Vault

CITY OF NEWBERG

AGREEMENT WITH SQUIER ASSOCIATES TO PROVIDE CONSULTING SERVICES TO THE CITY OF NEWBERG

THIS AGREEMENT is entered into this 7th day of February, 2003 by and between the City of Newberg, a municipal corporation of the State of Oregon, hereinafter called **City**, and

Squier Associates
4260 Galewood Street
Lake Oswego, OR. 97035
503-635-4419 503-635-1430

CITY OF NEWBERG
CITY RECORDER INDEX NO. 1990

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** by negotiating a scope of work and fee schedule, to provide services related to the Fernwood Road Street Improvements Project.

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 30, 2003, whichever date occurs first. This fact not withstanding, the services of **Consultant** shall be authorized and paid on the basis 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:

$6,200.00

The **Consultant** shall not exceed the fee for any task included in the fee proposal amount. If the **Consultant** foresees 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 and the Proposal (dated 1-21-003) of the **Consultant.** 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 a good and businesses-like manner in accordance with the highest professional standards. 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: Consultant** shall defend, indemnify and hold harmless **City** from and against all liability or loss and against all claims, suits, actions, losses, damages, liabilities, costs, and expenses of any nature whatsoever resulting from, arising out of, or relating to the activities NEGLIGENT of the **Consultant**, or its officers, employees, subcontractors, or agents 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 Commercial 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 of final work product, including digital files of text and drawings shall be provided to **City** at the conclusion or termination of this Contract. **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 the City's use of any instruments of professional service for purposes outside the scope of this Contract.

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. **Notification:** All correspondence and notices related to this Agreement shall be directed to the Project Manager for the party to whom the correspondence or notice is intended. If directed to the **City**: City of Newberg, P.O. Box 970, Newberg, Oregon 97132, Attn: Robert A. Bielman. If directed to the **Consultant**: Attn: Gary L. Peterson, C.E.G. at the address listed above. Each party shall be responsible for notifying the other of any changes in project manager designation.

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

CONSULTANT

By: _____

Name: GARY L. PETERSON

Title: VICE PRESIDENT

Date: JANUARY 30, 2003

CITY OF NEWBERG

By: _____

Name: JAMES H. BENNETT

Title: CITY MANAGER

Date: February 19, 2003

Division Approval: _____

Recommended for Approval By:

_____ 2/18/03

Michael Soderquist, P.E., P.L.S., DEE
Community Development Director

Approved as to form:

_____ 2/25/03

Terrence D. Mahr
City Attorney

EXHIBIT A

SQUIER ASSOCIATES

GEOTECHNICAL & ENVIRONMENTAL CONSULTANTS

4260 Galewood Street
Lake Oswego, Oregon
97035

503·635·4419
FAX 635·1430

201622
January 21, 2003

City of Newberg
414 East First Street
PO Box 970
Newberg, Oregon 97132

Attn: Mr. Bob Bealman

Re: Proposal for Evaluation of Embankment Reconstruction
Fernwood Road Embankment Failure

Dear Bob:

In response to your request we provide herein a proposed scope and fee estimate for additional geotechnical services related to the Fernwood Road Embankment failure. The work proposed was initially discussed in a memorandum dated November 4, 2002.

Scope of Work

Based upon the foregoing, we propose to accomplish a geotechnical investigation that will include the following tasks:

1. Three surveyed cross sections would be developed of the embankment. We would subcontract the survey work and fulfill two complete sections across the embankment, and a third half-profile that captures the area of the existing storm drain discharge at the southwest corner of the embankment. Assuming the City can provide electronic Autocad files of existing survey data and topography, the new cross sections would be plotted on the existing data.

2. Excavate one test pit on the south embankment slope and toe to evaluate subsurface conditions. A subcontracted excavator would accomplish the test pits.

3. Conduct a geologic reconnaissance using the new cross sections and existing data to estimate slip surfaces for the embankment failures and identify potential weak soils zones.

4. Review the design drawings and geotechnical report developed for the roadway repair. Using the newly developed field data, provide an opinion regarding the geotechnical suitability for short term and long term performance of the roadway repair design, including the potential for further ground movement.

5. Identify alternative repair approaches based upon the expressed long term use and needs of the City. Develop conceptual costs for alternatives to compare with the current design.

A meeting would be held with City representatives to discuss the findings and conceptual alternatives, including discussion of other relevant issues of the embankment area, including culvert damages / erosion damage at existing storm drain outlet and similar.

A brief technical memorandum would be prepared summarizing the findings and conclusions of the work accomplished.

Fees

The fee for the above services and the terms under which the services are offered will be in accordance with the attached Terms of Agreement. We estimate the total cost for the scope of services outlined above would be in the order of $6200. A breakdown of estimated fees is presented on Table 1, below. We propose to administer this work on a time and expense basis. This estimated fee will not be exceeded without your written authorization. Should you wish to modify the scope of services prior to accepting this agreement, we would be pleased to review this proposal and our estimated fee with you.

Table 1: Estimated Fee Breakdown

Task	Estimated Cost
Labor Services & Reimbursibles	$3750
Laboratory Testing	$150
Surveying	$1750
Test Pit Excavation	$550
Estimated Total Fee	$6200

We are in a position to begin this project within one week after receiving your authorization to proceed. We anticipate that the report can be submitted to you within three weeks after the completion of all field work.

Acceptance

Acceptance of this proposal and attached documents is indicated by signing and dating in the space provided below, and initialing and dating each page of the Terms of Agreement and returning one copy of this letter and attachments to us. If more than 90 days pass before authorizing the proposed work, we reserve the opportunity to review and modify this proposal where necessary.

We look forward to being of service to you on this project. Should you have any questions regarding this proposal, or if renegotiation of the Scope of Services or the Terms of Agreement is considered advisable, we would be pleased to confer with you at your convenience.

Very truly yours,
Squier Associates, Inc.

by _____
Gary L. Peterson, C.E.G.
Sr. Principal Geologist

GLP/kmb

_____
Client Name

_____
Authorized Signature

_____
Date

P:\Projects.01\201622 Fernwood Embankment\Additional evaluation proposal.doc

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID SG SQUIE-1 | DATE (MM/DD/YY) 02/03/03

PRODUCER

ACEC/MARSH
800 Market St, Ste. 2600
St. Louis MO 63101-2500
Phone: 800-338-1391 Fax: 888-621-3173

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED

Squier Associates, Inc.
4260 Galewood Street
Lake Oswego OR 97013

INSURER A: Hartford Insurance Company
INSURER B:
INSURER C:
INSURER D:
INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY [X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS MADE [X] OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: [ ] POLICY [X] PRO-JECT [ ] LOC	84SBWCG0480	11/01/02	11/01/03	EACH OCCURRENCE FIRE DAMAGE (Any one fire) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ 1,000,000 $ 1,000,000 $ 10,000 $ 1,000,000 $ 2,000,000 $ 2,000,000
A	AUTOMOBILE LIABILITY [X] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [ ] HIRED AUTOS [ ] NON-OWNED AUTOS	84UEGNP2482	11/01/02	11/01/03	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$ 1,000,000 $ $ $
	GARAGE LIABILITY [ ] ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
A	EXCESS LIABILITY [X] OCCUR [ ] CLAIMS MADE [ ] DEDUCTIBLE [X] RETENTION $ 10,000	84SBWCG0480	11/01/02	11/01/03	EACH OCCURRENCE AGGREGATE	$ 1,000,000 $ 1,000,000 $ $ $
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				[ ] WC STATU-TORY LIMITS [ ] OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	 $ $ $
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

RE: 301622 FERNWOOD ROAD STREET IMPROVEMENTS PROJECT. THE CITY, ITS AGENTS, EMPLOYEES AND OFFICIALS SHALL BE NAMED AS AN ADDITIONAL INSURED ON THE INSURANCE.

X-CLAUSE

CERTIFICATE HOLDER | N | ADDITIONAL INSURED; INSURER LETTER: ___

NEWBERG

CITY OF NEWBERG
ATTN: TABRINA R. MUELLER
414 EAST FIRST STREET
P.O. BOX 970
NEWBERG OR 97132

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ~~ENDEAVOR TO~~ MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, ~~BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES~~.

AUTHORIZED REPRESENTATIVE

Alfred A. Peterjeans

ACORD 25-S (7/97)

Client#: 3322 SQUIEASS

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 02/03/03

PRODUCER
USI Northwest
700 NE Multnomah, Suite 1300
Portland, OR 97232
503 224-8390

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Squier Associates, Inc.
4260 Galewood Street
Lake Oswego, OR 97035

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: SAIF Corporation	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$
		☐ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	$
		☐ CLAIMS MADE ☐ OCCUR				MED EXP (Any one person)	$
						PERSONAL & ADV INJURY	$
						GENERAL AGGREGATE	$
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	$
		☐ POLICY ☐ PRO-JECT ☐ LOC					
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$
		☐ ANY AUTO					
		☐ ALL OWNED AUTOS				BODILY INJURY (Per person)	$
		☐ SCHEDULED AUTOS					
		☐ HIRED AUTOS				BODILY INJURY (Per accident)	$
		☐ NON-OWNED AUTOS					
						PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		☐ ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	$
		☐ OCCUR ☐ CLAIMS MADE				AGGREGATE	$
							$
		☐ DEDUCTIBLE					$
		☐ RETENTION $					$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	912395	10/01/02	10/01/03	X WC STATU-TORY LIMITS ☐ OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?				E.L. EACH ACCIDENT	$500,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$500,000
						E.L. DISEASE - POLICY LIMIT	$500,000
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

RE: #201622 Fernwood Road Street Improvements Project

CERTIFICATE HOLDER

City of Newberg
Attn: Tabrina R. Meuller
PO Box 970
Newberg, OR 97132

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
Shelley R. Aispuro

IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Terra Insurance Company
(A Risk Retention Group)
Two Fifer Avenue, Suite 100
Corte Madera CA 94925

A RISK RETENTION GROUP

CERTIFICATE OF INSURANCE

DATE
02/02/03

NAME AND ADDRESS OF INSURED

Squier Associates, Inc.
4260 Galewood Street
Lake Oswego, OR 97035

This certifies that the insurance policy (described below by a policy number) written on forms in use by the Company has been issued. This certificate is not a policy or a binder of insurance and does not alter, amend or extend the coverage afforded by that policy.

Notwithstanding any requirement, term or condition of any contract or other document to which this certificate may pertain, the insurance afforded by the policy is subject to all of its terms, exclusions and conditions.

TYPE OF INSURANCE Professional/Environmental Liability

POLICY NUMBER	EFFECTIVE DATE	EXPIRATION DATE
202059	01/01/02	12/31/02

LIMITS OF LIABILITY
$1,000,000 EACH CLAIM
$1,000,000 ANNUAL AGGREGATE

PROJECT DESCRIPTION

201622 Fernwood Road- Street Improvements Project

CANCELLATION If the described policy is cancelled, materially altered or changed by the Company before its expiration date, the Company will mail written notice to the certificate holder thirty (30) days in advance. If the described policy is cancelled by the insured before its expiration date, the Company will mail written notice to the certificate holder within thirty (30) days of the notice to the Company from the insured.

CERTIFICATE HOLDER

City of Newberg
Attn: Tabrina R. Meuller
414 East First Street
P. O. Box 970
Newberg OR 97132

ISSUING COMPANY:
TERRA INSURANCE COMPANY
(A Risk Retention Group)

President