

REPORT / RECOMMENDATION



To: Park Board

Agenda Item #: VI.A.

From: Kristin Aarsvold
Recreation Supervisor

Action

Discussion

Date: January 14, 2014

Information

Subject: Veterans Memorial Update

Action Requested:

Receive an update on the Veterans Memorial project and provide feedback.

Information / Background:

In May 2013 the Veterans Memorial Committee requested \$38,500 from City Council to pay SEH for construction documents and assist with bidding and construction administration. The City Council approved funding for half of their request or \$19,250 for the completion of project and design documents. The Council suggested that the remainder of the cost should come from the money raised for the Memorial.

In August 2013, the Edina Veterans Committee and City staff approved retaining Elliott Design Build, Inc. to provide bidding and construction documents. Elliot Design Build, Inc. is an Edina based business willing to donate in-kind services. On January 3, 2014 City Manager Scott Neal signed a contract with Elliott Design Build, Inc. (not affiliated with SEH-Short Elliott Hendrickson) for \$19,250 to prepare construction documents and assist with the bidding and construction administration.

Committee members Bob Benson and Robert Reed have spent considerable time reviewing options for a more reasonable priced sculpture for the memorial. A quote for a six-foot wide wingspan, four and one half feet tall eagle sculpture in the amount of \$46,500 from Shoop's American Bronze Casting, Ltd in Osceola, Wisconsin was obtained. The artist will make a presentation at the January 17, 2014 Veteran's Memorial meeting and a vote will be taken. This is cost savings of almost 50% from the original sculpture selected. A contract was never signed for payment to the past artist in New York; however \$3,800 was paid for a maquette. The Committee is hoping to complete construction documents, solicit donations, receive Park Board and City Council approvals and begin construction in the summer of 2014.

Current Account Balance in the Veterans Memorial Fund at the Edina Community Foundation:

\$17,483

Pledged Funds:

\$100,000 Anonymous donor for the final phase

\$20,000 Edina Rotary Club

In-kind pledged donors include:

Frank R. Cardarelle Land Surveyors; Elliot Design Build, Inc.; Washburn-McGreavy; Kraus-Anderson; Bachman's

Attachment A – Contract with Elliott Design Build, Inc.

PROFESSIONAL SERVICES AGREEMENT

AGREEMENT made this 3rd day of January, 2014 by and between the **CITY OF EDINA**, a Minnesota municipal corporation ("City") and **ELLIOTT Design Build, Inc.**, hereinafter referred to as "Engineer".

IN CONSIDERATION OF THEIR MUTUAL COVENANTS, THE PARTIES AGREE AS FOLLOWS:

1. SCOPE OF SERVICES. The City retains Engineer to furnish the services set forth on the attached Exhibit "A". The Engineer agrees to perform the services. Engineer shall provide all personnel, supervision, services, materials, tools, equipment and supplies and do all things necessary and ancillary thereto specified on Exhibit "A". The work to be performed under this Agreement shall be done under the review of a professional engineer licensed in the State of Minnesota, who shall attest that the work will be performed in compliance with all applicable codes and engineering standards. The work shall be performed in accordance with the Contract Documents, which includes this Agreement and the Exhibits: Exhibit "A" – Scope of Services; Exhibit "B" – Schedule of Payment and Fee Schedule. In the event any ambiguity or conflict between the Contract Documents listed above, the order of precedence shall be the following order: (i) this Agreement; (ii) Exhibit "A", (iii) Exhibit "B".

2. REPRESENTATIVES. City has designated the Parks and Recreation Director (the "City Representative"), and the Engineer has designated Lance Elliott (the "Engineer Representative"). The City Representative and the Engineer Representative shall be available as often as is reasonably necessary for reviewing the Services.

3. COMPENSATION. Engineer shall be paid by the City for the services described in Paragraph 1 on an hourly basis in accordance with the attached fee schedule, Exhibit "B", but not to exceed \$19,250 inclusive of taxes and reimbursable costs.

4. COMPLETION DATE. The Engineer must complete the services by November 28, 2014.

5. DOCUMENTS. The City shall be the owner of all documents, reports, studies, analysis and the like prepared by the Engineer in conjunction with this contract.

6. COMPLIANCE WITH LAWS AND REGULATIONS. In providing services hereunder, Engineer shall abide by all statutes, ordinances, rules and regulations pertaining to the provisions of services to be provided.

7. STANDARD OF CARE. Engineer shall exercise the same degrees of care, skill, and diligence in the performance of the Services as is ordinarily possessed and exercised by a professional engineer under similar circumstances. No other warranty, expressed or implied, is included in this Agreement. City shall not be responsible for discovering deficiencies in the accuracy of Engineer's services.

8. **INDEMNIFICATION.** The Engineer shall indemnify and hold harmless the City, its officers, agents, and employees, of and from any and all claims, demands, actions, causes of action, including costs and attorney's fees, to the extent caused by the negligent acts or omissions of the Engineer.

9. **INSURANCE.** Engineer shall secure and maintain such insurance as will protect Engineer from claims under the Worker's Compensation Acts, automobile liability, and from claims for bodily injury, death, or property damage which may arise from the performance of services under this Agreement. Such insurance shall be written for amounts not less than:

Commercial General Liability	\$1,000,000 each occurrence/aggregate
Automobile Liability	\$1,000,000 combined single limit
Excess/Umbrella Liability	\$2,000,000 each occurrence/aggregate

The City shall be named as an additional insured on the general liability and umbrella policies.

Before commencing work the Engineer shall provide the City a certificate of insurance evidencing the required insurance coverage in a form acceptable to the City. The certificate shall provide that such insurance cannot be cancelled until thirty (30) days after the City has received written notice of the insurer's intention to cancel this insurance.

10. **INDEPENDENT CONTRACTOR.** The City hereby retains the Engineer as an independent contractor upon the terms and conditions set forth in this Agreement. The Engineer is not an employee of the City and is free to contract with other entities as provided herein. Engineer shall be responsible for selecting the means and methods of performing the work. Engineer shall furnish any and all supplies, equipment, and incidentals necessary for Engineer's performance under this Agreement. City and Engineer agree that Engineer shall not at any time or in any manner represent that Engineer or any of Engineer's agents or employees are in any manner agents or employees of the City. Engineer shall be exclusively responsible under this Agreement for Engineer's own FICA payments, workers compensation payments, unemployment compensation payments, withholding amounts, and/or self-employment taxes if any such payments, amounts, or taxes are required to be paid by law or regulation.

11. **SUBCONTRACTORS.** Engineer shall not enter into subcontracts for services provided under this Agreement without the express written consent of the City. Engineer shall comply with Minnesota Statute § 471.425. Engineer must pay Subcontractor for all undisputed services provided by Subcontractor within ten days of Engineer's receipt of payment from City. Engineer must pay interest of 1.5 percent per month or any part of a month to Subcontractor on any undisputed amount not paid on time to Subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10.

12. **ASSIGNMENT.** Neither party shall assign this Agreement, nor any interest arising herein, without the written consent of the other party.

13. **WAIVER.** Any waiver by either party of a breach of any provisions of this Agreement shall not affect, in any respect, the validity of the remainder of this Agreement.

14. **ENTIRE AGREEMENT.** The entire agreement of the parties is contained herein. This Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof as well as any previous agreements presently in effect between the parties relating to the subject matter hereof. Any alterations, amendments, deletions, or waivers of the provisions of this Agreement shall be valid only when expressed in writing and duly signed by the parties, unless otherwise provided herein.

15. **CONTROLLING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

16. **COPYRIGHT.** Engineer shall defend actions or claims charging infringement of any copyright or patent by reason of the use or adoption of any designs, drawings or specifications supplied by it, and it shall hold harmless the City from loss or damage resulting there from.

17. **RECORDS.** The Engineer shall maintain complete and accurate records of time and expense involved in the performance of services.

18. **MINNESOTA GOVERNMENT DATA PRACTICES ACT.** Engineer must comply with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13, as it applies to (1) all data provided by the City pursuant to this Agreement, and (2) all data, created, collected, received, stored, used, maintained, or disseminated by the Engineer pursuant to this Agreement. Engineer is subject to all the provisions of the Minnesota Government Data Practices Act, including but not limited to the civil remedies of Minnesota Statutes Section 13.08, as if it were a government entity. In the event Engineer receives a request to release data, Engineer must immediately notify City. City will give Engineer instructions concerning the release of the data to the requesting party before the data is released. Engineer agrees to defend, indemnify, and hold City, its officials, officers, agents, employees, and volunteers harmless from any claims resulting from Engineer's officers', agents', city's, partners', employees', volunteers', assignees' or subcontractors' unlawful disclosure and/or use of protected data. The terms of this paragraph shall survive the cancellation or termination of this Agreement.

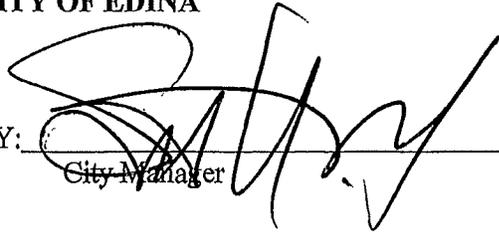
19. **TERMINATION.** This Agreement may be terminated by City on two (2) days' written notice delivered to Engineer at the address on file with the City. Upon termination under this provision if there is no fault of the Engineer, the Engineer shall be paid for services rendered and reimbursable expenses until the effective date of termination. If the City terminates the Agreement because the Engineer has failed to perform in accordance with this Agreement, no further payment shall be made to the Engineer, and the City may retain another engineer to undertake or complete the work identified in Paragraph 1.

Dated: 1/3, 2014

CITY OF EDINA

BY: _____

City Manager



Dated: 1/3, 2014

ENGINEER:

BY: _____

Its _____

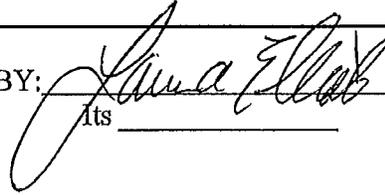


EXHIBIT "A"

SCOPE OF SERVICES

Elliott Design Build, Inc. Proposal to Provide Final Landscape Architecture and Engineering, Construction Document and Construction Administration Services for the Edina Veterans Memorial

Task A. Final Landscape Architectural and Engineering Design

A1. Prepare final landscape architectural and engineering design for:

- soils investigation (1 or 2 borings)
- grading and drainage
- pavements
- memorial feature walls w/bronze art work
- stairs and hand rails
- lighting
- planting design

A2. Meet with Edina Veterans Memorial Committee to present final design, cost estimate and schedule.

A3. Assist in making presentation to Edina City Council to obtain approval for preparing construction documents.

Soils investigation by others: Estimated @ \$3,500 (Braun Intertech)

Task B. Construction Documents

B1. Prepare a comprehensive set of construction documents directing the estimating, bidding and assembly/installation of the veterans memorial including:

- title sheet showing name, project location, owner, etc.
- estimated quantities and contractor notes
- final, site plan locating all memorial elements
- structural and surface cladding detail plans, section / elevation for footings and foundations of memorial wall, flag poles and stairs
- site grading plan indicating finished grades by 1-foot contours and spot elevations
- stormwater management /mitigation plan and associated details
- detail sections for granite, concrete and asphalt pavement systems
- planting plan indicating plant species, locations, turf restoration and associated plant schedule (species, size, root and detail notes) and installation details
- electrical lay out plan and associated details for illuminating flags
- mounting details for benches, flag poles, hand rails
- lettering details and layouts for memorial inscriptions
- project manual booklet containing advertisement for bid, bidding instructions, bid forms, City of Edina general conditions documents, special provisions and special conditions, technical specifications
- Prepare Watershed permit application submission and track approval process

B2. Facilitate construction document review with Edina City staff at 60% and 90% completion stages.

B3. Present 90%-stage construction documents to Edina Veterans Committee.

B4. Coordinate final mounting details and installation procedures for bronze artwork.

Task C. Bidding Assistance and Construction Administration

- Answer questions from bidders
- Attend bid opening and tabulate bid results
- Facilitate pre-construction meeting
- Facilitate up to six owner contractor meetings on site
- Visit site up to two times per week to review construction progress, answer contractor questions including
- Review and process shop drawings for structural steel, concrete mixture, granite cladding, etc.
- Review requests for payment and, change orders per City's direction
- Facilitate owner substantial completion walk-through and punch list
- Facilitate final walk-through and punch list

Timing

Tasks A and B will require approximately eleven to twelve weeks to complete, based on scheduling of plan review and sculpture progress.

Fees and Expenses

Fees and expenses are proposed to be billed monthly, net 30 day.

EXHIBIT "B"

SCHEDULE OF PAYMENT AND FEE SCHEDULE

Fees and expenses are proposed to be billed monthly, net 30 day, not to exceed \$19,250.



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/02/2014

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed, if SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER PIONEER HERITAGE INSURANCE LLC PO BOX 716 SPICER MN 56288	CONTACT NAME: James Tetzloff
	PHONE (A/C, No, Ext): 320.214.5523 FAX (A/C, No): 320.214.5583
	E-MAIL ADDRESS: jtetzloff@heritagebankna.com
	INSURER(S) AFFORDING COVERAGE
	NAIC #
INSURED Elliott Design Build, Inc. 5616 Dalrymple Rd Edina MN 55424-1507	INSURER A: AUTO OWNERS
	INSURER B: Auto Owners Insurance Company
	INSURER C: Gemini Insurance Company
	INSURER D:
	INSURER E:
	INSURER F:

COVERAGES CERTIFICATE NUMBER: REVISION NUMBER:

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

INSR LTR	TYPE OF INSURANCE	ADDL INSR	INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	N	N	08092300	04/27/2013	04/27/2014	EACH OCCURRENCE \$ 1,000,000
							DAMAGE TO RENTED PREMISES (Eq occurrence) \$
							MED EXP (Any one person) \$ 10,000
							PERSONAL & ADV INJURY \$ 1,000,000
	GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						GENERAL AGGREGATE \$ 3,000,000
	GENL AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS HIRED AUTOS						Fire Damage \$ 300,000
	SCHEDULED AUTOS NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Eq accident) \$
B	UMBRELLA LIAB EXCESS LIAB	N	N	4821328300	10/29/2013	10/29/2014	BODILY INJURY (Per person) \$
							BODILY INJURY (Per accident) \$
							PROPERTY DAMAGE (Per accident) \$
	DEED RETENTION \$						
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N	N	HPM-DP-00140-00	12/19/2013	12/19/2014	EACH OCCURRENCE \$ 1,000,000
							AGGREGATE \$
							NO STATUTORY LIMITS OTH-ER
							E.L. EACH ACCIDENT \$
	E.L. DISEASE - EA EMPLOYEE \$						E.L. DISEASE - POLICY LIMIT \$
	Professional Liability						1,000,000 each claim 1,000,000 Policy period aggregate

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

CERTIFICATE HOLDER CITY OF EDINA 4801 W. 50th St. EDINA MN 55424	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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**PROOF OF WORKERS' COMPENSATION
INSURANCE COVERAGE**

Minnesota Statute Section 176.182 requires every governmental subdivision entering into a contract for the doing of any public work to obtain acceptable evidence of compliance with the workers' compensation insurance coverage requirement of Section 176.181, subd. 2. The information required is: the name of the insurance company, the policy number, and dates of coverage or the permit to self-insure. This information will be furnished upon request to the Department of Labor and Industry to check for compliance with Minnesota Statute Section 176.181, subd. 2.

This information is required by law, and a contract for the doing of any public work may not be entered into if it is not provided and/or is falsely reported. Furthermore, if this information is not provided and/or falsely reported, it may result in a penalty assessed against the applicant by the Commissioner of the Department of Labor and Industry payable to the Special Compensation Fund.

Provide the information specified above in the spaces provided, or certify the precise reason your business is excluded from compliance with the insurance coverage requirement for workers' compensation.

INSURANCE COMPANY NAME:

(NOT the insurance agent)

POLICY NO. OR SELF-INSURANCE PERMIT NO.:

DATES OF COVERAGE:

OR

I am not required to have workers' compensation liability coverage because:

I have no employees covered by the law.

Other (Specify)

I HAVE READ AND UNDERSTAND MY RIGHTS AND OBLIGATIONS WITH REGARD TO PUBLIC CONTRACTS AND WORKERS' COMPENSATION COVERAGE, AND I CERTIFY THAT THE INFORMATION PROVIDED IS TRUE AND CORRECT.

Sam A Elliott

(SIGNATURE)

ELLIOTT DESIGN BUILD INC
5666 Dalrymple Rd.
Edina, MN 55424