard of care hereunder, CLIENT will direct KLEINFELDER in writing to re-perform any defective Services within twelve (12) months after completion of the Services. KLEINFELDER will only sign certifications if approved by KLEINFELDER in writing prior to start of Services. CLIENT understands that any such certifications are statements of professional opinion only. KLEINFELDER makes no other representation, guarantee, or warranty, express or implied, regarding the Services, communication (oral or written), report, opinion, or instrument of service provided under this Agreement.

**3. KLEINFELDER'S RESPONSIBILITIES:** KLEINFELDER will perform the Services as an independent contractor and shall not act as an agent or employee of CLIENT nor shall any special relationship or fiduciary duty be created. KLEINFELDER shall be solely responsible for the conduct of its own employees and for any of its employees' compensation, benefits, contributions, and payroll taxes. KLEINFELDER will, as directed by CLIENT or its agent (i) provide qualified staff to perform the Services specified in the Work Order; (ii) maintain records of Project site activities and costs for a period of no more than three (3) years from completion of KLEINFELDER's services; (iii) work, to the extent reasonably possible, in coordination with CLIENT's employees, contractors, consultants and other site staff so as not to impede the progress of the Project; and (iv) require its personnel to maintain a safe, clean and orderly work environment.

**4. TERM AND TERMINATION:** The term of this Agreement shall commence on the date of execution of this Agreement, except as to Services authorized by CLIENT and performed by KLEINFELDER prior to execution of this Agreement, and shall continue in effect for a period of two years or until terminated by either party as provided herein. The parties may agree to extend this Agreement for an additional two years. Either party may terminate this Agreement or any Work Order at any time, with or without cause, by providing not less than ten (10) days' written notice to the other party. Notwithstanding the termination of this Agreement, this Agreement will survive as to any and all Work Orders signed by both Parties prior to the Agreement's effective termination date, and until all of the rights and obligations of both Parties hereunder have been fulfilled. Within fifteen (15) days from termination CLIENT shall compensate KLEINFELDER for all Services performed hereunder through the date of any termination and for all reasonable costs and expenses incurred by KLEINFELDER in effecting the termination, including, without limitation, non-cancelable commitments, fixed cost components, and other demobilization costs. CLIENT may suspend Services by giving KLEINFELDER no less than ten (10) days' written notice. If such suspension exceeds ninety (90) days cumulative or in the aggregate, then KLEINFELDER may a) terminate this agreement; or b) agree to resume Services provided that CLIENT agrees to any increase in fees resulting from such suspension.

**5. COMPENSATION:** KLEINFELDER will be compensated for its Services as specified in each Work Order. CLIENT agrees to provide any special invoicing requirements to KLEINFELDER in advance of signing this Agreement. Additional charges may apply to any contracting or invoicing specifications outside of KLEINFELDER's standard procedures. CLIENT understands that time-and-materials pricing should be construed as an estimate only and that true costs may be higher or lower, depending on actual circumstances. For Services performed on a time-and-materials basis, KLEINFELDER shall be reimbursed for its Services and expenses at the rates and terms set forth in its then current fee schedule. Notwithstanding the foregoing, KLEINFELDER reserves the right to periodically adjust its fee schedule. KLEINFELDER generally submits its invoices for Services rendered to CLIENT on a monthly basis. The terms of payment are net thirty (30) days from date of invoice, with a one and one-half percent (1 1/2 %) per month surcharge on balances past due. Surcharges on amounts that are past due shall be computed from the initial date of invoice. KLEINFELDER may suspend performance of Services under this Agreement until KLEINFELDER has been paid in full for all balances past due, including interest charges. KLEINFELDER shall be entitled to recover all its attorney's fees and costs resulting from its efforts to secure payment from Client.

**6. INSURANCE:** KLEINFELDER represents that it currently carries Worker's Compensation, Commercial General Liability, and Automobile Liability Insurance for bodily injury and property damage. In addition, KLEINFELDER carries Professional Liability and Pollution Prevention insurance coverage. CLIENT represents that it currently carries adequate insurance coverage and agrees that it will require any contractors or parties it hires directly to have adequate coverage. Failure to do so will invalidate any Kleinfelder duty to indemnify Client under Section 11(a) herein.

**7. CHANGES:** CLIENT or KLEINFELDER may request changes to the scope of Services by altering, adding to, or deleting from the Services to be performed by KLEINFELDER. Both Parties agree to negotiate in good faith to determine changes in scope, any needed equitable adjustment to the price and time for performance of the affected Work Order, and to execute an amended Work Order. Failure by both parties to renegotiate in good faith changes to the terms and conditions of any Work Order, may result in suspension of work without penalties, and termination of this Agreement by KLEINFELDER.

**8. FORCE MAJEURE:** Neither party shall be liable for failure to fulfill its obligations if affected by causes beyond its control such as Force Majeure. Force Majeure includes, but is not limited to, acts of God; acts of a legislative, administrative, or judicial entity; acts of CLIENT's separate contractors and consultants; war; fires; floods; labor disturbances; and unusually severe or unanticipated weather.

**9. INSTRUMENTS OF SERVICE:** All reports, drawings, plans, or other documents (or copies) furnished to KLEINFELDER by the CLIENT, shall, at CLIENT's written request, be returned upon completion of the Services and payment in full for all Services rendered; provided, however, that KLEINFELDER may retain one (1) copy of all such documents for record keeping purposes. All reports, drawings, plans, documents, software, source code, object code, field notes and work product (or copies thereof) in any form prepared or furnished by KLEINFELDER pursuant to this Agreement are instruments of service. Exclusive ownership, copyright and title to all such instruments of service shall remain with KLEINFELDER. The opinions and other information prepared or furnished by KLEINFELDER under this Agreement, including, without limitation, its instruments of service, are not intended to inform, guide, or otherwise influence any entities or persons other than CLIENT and its Project with respect to any particular business transactions. KLEINFELDER makes no guarantee or warranty, express or implied, regarding the services, communication (oral or written), report, opinion, or instrument of service provided. Any requests by third parties for Reliance upon the Instruments of Service will be subject to approval at KLEINFELDER's sole discretion and subject to the terms of KLEINFELDER's then effective Reliance policy, which includes additional fees and additional terms and conditions related thereto. CLIENT agrees that the Instruments of Service are to be utilized solely for the Project. In the case of use of the Instruments of Service by CLIENT without KLEINFELDER's direct professional involvement, KLEINFELDER's and KLEINFELDER's consultants' names and seals shall be removed from all such documents and KLEINFELDER shall not be liable to CLIENT in any manner whatsoever for their use. Due to the potential exposure to liability when used without KLEINFELDER's involvement, CLIENT agrees to defend, indemnify and hold harmless KLEINFELDER, KLEINFELDER's consultants and employees from and against any claims, damages, losses and expenses, including but not limited to, attorneys' fees, arising out of or resulting from CLIENT's use of any such drawings, specifications or other documents.

**10. CLIENT'S RESPONSIBILITIES:** CLIENT agrees to (i) convey and discuss with KLEINFELDER all available material, data, and information pertaining to the Services, including, without limitation, the composition, quantity, toxicity, or potentially hazardous properties of any material known or believed to be present at any site, any hazards that may be present, the nature and location of underground or otherwise not readily apparent utilities, summaries and assessments of the site's past and present compliance status, and the status of any filed or pending judicial or administrative action concerning the site or Project; (ii) ensure the cooperation of CLIENT's employees and separate contractors and consultants; and (iii) be solely responsible for determining whether the Project is subject to prevailing wage regulations and to notify KLEINFELDER of such determination in advance of its proposal. KLEINFELDER is entitled to rely upon the accuracy and completeness of the information given by the CLIENT.

**11. ALLOCATION OF RISK:** The indemnity obligations and the limitation of liability established below shall survive the expiration or termination of this Agreement but in no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by an applicable statute of repose or statute of limitations. The language contained in Section 11(b) shall control irrespective of any conflict with provision(s) contained in any lien waiver, affidavit of payment or any other document related to the administration of this Agreement.

**(a) Indemnification of CLIENT. Subject to the provisions and Limitation of Liability of this Agreement, KLEINFELDER agrees to indemnify CLIENT from and against all liabilities, losses or damages caused by the negligence or other fault of KLEINFELDER and its employees, agents, representatives, sub-contractors, and all others for whom KLEINFELDER is legally responsible (the "Kleinfelder Parties"), but only to the proportional extent caused by the negligence or other fault of the Kleinfelder Parties when compared to the negligence or other fault of all other persons and entities. If, and only if, California law applies to this Agreement, the Parties also expressly agree that this indemnity provision does not include, and in no event shall Kleinfelder be required to assume, any obligation or duty to defend any claims, cause of action, demands, or lawsuits in connection with or arising out of this Project or the Services rendered by KLEINFELDER. This Section 11(a) is not intended to and shall not in any way be limited by any insurance coverage available to CLIENT under any insurance policy obtained and maintained by KLEINFELDER.**



**(b) Indemnification of KLEINFELDER.** CLIENT shall indemnify KLEINFELDER from and against all liabilities, losses or damages caused by the negligence or other fault of CLIENT and its employees, agents, representatives, sub-contractors, and all others for whom CLIENT is legally responsible (the "Client Parties"), but only to the proportional extent caused by the negligence or other fault of the Client Parties when compared to the negligence or other fault of all other persons and entities. If, and only if, California law applies to this Agreement, the Parties also expressly agree that this indemnity provision does not include, and in no event shall CLIENT be required to assume, any obligation or duty to defend any claims, cause of action, demands, or lawsuits in connection with or arising out of this Project or services rendered by CLIENT. This Section 11(b) is not intended to and shall not in any way be limited by any insurance coverage available to KLEINFELDER under any insurance policy obtained and maintained by CLIENT.

**(c) CLIENT and KLEINFELDER agree to require a provision in all contracts with contractors, subcontractors, subconsultants, vendors, agents and other entities involved in the Project to carry out the intent of this Section 11.**

**12. STATUTE OF LIMITATION REDUCTION:** Causes of action between the parties to this Agreement pertaining to acts or failures to act shall be deemed to have accrued and the applicable statutes of limitations shall commence to run not later than either the date of Substantial Completion of KLEINFELDER's services for acts or failures to act occurring prior to Substantial Completion of KLEINFELDER's services, or the date of issuance of the final payment to KLEINFELDER for acts or failures to act occurring after Substantial Completion of KLEINFELDER's services. However, the statute of limitations may commence to run sooner than the dates of Substantial Completion of KLEINFELDER's services or final payment to KLEINFELDER in accordance with applicable statutory or common law. CLIENT agrees that any claim or suit for damages made or filed against KLEINFELDER by CLIENT will be made or filed solely against KLEINFELDER or its successors or assigns and that no shareholder or employee of KLEINFELDER shall be personally liable to CLIENT for damages under any circumstances.

**13. LIMITATION OF LIABILITY:** To the fullest extent permitted by law, the total liability of KLEINFELDER arising out of or related to this Agreement, whether based in contract or tort, shall be limited to the greater of the compensation actually paid to KLEINFELDER for the Services under all Work Orders or \$50,000, and Client hereby releases KLEINFELDER from any liability above such amount. This Limitation of Liability shall include any Losses payable to Client under Section 11(a), Indemnification of CLIENT. This Limitation of Liability shall apply to any and all claims, no matter how pleaded, including but not limited to, claims for errors and omissions, breach of contract, negligence, or breach of fiduciary duty and applies to all phases of Services performed under this Agreement.

**14. WAIVER OF CONSEQUENTIAL DAMAGES.** Neither party shall be responsible to the other for any special, incidental, indirect, exemplary, punitive, penal nor consequential damages (including lost profits) incurred by either KLEINFELDER or CLIENT or for which either party may be liable to any third party.

**15. NO CONTROL OF MEANS AND METHODS OF OTHERS:** KLEINFELDER will not have control over or charge of, nor be responsible for the construction means, methods, techniques, sequences, or procedures, or for the safety precautions and programs of CLIENT's separate contractors and consultants in connection with the Project. KLEINFELDER's services do not include any job site safety obligations required by the project or any applicable code or regulation for other than its own employees or subcontractors. KLEINFELDER shall not be responsible for the Contractor's schedules or failure to perform the Services in accordance with the Contract Documents. KLEINFELDER shall not have control over or charge of acts or omissions of Contractor, Subcontractors, or their agents or employees, or of any other persons performing portions of the Services.

**16. SITE ACCESS:** CLIENT shall, as may be required by KLEINFELDER for the successful and timely completion of Services: (i) provide unimpeded and timely access to the site, including third party sites, if required; (ii) provide an adequate area for KLEINFELDER's site office facilities, equipment storage, and parking; (iii) furnish all construction utilities and utility releases necessary for the performance of the Services; and (iv) obtain Project-specific permits and licenses necessary for the performance of the Services.

**17. WARRANTY OF TITLE, WASTE OWNERSHIP:** KLEINFELDER will not take title to any hazardous materials found at the project site. Any risk of loss with respect to all materials shall remain with the project site owner, who shall be considered the generator of such materials, execute all manifests as the generator of such materials, and be liable for the arrangement, transportation, treatment, and/or disposal of all material. All samples shall remain the property of the CLIENT. CLIENT shall promptly, at its cost, remove and lawfully dispose of samples, cuttings, and hazardous materials.

**18. ASSIGNMENT AND SUBCONTRACTING:** This Agreement shall not be assigned by either party without the prior written approval of the other party. KLEINFELDER, however, may elect to subcontract portions of the Services to a qualified subcontractor.

**19. DISPUTE RESOLUTION:** If a claim or dispute arises out of or relates to the interpretation, application, enforcement, or performance of Services under this Agreement, both Parties agree to attempt to resolve the claim or dispute (1) at a meeting between the principals within fifteen (15) days of receipt by either party of a notice and description of the dispute, and failing resolution (2) mediation in accordance with the AAA Construction Industry Mediation Rules then in effect within forty-five (45) days from service of written notice. The Party seeking to initiate mediation shall do so by submitting a formal, written request to the other party to this Agreement. If the claim or dispute cannot be resolved through mediation and unless otherwise mutually agreed, either party may file suit in an appropriate court in the state where the Services are performed. This section shall survive completion or termination of this Agreement, but under no circumstances shall either party call for mediation of any claim or dispute arising out of this Agreement after such period of time as would normally bar the initiation of legal proceedings to litigate such claim or dispute under the laws of the state in which the Project is located, unless another location is mutually agreed upon.

**20. WAIVER OF TERMS AND CONDITIONS:** The failure of either Party in any one or more instances to enforce one or more of the terms or conditions of this Agreement, or to exercise any right or privilege in this Agreement, or the waiver by KLEINFELDER or CLIENT of any breach of the terms or conditions of this Agreement shall not be construed as thereafter waiving any such terms, conditions, rights, or privileges, and the same shall continue and remain in force and effect as if no such waiver had occurred.

**21. SEVERABILITY:** Every term or condition of this Agreement is severable from the others. Notwithstanding any possible future finding by a duly constituted authority that a particular term or provision is invalid, void, or unenforceable, this Agreement has been made with the clear intention that the validity and enforceability of the remaining parts, terms, and provisions shall not be affected thereby.

**22. NO THIRD-PARTY BENEFICIARIES:** The Parties do not intend to create, and nothing in this Agreement shall be construed to create, any benefit or right in any third party, nor is this Agreement or the services provided hereunder intended to create any special relationship or fiduciary duty to third parties.

**23. GOVERNING LAWS:** This Agreement shall be governed and construed in accordance with the laws of the State where the Services are performed.

**24. ENTIRE AGREEMENT:** The terms and conditions set forth herein, including any associated Work Orders, constitute the entire understanding and agreement of both Parties with respect to the Services. Any amendment or revision to this Agreement shall be in writing and signed by an authorized representative from each party. Any oral modification or revision of this Agreement or any Work Order shall not operate to modify this Agreement or any Work Order.

In witness whereof, CLIENT and KLEINFELDER have caused this Agreement to be executed by their respective duly-authorized representatives.

**CITY OF MCKINNEY**

**KLEINFELDER CENTRAL, INC.**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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

**WORK ORDER NO: \_\_\_\_\_**

Issued Pursuant to Master Services Agreement (Reference Number or Date of Execution \_\_\_\_\_)

Effective Date: January 20, 2011 by and between Kleinfelder Central, Inc. (KLEINFELDER) and City of McKinney (CLIENT).

CLIENT Office: 221 North Tennessee Street  
McKinney, Texas 75069

KLEINFELDER Project No: TBD

Work Order Type:  Time and Material  
 Fixed Price  
 Other (describe):

CLIENT Reference No: N/A

KLEINFELDER Office: McKinney, Texas

KLEINFELDER Contact: Mickey Lawson

1. SCOPE OF WORK: See attached Proposal DFW11P021 dated January 20, 2011.
2. LOCATION/CLIENT FACILITY INVOLVED: The Courts at Gabe Nesbit Park  
McKinney, Texas
3. PERIOD OF PERFORMANCE: FROM: January 20, 2011 TO: July 31, 2011
4. AUTHORIZED FEES: Estimated Budget of \$32,000 per attached Proposal DFW1P021.
5. SPECIAL PROVISIONS: See attached Proposal DFW11P021.

NOTICE TO PROCEED IS GIVEN ON (DATE): \_\_\_\_\_

**CITY OF MCKINNEY**

**KLEINFELDER CENTRAL, INC.**

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

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

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



## BASIS OF CHARGES

1. Project Management/Administration is billed at an hourly rate per proposal DFW11P021 dated January 20, 2011.
2. Listed herein are typical prices for services most frequently performed by Kleinfelder. Prices for other services provided by the firm or other services not listed will be given upon request, as well as special quotations for programs involving volume work.
3. The schedule of fees will be valid through December 31 of the current year, and an updated fee schedule will take effect beginning January 1 of each year.
4. Invoices will be issued on a periodic basis, or upon completion of a project, whichever is sooner. The net cash amount of this invoice is payable on presentation of the invoice. If not paid within 30 days after the date of the invoice, the unpaid balance shall be subject to a FINANCE CHARGE of 1.5% per month, which is an ANNUAL PERCENTAGE RATE of 18%.
5. A two-hour minimum charge applies for all field services. Technician time for field services is billed portal-to-portal, in hourly increments following the minimum 2 hours.
6. Hours worked before 7 a.m. / after 5 p.m. Monday through Friday and time worked in excess of 8 hours per day will be charged at 1.5 times the hourly rate. Additionally, weekend (Saturday and Sunday) and holiday work will be charged at 1.5 times the hourly rate. A premium of fifty percent will be charged for laboratory testing requested on a rush basis.
7. Per Diem at a rate of \$127 per day per person or expenses plus 15%, whichever is greater will be charged for all overnight stays. Travel expenses, such as airfare, will be charged at cost plus 15%.
8. Outside services will include a 15% markup unless otherwise noted.
9. We are protected by Worker's Compensation Insurance (and/or Employer's Liability Insurance), and by Public Liability Insurance for bodily injury and property damage, and will furnish certificates thereof upon request. We assume the risk of damage to our own supplies and equipment. If your contract or purchase order places greater responsibilities upon us or requires further insurance coverage, we, specifically directed by you, will take out additional insurance (if procurable) to protect us at your expense, but we shall not be responsible for property damage from any cause, including fire and explosion, beyond the amounts of coverage of our insurance.
10. All non-environmental and uncontaminated samples may be disposed of at Kleinfelder's discretion 30 days after submission of final report, unless prior arrangements are made. All environmental samples may be returned to clients at Kleinfelder's discretion 30 days after submission of final report, unless prior arrangements are made.
11. Proper disposal or handling of soil boring cuttings, well development and purge waters, decontamination solutions, and other contaminated/potentially contaminated materials is the responsibility of the client. Kleinfelder can provide containers for onsite containment and can advise the client regarding proper handling procedures.