

LETTER OF AGREEMENT

This letter includes the terms and conditions that will constitute the agreement between the Office of Fresno City Councilmember Garry Bredefeld ("Client") and WW2 Research Inc ("Consultant", or "WW2 Research") under which WW2 Research has been hired to provide historical and military records research services to Client.

1. **Term.** The term of this Agreement will commence on April 15, 2019 and will continue through May 15, 2019, unless extended by mutual written agreement or terminated by either party in accordance with the terms specified under section 5 below.
2. **Services.** WW2 Research agrees to provide historical research services in connection with the City of Fresno's "Fresno Veterans Memorial". The services are described in Attachment A, Scope of Work, to this Agreement.
3. **Compensation.** For services and outlays on Client's behalf, the basis of compensation to WW2 Research Inc shall be as follows:
 - a. Financial Arrangement:
 - i. WW2 Research shall assess a service fee of:
 1. \$15,000
 - a. Client agrees to pay a deposit of \$2,500 via check or PayPal upon contract signing and before work begins.
 - b. Client agrees to pay the remaining balance of \$12,500 on or before May 15, 2019 via check or PayPal. Client will be invoiced prior to the due date; payment instructions will be provided in the invoice.
 2. Additional services in excess of the planned budget may be performed upon receipt of written authorization by the Client.
 - ii. A deposit of \$2,500 is due upon contract signing and must be received by WW2 Research Inc before work begins.
 - b. .
4. **Billing.** The following billing arrangements and due dates shall be in effect unless otherwise specified and agreed upon in writing by both parties:
 - a. Client will be invoiced, and agrees to pay upon contract signing, the deposit against the project service fee. Work will begin once the funds are received by WW2 Research via check or PayPal.
 - b. Each subsequent fee may be made by check or PayPal and will be initiated in time to be received at WW2 Research by the invoice due date.

- c. Client agrees to pay all undisputed invoices by the invoice due date. **WW2 Research will assess a \$250 late fee for invoices paid five days after the invoice due date.** WW2 Research reserves the right to assess a 1.5% per month finance charge for invoices that remain unpaid after 30 days. Client agrees to reimburse WW2 Research for all expenses, including reasonable attorneys' fees, incurred in the collection of any overdue and unpaid invoices. In the event that invoices remain unpaid for more than 15 days, WW2 Research may, at its discretion, suspend work on Client's account. In addition, in the event any invoices become overdue, all subsequent payments may, at WW2 Research's option, first be applied to those invoices which are overdue for the longest period of time until all payments are up to date.
- d. WW2 Research reviews each invoice for accuracy before sending it to the Client. However, it is important that Client immediately review all invoices and approve them for payment. If Client cannot approve any portion of an invoice, Client agrees to contact WW2 Research immediately to discuss the discrepancy. Client agrees that invoices are deemed to be approved five days after receipt unless Client has notified WW2 Research in writing of a disputed invoice.

5. Termination.

- a. Either party may cause this Agreement to terminate by giving seven days' written notice. Written notification should be delivered by email to the principal of WW2 Research Inc. WW2 Research's receipt of the letter of termination shall cause a 15-day Notification Period to begin. During the Notification Period, the rights, duties and responsibilities of Client and WW2 Research as Client and Agency shall continue in full force and effect, and payment of all fees, hourly charges, expenses and other sums shall continue as provided in this Agreement.
- b. In the case of early termination, Client agrees to pay WW2 Research for all verifiable work performed up to the date of termination according to the Contractor's published rates in effect during the contract period.

6. Right of Ownership

All articles, web sites, monuments, and other public works created or published under this agreement will remain the exclusive property of Client or other copyright holders, except where the Client transfers rights to the publishing entity.

All services provided by WW2 Research under this Agreement shall be for the exclusive use of the Client. Upon full payment of all fees and expenses, reproduction rights for all work created by WW2 Research for this project shall be granted. All original source files, documents, spreadsheets and the like, created by WW2 Research or parts contained therein, whether preliminary concepts or final visual presentation remains the property of the WW2 Research and may not be used by the Client without the written permission of WW2 Research. WW2 Research retains the right to reference the completed project lists of names of war dead for educational purposes, marketing materials, on-line posting on

WW2 Research website and physical portfolio. Where applicable the client will be given any necessary credit for usage of the project elements.

7. **Possession of Property.** Upon the termination of this contract and receipt of final payments, WW2 Research shall transfer, assign, and make available to Client or Client's representative all property and materials in WW2 Research's possession or control, which belong to Client, if requested.
8. **Indemnification.**
 - a. Client agrees to indemnify, defend and hold harmless WW2 Research from and against all liabilities, losses, damages or expenses, including reasonable attorneys' fees and costs, which WW2 Research may incur as the result of any claim, suit or proceeding brought or threatened arising out of the nature or use of Client's work performed under this Agreement or research inquiries WW2 Research may make on Client's behalf.
 - b. Likewise, WW2 Research will indemnify, defend and hold harmless Client against all liabilities, losses, damages or expenses, including reasonable attorneys' fees and costs, which Client may incur as the result of any claim, suit or proceeding brought or threatened against Client pertaining to libel, slander, defamation, copyright infringement, invasion of privacy and/or plagiarism, except to the extent that such claims arise from information or materials supplied by or through Client.
 - c. In the event WW2 Research is called upon to respond to or assist Client in connection with litigation commenced or threatened against Client by third parties (for example, in complying with a document subpoena), WW2 Research will be entitled to staff time charges and reimbursement of out-of-pocket expenses for services rendered to Client, or time spent by WW2 Research in connection with such matters.
9. **Confidentiality.** WW2 Research and Client agree to keep confidential and not to disclose or use for their own benefit or for the benefit of any third party (except as may be required for the performance of services under this agreement or as may be required by law), any information, documents or materials which are identified by a party, at the time that they are made available, to be proprietary or confidential. The confidentiality obligations in the preceding sentence, however, shall not extend to any information, documents, or materials that (a) become publicly available without breach of this provision, (b) are received from a third party without restriction, or (c) are independently developed without reference to information received hereunder from the other party, and provided further that such obligations shall expire upon the first anniversary of the effective date of termination of this contract.
10. **Agreement Disclosure.** WW2 Research may publicize our agreement to work with Client in the form of press releases and announcements and may include Client's name in our client roster for the purpose of further business development efforts.

11. **Dispute Resolution.** This agreement shall be construed and interpreted according to California State law, with jurisdiction and venue in the California State courts in Los Angeles County. We hope and expect that our relationship will be mutually beneficial and cooperative. However, disputes arising out of or related to this agreement shall be resolved in accordance with this provision.

In the first instance the parties will attempt to resolve such disputes through open communication and dialogue. To this end, if a party has a concern about an actual or possible dispute, and there is not otherwise a reason to immediately give a Notice of Dispute, the concerned party will informally notify the other party of the nature of the dispute and explore the possibility of reaching an agreeable resolution, prior to initiating a Notice of Dispute.

If the parties cannot resolve the matter by informal dialogue or there is a reason to give notice immediately, either party may give Notice of Dispute to the other party. The Notice of Dispute shall state the nature of the dispute and the corrective action necessary to remedy the dispute.

After Notice of Dispute, the parties shall first attempt to resolve any disputes by mediation. The parties shall agree on a single mediator who shall be Mediation shall be conducted in Los Angeles County, California. Each party shall pay its own attorneys' fees and the costs of mediation shall be split equally between the parties.

If the dispute has not been resolved by mediation within 30 days after Notice of Dispute, or the parties are unable to agree to a mediator, within 10 days after Notice of Dispute, then the dispute shall be resolved by binding arbitration in accordance with the binding arbitration laws of the State of California and judgment upon the award rendered by the arbitrator may be enforced in any court of competent jurisdiction. The parties shall agree on an arbitrator who shall render a decision within ten days of the arbitration hearing. Arbitration shall be conducted in Los Angeles County, California.

Anything else in this provision notwithstanding, if either party, at any time, believes that there is the need to maintain the status quo pending resolution by one or more of the methods set forth in this section, that party may seek a preliminary injunction or other equitable relief from any court of competent jurisdiction.

12. **No Warranty.** WW2 Research makes no guarantees as to the success of the Client's Veterans War Memorial Project.

Except for damages resulting from WW2 Research of Client's material breach of any of their agreements contained herein, and except for any intentional, reckless, or grossly negligent actions by WW2 Research or Client or their agents, neither WW2 Research nor Client shall be liable to each other for any damages, including any lost profits, lost savings, or other incidental, consequential, or special damages arising out of or related to this agreement. Except as expressly set forth in this agreement, WW2 Research's

services delivered under this agreement are delivered without warranty of any kind, including without limitation, any warranty of non-infringement, merchantability, or fitness for a particular purpose.

13. **General Terms.** Nothing contained in this Agreement shall create any partnership or joint venture between the parties and WW2 Research shall not be deemed to be Client's employee. WW2 Research will be acting as Client's agent when purchasing materials or services on Client's behalf, and Client agrees that all orders placed and contracts entered into by WW2 Research on Client's behalf with our suppliers and other persons may so state. Client acknowledges that WW2 Research may from time to time use consultants and/or subcontractors in the performance of services hereunder.

This agreement may not be assigned by either party without the prior written consent of the other, and any such purported assignment shall be void. This agreement shall be construed and interpreted in accordance with the law of the State of California, applicable to contracts made and to be performed entirely therein. This document is a complete and exclusive statement of the terms of this agreement and may not be changed orally but only in writing and signed by both parties.

Agreed and Accepted:

Agreed and Accepted:
Fresno Veterans Memorial

(Signature)

William Beigel, WW2 Researcher

(Print or type name)

WW2 Research Inc

(Title)

April 15, 2019

(Date)

Bill.Beigel@ww2research.com

(e-mail Address)

804 El Redondo Avenue

(Mailing Address)

Redondo Beach, CA 90277

(City, State/Province, Zip)

(310) 791-3949

(Phone Number)

(Signature)

Garry Bredefeld

(Print or type name)

City of Fresno City Councilmember

(Title)

April 15, 2019

(Date)

Garry.Bredefeld@fresno.gov

(e-mail Address)

(Signature)

Douglas T. Stone, City Attorney

(Print or type name)

(Date)

Attachment A: SCOPE OF WORK

WW2 Research will provide to Client a list, via Excel Spreadsheet, the following information:

- 1) List of servicemen from the City of Fresno who can be verified as having died in World War 2, in combat or in captivity as prisoners of war. Servicemen from the City of Fresno who did not die in combat (other than prisoners of war) shall not be included in this list.
- 2) List of servicemen from the City of Fresno who can be verified as having died in in the Korean War, in combat or in captivity as prisoners of war. Serviceman from the City of Fresno who did not die in combat (other than prisoners of war) shall not be included in this list
- 3) The list of names will also include complete rank (or grade) of servicemen, branch of the military with which they served, first name, middle initial, and surname, as recorded in World War 2 or Korean War military files.
- 4) WW2 research confirms that it has reviewed the lists of Vietnam and Gulf Conflict War dead provided by the Fresno Veterans Memorial and finds that the lists are accurate, barring extensive research or any evidence to the contrary.