



Request for Proposal

#1679

Veteran Sculpture Professional Services

Design and Installation of Art – Women in the Military

City of Springfield
City Manager's Office
Springfield, Oregon 97477

July 18, 2016

I. Project Overview

There are very few memorials honoring the sacrifice of women who have served in the United States Military. Springfield is working to bring a high quality art installation to Oregon that will celebrate the achievements of women who serve.

In Springfield we have a long tradition of supporting our veterans. In the recent past we have hosted the traveling Vietnam Wall Memorial and we host and sponsor the annual Lane County Veterans Day Parade. Our plan for this project is to work with a qualified artist to produce a high-quality sculpture that celebrates the service of women in the US Military. We plan to recognize the five military branches and dedicate the work to the women who served or gave their lives in service of our country.

The art installation will be of bronze, stainless steel or stone. Five to seven feet in height, atop a four-foot base. The install deadline is September 15, 2017. The City of Springfield's purpose for issuing this RFP is to establish a contract with a professional artist/sculptor. The City of Springfield has a proposed budget of \$60,000 for the sculpture design and installation. The City of Springfield will own the final design and all intellectual property associated with the piece. This project is funded in part through the Oregon Parks and Recreation Department 2016 Veterans & War Memorials Grant

The goal of the project is: A celebration honoring all women of service.

A group of women veterans have volunteered their time as part of the City's Project Committee. They have designed the following characteristics and objectives. These characteristics and objectives should serve as a roadmap for project design.

Content:

The content of the sculpture is intended to reflect themes and art directly associated with women who have served in the United States Military and based on the characteristics established by the City's volunteer project committee are outlined below.

- The final design should be simple, direct, and timeless. It should encompass all women with an element of femininity as a woman may view it.
- The artist should have a good understanding of the perspective of women in the military and proper symbolism associated with military service.
- The committee has suggested a representational piece. While it can represent a female form, it is not a requirement.
- The final design should represent all five military branches (Army, Navy, Air Force, Marines and Coast Guard).
- The Project Committee would like the base to be five sided with each side representing a different branch.
- It is important for the piece to represent every woman military service member in a celebration that honors those women who have come before, those who currently serve and those who will serve in the future.
- These characteristics were provided by our Project Committee and should be a focus of this piece. The characteristics of a woman who have served:
 - Integrity – Strength - Conviction – Determination - Perseverance - Sacrifice - Pride – Accomplishment – Honor - Commitment - Endurance – Survival – Tenacity.
- The Project Committee has identified elements that they **do not want represented** in the final piece. These elements include:

- The cutlass, the flag (as it will already be on display in the plaza,) flowers, no pumps or skirts and no reference to family and/or caregiving.
- Additionally, should uniforms be included, keep in mind that they are different for each branch of service, rank/rate/MOS, as well as era served. The women veteran volunteers on the Project Committee emphatically agreed that there be no pumps or skirts depicted anywhere on the sculpture.

The location of the sculpture will be on the grounds of Willamalane Park 1276 G St, Springfield, OR 97477. The sculpture will be installed in the soon to be constructed Veteran’s Plaza. The sculpture will be placed upon a provided base.

The successful artist proposal will be responsible for producing the artwork and the preparation of the produced design including, but not limited to, design, layout and art production. The available space for design is approximately 4 ft. X 4 ft.

Once selected, the artist will participate in a final design review with stakeholders, including but not limited to representatives of the volunteer Project Committee, the City of Springfield and Willamalane Park and Recreation District. This review is to assure quality and authenticity of the themes displayed. In order to maintain timely completion of the project, the artist will be expected to respond and participate in a reasonable and timely manner to design and content questions and/or requests.

The artist will be responsible for all materials needed to complete the project. The artist is responsible for an accurate reproduction of their proposed design piece as it is depicted and approved by the City of Springfield.

II. Request for Proposal Process Overview

This Request for Proposal (RFP) will include of scoring of the Design Proposal. For specific criteria see **IV. Evaluation and Scoring Criteria.**

Request for Design Proposals

An optional pre-design submittal meeting where artists will have an opportunity to ask questions and receive direction from staff and the Women Veterans Committee regarding desired design elements. Design submittals will be scored on artistic representation of the specified themes, quality of artwork, installation timeline and fee. Upon selection, the artist may be asked to make minor modifications, additions, or deletions depending on design input from the City of Springfield and the committee.

The optional meeting, July 29, 2016 at 2:00p.m., will be held at City Hall, 225 5th Street, Springfield, OR in the Library Meeting Room.

III. Request for Proposal Submission Requirements

RFP Content Requirements

1. **General** – Qualification proposals will be clear and concise. The City encourages green options and discourages the use of materials that cannot be recycled such as PVC and spiral binders, plastic or glossy covers and dividers. Further, the City encourages Proposers to print on both sides of a sheet of paper whenever possible. Submissions must include the items organized and numbered to correspond to each requirement below.

2. **Cover Letter** – All qualification proposals must be accompanied by a cover letter signed by an individual who is legally authorized to enter into a contract on behalf of the proposing individual. The letter must contain a description of your firm and experience, a statement of how you propose to accomplish the work and affirm that you accept all terms and conditions of the Request for Proposals, including the Attachment 1 Sample Contract terms and conditions. The letter must designate the Proposer's contact person during the Proposal review process. Also, identify whether you qualify as resident bidder as described in ORS279A.120 (1) (b) and if you are licensed to do business in the State of Oregon. Include a statement of the firm's ability to begin work October 1, 2016 and a statement that the submission is a firm offer for a 90-day period.
3. **Experience** - Include a detailed statement of the qualifications of the artist. This should include the artists' prior work. Qualifying activities should include some combination of the following: education and training as an artist; an exhibition record in museums; commercial art galleries, and/or non-profit art spaces; previous public or private commissions; participation in artist-in-residency programs; or other related activities indicative of a professional art practice.
4. **Resumes**- Include a resume(s) for the artist assigned to this engagement.
5. **Approach** - The proposal should set forth a tentative work plan and approach.
6. **Work Examples**- Image CD or jump drive with up to 16 clearly labeled images of related past work in JPEG format. (Minimum four images per artist if working as a team.)
 - a. Name each image with the following format in the order you want them to appear: lastname__rstnameimagenumber.jpg. For example, filenames for artist Pablo Picasso would be Picasso_pablo01.jpg, Picasso_pablo02.jpg, Picasso_pablo03.jpg, and so on.
 - b. Label all files clearly with the artist's name, team name or studio name. The City of Springfield is not responsible for distortion or alteration of images as they appear on monitors as projected.
 - c. Movie clips on CD, DVD or jump drive accompanying the digital images must be cued and no more than three minutes maximum length. Movie clips must be formatted in Windows Media Player or QuickTime only.
 - d. An annotated image list of past works that clearly indicates the title, dimensions, materials, date of work, and locations, as well as project budget and commissioning entity, if applicable. Image names must match image names on the annotated list and be in the exact same order. A thumbnail image adjacent to each list entry is highly recommended to assure the panel understands what they are seeing.
7. **Fee Proposal** -The fee proposal must list the total breakdown of costs: personnel costs and all out-of-pocket expenses. The fee proposal will be understood as an estimate which may be modestly adjusted by proposers based on actual unique design elements.
8. **References** - Provide a minimum of three (3) references for sculpture services for organizations for which you have provided similar services. The references should include, at a minimum, the name of the organization, the address, the contact person, title, email address and a telephone number. References cannot include current City Staff.
9. **Attachment #1– Contract**. In the cover letter acknowledgment that you accept the terms and conditions and have or will obtain before contract execution, the requisite insurance.
10. **Signed Attachment #2** – Authorization to Legally Bind Bidder
11. **Signed Attachment #3** – Minority Women Emerging Small Business Form (MWESB)

IV. Evaluation and Selection Criteria

A committee comprised of representatives from the City, the Women Veterans Committee and the Springfield Arts Commission will review and score the submittals for conformance with the requirements of the Request for Qualifications.

1. Proposal Evaluation Criteria

Criteria	Possible Points
A. Resume and Experience	10
B. Proposed, Unique Design/Artwork	55
C. Detailed Work Plan and Approach	20
D. Fee Proposal	15
Total	100

2. Tie Breaker

- i. In the event of a tie during the evaluation process, the tie will be broken by taking the highest scoring proposer based on cost. If these scores are also tied, then by taking the highest scoring proposer based on their experience.

3. The final selection will be reviewed and approved by the City of Springfield prior to moving forward.

V. Schedule for Selection Process

RFP Package Available	July 18, 2016
Optional Meeting	July 29, 2016 at 2:00pm PT
Artist Questions Due (if applicable)	August 8, 2016 at noon PT
City Response to Questions Due (if applicable)	August 16, 2016
Proposals Due by	September 1, 2016 at Noon PT
Intent to Award Notice (approximate)	September 19, 2016
Contract Award (approximate)	September 21, 2016
Prep & Installation May Begin	October 1, 2016
Sculpture Completion	September 15, 2017

Prospective Proposers may contact Jayne McMahan by email at jmcmahan@springfield-or.gov for further information regarding this process or to ask questions. Contact with other City officials may be grounds for disqualification. Please note that the City of Springfield has implemented this policy to ensure fairness and transparency in the selection process. Upon receipt of an inquiry from a prospective proposer, the message is promptly relayed to the project’s lead staff person, who then prepares a written reply. Ms. McMahan, in turn, posts the questions and responses in an Addendum. Follow-up questions may continue to be submitted in this fashion until noon local time August 8, 2016.

Prospective Proposers are encouraged to register with jmcmahan@springfield-or.gov to stay in touch with the project and to receive any updates.

VI. Instructions to Proposers

Proposal must include one (1) original signed submission, six (6) printed copies clearly marked “**RFP# 1679 Veteran Sculpture Professional Services**” and (1) electronic copy (PDF format) on a CD. Each original Proposal

and required copies must be contained in a sealed envelope or box clearly marked “**RFP# 1679 Veteran Sculpture Professional Services**” and must be received no later than 2pm, local time, September 1, 2016 at the following address:

City of Springfield
Finance Department
Attention: Jayne McMahan, Procurement and Contracts Manager
225 Fifth Street,
Springfield, Oregon 97477

VII. Late Proposals Not Considered

Proposals must be received by the time specified at the address listed above. Any Proposal received after the deadline will not be considered. Faxed or emailed submissions will not be accepted.

VIII. Addenda to RFP

In the event that it is necessary to amend, revise, or supplement any part of the Request for Proposal, addenda will be posted on Springfield’s website at www.springfield-or.gov (select the hyperlink **Purchase/Contracts** from the left menu on the home page to be linked to the ITB/RFP page where the document titled **RFP#1679 Veteran Sculpture Professional Services** is linked). The City will make a reasonable effort to provide the addenda to all Proposers to whom the City provided the initial Proposal. This includes the amendment of dates in the Schedule for Selection Process. Any addenda so issued are to be considered part of the specifications of the Proposal. The City is not responsible for any explanation, clarification, interpretation or approval made or given in any manner except by written addenda issued by City.

In case of any doubt or differences of opinion as to the services to be furnished hereunder, or the interpretation of the provisions of the Proposal, the decision of the City shall be final and binding upon all parties.

IX. Contract

The successful Proposer will be expected to enter into a professional services contract with the City. The contract will specify the extent of services to be rendered, the means and methods of providing the services, and the amount of compensation. A sample contract is included as Attachment 2.

X. City Selection Discretion

Springfield reserves the right to reject any or all bids and to waive irregularities and informalities in the selection process. Springfield further reserves the right to negotiate, amend, and refine bids in consultation with one or more of the prospective Proposers.

XI. Proposal Ownership

All material submitted by the Proposers shall be considered property of Springfield, and the City will not be required to return same to any Proposer. The material submitted by Proposer will be treated in the same manner as the City’s own records.

After opening, all Proposals become part of the public record unless exempt under Oregon Public Records Law. Proposers wishing to exempt appropriate portions of their Proposals from disclosure as public records are encouraged to discuss their concerns with City’s Finance Director (address listed below) prior to the submissions of their Proposals.

Robert J. Duey, Finance Director

City of Springfield Finance Department
225 Fifth Street
Springfield, OR 97477

XII. Exceptions/Comments to Request for Proposal

If, for any reason, a Proposer should find fault with the structure of this Request for Proposal or with the evaluation process or desire a change to any of the specification's herein, concerns, comments or requests may be submitted in writing to:

Jayne McMahan, Procurement and Contracts Manager
Springfield Finance Department
225 Fifth Street
Springfield, OR 97477
Phone: (541) 726-3708
jmcmahan@springfield-or.gov

The City will make every effort to answer questions and, if warranted, to amend the Request for Proposal. Responses to questions and amendments to the Proposal will be posted on the Springfield website www.springfield-or.gov (select the hyperlink **Purchase/Contracts** from the left menu on the home page and then select the document titled **RFP# 1679 Veteran Sculpture Professional Services**). Proposers who are unable or unwilling to meet any of the requirements of this Request for Proposal must include, as part of their response, written exceptions to those requirements. Such requests shall be delivered on or before noon local time August 8, 2016.

XIII. Requests for Change

Requests for change must be delivered no later than noon local time August 8, 2016. A written request for change shall include:

- A detailed description of the legal and factual grounds for the request;
- A description of the resulting prejudice to the prospective Proposer; and
- A statement of the form of relief requested or any bid changes to the specifications.

The City will review the specification change request and notify the prospective Proposers of the decision in writing prior to the closing date. To the extent possible, the City will notify other prospective Proposers of any changes or modifications to the Request for Proposal.

XIV. Cost of Proposal

The City is not liable for any costs incurred by vendors for the preparation and presentation of their Request for Proposals. This includes any costs in the submission of a Proposal or in making necessary studies or designs for the preparation thereof.

4. **Term.** This Agreement is effective as of the date first set forth above and shall continue until _____, unless earlier terminated in accordance with the provisions of this Agreement or by mutual consent of the parties.
5. **Sourcing.** Independent Contractor selected as a result of RFP 1679 Veteran Sculpture Professional Services issued July 18, 2016.
6. **First Point of Contact.**

Independent Contractor: [insert name, ph# and email address]
CITY: [insert name, ph# and email address]

7. **Independent Contractor Status.** By its execution of this Agreement, Independent Contractor certifies its status as an "Independent Contractor" as that term is used under the laws of the State of Oregon, and that all performance of any labor or services required to be performed by Independent Contractor under the terms of this Agreement shall be performed in accordance with the standards set forth in ORS 670.600, and as more specifically set forth on Exhibit "A" attached hereto and incorporated herein by this reference.
8. **Conformance with Oregon Public Contracts Law (ORS Chapter 279).** Independent Contractor shall comply with all applicable provisions of Oregon law for public contracts, including, but not limited to ORS 279B.110, ORS 279B.220, ORS 279B.225, ORS 279B.230, and ORS 279B.235, and as more fully set forth on Exhibits "A", "B" and "C" attached hereto and incorporated herein by this reference.
9. **Work Performed.** The work to be performed by Independent Contractor includes services generally performed by Independent Contractor in his/her/its usual line of business.
10. **Tax duties and Liabilities.** Independent Contractor shall be responsible for all federal, state and local taxes, if any, applicable to any payments received pursuant to this Agreement, including but not limited to income tax, payroll tax, social security and self-employment tax. CITY shall not withhold, pay, or in any other manner be responsible for payment of any taxes on behalf of Independent Contractor.
11. **Reimbursement of Expenses.** Independent Contractor shall not be entitled to reimbursement by CITY for any expenses incurred by Independent Contractor unless otherwise agreed in writing.
12. **Materials and Supplies.** Independent Contractor shall supply all materials and supplies needed to perform the services required unless otherwise agreed in writing.
13. **No Authority to Bind CITY.** Independent Contractor shall have no authority to enter into contracts on behalf of CITY, its officers, agents and employees. This Agreement shall not create a partnership or joint venture of any sort between the parties.
14. **Federal Employment Status.** In the event payment made pursuant to this Agreement is to be charged against federal funds, Independent Contractor hereby certifies that it is not currently employed by the Federal Government and the amount charged does not exceed Independent Contractor's normal charge for the type of services provided
15. **Indemnification and Hold Harmless.** The Independent Contractor shall assume all responsibilities for the work, and bear all losses and damages directly or indirectly resulting to the Independent Contractor, the City, or to others on account of the character or performance of the work, unforeseen difficulties, accidents, or any other cause whatsoever. The Independent Contractor shall assume defense of, indemnify and save harmless the City, its officials, agents, and employees from all claims, liability, loss, damage and injury of every kind, nature and description, directly or indirectly resulting

from activities in the performance of the Contract, the ownership, maintenance or use of motor vehicles in connection therewith, or the acts, omissions, operations, or conduct of the Independent Contractor or any Subcontractor under the Contract or any way arising out of the Contract, irrespective of whether any act, omission or conduct of the City connected with the Contract is a condition or contributory cause of the claim, liability loss, damage or injury and irrespective of whether act, omission, or conduct of the Independent Contractor or Subcontractor is merely a condition rather than a cause of a claim, liability, loss damage or injury. The Independent Contractor shall not be liable for nor be required to defend or indemnify, the City relative to claims for damage or damages resulting solely from acts or omissions of the City, its officials, agents or employees. The absence of or inadequacy of the liability insurance required in section 16 below shall not negate Independent Contractor's obligations in this paragraph.

16. Insurance.

- 16.1. General Insurance.** The Independent Contractor shall maintain in force for the duration of this Agreement a Commercial General Liability insurance policy written on an occurrence basis with limits not less than \$2,000,000 per occurrence and \$3,000,000 in the aggregate for bodily injury or property damage. The policy will contain a "per project" aggregate endorsement. Automobile Liability (owned, non-owned and hired) insurance with limits not less than \$1,000,000 per occurrence shall be maintained. The City, its employees, officials and agents will be named as an Additional Insured where operations are being conducted related to this contract, on the General Liability policy as respects to work or services performed under this Agreement to the extent that the death or bodily injury to persons or damage to property arises out of the fault of the Independent Contractor or the fault of the Independent Contractor's agents, representatives or subcontractors. This insurance will be primary over any insurance the City may carry on its own. Independent contractor understands that CITY is a public entity subject to the requirements of the Oregon Governmental Tort Claims Act, ORS 30.260 et seq. In the event that CITY'S financial obligations or liabilities are modified by any amendment to the liability limits imposed by the Oregon Governmental Tort Claims Act, Independent contractor agrees that the limits regarding liability insurance set forth in this Section 16.1 will be modified to conform to such limits. Independent contractor and CITY shall sign an amendment to this Agreement incorporating such modification.
- 16.2. Professional Liability.** Independent Contractor shall maintain in force during the duration of this Agreement (and, if it is a claims made policy, for a year following completion of the project) a professional liability policy, approved by the City's Risk Manager as to terms, conditions and limits.
- 16.3. Workers' Compensation.** Independent Contractor shall provide and maintain workers' compensation coverage for its employees, officers, agents, or partners, as required by applicable workers' compensation laws. If Independent Contractor is exempt from coverage, a written statement signed by Contractor so stating the reason for the exemption shall be provided to the City.
- 16.4. Evidence of Insurance Coverage.** Evidence of the required insurance coverages issued by an insurance company satisfactory to the City shall be provided to the City by way of a City approved certificate of insurance before any work or services commence.
- 16.5. Notice of Cancellation or Material Change in Coverage.** The certificate of insurance shall contain a requirement that the Insurance Company notify the City 30 days prior to any cancellation or material change in coverage. If the approved insurance company will not provide this 30 day notice, the Contractor shall provide written notice to the City contract manager within 2 calendar days after the Contractor becomes aware that their coverage has been canceled or has been materially changed. The Contractor shall either fax 541-726-3782 said notice or email it directly to Bob Duey (rduey@springfield-or.gov), Finance Director at the City. Regardless of what circumstances caused Contractors insurance coverage to cease or be modified, it is the contractor's responsibility to notify the City. Failure to maintain proper insurance or provide notice of cancellation or modification shall be grounds for immediate termination of this contract. _____ **(Contractor initials)**

- 16.6. Equipment and Material.** The Independent Contractor shall be responsible for any loss, damage, or destruction of its own property, equipment, and materials used in conjunction with the work.
- 16.7. Subcontractors.** The Independent Contractor shall require all subcontractors to provide and maintain general liability, auto liability, professional liability (as applicable), and workers' compensation insurance with coverage's equivalent to those required of the general contractor in this contract. The Independent Contractor shall require certificates of insurance from all subcontractors as evidence of coverage.
- 16.8. Exception or Waivers.** Any exception or waiver of these requirements shall be subject to review and approval from the City's Risk Manager.
- 17. Termination.** The performance of work under this Agreement may be terminated by CITY, in whole or in part, whenever for any reason CITY shall determine that such termination is in the best interest of CITY. Any such termination shall be effected by delivery to the Independent Contractor of a Notice of Termination specifying the extent to which performance of the work under the Agreement is terminated and the date on which such termination is effective. Upon delivery to the Independent Contractor of a Notice of Termination under this paragraph, the Independent Contractor and CITY shall, by agreement, make an appropriate written modification to this Agreement governing completion of portions of the independent Contractor's work and payment therefore by CITY.
- 18. Rights In Data.** The Sculpture, preliminary designs and sketches relating to the Sculpture, whether in tangible or electronic form, all original written material, including programs, card decks, tapes, listings, and other documentation originated and prepared for CITY pursuant to this Agreement, shall become exclusively the property of CITY. The ideas, concepts, know-how, or techniques developed during the course of this Agreement by Independent Contractor personnel can be used by either party in any way it may deem appropriate. Material already in Independent Contractor's possession, independently developed by Independent Contractor outside the scope of this Agreement, or rightfully obtained by Independent Contractor from third parties (collectively referred to as Additional Materials), shall belong to Independent Contractor but the City of Springfield shall have a royalty free unrestricted license to use any such Additional Materials to the extent they are incorporated into the Sculpture or into any other materials delivered to the City of Springfield by Independent Contractor. Providing that there is no infringement of copyright rights transferred to the City of Springfield by this agreement or copyright and other rights in source materials provided by the City of Springfield to Independent Contractor, this agreement shall not preclude Independent Contractor from developing materials which are competitive, irrespective of their similarity to materials which might be delivered to CITY pursuant to this Agreement. Independent Contractor shall not, however, use any written materials developed under this Agreement in developing materials for others, except as provided in this section.
- 19. Confidentiality.** During the course of performance hereunder, Independent Contractor or its agent, employees, or contractors, may receive confidential information. Independent Contractor agrees to use its best efforts to maintain the confidentiality of such information and to inform each agent and employee performing services of the confidentiality obligation that pertains to such information.
- 20. Assignment/Subcontract.** Independent Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Agreement, in whole or in part, without the prior written approval of CITY. No such written approval shall relieve Independent Contractor of any obligations of this Agreement, and any transferee or subcontractor shall be considered the agent of Independent Contractor. Independent Contractor shall remain liable as between the original parties to this Agreement as if no such assignment had occurred.
- 21. Successors in Interest.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective successors and assigns.
- 22. Compliance with All Government Regulations.** Independent Contractor shall comply with all Federal, State and local laws, codes, regulations and ordinances applicable to the work performed

under this Agreement. Failure to comply with such requirements shall constitute a breach of contract and shall be grounds for termination of this Agreement. Damages or costs resulting from noncompliance shall be the sole responsibility of Independent Contractor.

- 23. Attorney Fees.** In the event a lawsuit of any kind is instituted on behalf of CITY to enforce any provision of this Agreement, Independent Contractor shall pay such additional sums as the Court may adjudge reasonable for attorney fees plus all costs and disbursements at trial and on any appeal.
- 24. Force Majeure.** Neither party to this Agreement shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. CITY may terminate this Agreement upon written notice after determining such delay or default will unreasonably prevent successful performance of the Agreement.
- 25. Assistance Regarding Patent and Copyright Infringement.** In the event of any claim or suit against CITY on account of any alleged patent or copyright infringement arising out of the performance of this Agreement or out of the use of any material furnished or work or services performed hereunder, Independent Contractor shall defend CITY against any such suit or claim and hold CITY harmless from any and all expenses, court costs, and attorney's fees in connection with such claim or suit.
- 26. Severability.** If any provision of this Agreement is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.
- 27. Access to Records.** CITY and its duly authorized representatives shall have access to books, documents, papers and records of Independent Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts and transcripts.
- 28. Waiver.** Failure of CITY to enforce any provision of this Agreement shall not constitute a waiver or relinquishment by CITY of the right to such performance in the future nor of the right to enforce any other provision of this Agreement.
- 29. Amendments.** The terms of this Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever, without prior written approval of CITY. No modification of this Agreement shall bind either party unless reduced to writing and subscribed by both parties, or ordered by a Court.
- 30. Nondiscrimination.** Independent Contractor shall comply with all applicable requirements of Federal and State civil rights and rehabilitation statutes, rules and regulations.
- 31. Dual Payment.** Independent Contractor shall not be compensated for work performed under this contract from any CITY agency other than the agency which is a party to this contract.
- 32. Choice of Law, Forum, Construction of Agreement.** This Agreement shall be governed and construed in accordance with the laws of the State of Oregon, apart from choice of law provisions. The parties agree that the Circuit Court for the County of Lane, State of Oregon, or the Federal District Court of the State of Oregon (Eugene) is the sole and proper forum for resolving any disputes involving this Agreement, any breach of this Agreement, or relating to its subject matter. The Parties agree to submit themselves to the jurisdiction of such courts without challenge to the jurisdiction of these courts. This Agreement shall not be construed more favorably to CITY due to the preparation of this Agreement by CITY. The headings and subheadings in this Agreement are for convenience, do not form a part of this Agreement, and shall not be used in construing this Agreement.

33. Transfer and Ownership of Rights. Independent Contractor hereby confirms that only employees of Independent Contractor working within the scope of their employment will perform work in connection this Agreement, including design work in connection with the Sculpture and installation and completion of the Sculpture. The parties agree that the Sculpture and any sketches, preliminary designs, and other works prepared by or for Independent Contractor will be works by employees within the scope of their employment and therefore works made for hire under the United States Copyright laws with ownership of the copyrights in the work initially vesting in Independent Contractor. Except for source material used in the Sculpture that is provided to Independent Contractor by the City of Springfield: (1) Independent Contractor hereby confirms that no other individual or entity other than Independent Contractor will have or has any ownership of any copyright rights or other rights in the Sculpture; and (2) if any other individual or entity has or may have any copyright rights or other rights in the Sculpture, prior to installation of the Sculpture, Independent Contractor shall obtain an assignment in writing, signed and dated by such individual or entity (by a representative of the entity who is authorized to enter into such assignment) to the City of Springfield of all of their worldwide copyrights in the Sculpture together with the right for the City of Springfield to sue for past or future infringement thereof. Except to the extent rights exist in source material used in the Sculpture provided to Independent Contractor by the City of Springfield, Independent Contractor hereby transfers to the City of Springfield any and all worldwide copyrights in the Sculpture and in materials used to prepare the Sculpture, including, but not limited to, the right to the City of Springfield to sue for past and future infringement and the right to prepare derivative works. To the extent that the City of Springfield has provided source materials for the Sculpture and such source materials are used by Independent Contractor in preparing the Sculpture, the parties understand and agree that Independent Contractor does not own the copyrights in any such provided source materials used in the Sculpture; provided, however, paragraph 18 does apply to modifications of such source materials prepared by or for Independent Contractor. Independent Contractor hereby waives any moral rights that Independent Contractor may have under 17 USC Section 106(A) of the United States Copyright Law. Independent Contractor agrees that the following copyright notice is to be placed by Independent Contractor on the installed Sculpture: © 2016 City of Springfield. The City of Springfield shall have the right to include the preceding copyright notice, or no copyright notice on any reproductions of the work in whole or in part and with or without modifications to the reproductions. Independent Contractor understands and agrees that the City of Springfield has the right to include copies of the work, in whole or in part, and with or without modification, in advertising, promotional and other materials and on tangible items, without attribution to Independent Contractor. Independent Contractor understands that installation of the work in the park may subject the work to destruction, distortion, mutilation, or other modification, by reason of its removal. Independent Contractor waives any objection to any such removal and waives any notice to Independent Contractor prior to any such removal.

34. Entire Agreement. This Agreement signed by both parties is the parties' final and entire Agreement and supersedes all prior and contemporaneous oral or written communications between the parties, their agents and representatives. There are no representations, promises, terms, conditions or obligations other than those contained herein.

IN WITNESS WHEREOF the parties have executed this Agreement to be effective the date first set forth above.

CITY OF SPRINGFIELD:

INDEPENDENT CONTRACTOR

By: _____
 Name: _____
 Title: _____
 Date: _____

By: _____
 Name: _____
 Title: _____
 Date: _____

EXHIBIT "A"

INDEPENDENT CONTRACTOR STATUS

Independent contractor states and represents that contractor is an independent contractor as that term is defined in Oregon Revised Statute 670.600 and more specifically represents, states and agrees that in providing the services and scope of work specified in this contract:

1. Independent contractor provides services for remuneration; and
2. Independent contractor is free from direction and control over the means and manner of providing the services and scope of work subject only to the right of City to specify the desired results; and
3. Independent contractor is customarily engaged in an independently established business; and
4. Independent contractor is licensed within the state of Oregon to provide any services for which a license is required under ORS Chapter 671 or 701 and is responsible for obtaining other licenses or certificates necessary to provide the service or scope of work; and
5. Independent contractor complies with at least five of the following requirements:
 - (a) A business location is maintained that is separate from the business or work location of City; or is in a portion of the independent contractor's residence and that portion is used primarily for the business.
 - (b) The independent contractor bears the risk of loss related to the provision of services or scope of work such as entering into a fixed price contract, defective work is required to be corrected, the services provided are warranted or indemnification agreements, liability insurance and performance bonds and errors and omissions insurance are provided.
 - (c) Contracted services for two or more different persons or entities within a twelve month period have been obtained, or routinely engaged in business advertising, solicitation, or other marketing efforts reasonably calculated to obtain new contracts to provide similar services.
 - (d) Significant investment in the business has been made such as purchasing tools or equipment, paying for premises or facilities where services are provided, paying for licenses, certificates or specialized training.
 - (e) Possesses authority to hire other persons to assist in providing their services and has the authority to fire those persons.
6. Independent contractor will immediately inform City in the event that it fails to conduct its services in one or more particulars as represented in 1 through 5 above.

EXHIBIT "B"

**City of Springfield
Public Contracts
Conformance with Oregon Public Contractors Laws**

Pursuant to Oregon law, every public contract shall contain the following conditions:

- 1) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract. ORS 279B.220(1)
- 2) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract. ORS 279B.220(2).
- 3) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. ORS 279B.220(3).
- 4) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167. ORS 279B.220(4).
- 5) If the agreement is for lawn and landscape maintenance, it shall contain a condition requiring the contractor to salvage, recycle, compost or mulch yard waste material at an approved site, if feasible and cost-effective. ORS 279B.225.
- 6) Promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services. All employers shall comply with ORS 656.017. ORS 279B.230.
- 7) A person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279A.055, the employee shall be paid at least time and a half pay:
 - a) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days; or
 - b) For all overtime in excess of 10 hours in any one day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and
 - c) For all work performed on Saturday and on any legal holiday specified in ORS 279B.020.

An employer must give notice in writing to employees who work on a public contract, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. ORS 279B.235(1)-(2).

- 8) If the agreement is for personal services, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201-209 from receiving overtime. ORS 279B.235(3).
- 9) Contracts for services must contain a provision that requires that persons employed under contracts shall receive at least time and half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279B.020(1)(b)(B)-(G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater. Employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number hours per day and days per week that the employees may be required to work. ORS 279B.235(5).

If this agreement is for a public improvement, the contract shall contain the following conditions:

- 10) Make payment promptly, as due, to all persons supplying to the contractor labor or material for the performance of the work provided for in the contract. ORS 279C.505(1)(a).
- 11) Pay all contributions or amounts due the Industrial Accident Fund from the contractor or subcontractor incurred in the performance of the contract. ORS 279C.505(1)(b).
- 12) Not permit any lien or claim to be filed or prosecuted against the state or a county, school district, municipality, municipal corporation or subdivision thereof, on account of any labor or material furnished. ORS 279C.505(1)(c).
- 13) Pay to the Department of Revenue all sums withheld from employees under ORS 316.167. ORS 279C.505(1)(d).
- 14) The contractor shall demonstrate that an employee drug testing program is in place. ORS 279C.505(2).

ATTACHMENT 1

- 15) If the contractor fails, neglects or refuses to make prompt payment of any claim for labor or services furnished to the contractor or subcontractor by any person in connection with the public improvement contract as the claim becomes due, the proper officer or officers representing the state or a county, school district, municipality, municipal corporation or subdivision thereof, as the case may be, may pay such claim to the person furnishing labor or services and charge the amount of the payment against the funds due or to become due the contract by reason of the contract. If the contractor or first-tier subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract within 30 days after receipt of payment from the contracting agency or a contractor, the contractor or first-tier subcontractor shall owe the person the amount due plus interest charges commencing at the end of the 10-day period that payment is due under ORS 279C.580(4) and is subject to a good faith dispute as defined in ORS 279C.580. If the contractor or a subcontractor fails, neglects or refuses to make payment to a person furnishing labor or materials in connection with the public improvement contract, the person may file a complaint with the Construction Contractors Board, unless payment is subject to a good faith dispute as defined in ORS 279C.580. ORS 279C.515.
- 16) The payment of a claim does not relieve the contractor or the contractor's surety from obligation with respect to any unpaid claims. ORS 279C.515(4).
- 17) A person may not be employed for more than 10 hours in any one day, or 40 hours in any one week, except in cases of necessity, emergency or when the public policy absolutely requires it, and in such cases, except in cases of contracts for personal services designated under ORS 279C.100, the employee shall be paid at least time and a half pay:
- a) For all overtime in excess of eight hours a day or 40 hours in any one week when the work week is five consecutive days; or,
 - b) For all overtime in excess of 10 hours in anyone day or 40 hours in any one week when the work week is four consecutive days, Monday through Friday; and,
 - c) For all work performed on Saturday and on any legal holiday specified in ORS 279B.020. ORS 279C.520(1).
- An employer shall give notice in writing to employees who work on a public contract either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. ORS 279B.520(2).
- 18) If the agreement is for personal services, the contract shall contain a provision that the employee shall be paid at least time and a half for all overtime worked in excess of 40 hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. 201-209 from receiving overtime. ORS 279C.520(3).
- 19) Contracts for services must contain a provision that requires that persons employed under contracts shall receive at least time and half pay for work performed on the legal holidays specified in a collective bargaining agreement or in ORS 279C.540(1)(b)(B)-(G) and for all time worked in excess of 10 hours in any one day or in excess of 40 hours in any one week, whichever is greater. An employer shall give notice in writing to employees who work on a contract for services, either at the time of hire or before commencement of work on the contract, or by posting a notice in a location frequented by employees, of the number of hours per day and days per week that the employees may be required to work. ORS 279C.520(5)
- 20) Solicitation documents for a public improvement contract shall make specific reference to federal, state and local agencies that have enacted ordinances, rules or regulations dealing with the prevention of environmental pollution and the preservation of natural resources that affect the performance of the contract. A solicitation document must also make special reference to known conditions at the construction site that may require the successful bidder to comply with the ordinances, rules or regulations identified under ORS 279C.525(1). If the successful bidder encounters a condition not referred to in the solicitation documents, not caused by the successful bidder and not discoverable by a reasonable prebid visual site inspection, and the condition requires compliance with the ordinances, rules or regulations referred to under ORS 279C.525(1), the successful bidder shall immediately give notice of the condition to the contracting agency. The successful bidder may not commence work nor incur any additional job site costs in regard to the condition encountered and described in ORS 279.525(3) without written direction from the contracting agency. ORS 279C.525.
- 21) Promptly, as due, make payment to any person, copartnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the contractor, of all sums that the contractor agrees to pay for the services and all moneys and sums that the contractor collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the services. All employers shall comply with ORS 656.017. ORS 279C.530.
- 22) A contract for public works shall contain a provision stating the existing state prevailing rate and wage and, if applicable, the federal prevailing rate of wage required. Every contract and subcontract shall contain a provision that workers shall be paid not less than the specified minimum hourly rate of wage in accordance with ORS 279C.838. ORS 279C.830(1).

If this agreement is for demolition, the contract shall also contain the following conditions:

- 23) Contractor must salvage or recycle construction and demolition debris, if feasible and cost-effective. ORS 279C.510(1)

**EXHIBIT C
OREGON TAX LAWS COMPLIANCE AND CERTIFICATION**

A. Independent Contractor's Compliance with Tax Laws.

1. Independent Contractor must, throughout the duration of this Contract and any extensions, comply with all tax laws of this state and all applicable tax laws of any political subdivision of this state. For the purposes of this Section, "tax laws" includes all the provisions described in Subsection B. 3. (i) through (iv) of this Contract.

2. Any violation of Subsection 1 of this Section A shall constitute a material breach of this Contract. Further, any violation of Independent Contractor's warranty, in Subsection B.3. of this Contract, that Independent Contractor has complied with the tax laws of this state and the applicable tax laws of any political subdivision of this state also shall constitute a material breach of this Contract. Any violation shall entitle City to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract, at law, or in equity, including but not limited to:

- a. Termination of this Contract, in whole or in part;
- b. Exercise of the right of setoff, and withholding of amounts otherwise due and owing to Independent Contractor, in an amount equal to State's setoff right, without penalty; and
- c. Initiation of an action or proceeding for damages, specific performance, declaratory or injunctive relief. City shall be entitled to recover any and all damages suffered as the result of Independent Contractor's breach of this Contract, including but not limited to direct, indirect, incidental and consequential damages, costs of cure, and costs incurred in securing [replacement Services/replacement Goods/ a replacement Independent Contractor].

These remedies are cumulative to the extent the remedies are not inconsistent, and City may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.

B. Independent Contractor's Representations and Warranties.

Independent Contractor represents and warrants to City that:

1. Independent Contractor (to the best of Independent Contractor's knowledge, after due inquiry), for a period of no fewer than six calendar years preceding the [date of Closing of {bids/proposals}/for/effective date of] this Contract, faithfully has complied with:

- (i) All tax laws of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318;
- (ii) Any tax provisions imposed by a political subdivision of this state that applied to Independent Contractor, to Independent Contractor's property, operations, receipts, or income, or to Independent Contractor's performance of or compensation for any work performed by Independent Contractor;
- (iii) Any tax provisions imposed by a political subdivision of this state that applied to Independent Contractor, or to goods, services, or property, whether tangible or intangible, provided by Independent Contractor; and
- (iv) Any rules, regulations, charter provisions, or ordinances that implemented or enforced any of the foregoing tax laws or provisions.

Any [Goods/Items/Equipment/Components/Hardware/Software/Intellectual Property Rights, etc.] [delivered to/granted to] City under this Contract, and Independent Contractor's Services rendered in the performance of Independent Contractor's obligations under this Contract, shall be provided to City free and clear of any and all restrictions on or conditions of use, transfer, modification, or assignment, and shall be free and clear of any and all liens, claims, mortgages, security interests, liabilities, charges, and encumbrances of any kind.

ATTACHMENT 2

Authorization to Legally Bind Proposer

The person executing this Proposal and the instruments referred to herein on behalf of the Proposer has the legal power, right, and actual authority to submit this Proposal, and to bind the Proposer to the terms and conditions of this Proposal.

(Signature of person authorized to bind Proposer)

Dated

Print Name of Person signing as authorized to bind Proposer

Title of Person signing as authorized to bind Proposer

Firm Name

Phone

Address

Fax

City, State, Zip

email address

Minority, Women, and Emerging Small Business/Disadvantaged Business Enterprise



MWESB/DBE Voluntary Self-Declaration for City Procurement # _____ or Project No. P _____

The Public Works Department of the City of Springfield is seeking information on the various business entities that submit bids and proposals for working with the Department. We request that you provide the following information to assist us with evaluating our efforts at reaching the underrepresented sectors of the business and construction communities. The Department does not intend to use this data as criteria for selecting the successful bidders or proposers for city-funded procurements. For procurements with state or federal DBE requirements, the Department will use the forms and criteria established by the state or federal agency for selecting the successful bidders or proposers.

Please include this form with your bid/proposal submittal to the City.

Prime Bidder/Proposer: _____

Business Name: _____

Contact Person: _____

CCB#/PE#/Other Registration: _____

Business Address: _____

Business Phone: _____

Please check each box indicating the business certification type that your firm has with the State of Oregon or the federal government, if any:

- Oregon Minority-owned Business
- Oregon Woman-owned Business
- Oregon Emerging Small Business
- Federal Disadvantaged Business Enterprise (DBE)

First Tier Sub-contractors:

For each First Tier Subcontractor, provide the same information, using additional sheets as necessary: