

AGREEMENT BETWEEN CITY AND CONSULTANT

THIS AGREEMENT, entered into this 14th day of Dec, 2006 by and between the City of Richland, 505 Swift Ave., Richland, Washington, (hereinafter called the "City"), and Archaeological Investigations Northwest, Inc. (hereinafter called the "Consultant").

WITNESSETH:

1. GENERAL DESCRIPTION OF WORK:

The Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work as designated elsewhere in this Agreement.

2. SCOPE OF WORK

The Consultant shall provide archaeological services for the Richland Wye Levee Trail Improvements. Services to be provided are detailed in the attached Proposal, dated November 30, 2006 and are made part of this Agreement.

3. GENERAL REQUIREMENTS

There are no general requirements associated with this contract.

4. TIME FOR BEGINNING AND COMPLETION

The Consultant shall not begin any work under the terms of this Agreement until authorized in writing by the City. Consultant agrees to use best efforts to complete all work described under this Agreement by February 15, 2007.

5. PAYMENT

The Consultant shall be paid a Lump Sum Amount not to exceed eight thousand nine hundred and forty dollars (\$8,940.00), by the City to complete the services rendered under this Agreement. Such payment shall be full compensation for all work performed or services rendered, and for all labor, materials, supplies, equipment, and incidentals necessary to complete the work specified in Section 2, Scope of Work.

The maximum total amount payable, by the City to the Consultant under this Agreement, shall not exceed the above lump sum amount .

Partial payments to cover the percentage of work completed may be requested by the Consultant. These payments shall not be more than one (1) per month. To provide a means of verifying the invoiced salary costs for the Consultant's employees, the City may conduct employee interviews. These interviews may consist of recording the names, titles, salary rate, and present duties of those employees performing work on the Project at the time of the interview.

The Consultant and his/her subconsultants shall keep available for inspection by representatives of the City, the State and the United States for a period of three years after final payment the cost records and accounts pertaining to this Agreement and all items relating to or bearing upon these records with the following exception: if any litigation, claim, or audit arising out of, in connection with, or relating to this contract is initiated before the expiration of the three-year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed.

6. **EMPLOYMENT**

Any and all employees of the Consultant or other persons while engaged in the performance of any work or services required of the Consultant under this Agreement, shall be considered employees of the Consultant only and not of the City, and any and all claims that may or might arise under any Workmen's Compensation Act on behalf of said employees or other persons while so engaged, and any and all claims made by a third party as a consequence of any act or omission on the part of the Consultant's employees or other persons while so engaged on any of the work or services provided to be rendered herein, shall be the sole obligation and responsibility of the Consultant.

7. **OTHER PARTIES**

It is mutually agreed that this Agreement is not transferable by either signatory to a third party without the consent of the other principal party.

8. **OWNERSHIP OF DOCUMENTS**

All designs, drawings, specifications, documents, and other work products prepared pursuant to this Agreement, will become the property of the City upon payment to the Consultant of his fees as set forth in this Agreement. The City acknowledges the Consultant's plans and specifications, including all documents on electronic media, as instruments of professional services. The plans and specifications prepared under this Agreement shall become the property of the City upon completion of the services and payment in full of all payment due to the Consultant. The City may make or permit to be made any modifications to the plans and specifications without the prior written authorization of the Consultant. The City agrees to waive any claim against the Consultant arising from any unauthorized reuse of the plans and specifications and to indemnify and hold the Consultant harmless from any claim, liability or cost arising or allegedly arising out of any reuse of the plans and specifications by the City or its agent not authorized by the Consultant.

9. **TERMINATION**

This Agreement may be terminated by either party upon thirty (30) days written notice, by registered mail, or mailed to the other party at his usual place of business. In the event this contract is terminated by the Consultant, the City will be entitled to reimbursement of costs occasioned by such termination by the Consultant. In the event the City terminates this Agreement, the City shall pay the

Consultant for the work performed, an amount equal to the percentage of completion of the work as mutually agreed between the City and the Consultant.

If any work covered by this Agreement shall be suspended or abandoned by the City before the Consultant has completed the assigned work, the Consultant shall be paid for services performed down to the time of such termination or suspension an amount equal to the costs incurred at the date of termination as mutually agreed upon between the City and the Consultant.

10. DISPUTE RESOLUTION

The City and the Consultant agree to negotiate in good faith for a period of thirty (30) days from the date of notice of all disputes between them prior to exercising their rights under this Agreement, or under law.

All disputes between the City and the Consultant not resolved by negotiation between the parties may be arbitrated only by mutual agreement of the City and the Consultant. If not mutually agreed to resolve the claim by arbitration, the claim will be resolved by legal action. Arbitration of all claims will be in accordance with the Arbitration Rules of the American Arbitration Association.

11. VENUE, APPLICABLE LAW AND PERSONAL JURISDICTION

In the event that either party deems it necessary to institute legal action or proceedings to enforce any right or obligation under this Agreement, the parties hereto agree that any such action shall be initiated in the Superior Court of the State of Washington, situated in Benton County. The parties hereto agree that all questions shall be resolved by application of Washington law and that the parties to such action shall have the right of appeal from such decision of the Superior Court in accordance with the laws of the State of Washington. The Consultant hereby consents to the personal jurisdiction of the Superior Court of the State of Washington, situated in Benton County.

12. ATTORNEY'S FEES

Attorney's fees which are reasonable and costs, including those on appeal, if appeal is taken, shall be allowed to the prevailing party by any court hearing a dispute under this Agreement.

13. INSURANCE

The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Consultant, its agents, representatives, or employees.

A. Minimum Scope of Insurance

Consultant shall obtain insurance of the types described below:

Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the Consultant's Commercial General Liability insurance policy with respect to the work performed by the City.

Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

Professional Liability insurance appropriate to the Consultant's profession.

B. Minimum Amounts of Insurance

Consultant shall maintain the following insurance limits:

Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.

Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate.

Professional Liability Insurance shall be written with limits no less than \$1,000,000 per claim and \$1,000,000 policy aggregate limit.

C. Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

The Consultant's insurance coverage shall be primary insurance as respect the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Consultant's insurance and shall not contribute with it.

The Consultant's insurance shall be endorsed to state that the coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.

D. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. best rating of not less than A:VII.

E. Verification of Coverage

Consultant shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Consultant before commencement of the work

14. INDEMNIFICATION / HOLD HARMLESS

Consultant shall defend, indemnify, and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

15. WARRANTY

The professional services will be furnished in accordance with the care and skill ordinarily used by members of the same profession practicing under similar conditions at the same time and in the same locality. The Consultant makes no warranties express or implied, under this Agreement or otherwise, in connection with the Consultant's services.

16. SUCCESSORS OR ASSIGNS

All of the terms, conditions and provisions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective successors and assigns; provided, however, that no assignment of the Agreement shall be made without written consent of the parties to the Agreement.

17. EQUAL OPPORTUNITY AGREEMENT

The Consultant agrees that he will not discriminate against any employee or job applicants for work on this Agreement for reasons of race, sex, nationality or religious creed.

18. CHANGES OF WORK

The Consultant shall make such changes and revisions in the completed work of this Agreement as necessary to correct or revise any errors, omissions, or other deficiencies in the design, drawings, specifications, reports, and other similar documents which the Consultant is responsible for preparing or furnishing under this Agreement, when required to do so by the City, without additional compensation thereof.

Should the City find it desirable for its own purposes to have previously satisfactorily completed work or parts thereof changed or revised, the Consultant shall make such revisions as directed by the City. This work shall be considered as Extra Work and will be paid for as herein provided under Section 19, Extra Work.

19. EXTRA WORK

The City may desire to have the Consultant perform work or render additional services within the general scope of this Agreement. Such work shall be considered as Extra Work and will be specified in a written supplement to this Agreement which will set forth the nature of the scope, schedule for additional work, additional fees

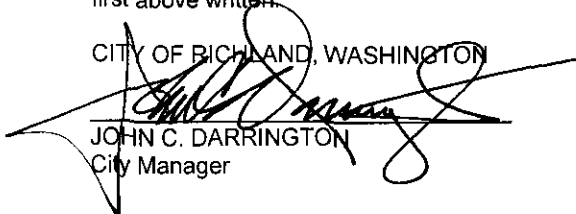
Comment [BB1]:

and the method of payment. Work under a supplemental Agreement shall not proceed until authorized in writing by the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF RICHLAND, WASHINGTON

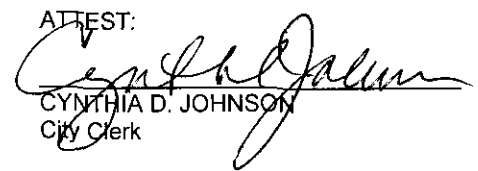
AINW, Inc

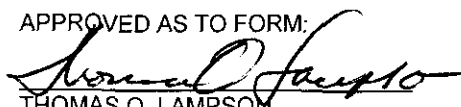

JOHN C. DARRINGTON
City Manager

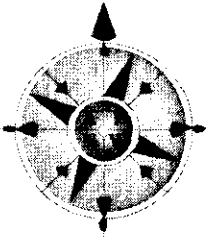

12/6/06
President

ATTEST:

APPROVED AS TO FORM:


CYNTHIA D. JOHNSON
City Clerk


THOMAS O. LAMPSON
City Attorney



Archaeological Investigations Northwest, Inc.

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E-mail: ainw@ainw.com
Web: www.ainw.com

November 30, 2006

Phil Pinard
Planning and Capital Projects Manager
Parks and Recreation Department
500 Amon Park Drive
Richland, WA 99352

Re: Proposal for preparing Mitigation Documentation for Levee 4A for the City of Richland

Dear Mr. Pinard:

The following is my proposal for preparing the National Register of Historic Places (NRHP) documentation for Levee 4A for the City of Richland. As we discussed, I understand that the Corps of Engineers (COE) is in the process of working with the City and coordinating their activities with the Department of Archaeology and Historic Preservation (DAHP) in Olympia regarding the NRHP eligibility of Levee 4A, and assessing the effects to the levee of the proposed levee lowering project. I further understand that you wish to have a mitigation document prepared in advance of the final decision being made by the COE, and that you understand that the COE and DAHP may require a somewhat different approach to mitigation the effects to the levee by the proposed lowering project. As we discussed, my firm, Archaeological Investigations Northwest, Inc. (AINW), has conducted a similar study for the City of Pasco, and we are interested in assisting you and the City of Richland in documenting Levee 4A.

Based on the previously completed work that we have done for Levee 4A, and the documentation that we completed for the City of Pasco, I anticipate that the following tasks will need to be completed as part of the levee documentation work:

- coordinate with the Walla Walla District COE staff cultural resource specialists,
- coordinate with DAHP staff regarding historic qualities of Levee 4A,
- update existing background information regarding the history and historical values of Levee 4A beyond what was compiled for the previous evaluation work,
- prepare a draft Mitigation Document for your review,
- prepare a revised draft Mitigation Document for outside review by DAHP and the COE,
- coordinate the draft Mitigation Document with the DAHP, and COE,
- prepare and submit a final Mitigation Document to the City for distribution to the COE and the DAHP for review and concurrence.

For this project, I would serve as Project Manger and would assist in the coordination between the City, the DAHP, and the COE. Judith Chapman, M.A., Senior Historian/Architectural Historian, Jason Allen, M.A. Architectural Historian, and Elizabeth O'Brien, B. Arch, Architectural Historian, would provide expertise in compiling historical information and completing the draft and final mitigation document. As required by DAHP, the

Proposal for preparing Mitigation Documentation for Levee 4A

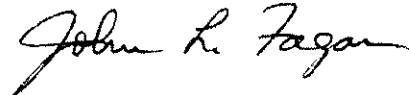
mitigation documentation would be prepared in an electronic format following DAHP's requirements. Ms. Chapman, Mr. Allen, and Ms. O'Brien would compile existing historical information about the historic qualities of Levee 4A and would conduct a field meeting to obtain up to date photography of the levee for use in the mitigation document. AINW support staff would include a draftsman, a production specialist, and an administrative assistant.

I estimate that the above tasks can be completed for an amount not to exceed \$8,940.00. This estimate includes \$8,305.00 in labor for 164 person hours, and \$635.00 in expenses. Expenses are estimated to include \$210.00 for vehicle rental and fuel, \$160.00 for lodging for 2 people for 1 night @ \$80/night, \$120.00 for per diem for 2 people for 2 days @ \$30.00/day, \$115.00 for photocopies, photographs, and processing, and \$30.00 for shipping and long distance communications. Expenses will be passed through with no mark up, and I can initiate the work as soon as I receive a notice to proceed. Please note that this estimate should be considered as a not to exceed amount, and is based on estimated hours to complete the tasks noted above.

Once the technical mitigation report has been prepared, AINW will assist you with the coordination with the COE and the DAHP. Based on previous work in the area, I anticipate that the mitigation report would consist of engineering drawings and photographs and a historic context for the levee and its relationship to the rest of the McNary Lock and Dam project.

I am available to discuss this proposal at your convenience. I look forward to the opportunity to work with you on this next phase of the project.

Sincerely,



John L. Fagan, Ph.D., RPA
President/ Senior Archaeologist