



Parks and Rec.

CONTRACT

31-2318-CR

RFP-CULTURAL RESOURCES SERVICES

Lewis County



PARKS AND REC.

Project: RFP-Cultural Resources Services, 31-2318-CR

Effective Date: Monday, July 8, 2024

1. AGREEMENT

Antiquity Consulting, hereinafter called CONTRACTOR, and LEWIS COUNTY, hereinafter called COUNTY, agree as set forth in this Agreement, including: Scope of Work, Specifications, Compensation, Bid Response forms, General and Special Conditions, copies of which are attached hereto and incorporated herein by this reference as fully as if set forth herein.

Project: RFP-Cultural Resources Services, Project #31-2318-CR

Bid Price (with accepted alternates): \$41,149.88

The term of this Agreement shall commence upon the date of execution as shown below. This agreement may be renewed or terminated upon written notice provided either by the County or the service provider thirty (30) or more days prior to the effective date of renewal or termination.

CONTRACTOR acknowledges and by signing this contract agrees that the Indemnification provisions set forth in Paragraphs 5, 7, 14, 15, 16, 21, 22, and 25, are totally and fully part of this contract and have been mutually negotiated by the parties and COUNTY would not have entered into agreement without said provisions.

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, _____.

CONTRACTOR:

LEWIS COUNTY

Title of Signatory
Authorized by the firm By Laws

Doug Carey, Capital Facilities Manager

Mailing Address:

Approved as to Form Only:
Jonathan Meyer, Prosecuting Attorney

2. General Conditions Capital

2.1. Scope of Contractors Services

The Contractor agrees to provide to the County services and any material set forth in the project narrative identified as Exhibit "A" during the agreement period. No material, labor, or facilities will be furnished by the County, unless otherwise provided for in the Agreement.

2.2. Accounting and Payment for Contractor Services

Payment to the Contractor for services rendered under this Agreement shall be as set forth in Exhibit "B". Where Exhibit "B" requires payments by Lewis County, payment shall be based upon billings, supported unless otherwise provided in Exhibit "B", by documentation of units of work actually performed and amounts earned, including where appropriate, the actual number days worked each month, total number of hours for the month, and total dollar payment requested. Unless specifically stated in Exhibit "B" or approved in writing in advance by the official executing this Agreement for Lewis County (hereinafter referred to as the "Contracting Officer"), the County will not reimburse the Contractor for any costs or expenses incurred by the Contractor in the performance of this contract.

Where required, the County shall, upon receipt of appropriate documentation, compensate the Contractor, no more often than weekly; through the County voucher system for the Contractor's service pursuant to the fee schedule set forth in Exhibit "B".

2.3. Assignment and Subcontracting

No portion of this contract may be assigned or subcontracted to any other individual, firm or entity without the express and prior written approval of the Contracting Officer or as set forth in Exhibit "A"

2.4. Labor Standards and Contract Assistance

The Contractor shall comply with the provisions of the Lewis County Contract and Procurement Assistance Program as applicable, attached hereto as "Special Conditions"

2.5. Independent Contractor

The Contractor's services shall be furnished by the Contractor as an independent Contractor and nothing herein contained shall be construed to create a relationship of employer-employee or master-servant, but all payments made hereunder and all services performed shall be made and performed pursuant to this Agreement by the Contractor as an independent Contractor. The Contractor acknowledges that the entire compensation for this Agreement is specified in Exhibit "B" and the Contractor is not entitled to any County benefits including, but not limited to: vacation pay, holiday pay, sick leave pay, medical, dental, or other insurance benefits, or any other rights or privileges afforded to Lewis County employees.

Contractor will defend, indemnify and hold harmless the County, its officers, agents or employees from any loss or expense, including but not limited to settlements, judgments, setoffs,

attorneys' fees or costs incurred by reason of claims or demands because of breach of the provisions of this paragraph.

2.6. Safety; Familiarity with Site

Contractor understands that safety is a high priority. Prior to the commencement of work or providing services, Contractor will, at its own expense and to the extent it determines is necessary to safeguard itself and its employees and agents, become familiar with the Site, its operations, and any safety rules or guidelines. In addition, Contractor will meet all OSHA, WISHA, and other applicable Federal and State requirements regarding safety. County shall not be responsible for the manner in which Contractor (1) provides and completes its work; and (2) analyzes the need for and implements safety procedures. County delegates to Contractor, and Contractor agrees to assume, any duty County has to exercise reasonable care to make the premises and work area safe, and Contractor agrees to: abide by all applicable laws, be solely responsible for health and safety of all persons providing service, and create and post a site-specific worker safety plan in advance of gaining access to the work area. Contractor represents that it is a professional company with the knowledge and experience to reasonably assume such a delegation and to work in the presence of any known or obvious dangers by taking appropriate precautions and by using and providing proper equipment for itself and its employees

2.7. No Guarantee of Employment

The performance of all or part of this contract by the Contractor shall not operate to vest any employment rights whatsoever and shall not be deemed to guarantee any employment of the Contractor or any employee of the Contractor or any subcontractor or any employee of any subcontractor by the County at the present time or in the future.

2.8. Taxes

The Contractor understands and acknowledges that the County will not withhold Federal or State income taxes. Where required by State or Federal law, the Contractor authorizes the County to make withholding for any taxes other than income taxes (i.e., Medicare). All compensation received by the Contractor will be reported to the Internal Revenue Service at the end of the calendar year in accordance with the applicable IRS regulations. It is the responsibility of the Contractor to make the necessary estimated tax payments throughout the year, if any, and the Contractor is solely liable for any tax obligation arising from the Contractor's performance of this Agreement. The Contractor hereby agrees to indemnify the County against any demand to pay taxes arising from the Contractor's failure to pay taxes on compensation earned pursuant to this Agreement.

The County will pay sales and use taxes imposed on goods or services acquired hereunder as required by law. The Contractor must pay all other taxes including, but not limited to: Business and Occupation Tax, taxes based on the Contractor's gross or net income, or personal property to which the County does not hold title. The County is exempt from Federal Excise Tax.

2.9. Regulations and Requirement

This Agreement shall be subject to all laws, rules, and regulations of the United States of America, the State of Washington, and political subdivisions of the State of Washington, and to any other provisions set forth in Special Conditions.

2.10. Prevailing Wages

Contractor shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with RCW 39.12 and the rules and regulations of the Department of Labor and Industries. The schedule of prevailing wage rates for the locality or localities of the Work, is determined by the Industrial Statistician of the Department of Labor and Industries. It is the Contractor's responsibility to verify the applicable prevailing wage rate.

Each Application for Payment submitted by Contractor shall state that prevailing wages have been paid in accordance with the pre-filed statement(s) of intent, as approved. Copies of the approved intent statement(s) shall be posted on the job site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

In compliance with chapter 296-127 WAC, Contractor shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.

In addition, the Contractor shall file weekly certified payroll records with the Department of Labor and Industries, as required by RCW 39.12.120

2.11. Right to Review

This contract is subject to review by any Federal or State auditor. The County or its designee shall have the right to review and monitor the financial and service components of this program by whatever means are deemed expedient by the Contracting Officer. Such review may occur with or without notice, and may include, but is not limited to, on-site inspection by County agents or employees, inspection of all records or other materials which the County deems pertinent to the Agreement and its performance, and any and all communications with or evaluations by service recipients under this Agreement. The Contractor shall preserve and maintain all financial records and records relating to the performance of work under this Agreement for 3 years after contract termination, and shall make them available for such review, within Lewis County, State of Washington, upon request.

2.12. Modifications

Either party may request changes in the Agreement. Any and all agreed modifications shall be in writing, signed by each of the parties.

2.13. Termination for Default

If the Contractor defaults by failing to perform any of the obligations of the contract or cannot perform because of regulatory order or failure to comply with regulatory requirements, including

but not limited to applicable licensing laws, or becomes insolvent or is declared bankrupt or commits any act of bankruptcy- or insolvency or make an assignment for the benefit of creditors, the County may, by depositing written notice to the Contractor in the U.S. mail, postage prepaid, terminate the contract, and at the County's option, obtain performance of the work elsewhere. If the contract is terminated for default, the Contractor shall not be entitled to receive any further payments under the contract until work called for, as may be applicable under Exhibit "A", has been fully performed. Any extra cost or damage to the County resulting from such default(s) shall be deducted from any money due or coming due to the Contractor. The Contractor shall bear any extra expenses incurred by the County in completing the work, as may be applicable under Exhibit "A", including all increased costs for completing the work, and all damage sustained, or which may be sustained by the County by reason of such default.

If a notice of termination for default has been issued and it is later determined for any reason that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the Termination for Public Convenience paragraph hereof.

2.14. Termination for Public Convenience

The County may terminate the contract in whole or in part whenever the County determines, in its sole discretion, that such termination is in the interests of the County. Whenever the contract is terminated in accordance with this paragraph, the Contractor shall be entitled to payment for actual work performed at unit contract prices for completed items of work. An equitable adjustment in the contract price for partially completed items of work will be made, but such adjustment shall not include provision for loss of anticipated profit on deleted or uncompleted work. Termination of this contract by the County at any time during the term, whether for default or convenience, shall not constitute a breach of contract by the County.

2.15. Insurance Coverage

INSURANCE REQUIREMENTS

Without limiting Contractor's indemnification of County, and prior to commencement of Work, Contractor shall obtain, provide and maintain at its own expense during the term of this Agreement, policies of insurance of the type and amounts described below and in a form satisfactory to County.

General Liability Insurance, using a standard ISO CG 00 01 occurrence form, including premises, operations, products and completed operations, contractual liability with limits not less than \$1,000,000. per occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products-Completed Operations Aggregate for bodily injury, personal injury, and property damage. Coverage shall include Employers Liability (stop gap).

The Commercial General Liability Coverage shall include the following endorsements:

The County, its Board, officers, agents and employees shall be included as Additional Insureds either by specific endorsement naming these parties or a blanket additional insured endorsement applicable “when required by written contract or agreement”

Primary, Non-contributory endorsement, both in favor of the County, its Board, officers, agents and employees or a blanket waiver of subrogation endorsement applicable “when required by written contract or agreement”.

The Commercial General Liability Coverage shall not include the following endorsements:

- i) Amendment of Contractual Liability
- ii) Total Pollution Exclusion
- iii) Cross Suits Liability Exclusion

Automobile liability insurance. Contractor shall maintain automobile insurance at least as broad as Insurance Services Office form CA 00 01 covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with Work to be performed under this Agreement, including coverage for any owned, hired, non-owned or rented vehicles, in an amount not less than \$1,000,000 combined single limit for each accident.

Umbrella or excess liability insurance. Contractor shall obtain and maintain an umbrella or excess liability insurance policy with limits of not less than \$4,000,000 that will provide bodily injury, personal injury and property damage liability coverage at least as broad as the primary coverages set forth above, including commercial general liability and employer’s liability. Such policy or policies shall include the following terms and conditions:

- A drop down feature requiring the policy to respond in the event that any primary insurance that would otherwise have applied proves to be uncollectable in whole or in part for any reason;
- Pay on behalf of wording as opposed to reimbursement;
- Concurrence of effective dates with primary policies; and
- Policies shall “follow form” to the underlying primary policies.
- Insureds under primary policies shall also be insureds under the umbrella or excess policies.

Workers’ compensation insurance. Contractor shall maintain Workers’ Compensation Insurance (Statutory Limits) and Employer’s Liability Insurance (with limits of at least \$1,000,000) for Contractor’s employees in accordance with the laws of the State of Washington. In addition, Contractor shall require each subcontractor to similarly maintain Workers’ Compensation Insurance and Employer’s Liability Insurance in accordance with the laws of the State of Washington for all of the subcontractor’s employees .

Contractor shall submit to County, along with the certificate of insurance, a Waiver of Subrogation endorsement in favor of County, its officers, agents, employees and volunteers.

Pollution liability insurance. [If required]

Builder’s risk insurance. Upon commencement of construction and with approval of County, Contractor shall obtain and maintain builder’s risk insurance as specified below.

The named insureds shall be Contractor, all Subcontractors (excluding those solely responsible for design Work) of any tier, suppliers, and County and its officers, officials, employees, and

agents. Contractor shall not be required to maintain property insurance for any portion of the Project following transfer of control thereof to County.

Policy shall be provided for replacement value on an "all risk" basis. There shall be no coinsurance penalty provision in any such policy. Policy must include: (1) coverage for any ensuing loss from faulty workmanship, Nonconforming Work, omission or deficiency in design or specifications; (2) coverage against machinery accidents and operational testing; (3) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, materials, facilities, fixtures and all other properties constituting a part of the Project; (4) transit coverage, including ocean marine coverage (unless insured by the supplier), with sub-limits sufficient to insure the full replacement value of any key equipment item; and (5) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the Site. Such insurance shall be on a form acceptable to County to ensure adequacy of terms and sublimits.

Proof of insurance. Contractor shall provide certificates of insurance to County as evidence of the insurance coverage required herein, along with a waiver of subrogation endorsement for workers' compensation. Insurance certificates and endorsement must be approved by County's risk manager prior to commencement of performance. Current certification of insurance shall be kept on file with County at all times during the term of this contract. County reserves the right to require complete, certified copies of all required insurance policies, at any time.

Duration of coverage. Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property, which may arise from or in connection with the performance of the Work hereunder by Contractor, his agents, representatives, employees or subcontractors. Contractor must maintain general liability and umbrella or excess liability insurance for as long as there is a statutory exposure to completed operations claims. County and its officers, officials, employees, and agents shall continue as additional insureds under such policies.

County's rights of enforcement. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, County has the right but not the duty to obtain the insurance it deems necessary and any premium paid by County will be promptly reimbursed by Contractor or County will withhold amounts sufficient to pay premium from Contractor payments. In the alternative, County may cancel this Agreement.

Acceptable insurers. All insurance policies shall be issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance in the State of Washington, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by the County's risk manager.

Waiver of subrogation. All insurance coverage maintained or procured pursuant to this agreement shall be endorsed to waive subrogation against County, its elected or appointed officers, agents, officials, employees and volunteers or shall specifically allow Contractor or others providing insurance evidence in compliance with these specifications to waive their right

of recovery prior to a loss. Contractor hereby waives its own right of recovery against County, and shall require similar written express waivers and insurance clauses from each of its subconsultants.

Enforcement of contract provisions (non estoppel). Contractor acknowledges and agrees that any actual or alleged failure on the part of the County to inform Contractor of non-compliance with any requirement imposes no additional obligations on the County nor does it waive any rights hereunder.

Requirements not limiting. Requirements of specific coverage features or limits contained in this Section are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

Notice of cancellation. Contractor agrees to oblige its insurance agent or broker and insurers to provide to County with a thirty (30) day notice of cancellation (except for nonpayment for which a ten (10) day notice is required) or nonrenewal of coverage for each required coverage.

Additional insured status. General liability policies shall provide or be endorsed to provide that County and its officers, officials, employees, and agents shall be additional insureds under such policies. This provision shall also apply to any excess liability policies.

County's right to revise requirements. The County reserves the right at any time during the term of the contract to change the amounts and types of insurance required by giving the Contractor a ninety (90)-day advance written notice of such change. If such change results in substantial additional cost to the Contractor, the County and Contractor may renegotiate Contractor's compensation.

Self-insured retentions. Any self-insured retentions must be declared to and approved by County. County reserves the right to require that self-insured retentions be eliminated, lowered, or replaced by a deductible. Self-insurance will not be considered to comply with these specifications unless approved by County.

Timely notice of claims. Contractor shall give County prompt and timely notice of claims made or suits instituted that arise out of or result from Contractor's performance under this Agreement, and that involve or may involve coverage under any of the required liability policies.

Additional insurance. Contractor shall also procure and maintain, at its own cost and expense, any additional kinds of insurance, which in its own judgment may be necessary for its proper protection and prosecution of the Work.

2.16. Defense & Indemnity Agreement

To the fullest extent permitted by law, the Contractor agrees to indemnify, defend and hold the County and its departments, elected and appointed officials, agents, and volunteers, harmless from and against any and all claims, damages, losses and expenses, including but not limited to

court costs, attorney's fees and alternative dispute resolution costs which 1) are caused in whole or in part by any act or omission, negligent or otherwise, of the Contractor, its employees, agents or volunteers, and/or Contractor's subcontractors and their employees, agents or volunteers; or 2) are directly or indirectly arising out of, resulting from or in connection with performance of this Agreement; or 3) are based upon the Contractor's or its subcontractors' use of, presence upon or proximity to the property of the County. Contractor's indemnity obligations shall extend to, but shall not be limited to, claims for any personal injury, for any bodily injury, sickness, disease or death and for any damage to or destruction of any property (including the loss of use resulting therefrom).

This indemnification obligation of the Contractor shall not apply if the claim, damage, loss or expense is caused by the sole negligence of the County. In the event of the concurrent negligence of the Contractor, its subcontractors, employees or agents, and the County, its employees or agents, this indemnification obligation of the Contractor shall be valid and enforceable only to the extent of the negligence of the Contractor, its subcontractors, employees and agents. This indemnification obligation shall not be limited in any way by the Washington State Industrial Insurance Act, RCW Title 51, or by application of any other workmen's compensation act, disability benefit act or other employee benefit act, and the Contractor hereby expressly waives any immunity afforded by such acts. The foregoing indemnification obligations of the Contractor are a material inducement to County to enter into this Agreement, are reflected in the Contractor's compensation, and have been mutually negotiated by the Parties.

2.17. Participation by County – Right to participate; Survival of Contractor's Indemnity Obligations; Indemnity for Subcontractors

The County reserves the right, but not the obligation, to participate in the defense of any claim, damages, losses or expenses and any such participation shall not constitute a waiver of Contractor's indemnity obligations under this Agreement.

The Contractor agrees all Contractor's indemnity obligations shall survive the completion, expiration or termination of this Agreement.

In the event the Contractor enters into subcontracts to the extent allowed under this Agreement, the Contractor shall include as a requirement in each such contract that Contractor's subcontractors shall indemnify the County on a basis equal to or exceeding Contractor's indemnity obligations to the County.

2.18. Venue and Choice of Law

In the event that any litigation should arise concerning the construction or interpretation of any of the terms of this Agreement, the venue of such action of litigation shall be in the courts of the State of Washington in and for the County of Lewis. This Agreement shall be governed by the law of the State of Washington.

2.19. Withholding Payment

In the event the Contractor has failed to perform any substantial obligation to be performed by the Contractor under this Agreement and said failure has not been cured within the times set

forth in this Agreement, then the County may, upon written notice, withhold all monies due and payable to Contractor, without penalty, until such failure to perform is cured or otherwise adjudicated.

2.20. Liquidated Damages (Not a Penalty)

Because breach and/or non-performance by Contractor may cause County to incur economic damages and losses of types and in amounts which are incapable or very difficult to ascertain with certainty in advance as a basis for recovery of actual damages, in the event Contractor has not fully completed work pursuant to and by the deadline set forth in this Agreement, Contractor shall pay County liquidated damages in the amount of \$500.00 per day for every day past the agreed end date Tuesday, December 31, 2024. The parties believe said amount represents a fair, reasonable, and appropriate forecast of just compensation for the harm caused by a breach. Such liquidated damages are intended to represent estimated actual damages as contemplated by the parties at the time of entering into this Agreement and are not intended as a penalty.

2.21. Payment and Performance Bond

Payment and performance bonds for 100% of the Contract Sum, including all Change Orders and state sales tax, shall be furnished for the Work, and shall be in a form acceptable to the Owner. No payment or performance bond is required if the Contract Sum is \$35,000 or less and Contractor agrees that Owner may, in lieu of the bond, retain 50% of the Contract Sum for the period allowed by RCW 39.08.010.

2.22. Future Non-Allocation of Funds

If sufficient funds are not appropriated or allocated for payment under this contract for any future fiscal period, the County will not be obligated to make payments for services or amounts incurred after the end of the current fiscal period. No penalty or expense shall accrue to the County in the event this provision applies.

2.23. Nature of the Work

County delegates to Contractor, and Contractor agrees to assume, any duty County has to exercise reasonable care to make the premises and work area safe, and Contractor agrees to: abide by all applicable laws, be solely responsible for health and safety of all persons providing service, and create and post a site-specific worker safety plan in advance of gaining access to the work area. Contractor represents that it is a professional company with the knowledge and experience to reasonably assume such a delegation and to work in the presence of any known or obvious dangers by taking appropriate precautions and by using and providing proper equipment for itself and its employees.

2.24. Contractor Commitments, Warranties and Representations

Any written commitment received from the Contractor concerning this Agreement shall be binding upon the Contractor, unless otherwise specifically provided herein with reference to this paragraph. Failure of the Contractor to fulfill such a commitment shall render the Contractor liable for damages to the County. A commitment includes, but is not limited to any representation made prior to execution of this Agreement, whether or not incorporated elsewhere

herein by reference, as to performance of services or equipment, prices or options for future acquisition to remain in effect for a fixed period, or warranties.

2.25. Authority

Contractor acknowledges, represents, and warrants that it has the full right, power, and authority to enter into this agreement. Each person signing this agreement on behalf of an entity represents and warrants that he or she has the full right, power, and authority to bind their respective entity, their respective entity has approved this Agreement and authorized them to sign it, and their respective entity is duly formed and in good standing.

2.26. Patent/Copyright Infringement

Contractor will defend and indemnify the County from any claimed action, cause or demand brought against the County, to the extent such action is based on the claim that information supplied by the Contractor infringes any patent or copyright. The Contractor will pay those costs and damages attributable to any such claims that are finally awarded against the County in any action. Such defense and payments are conditioned upon the following:

- A. That Contractor shall be notified promptly in writing by County of any notice of such claim.
- B. Contractor shall have the right, hereunder, at its option and expense, to obtain for the County the right to continue using the information in the event such claim of infringement is made, provided no reduction in performance or loss results to the County.

2.27. Disputes

A. General

Differences between the Contractor and the County, arising under and by virtue of the Contract Documents shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Except for such objections as are made of record in the manner hereinafter specified and within the time limits stated, the records, orders, rulings, instructions, and decisions of the Contracting Officer, shall be final and conclusive.

B. Notice of Potential Claims

The Contractor shall not be entitled to additional compensation which otherwise may be payable, or to extension of time for (1) any act or failure to act by the Contracting Officer or the County, or (2) the happening of any event or occurrence, unless the Contractor has given the County a written Notice of Potential Claim within 10 days of the commencement of the act, failure, or event giving rise to the claim, and before final payment by the County. The written Notice of Potential Claim shall set forth the reasons for which the Contractor believes additional compensation or extension of time is due, the nature of the cost involved, and insofar as possible, the amount of the potential claim. Contractor shall keep full and complete daily records of the Work performed, Labor and material used, and all costs and additional time claimed to be additional.

C. Detailed

Claim

The Contractor is not entitled to claim any such additional compensation, or extension of time, unless within 30 days of the accomplishment of the portion of the work from which the claim arose, and before final payment by the County, the Contractor has given the County a detailed written statement of each element of cost or other compensation requested and of all elements of additional time required, and copies of any supporting documents evidencing the amount or the extension of time claimed to be due.

2.28. Attorneys Fees, Expenses, and Costs

Should any legal proceeding be commenced between or by the Parties concerning or related to this Agreement or the rights and duties of either in relation to this Agreement, the Party prevailing in such proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for such Party's reasonable attorneys' fees, expenses, and costs actually incurred and paid.

2.29. Ownership of Items Produced

All writings, programs, data, public records or other materials prepared by the Contractor and/or its consultants or subcontractors, in connection with the performance of this Agreement shall be the sole and absolute property of the County.

2.30. Confidentiality

In the event that the Contractor comes in contact with or obtains knowledge of confidential information, the Contractor shall maintain the confidentiality of all obtained information provided by the County or acquired by the Contractor in performance of this Agreement, except upon the prior written consent of the Lewis County Prosecuting Attorney or an order entered by a court after having acquired jurisdiction over the County. Contractor shall immediately give to the County notice of any judicial proceeding seeking disclosure of such information. Contractor shall indemnify and hold harmless the County, its officials, agents or employees from all loss or expense, including, but not limited to settlements, judgments, setoffs, attorneys' fees and costs resulting from Contractor's breach of this provision.

2.31. Public Records Law and Records Maintenance

The Contractor shall assist the County in timely and fully fulfilling all of County's obligations under the Washington Public Records Act and/or any other authority by timely and fully responding and providing documents and records in response to County's request for the same. In the event that Contractor fails to fully fulfill its obligations pursuant to this section and should a court impose a fine, penalty, sanction, and/or judgment against County for violation of said law, Contractor shall indemnify the County for the same, immediately pay County to satisfy the same together with all costs and attorney's fees incurred by County. The obligations created by this section shall survive the termination of this agreement.

The Contractor shall keep and maintain all books, records, documents, data, and other evidence relating to this contract and performance of the services described herein, including but not

limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract (“Records”). Contractor shall permit County to review the Records at Contractor’s place of business during normal working hours. Contractor shall retain such Records for a period of seven (7) years following the date of final payment.

If any litigation, claim, or audit is commenced, Contractor shall cooperate with County and assist in the production of all such Records. If any litigation, claim, or audit is started before the expiration of the seven- (7) year period, Contractor shall retain the Records for a period of seven (7) years after all litigation, claims, or audit findings involving the Records have been finally resolved.

For purposes of this AGREEMENT, Records includes every writing or record of every type and description including electronically stored information (“ESI”) that is in Contractor’s possession, control, or custody, including, without limitation, any and all correspondences, contracts, agreements, appraisals, plans, designs, data, surveys, maps, spreadsheets, memoranda, stenographic or handwritten notes, reports, records, telegrams, schedules, diaries, notebooks, logbooks, invoices, accounting records, work sheets, charts, notes, drafts, scribbles, recordings, visual displays, photographs, minutes of meetings, telephone conversations, and any and all other taped, recorded, written, printed, or typed matters of any kind or description; and every copy of the foregoing whether or not the original is in Contractor’s possession, custody, or control, and every copy of any of the foregoing, whether or not such copy is a copy identical to an original, or whether or not such copy contains any commentary or notation whatsoever that does not appear on the original.

For purposes of this AGREEMENT, “ESI” means any and all computer data or electronic recorded media of any kind, including “Native Files”, that are stored in any medium from which it can be retrieved and examined, either directly or after translation into a reasonably useable form. ESI may include information and/or documentation stored in various software programs such as: Email, Outlook, Word, Excel, Access, Publisher, PowerPoint, Adobe Acrobat, SQL databases, or any other software or electronic communication programs or databases that the Contractor may use in the performance of its operations. ESI may be located on network servers, backup tapes, smart phones, thumb drives, CDs, DVDs, floppy disks, work computers, cell phones, laptops, or any other electronic device that Contractor uses in the performance of its work or services hereunder, including any personal devices used by the Contractor or any sub-consultant at home.

“Native files” are a subset of ESI and refer to the electronic format of the application in which such ESI is normally created, viewed, and /or modified.

Contractor shall include this section “Records Maintenance” in every subcontract it enters into in relation to this Agreement and bind the sub-contract to its terms.

2.32. Notice

Except as set forth elsewhere in the Agreement, for all purposes under this Agreement, except service of process, notice shall be given by the Contractor to the Contract Manager for whom services are rendered, to wit: Doug Carey, Capital Facilities Manager, 351 NW North Street, Chehalis, Washington 98532-1900. Notice to the Contractor for all purposes under this Agreement shall be given to the address reflected above. Notice may be given by delivery or by depositing in the US Mail, first class, postage prepaid.

2.33. Severability

If any term or condition of this contract or the application thereof to any person(s) or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications which can be given effect without the invalid term, condition or application. To this end, the terms and conditions of this contract are declared severable.

This Agreement does not violate any known federal or state statute, rule, regulation, or common law. However, any provision that is found to be invalid or in violation of any statute, rule, regulation, or common law shall be considered null and void, with the remaining provisions remaining viable and in effect.

2.34. Waiver

Waiver of any breach or condition of this contract shall not be deemed a waiver of any prior or subsequent breach. No term or condition of this contract shall be held to be waived, modified or deleted except by an instrument, in writing, signed by the parties hereto.

2.35. Survival

The provisions of this Agreement which by their nature are reasonably intended to survive the expiration of this Agreement shall so survive, including paragraphs 5, 10, 11, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26, 27, 29, and 30, notwithstanding the termination or invalidity of any other portion of this Agreement for any reason.

2.36. Time

With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

2.37. Entire Agreement

This written contract, including all special provisions and attachments, represents the entire Agreement between the parties and supersedes any prior oral statements, discussions or understandings between the parties.

2.38. Interpretation of the Agreement

This agreement was negotiated and drafted jointly by the parties, and it shall not be construed against either party in case of any dispute.

3. Professional Liability

CONSULTANT shall maintain Professional Liability, or equivalent Errors & Omissions Liability, at a limit of liability not less than \$1,000,000 each occurrence, and \$2,000,000 per aggregate. When a self-insured retention (SIR) or deductible exceeds \$10,000, COUNTY reserves the right, but not the obligation, to review and request a copy of CONSULTANT'S most recent annual report or audited financial statement. For policies written on a "claims-made" basis, CONSULTANT warrants the Retroactive Date equals or precedes the effective date of this CONTRACT. In the event the policy is canceled, non-renewed, switched to an Occurrence Form, retroactive date advanced, or any other event triggering the right to purchase a Supplement Extended Reporting Period (SERP) during the term of this CONTRACT, CONSULTANT shall purchase a SERP with a minimum reporting period not less than three (3) years after the expiration of the CONTRACT term. The requirement to purchase a SERP shall not relieve the CONSULTANT of the obligation to provide replacement coverage. The Certificate of Insurance providing evidence of the purchase of this coverage shall clearly indicate whether coverage is provided on an "occurrence" or "claims-made" form. If coverage is provided on a "claims-made" form the Certificate of Insurance must also clearly indicate the "retroactive date" of coverage.

4. Special Conditions (County Funds) Capital

4.1. Definitions

The COUNTY is the recipient of CONTRACTOR'S services, and at all times acts through its Board of County Commissioners. The Contracting Officer of the COUNTY will be the Capital Facilities Manager, or his designee.

4.2. Contractor Registration

The CONTRACTOR agrees and covenants to furnish unto the COUNTY proper evidence that the CONTRACTOR has fully complied with the State Licensing Law.

CONTRACTOR shall include his contractor's license number in the space provided for CONTRACTOR INFORMATION this Agreement.

4.3. Non-Discrimination (Lewis County Funds)

The CONTRACTOR should be aware that public funds are being used to assist in this project. During the performance of this contract, the CONTRACTOR agrees as follows:

1. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this non-discrimination clause.

2. The CONTRACTOR will, in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, creed, color, or national origin.
3. The CONTRACTOR will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, notice to be provided by the agency contracting officer, advising the labor union or worker's representative of the contractor's commitments under Section 202 or Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in a conspicuous place available to employees and applicants for employment.
4. The CONTRACTOR will comply with all provisions of Executive Order No. 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The CONTRACTOR will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books and records for purposes of investigation to ascertain compliance with such rules, regulations and orders
6. In the event of the CONTRACTOR'S non-compliance with the non-discrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contract may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
7. The CONTRACTOR will include the provisions of Paragraphs (1) through (7) in every sub-contract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each sub-contract or vendor. The CONTRACTOR will take such action with respect to any sub-contract or purchase order as the contracting agency may direct as a means of enforcing such provisions, including sanctions for non-compliance: Provided, however, that in the event the CONTRACTOR becomes involved in, or is threatened with litigation with a sub-contractor or vendor as a result of such direction by the contracting agency, the CONTRACTOR may request the United States to enter into such litigation to protect the interest of the United States.

4.4. Original Specifications

It is hereby expressly agreed by and between the parties involved that in any matter, dispute, suit, or proceedings arising or in any way growing out of this contract in which it may be necessary to introduce into evidence the original of such specifications, that a printed copy thereof may be used in lieu thereof with like force and effect as though the original was produced.

4.5. Eight Hour Law and Payment for Labor

The CONTRACTOR agrees to comply with RCW chapter 49.28 providing that no laborer, workman or mechanic in the employ of the CONTRACTOR, sub-contractor, or other person doing or contracting to do the whole or any part of the work contemplated by this contract, shall be permitted or required to work more than eight (8) hours in any one calendar day, provided that, in cases of extraordinary emergency, such danger to life or property, the hours of work may be extended, but in such cases the rate of pay for time employed in excess of eight (8) hours of each calendar day shall not be less than one and one-half times the rate allowed for this same amount of time during eight (8) hours' service. Any work necessary to be performed after regular working hours, or Sunday or legal holidays shall be performed without additional expense to the COUNTY.

Notwithstanding the above provisions, a CONTRACTOR may enter into an agreement approved by the employees in which the employees may work up to ten (10) hours in a calendar day for not more than four (4) calendar days in a week.

CONTRACTOR further agrees that said contract is terminable in case the CONTRACTOR violates the provisions of such act.

The CONTRACTOR, and sub-contractors shall further verify that:

1. Contractor had not employed or retained any company or person (other than a full time bona fide employee working solely for the offeror) to solicit or receive this contract; and
2. Contractor has not paid or agreed to pay any company or person (other than a full-time bona fide employee working solely for the offeror) any fee, commission, percentage, or brokerage fee contingent upon or resulting from the award of this contract; and
3. Contractor has not been asked or otherwise coerced, whether expressed or implied, into contributing funds, for any purpose as a condition to doing business with the COUNTY.

It is further agreed that in case any dispute arises as to what are the prevailing wages for the work of a similar nature and such dispute cannot be adjusted by the parties involved, the matter shall be referred for arbitration to the Director of the Department

of Labor & Industries of the State and his decision therein shall be final, binding, and conclusive on all parties.

4. To the extent applicable, the parties agree that this agreement and CONTRACTOR'S work does not create or imply a license agreement for the use of software, code, or a computer program. CONTRACTOR agrees that COUNTY shall have the sole and exclusive ownership of all rights, title, and interest in all software, written code, computer programs created or written by CONTRACTOR and that COUNTY has the right of unlimited use of the software, code and programs, including reproduction, modification and sale. CONTRACTOR denies any proprietary rights, including copyrights, trademarks, trade secrets, or intellectual property rights, to any software, code or program.
5. To the extent applicable, Contractor warrants that the computer code, software, or computer program installed by CONTRACTOR is not patented or copyrighted. CONTRACTOR will defend and indemnify the COUNTY from any claim, cause or demand brought against the COUNTY based upon copyright or patent of the software, computer code, or computer program installed by CONTRACTOR.

5. Exhibits

5.1. Exhibit A Scope of Work/Specifications

SCOPE OF WORK

A) Archaeological survey of the proposed project area. Consultant will review archeological records, project design and perform a professional survey in the areas of ground disturbance to identify any potential areas of concern or to identify any historical artifacts.

B) Project-Specific Monitoring Plan – The selected consultant is to review the Project plans and area in light of appropriate cultural resource documentation and prepare an Archaeological Monitoring Plan. This plan should determine the locations for and manner of monitoring in light of the project plans, area conditions, and methodology, taking into account what can be fruitfully monitored from utility plowing in such areas. The plan should contain or be accompanied by an explanation of what monitoring should be required, in what areas, and by what personnel, based on a standard of practice acceptable in Washington State. At a minimum, this should consist of a brief description of the natural and cultural setting of the project, types of archaeological materials that might be encountered in light of the area and methodology, a description of the role of the archaeological monitor, an assessment of potential discovery of archaeological and/or human remains, and notification protocols and setbacks to be implemented upon the discovery of either. The project already has an inadvertent discovery plan, which the monitoring plan may incorporate or revise for consistency.

C) Construction Monitoring – If required, archaeological monitoring shall be conducted to the extent needed in accordance with the monitoring plan for project-related ground disturbing activities. This includes monitoring the relevant project-related ground disturbance, recording its

progress, and coordinating with Lewis County staff or their designated counterparts at Contractor regarding the construction schedule. If archaeological materials are encountered, the selected consultant shall implement the protocols and procedures outlined in the monitoring and discovery plans. The selected consultant shall also provide training to contractor personnel on protocols and identifying potential artifacts.

D) Monitoring Reports – An archaeological monitoring report shall be prepared once construction monitoring is complete for a relevant portion of project work. This report shall include a project work description, methods, results of archaeological monitoring, and any technical recommendations.

The minimum professional qualifications to be eligible to perform this contract are as follows.

The monitoring plan must be prepared, or supervised and approved, by an archaeologist meeting the Secretary of the Interior's Professional Qualification Standards in Archaeology plus:

1. At least one year of full-time professional experience or equivalent specialized training in archeological research, administration, or management;
2. At least four months of supervised field and analytic experience in general North American archeology;
3. At least one year, combined, of full-time professional experience at a supervisory level in the study of archeological resources of the pre-European introduction/settlement and post-European introduction/settlement periods in North America.
4. Demonstrated ability to carry the scope of work to completion.

If required by the monitoring plan, the construction monitoring and reports must be undertaken or supervised by a similarly qualified professional. Or, if the monitoring plan so directs, the monitoring and reporting may be undertaken by other field personnel or the on-site workers pursuant to a job-site training session and protocol.

5.2. Exhibit B

Compensation will be made in the amount of \$41,149.88 plus Washington State Sales Tax upon completion of contract. Progress payments may be made at County's discretion upon County's approval of Contractor's invoices, to the extent that said invoices reflect the completion of project milestones by the Contractor (milestones are points at which significant components of the project have been completed and at which tangible project deliverables of material value have been received by the County).

6. **Contractors Info**

Name of Firm _____

Address _____

City _____ State _____ Zip Code _____

Telephone _____ FAX _____

E-mail address: _____

State of Washington Contractor's License No. _____

Federal Tax ID # _____

UEI# _____

7. Debarment and Suspension (Federally funded contracts)

Contractor represents and warrants that, as of the execution of this Contract, neither Contractor nor any subcontractor or sub-consultant performing work under this Contract (at any tier) is included on the federally debarred bidder's list listed on the government-wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." If at any point during Contract's term Contractor or any subcontractor or sub-consultant performing work at any tier is included on the federally debarred bidder's list, Contractor shall notify the County immediately. Contractor's completed Vendor Debarment Certification is attached hereto and incorporated herein.