

Bell Memorials & Granite Works Inc.

339 North Minnewawa Avenue
Clovis, CA 93612
(559) 299-7055 O (559) 299-7045 F



Contract and SOW 01 for Agreement to Create/Install Monument Services to The City of Fresno

Date	Services Performed By:	Services Performed For:
April 22, 2019	Bell Memorials & Granite Works Inc. 339 North Minnewawa Avenue Clovis, CA 93612 (559) 299-7055 O (559) 299-7045 F	Fresno Revitalization Corporation 2344 Tulare Street Suite 200 Fresno, CA 93721

This **Contract** and **Statement of Work (SOW)** is made between The City of Fresno ("Client") and Bell Memorials & Granite Works Inc. ("Monument Contractor"), effective April 22, 2019 (the "Agreement"). This SOW # 01 (hereinafter called the "SOW"), effective as of April 22, 2019, is entered into by and between Monument Contractor and Client, and is subject to the terms and conditions specified below.

The Exhibit(s) to this SOW, if any, shall be deemed to be a part hereof. In the event of any inconsistencies between the terms of the body of this SOW and the terms of the Exhibit(s) hereto, the terms of the body of this Contract / SOW shall prevail.

Contract

The Fresno Revitalization Corporation hereby contracts with Bell Memorials & Granite Works Inc. for design, fabrication, and installation of:

- One (1) Granite Monument; Consisting of Three (3) Upright Panels and Bases; City of Fresno Fallen War Heroes Memorial (The "Project")

to be completed as per the description and SOW referenced herein; said Project to be delivered on or before November 1, 2019 unless delayed by transportation, strike, fire, or other conditions beyond the control of the Monument Contractor.

Period of Performance

The Services shall commence on April 22, 2019, and shall continue through November 1, 2019.

Scope of Work

Monument Contractor shall provide the Services and Deliverable(s) as follows:

Deliverable Materials

Item Description	Material	Size	Bases/Dies	Photo Medallions	Special Instructions
City of Fresno Fallen War Heroes Memorial 5 Upright Panels and 1 Base	Academy Black Granite Georgia Gray Granite	As Per Production Layout 1-D Attached (Exhibit B)	Academy Black Granite & Georgia Gray Granite As Per Design Layout 1-D Attached (Exhibit A)	City of Fresno Seal (1@14") One Insignia for Each Branch of War Time Military (5@10")	None

Project to be delivered and erected at the Fresno City Hall, 2600 Fresno Street, Fresno, CA 93721. Fifty percent (50%) deposit required at execution of this contract; balance due prior to delivery and installation. Monument Contractor is entitled to recover costs and reasonable attorney's fee arising out of any dispute involving this Contract/SOW. It is agreed that the title and ownership of the Project shall not pass from the Monument Contractor to the Client until this Contract is fully paid. The Project, though placed upon any real property, shall not become part of the same until paid in full. If Client defaults on payment, Monument Contractor may without further notice immediately repossess said Project and Client shall forfeit any amounts paid on account. Client gives limited power of attorney to Monument Contractor to act on their behalf with the above noted installation site. Permission is granted to the Monument Contractor to use photographs of the completed Project for any purpose such as, but not limited to, advertising, marketing, publication, electronic distribution, the Internet, and Monument Contractor's own website.

It is understood that no engraving on back of monument is included and would incur additional expense. It is further understood that no future inscriptions are included in this Contract/SOW and would be provided by Monument Contractor at additional expense to Client.

Total, including all materials, delivery, installation, and sales tax: \$83,854.46

Deposit: 4/23/2019 \$42,000

Balance due: \$41,854.46

Monument Contractor Responsibilities

Manufacture and install One (1) Academy Black Granite/ Georgia Gray Granite City of Fresno Fallen War Heroes Memorial as per Bell Memorials & Granite Works Inc. Layout 1-D. Final Invoice (Exhibit C) includes memorial materials, granite bases, labor, sandblasting, photo medallion installations, monument engineering, transportation of Project to Project Site, and installation of monument components ONLY. Concrete footing, site work, applicable site engineering, excavation and any other preparation work for the site itself is being handled by Others and is outside this Scope of Work.

*No concrete pads or benches have been included in this invoice.

*All work to be performed during regular working hours and non-prevailing wage.

Monument Contractor is responsible for adhering to city and county codes and permits, as applicable. Monument Contractor herein notes that at time of this Contract, no City of Fresno Building Inspector has advised that a permit is required for this Project. If such a permit is required, it may change the balance due and payable after initial deposit.

Monument Contractor assumes full responsibility for all aspects of fabrication and installation that are under its control, such as project management, coordination and communication between Monument Contractor, general contractor(s), sub-contractor(s), employees and other participating entities in order to meet target completion date of November 1, 2019.

Monument Contractor hereby notifies Client that Monument Contractor can only commit to the November 1, 2019 installation date as long as all project materials are received undamaged and in Monument Contractor's possession on or before July 8, 2019. Monument Contractor cannot be held responsible for installation by November 1, 2019 if delay(s) are created by circumstances outside of Monument Contractor's control, such as, but not limited to: fire, earthquake, major weather disturbances and other Acts of Nature; overseas shipping delays; domestic shipping/transportation delays; union strikes; port strikes; and customs delays.

Project has been estimated and priced according to regular, non-prevailing wages (no overtime). If circumstances outside Monument Contractor's control occur which impact the November 1, 2019 date, resulting in possible delays, Client may elect to engage overtime charges to meet the November 1, 2019 date. These additional charges will be at Client's direction, and will be contracted via the Project Change Control Procedure as outlined in that section.

Client Responsibilities

Client shall be responsible for providing all names and inscriptions for the Project. **Client shall be further responsible for final proofreading of names and inscriptions to ensure correct spelling (especially as it relates to names),** punctuation, grammar, imagery and insignias. While Monument Contractor strives to ensure all inscriptions are accurate, Monument Contractor must rely on Client's knowledge of names and specific insignias,

etc to produce an error-free final product. **By signature below, Client certifies that they have checked the inscriptions as attached Exhibit D and Exhibit E and find them to be correct.**

Client is responsible for securing all site preparation work, including but not limited to: engineering, excavation, cement foundation and/or pedestals, retaining walls, benches, landscaping and any other site work deemed necessary to prepare site for installation of The Project.

Client is responsible for a 50% deposit of total Project cost; with balance due prior to installation.*

Exhibits

Please see attached Exhibits, which herein referenced become part of the Contract and Scope of Work (SOW):

- Exhibit A: Bell Memorials & Granite Works Inc. Design Layout 1-D
- Exhibit B: Bell Memorials & Granite Works Inc. Production Layout 1-D
- Exhibit C: Bell Memorials & Granite Works Inc. Final Invoice
- Exhibit D: List of Names and Other Inscriptions for Project, as provided by Client
- Exhibit E: Contractors Insurance Requirements
- Exhibit F: Indemnification

Fee Schedule

This engagement will be conducted on a Time & Materials basis. The total value for the Services pursuant to this SOW shall not exceed \$83,854.46 unless otherwise agreed to by both parties via the project change control procedure, as outlined within. A PCR will be issued specifying the amended value.

Upon completion of this Performance Period, Monument Contractor and Client will have the option to renew this agreement for an additional then-stated number of hours at the then-current hourly rate for those resources identified.

Bill To Address	Client Project Manager	Client Cost Center
2344 Tulare Street Suite 200 Fresno, CA 93721	Garry Bredefeld	N/A

Completion Criteria

Monument Contractor shall have fulfilled its obligations when any one of the following first occurs:

- Monument Contractor accomplishes the Monument Contractor activities described within this SOW, including delivery to Client of the materials listed in the Section entitled “Deliverable Materials,” and Client accepts such activities and materials without unreasonable objections. No response from Client within 2-business days of deliverables being delivered and/or installed by Monument Contractor is deemed acceptance.

Project Change Control Procedure

The following process will be followed if a change to this SOW is required:

- A Project Change Request (PCR) will be the vehicle for communicating change. The PCR must describe the change, the rationale for the change, and the effect the change will have on the project.
- The designated Project Manager of the requesting party (Monument Contractor or Client) will review the proposed change and determine whether to submit the request to the other party.
- Both Project Managers will review the proposed change and approve it for further investigation or reject it. Monument Contractor and Client will mutually agree upon any charges for such investigation, if any. If the investigation is authorized, the Client Project Managers will sign the PCR, which will constitute approval for the investigation charges. Monument Contractor will invoice Client for any such charges. The investigation will determine the effect that the implementation of the PCR will have on SOW price, schedule and other terms and conditions of the Agreement.
- Upon completion of the investigation, both parties will review the impact of the proposed change and, if mutually agreed, a Change Authorization will be executed.
- A written Change Authorization and/or PCR must be signed by both parties to authorize implementation of the investigated changes.

IN WITNESS WHEREOF, the parties hereto have caused this Contract and SOW to be effective as of the day, month and year first written above.

Fresno Revitalization
Corporation

Bell Memorials & Granite Works
Inc.

By: _____
Name: Marlene Murphy
Title: _____

By: _____
Name: Dan L. Bell
Title: President

Exhibit A

Bell Memorials & Granite Works Inc. Design Layout 1-D

Exhibit B

Bell Memorials & Granite Works Inc. Production Layout 1-D

Exhibit C

Bell Memorials & Granite Works Inc. Final Invoice Dated April 22, 2019

Exhibit D

List of Names and Other Inscriptions for Project, as provided by Client

Exhibit E

Contractors Insurance Requirements

INSURANCE REQUIREMENTS

(a) Throughout the life of this Agreement, CONTRACTOR shall pay for and maintain in full force and effect all insurance as required herein with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated herein shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, CONTRACTOR or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONTRACTOR shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONTRACTOR of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(c) The fact that insurance is obtained by CONTRACTOR shall not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by CONTRACTOR. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONTRACTOR, vendors, suppliers, invitees, contractors, sub-contractors, subcontractors, or anyone employed directly or indirectly by any of them.

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."

2. The most current version of ISO *Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.

3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

MINIMUM LIMITS OF INSURANCE

EXHIBIT A

CONTRACTOR shall procure and maintain for the duration of the contract, and for 5 years thereafter, insurance with limits of liability not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. COMMERCIAL GENERAL LIABILITY

- (i) \$1,000,000 per occurrence for bodily injury and property damage;
- (ii) \$1,000,000 per occurrence for personal and advertising injury;
- (iii) \$2,000,000 aggregate for products and completed operations; and,
- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. COMMERCIAL AUTOMOBILE LIABILITY

\$1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation Insurance as required by the State of California with statutory limits and EMPLOYER'S LIABILITY with limits of liability not less than:

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

UMBRELLA OR EXCESS INSURANCE

In the event CONTRACTOR purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

DEDUCTIBLES AND SELF-INSURED RETENTIONS

CONTRACTOR shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONTRACTOR shall also be responsible for payment of any self-insured retentions. Any self-insured retentions must be declared on the Certificate of Insurance, and approved by, the CITY'S Risk Manager or his/her designee. At the option of the CITY'S Risk Manager or his/her designee, either:

- (i) The insurer shall reduce or eliminate such self-insured retentions as respects CITY, its officers, officials, employees, agents and volunteers; or
- (ii) CONTRACTOR shall provide a financial guarantee, satisfactory to CITY'S Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall CITY be responsible for the payment of any deductibles or self-insured retentions.

OTHER INSURANCE PROVISIONS/ENDORSEMENTS

- (i) All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice has been given to CITY, except ten (10) days for nonpayment of premium. CONTRACTOR is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONTRACTOR shall furnish CITY with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for CITY, CONTRACTOR shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.
- (ii) The Commercial General and Automobile Liability insurance policies shall be written on an occurrence form.
- (iii) The Commercial General and Automobile Liability insurance policies shall be endorsed to name City, its

officers, officials, agents, employees and volunteers as an additional insured. CONTRACTOR shall establish additional insured status for the City and for all ongoing and completed operations under the Commercial General Liability policy by use of ISO Forms or an executed manuscript insurance company endorsement providing additional insured status. The Commercial General endorsements must be as broad as that contained in ISO Forms: GC 20 10 11 85 or both CG 20 10 & CG 20 37.

(iv) The Commercial General and Automobile Liability insurance shall contain, or be endorsed to contain, that the CONTRACTORS' insurance shall be primary to and require no contribution from the City. The Commercial General insurance policy is required to include primary and non contributory coverage in favor of the City for both the ongoing and completed operations coverage. These coverages shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers. If CONTRACTOR maintains higher limits of liability than the minimums shown above, City requires and shall be entitled to coverage for the higher limits of liability maintained by CONTRACTOR.

(v) Should any of these policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

(vi) For any claims related to this Agreement, CONTRACTOR'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, agents, employees and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, agents, employees and volunteers shall be excess of the CONTRACTOR'S insurance and shall not contribute with it.

(vii) The Workers' Compensation insurance policy shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

(viii) The Commercial General and Automobile Liability insurance policies shall contain, or be endorsed to contain, a waiver of subrogation as to CITY, its officers, officials, agents, employees and volunteers.

PROVIDING OF DOCUMENTS - CONTRACTOR shall furnish CITY with all certificate(s) and applicable endorsements effecting coverage required herein. All certificates and applicable endorsements are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, CONTRACTOR shall immediately furnish CITY with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement. All subcontractors working under the direction of CONTRACTOR shall also be required to provide all documents noted herein.

CLAIMS-MADE POLICIES - If any coverage required is written on a claims-made coverage form:

(i) The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONTRACTOR.

(ii) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the work or termination of the Agreement, whichever first occurs.

(iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement, or work commencement date, CONTRACTOR must purchase "extended reporting" period coverage for a minimum of five (5) years after completion of the work or termination of the Agreement, whichever first occurs.

(iv) A copy of the claims reporting requirements must be submitted to CITY for review.

(v) These requirements shall survive expiration or termination of the Agreement.

SUBCONTRACTORS - If CONTRACTOR subcontracts any or all of the services to be performed under this Agreement, CONTRACTOR shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, CONTRACTOR will be solely responsible for ensuring that it's subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

Exhibit E

Indemnification

To the furthest extent allowed by law, Monument Contractor shall indemnify, hold harmless and defend Client and each of its officers, officials, employees, agents and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by Client, Monument Contractor or any other person, and from any and all claims, demands and actions in law or equity (including attorney's fees and litigation expenses), arising or alleged to have arisen directly or indirectly out of performance of this Contract. Monument Contractor's obligations under the preceding sentence shall apply regardless of whether Client or any of its officers, officials, employees, agents or volunteers are passively negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused by the active or sole negligence, or the willful misconduct, of Client or any of its officers, officials, employees, agents or volunteers.

If Monument Contractor should subcontract all or any portion of the work to be performed under this Contract, Monument Contractor shall require each subcontractor to indemnify, hold harmless and defend Client and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Contract