

IMPORTANT NOTICE!!

If you download these materials and wish to be added to the proposer contact list send an email to:

Jayne McMahan jmcmahan@springfield-or.gov

Information to be provided:

- “RFP# 1731 Database Administration Services” in the subject line
- Company name
- Primary contact name
- Primary contact title
- Primary contact direct phone #
- Primary contact email

It will be the responsibility of each participating supplier to refer daily to the City of Springfield – Purchasing/Contracts website <http://www.springfield-or.gov/RFP/PAGE.HTM> to check for any available addendum to current opportunities, cancellations or intents to award posted.

**CITY OF SPRINGFIELD
OREGON**

**Request for Proposals #1731
IT - Database Administration Services**

Sealed proposals will be received by the Finance Department, City of Springfield, 225 Fifth St. Springfield OR, 97477, Attn: Jayne McMahan until 2:00 p.m. local time, the 26th of September, 2016 and opened at 2:00 p.m. local time the same day, for proposals regarding Database Administration Services. Sealed proposals must be marked **“RFP#1731: IT- Database Administration Services”**.

Proposal packets are available on the City’s website at www.springfield-or.gov (select the hyperlink from the left menu titled *Purchasing/Contracts* then *RFP#1731 IT: Database Administrative Services*) or by contacting Jayne McMahan at (541)726-3708 or by email: jmcmahan@springfield-or.gov.

The City of Springfield reserves the right to accept or reject any or all proposals or to waive any specifications or requirements, or to negotiate with any vendor submitting a proposal regarding any aspect of this Request for Proposals when doing so is deemed to be in the best interest of the City.



Robert J. Duey
Finance Director
City of Springfield, OR

Publication Schedule:

Daily Journal of Commerce August 24, 2016



Request for Proposal #1731

Database Administration Services

City of Springfield
Information Technology Department
Springfield, Oregon 97477

August 24, 2016

I. Project Overview

The City seeks qualified proposers to provide Microsoft SQL Server Database Administration Support Services to augment the City's existing database administration staff. These services will provide support on one or more production and development/testing database servers.

II. Overall Project Description and Scope of Work

The City of Springfield's purpose for issuing this RFP is to establish a contract with a Database Administration Service provider for the daily administration of City's database services in the following general areas:

- 1) Daily monitoring of databases and database servers: Insure that the databases and database servers are operating within the service level agreements. Insure that database jobs and backups complete successfully and on schedule. Respond to abnormal events through notification and providing corrective action. Track trends in database performance and provide periodic status reports. This service is required 24 hours per day, 7 days per week and 365 days per year.
- 2) Patch monitoring and deployment: Manage the patching lifecycle of the City's database servers. Apply scheduled patching as appropriate or as needed to correct error conditions. Notify City database administrators when out-of-bound security patching is released by database vendors. Coordinate patch scheduling with City's database administrators.
- 3) Building and configuring new databases: Assist the City's database administrators in deploying new database servers and creating new databases.
- 4) Database schema development: Assist the City's database administrators in modifying existing or creating new database schema including but not limited to table and view design, indexing design, trigger development and stored procedure development.

The scope of Database Administration Services is described in Attachment 1 - Scope of Work.

III. Proposal Submission Requirements

Your response to the Request for Proposal must contain all of the information requested in the Request for Proposal along with acknowledgement of all addenda. A completeness check will be conducted for each submission. Incomplete submissions will not be accepted. Submissions must include the items organized and numbered to correspond to each requirement below:

Content requirements

1. **General** – 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.
2. **Cover Letter** – All 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/firm. The letter must introduce the Proposal, provide an overview of your representation according to the Attachment 1 Scope of Work and affirm that the Proposer accepts all terms and conditions of the Request for Proposals, including the Attachment 2 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 November 1, 2016 and a statement that the submission is a firm offer for a 90-day period.
3. **Qualifications-** Include a detailed statement of the qualifications of the firm. This should include organizational history, clients presently served, and extent of database administration work within the SQL Server environment. Response should reference the items outlined in Attachment 1 Scope of Work.
4. **Resumes-** Include a resume for the lead Database Administrator who will be assigned to this engagement. Include a description of the database administration team: number of members, rate of turnover, and years of experience with MS SQL Server and any other database platforms supported.
5. **Approach** - The proposal should set forth an explanation of the database administration methodology to be followed to perform the services required in this request for proposal.

Proposers are required to provide the following information on their Database Administration approach:

- a. Technology used to monitor databases.
 - b. Process to provide the services and support levels as outlined in the Attachment 1, Scope of Work.
 - c. Change management process.
 - d. Ability to comply with security standards such as Criminal Justice Information System (CJIS), Health Insurance Portability and Accountability Act (HIPAA), Purchase Card Information (PCI) and Personally Identifying Information (PII)
 - e. Proposer’s adoption of the Information Technology Information Library (ITIL) or other industry standard services delivery framework.
6. **Fee Proposal** -The fee proposal must include the following:
- a. Monthly (or other period) per server (and/or database) rate of providing database administration services. If rate is based on ranges of servers/databases supported

(i.e. 1 to 5 servers at rate A, 6 to 10 servers at rate B, etc.) please specify.

- b. Out of pocket reimbursable expenses for providing services.

Travel is not anticipated for this project but if necessary all travel or other related expenses must be pre-approved in writing by the City and are a pass through without markup. Independent Contractor must use City travel reimbursement rates. City follows GSA Per Diem rates that can be found at the following URL <http://www.gsa.gov/portal/category/100120>. Authorized expenses to be reimbursed by the City include: transportation to and from destination (coach fare or less), lodging, meals, local transportation at destination, and miscellaneous incidental expenses required to transact City business. The City does not reimburse for alcohol, in room movies, laundry, dry cleaning, room service additional charges for in room meal delivery, or health club costs. Copies of all receipts must accompany invoice for all pre-approved reimbursable expenses.

- 7. **Additional Services** - If it should become necessary for the City of Springfield to request the Database Service Provider to render any additional services to either supplement the services requested in this RFP or to perform additional work as a result of the specific recommendations included in any report issued on this engagement, then such additional work shall be performed only if set forth in an addendum Scope of Work to the contract between the City of Springfield and the firm. Any such additional work agreed to between the City of Springfield and the firm shall be performed at the same rates set forth in the Fee Proposal. Include the hourly rate for additional services in the table below.

Job Title	Number of Employees	Hourly Rate
Project Manager		
Lead DBA		
Production DBA		
Other		

- 8. **References** - Provide a minimum of three (3) references for Database Administration Services for organizations for whom 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 #2** – Sample Contract – Include in your cover letter acceptance of terms and conditions.
- 10. **Signed Attachment #3** – Authorization to Legally Bind Bidder
- 11. **Signed Attachment #4** – Minority Women Emerging Small Business Form (MWESB)

IV. Evaluation and Selection Criteria

A committee comprised of representatives from the City will review the Proposals for conformance with the requirements of the Request for Proposals. Conforming Proposals will be evaluated according to the criteria listed below.

1. Evaluation Criteria

The following represent the criteria which will be considered during the evaluation process.

a. Proposal Evaluation Criteria

Criteria	Possible Points
The qualifications of the firm to provide MS SQL Server Database Administration Services (Reference III. Proposal Submission Requirements Section 3 Qualifications and Section 4 Resumes)	25
Firms intended approach to providing services (Reference III. Proposal Submission Requirements Section 5 Approach)	20
References (Reference III. Proposal Submission Requirements Section 8 References)	15
Cost (Reference III. Proposal Submission Requirements Section 6 Fee Proposal and Section 7 Additional Services)	35
Completeness of RFP	5
Total	100
Oral Presentation for selected firms (if any)	20
Grand Total	120

b. Oral Presentations and Final Scoring

- i. After the technical proposals have been evaluated and finalist firms have been identified, those firms will be invited to make an oral presentation to the committee. If a firm cannot attend in person then it will be the firm's responsibility to provide the web conferencing connections.
- ii. Presentations provide the firms an opportunity to answer any questions or provide clarifications to the committee; however, no changes are allowed to be made to the originally submitted proposal.
- iii. The committee will score the firm's presentations in the context of the criteria listed in III Proposal Submission Requirements Sections 3 Qualifications and Section 5 Approach, of this document and whether the presentation and responses enhance the scoring of the written proposals. Firms may receive up to an additional 20 points on the presentation.

iv. Based upon the addition of the presentation scores to the written proposal scores, a final cumulative score for each finalist will be compiled, from which the selection of a firm will be made.

c. Tie Breaker

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 Qualifications.

V. Schedule for Selection Process

RFP Package Available	August 24, 2016
Request for Clarification Due (if applicable)	September 16, 2016 noon local time
Response to Clarification Due (if applicable)	September 19, 2016
Proposals Due by:	September 26, 2016 2pm local time
Intent to Award Notice (approximate)	September 30, 2016
Contract Award (approximate)	October 17, 2016
Work Commences	November 1, 2016

Prospective Proposers may contact Jayne McMahan by email at jmcmahan@springfield-or.gov for further information regarding this process or to request clarification. **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 and/or clarifications may continue to be submitted in this fashion until noon local time September 16, 2016.

VI. Instructions to Proposers

The Request for Proposals may be found on the City of Springfield website at www.springfield-or.gov (Select the **Purchase/Contracts** hyperlink from the menu on the left and then select the document titled **RFP# 1731, Database Administration Services**).

Each Proposal must include one (1) original signed submission, five (5) printed copies clearly marked "**RFP# 1731, Database Administration 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 and must be received no later than 2pm, local time, September 26, 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# 1731, Database Administration 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. Negotiation of Price Agreement

Springfield reserves the right to negotiate a final contract which is in the best interest of the City considering cost effectiveness and quality central control. Once a tentative selection has been made by the evaluation committee, City staff will attempt to negotiate a contract with the preferred Proposer. If the negotiations are not successful, City staff will negotiate with other qualified Proposers in the order of their respective qualifications until an agreement is reached or City staff decides to terminate the selection process.

XI. 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.

XII. 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

XIII. Exceptions 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, concerns 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# 1731, Database Administration 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 request shall be delivered on or before noon local time September 16, 2016.

XIV. Comments Procedure

A prospective Proposer may deliver to Jayne McMahan, a written request for change to any of the specification listed in this Request for Proposal. This request must be delivered no later than noon local time September 16, 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.

XV. Protest Procedure

Any Proposer who has submitted a Proposal to the City and who is adversely affected by the City's award of the Contract to another Proposer has seven (7) days after issuance of the Notice of Intent to Award the Contract, to submit a written protest of the award to the City. This right to protest shall conform to the written requirements of OAR 137-047-0740 and specify the grounds upon which the protest is based.

An adversely affected Proposer must exhaust all avenues of administrative relief and review before seeking judicial review of City's Contract award. Concerns must be submitted to:

Robert J. Duey
Finance Director
City of Springfield
225 Fifth Street
Springfield, OR 97477

XVI. 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.

Attachment 1 Scope of Work

The City is seeking Database Administration Services for approximately 16 MS SQL Server database servers. Of these 13 are production instances serving databases for a variety of applications such as financial management, payroll, human resource management, budgeting, document management and etc. Please refer to the table below for specifications on the OS version, SQL Server version and database count for the production database servers. The City also maintains three or four testing and development database servers at any given time. Testing and development database servers are commissioned and decommissioned as needed in support of various projects.

Production MS SQL Servers currently deployed:

S.No	OPERATING SYSTEM			DATABASE				Database Count
	OS	Version	Edition	Database	Version	Edition	Current Service Pack	
1	Windws Server	2003 R2	Standard	SQL Server	2005	Standard	SP4	6
2	Windws Server	2003 R2	Standard	SQL Server	2005	Standard	SP4	6
3	Windws Server	2003 R2	Standard	SQL Server	2005	Express	SP4	4
4	Windws Server	2008 R2	Standard	SQL Server	2008	Standard	SP4	4
5	Windws Server	2008 R2	Enterprise	SQL Server	2008	Standard	SP4	2
6	Windws Server	2009 R2	Standard	SQL Server	2008 R2	Standard	SP1	4
7	Windws Server	2012 R2	Standard	SQL Server	2008 R2	Standard	SP3	5
8	Windws Server	2008 R2	Enterprise	SQL Server	2008 R2	Standard	SP3	41
9	Windws Server	2008 R2	Standard	SQL Server	2008 R2	Standard	SP3	7
10	Windws Server	2008 R2	Standard	SQL Server	2008 R2	Express	SP3	2
11	Windws Server	2012 R2	Enterprise	SQL Server	2008 R2	Standard	SP4	6
12	Windws Server	2012 R2	Enterprise	SQL Server	2012	Enterprise		4

All connections to City servers and databases will be provided through IPsec VPN for active monitoring and/through a City pre-approved product such as TeamViewer or GoToMyPC for workstation access.

I. Database Administration Services required on MS SQL Server database servers:

1. Daily Monitoring: (Required 24 hours per day, 7 days per week)
 - a. OS and Database Server Maintenance
 - i. Verify the server is on-line and accessible.
 - ii. Verify select performance measures are within acceptable parameters.
 - iii. Monitor system event logs for warnings and errors.
 - iv. Initiate response to any warnings, errors or conditions operating outside their normal range.

- v. Document all event responses and communicate response with City's database administrators.
 - vi. Record incidents and events within the City's help desk system: ManageEngine ServiceDesk Plus version 9.2.
- b. Database Management
- i. Verify database is on-line and accessible.
 - ii. Verify select performance measures are within acceptable parameters.
 - iii. Verify database free space is within required parameters.
 - iv. Identify and respond to any database intrusion events.
 - v. Monitor database event logs for warnings and errors.
 - vi. Initiate response to any warnings, errors or conditions operating outside their normal range.
 - vii. Document all event responses and communicate response with City's database administrators.
- c. Database Backup and Maintenance
- i. Build, modify, schedule and monitor database maintenance jobs that may include database backup, transaction log backup, backup verification, index maintenance, statistics updates and/or backup file cleanup.
 - ii. Verify the backup executed successfully and is executing according to scheduled backup cycle and within the expected timeframe.
 - iii. Verify that all database maintenance and data management processes executed successfully and according to schedule.
 - iv. Resubmit any failed maintenance jobs, and inform City database administrators of failure.
 - v. Work with City database administrators to implement new database maintenance jobs or modification to existing jobs.
2. Periodic Monitoring and Review (weekly, monthly, as required and etc.)
- a. Verify database transaction logs are properly managed.
 - b. Rebuild tables and/or indexes as required.
 - c. Review database file sizes, usage space and recommend resizing as required.
 - d. Review disk usage and provide recommendations as required.
 - e. Review OS and database performance trends and provide recommendations for system and/or database modifications.
 - f. Respond to any conditions requiring changes to the backup schedule and cycle.
 - g. Coordinate all system changes with the City's database administrators.
 - h. Work with relational database vendor technical support providers to resolve incidents that cannot be resolved with local expertise.

3. Database Backup and Recovery:
 - a. Perform non-scheduled database backups on an as needed basis.
 - b. Perform database recovery on an as needed basis.

4. Database Server and OS Patches and Upgrades:
 - a. Provide critical patches and upgrades to the database server as needed throughout the service period. Critical patches are defined as those patches released by the database vendors that protect the system from security risks or possible faulty operations and those patches and upgrades required by the business applications running against the database. This includes patches released on the vendors normal patch cycle and out of bound patching that addresses urgent security risks and application errors.
 - b. Coordinate all patch scheduling and testing with the City's database administrators.

5. Test Restore:
 - a. Work with City database administrators to annually test database and database server restore procedures.
 - b. Document test findings and make recommendations on process improvement.

6. Service Security:
 - a. Work with City database administrators to evaluate and implement security policy, establish internal controls and provide information for independent audit.
 - b. Manage database and database server users, roles and object permissions.

7. Database Design:
 - a. Evaluate and implement database schema changes as directed by City database administrators.
 - b. Recommend database schema changes when database design is found to negatively impact application performance.

8. Database Planning and Implementation:
 - a. In both physical and virtual environments, work with the City database and network administrators to determine disk, memory and processor requirements for the database.
 - b. Install database software onto target server and configure software for its intended use.
 - c. Plan the logical data storage, physical design, backup and recovery strategy and business continuity strategy for the database. Communicate risk/benefits of plan with City database administrators.

- d. Create the database instance on the database service and configure database parameters for the intended use.
9. Change Management:
 - a. Work with City database administrators to evaluate all database changes before they are applied. Once applied document all server configurations, database schemas, SQL code and any other facets of the database environment for the City's Configuration Management System.
 10. Knowledge Transfer:
 - a. Train City database administrators on any new technologies and techniques used in the course of providing Database Administration Services.

II. Support Level and Response: The following levels of support and minimum response are required:

Tier 1 - Critical System Failure:

Complete failure of a production database service or component has occurred preventing the use of key business applications. Examples include database or database server failure.

Response will be provided for Tier 1 support requests from the City within 60 minutes of notification with issue resolution proposal within 4 hours of response. Service is required 24 hours per day, 7 days per week including holidays.

Tier 2 - Partial System Failure:

Partial failure of a database service or component has occurred seriously impacting the use of key business applications. A Severity 2 issue may become a Severity 1 issue if it is not corrected.

Response will be provided for Tier 2 support requests from the City within 4 hours of notification with issue resolution proposal within 16 hours of response. Service is required during normal business time -7:00am to 5:00pm, local time, Monday through Friday, excluding local holidays.

Tier 3 - System Incident or System Maintenance:

System incident has occurred that is not a critical performance issue. For example, disk space is beginning to run low or performance is slowly beginning to deteriorate. System maintenance is a non-incident activity such as patch scheduling, system analysis or other service request.

Response will be provided for Tier 3 support requests within 16 hours of notification. Service is required during normal business time -7:00am to 5:00pm, local time, Monday through Friday, excluding local holidays.

Support Escalation – Includes tiers 1 through 3:

Should City not receive response within the time frames outlined above, response is inadequate or in the event the condition deteriorates to a higher level tier, vendor must provide appropriate contact information so that City may escalate the request within a time frame appropriate for the severity of the request.

III. Other Desired Services:

1. Open Source Relational Database Management Systems: The City has interest in researching the application of open source systems such as MySQL and PostgreSQL. The City is currently working on a “test of concept” data warehouse project built on PostgreSQL with the PostGIS extension. The City desires a service provider with experience in these technologies who can evaluate City business needs and make recommendations on database platform.
2. The City is in the early stages of implementing the Information Technology Infrastructure Library (ITIL) framework, and desires a service provider with ITIL experience who can work with the City within the ITIL framework and recommend processes improvements as they pertain to database assets.

ATTACHMENT 2

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 #1731 IT – Database Administration Services issued August 24, 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, it’s 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

ATTACHMENT 2

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. Cybersecurity.** Independent Contractor shall maintain in force during the duration of this Agreement a cybersecurity liability policy with limits not less than \$2,000,000.
- 16.4. Workers' Compensation.** Independent Contractor shall provide and maintain workers' compensation coverage with limits not less than \$500,000 for its employees, officers, agents, or partners, as required by applicable workers' compensation laws as defined in ORS 656.027 and ORS 701.035(5). If Independent Contractor is exempt from coverage, a written statement signed by Independent Contractor so stating the reason for exemption shall be provided to the City.
- 16.5. 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.
- 16.6. 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 Independent Contractor shall provide written notice to the City contract manager within 2 calendar days after the Independent Contractor becomes aware that their coverage has been canceled or has been materially changed. The Independent 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 Independent Contractors insurance coverage to cease or be modified, it is the Independent Contractor's responsibility to notify the City. Failure to maintain proper

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insurance or provide notice of cancellation or modification shall be grounds for immediate termination of this contract. _____ **(Contractor initials)**

- 16.7. 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.
- 16.8. 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.
- 16.9. 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.** 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, shall belong 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/Protected Information.** 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. Regarding the receipt and handling of such information, independent contractor shall comply with the requirements of Exhibit D and E.
- 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.

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- 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. Non Appropriation.** The obligation of the City to make payments beyond June 30, 2017 is subject to annual appropriation. To the extent that funds are appropriated to make those payments for a given fiscal year, the full faith and credit of the City is pledged to the payments for such fiscal year. The obligation of the City to make those payments is not secured by the unlimited taxing power of the City and is not a general obligation of the City. The City's obligation to make those payments in any year is subject to future appropriation of funds by the City Council for the fiscal year in which the payment is due. In the event that funds are not so appropriated, payments will not be made. The failure to make a payment due to non-appropriation shall not constitute a default under this Agreement.
- 33. 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

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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.

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: _____

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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.

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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).

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- 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) ENVIRONMENTAL MATTERS: In compliance with ORS 279C.525, the Contractor is made aware that the following federal, state, and local agencies have enacted ordinances or regulations relating to the prevention of environmental pollution or the preservation of natural resources which may affect performance of SUB contracts. This is not intended to be a complete listing of agencies. Other agencies may have enacted ordinances or regulations that may apply. If the Contractor is delayed or must undertake additional work by reason of existing ordinances, rules or regulations of agencies not cited in the Contract or due to enactment of new or the amendment of existing statutes, ordinances, rules or regulations relating to the prevention of natural resources occurring after the submission of the successful quote, the contracting agency may, at its discretion, terminate the Contract, complete the work itself; use non-agency forces already under contract with the City, require that the underlying property owner be responsible for cleanup, solicit quotes for a new contractor to provide the necessary services or issue the Contractor a change order setting forth the additional work that must be undertaken. If the Contractor encounters a condition not referred to in the Invitation to Bid documents, not caused by the Contractor or any subcontractor employed on the project and not discoverable pre-bid visual site inspection, and the condition requires compliance with the ordinances, rules or regulations referred to under this regulation, the contractor shall immediately notify SUB of the condition.

FEDERAL AGENCIES

Department of Agriculture
Forest Service
Soil Conservation Service
Department of the Army Corps of Engineers
Coast Guard
Department of Health and Human Services
Department of the Interior
Bureau of Indian Affairs
Bureau of Land Management
Bureau of Outdoor Recreation
Department of Commerce

Fish and Wildlife Services
Office of Surface Mining
Reclamation and Enforcement
Bureau of Reclamation
Department of Labor
Occupational Safety and Health Administration
Mine Safety and Health Administration
Department of Transportation
Federal Highway Administration
Environmental Protection Agency

STATE AGENCIES

Department of Agriculture
Department of Energy
Department of Environmental Quality

Department of Human Services
Land Conservation and Development Commission
Division of State Lands

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Department of Fish and Wildlife
Department of Forestry
Department of Geology and Minerals

State Soil and Water Conservation Commission
Water Resources Department
Oregon Department of Transportation

LOCAL AGENCIES

Common Council, City of Springfield
Environmental Services, City of Springfield
Board of Commissioners, Lane County
Lane Regional Air Protection Agency
Willamalane Park & Recreation District
Rainbow Water District

Planning Commission, City of Springfield
Development Services Department, City of Springfield
Planning Commission, Lane County
Springfield Utility Board
Springfield Downtown & Glenwood Urban Renewal Districts

- 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)

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EXHIBIT C OREGON TAX LAWS COMPLIANCE AND CERTIFICATION

A. Contractor's Compliance with Tax Laws.

1. 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 Contractor's warranty, in Subsection B.3. of this Contract, that 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 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 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 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. Contractor's Representations and Warranties.

Contractor represents and warrants to City that:

1. Contractor (to the best of 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 Contractor, to Contractor's property, operations, receipts, or income, or to Contractor's performance of or compensation for any work performed by Contractor;
- (iii) Any tax provisions imposed by a political subdivision of this state that applied to Contractor, or to goods, services, or property, whether tangible or intangible, provided by 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 Contractor's Services rendered in the performance of 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.

EXHIBIT D

Protected Information

1. **“Protected Information”** shall be defined as *data or information* that has been designated as private or confidential by law or by the City. *Protected Information* includes, but is not limited to, employment records, medical records, personal financial records (or other personally identifiable information), trade secrets, and classified government information. To the extent there is any uncertainty as to whether any *data* constitutes *Protected Information*, the *data* in question shall be treated as *Protected Information* until a determination is made by the City or proper legal authority.
2. **Data Confidentiality.** Independent Contractor shall implement appropriate measures designed to ensure the confidentiality and security of *Protected Information*, protect against any anticipated hazards or threats to the integrity or security of such information, protect against unauthorized access or disclosure of information, and prevent any other action of unauthorized disclosure that could result in substantial harm to the City or an individual identified with the data or information in Independent Contractor’s custody or access.

To the extent that Independent Contractor may have access to City protected health information (as the same is defined in the privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and the implementing regulations known and referred to as Privacy Rule, Security Rule, Enforcement Rule and Breach Notification Rule, referred to herein collectively as “HIPAA”), Independent Contractor agrees to protect such information in compliance with HIPAA and represents that it has the processes, systems and training to assure compliance with the same.

3. **Data and Network Security.** Independent Contractor agrees at all times to maintain commercially reasonable network security that, at a minimum, includes: network firewall provisioning, intrusion detection/prevention and periodic third party penetration testing. Likewise Independent Contractor agrees to maintain network security that at a minimum conforms to current standards set forth and maintained by the National Institute of Standards and Technology, including those at: <http://checklists.nist.gov/repository>. Independent Contractor agrees to protect and maintain the security of data with protection security measures that include maintaining secure environments that are patched and up to date with all appropriate security updates as designated by a relevant authority.
4. **Security Breach.** In the unlikely event of a security breach or issue, Independent Contractor will notify the appropriate City contact no later than one hour after they are aware of the breach. Independent Contractor will be responsible for all remedial action necessary to correct the breach; provided however, that Independent Contractor will not undertake litigation on behalf of the City without prior written consent.
5. **Data Storage and Backup.** Independent Contractor agrees that any and all City data will be stored, processed, and maintained solely on designated servers and that no City data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that storage medium is in use as part of the Independent Contractor's designated backup and recovery processes. All servers, storage, backups, and network paths utilized in the delivery of the service shall be contained within the states, districts, and territories of the United States unless specifically agreed to in writing by an City officer with designated data, security, or signature authority. An appropriate officer with the necessary authority can be identified by the City Information Security Officer for any general or specific case.

Independent Contractor agrees to store all City backup data stored as part of its backup and recovery processes in encrypted form, using no less than AES 256.

6. **Data Re-Use.** Independent Contractor agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Independent Contractor. Independent Contractor

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further agrees that no City data of any kind shall be revealed, transmitted, exchanged or otherwise passed to other Independent Contractor or interested parties except on a case-by-case basis as specifically agreed to in writing by a City officer with designated data, security, or signature authority.

7. **PCI Compliance.** Independent Contractor agrees to comply with PCI DSS (Payment Card Industry Data Security Standard). As evidence of compliance, Independent Contractor shall provide upon request a current attestation of compliance signed by a PCI QSA (Qualified Security Assessor).
8. **End of Agreement Data Handling.** Independent Contractor agrees that upon termination of this Agreement it shall erase, destroy, and render unreadable all City data in its entirety in a manner that prevents its physical reconstruction through the use of commonly available file restoration utilities, and certify in writing that these actions have been completed within 30 days of the termination of this Agreement or within 7 days of the request of an agent of City whichever shall come first.
9. **Mandatory Disclosure of Protected Information.** If Independent Contractor becomes compelled by law or regulation (including securities' laws) to disclose any Protected Information, Independent Contractor will provide City with prompt written notice so that City may seek an appropriate protective order or other remedy. If a remedy acceptable to City is not obtained by the date that Independent Contractor must comply with the request, Independent Contractor will furnish only that portion of the Protected Information that it is legally required to furnish, and the Independent Contractor shall require any recipient of the Protected Information to exercise commercially reasonable efforts to keep the Protected Information confidential.
10. **Remedies for Disclosure of Confidential Information.** Independent Contractor and City acknowledge that unauthorized disclosure or use of the Protected Information may irreparably damage City in such a way that adequate compensation could not be obtained from damages in an action at law. Accordingly, the actual or threatened unauthorized disclosure or use of any Protected Information shall give City the right to seek injunctive relief restraining such unauthorized disclosure or use, in addition to any other remedy otherwise available (including reasonable attorneys' fees). Independent Contractor hereby waives the posting of a bond with respect to any action for injunctive relief. Independent Contractor further grants City the right, but not the obligation, to enforce these provisions in Independent Contractor's name against any of Independent Contractor's employees, officers, board members, owners, representatives, agents, contractors, and subcontractors violating the above provisions.
11. **Non-Disclosure.** Independent Contractor is permitted to disclose Confidential Information to its employees, authorized subcontractors, agents, consultants and auditors on a need to know basis only, provided that all such subcontractors, agents, consultants and auditors have written confidentiality obligations to both Independent Contractor and City.
12. **Criminal Background Check.** City shall perform criminal background checks on all talent assigned to this project before a person is allowed to work on any of the City's Criminal Justice Information System (CJIS) protected data, software systems or facilities.
13. **Survival.** The confidentiality obligations shall survive termination of any agreement with Independent Contractor for a period of ten (10) years or for so long as the information remains confidential, whichever is longer and will inure to the benefit of City.

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EXHIBIT E

City of Springfield Business Associate Agreement Between - City of Springfield and INDEPENDENT CONTRACTOR

This Business Associate Agreement (“Agreement”) between City of Springfield (Springfield) and INDEPENDENT CONTRACTOR is executed to ensure that INDEPENDENT CONTRACTOR will appropriately safeguard protected health information (“PHI”) that is created, received, maintained, or transmitted on behalf of Springfield in compliance with the applicable provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, *et seq.*, as amended (“HIPAA”), and with Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, *et seq.*, the Health Information Technology and Clinical Health Act, as amended (the “HITECH Act”).

A. General Provisions

1. **Meaning of Terms.** The terms used in this Agreement shall have the same meaning as those terms defined in HIPAA.
2. **Regulatory References.** Any reference in this Agreement to a regulatory section means the section currently in effect or as amended.
3. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.

B. Obligations of Business Associate

INDEPENDENT CONTRACTOR agrees that it will:

1. Not use or further disclose PHI other than as permitted or required by this Agreement or as required by law;
2. Use appropriate safeguards and comply, where applicable, with Subpart C of 45 CFR Part 164 to prevent use or disclosure of PHI other than as provided for by this Agreement;
3. Report to Springfield any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including any security incident (as defined in 45 CFR 164.304) and any breaches of unsecured PHI as required by 45 CFR §164.410. Breaches of unsecured PHI shall be reported to Springfield without unreasonable delay but in no case later than 60 days after discovery of the breach;
4. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of INDEPENDENT CONTRACTOR agree to the same restrictions, conditions, and requirements that apply to INDEPENDENT CONTRACTOR with respect to such information;
5. Make available PHI in a designated record set to Springfield as necessary to satisfy Springfield’s obligation under 45 CFR 164.524 in no more than 30 days of a request;
6. Make any amendment(s) to PHI in a designated record set as directed by Springfield, or take other measures necessary to satisfy Springfield’s obligations under 45 CFR §164.526 in no more than 30 days of a request;

ATTACHMENT 2

7. Maintain and make available information required to provide an accounting of disclosures to Springfield or an individual who has a right to an accounting within 60 days and as necessary to satisfy Springfield's obligations under 45 CFR §164.528;
8. To the extent that INDEPENDENT CONTRACTOR is to carry out any of Springfield's obligations under Subpart E of 45 CFR Part 164, INDEPENDENT CONTRACTOR shall comply with the requirements of Subpart E of 45 CFR Part 164 that apply to Springfield when it carries out that obligation;
9. Make its internal practices, books, and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the HIPAA rules;
10. Springfield shall notify INDEPENDENT CONTRACTOR of any restriction on the use or disclosure of PHI that Springfield has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect INDEPENDENT CONTRACTOR's use or disclosure of PHI; and
11. If Springfield is subject to the Red Flags Rule (found at 16 CFR §681.1 *et seq.*), INDEPENDENT CONTRACTOR agrees to assist Springfield in complying with its Red Flags Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 C.F.R. §681.2); (b) taking all steps necessary to comply with the policies and procedures of Springfield's Identity Theft Prevention Program; (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of Springfield agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting Springfield of any red flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to Springfield of any threat of identity theft as a result of the incident.
12. If INDEPENDENT CONTRACTOR is part of a larger organization, INDEPENDENT CONTRACTOR will implement policies and procedures to protect PHI from unauthorized access by the larger organization.

C. Permitted Uses and Disclosures by Business Associate

The specific uses and disclosures of PHI that may be made by INDEPENDENT CONTRACTOR on behalf of Springfield are limited to:

1. The review of patient care information in the course of INDEPENDENT CONTRACTOR conducting risk and compliance assessment activities, or providing Springfield with a Control Activity Gap Analysis, or the review of PHI and other information necessary to assist Springfield in developing its HIPAA compliance program; and
2. Other uses or disclosures of PHI as permitted by the HIPAA rules as necessary to perform the services set forth in the Service Agreement.
3. Uses or disclosures of protected health information as required by law

D. Termination

1. Springfield may terminate this Agreement if Springfield determines that INDEPENDENT CONTRACTOR has violated a material term of the Agreement.
2. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligations under this Agreement, that party shall take

ATTACHMENT 2

- reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Agreement, if feasible.
3. Upon termination of this Agreement for any reason, INDEPENDENT CONTRACTOR shall return to Springfield or destroy all PHI received from Springfield, or created, maintained, or received by INDEPENDENT CONTRACTOR on behalf of Springfield that INDEPENDENT CONTRACTOR still maintains in any form. INDEPENDENT CONTRACTOR shall retain no copies of the PHI. If return or destruction is infeasible, the protections of this Agreement will extend to such PHI.

Attachment 3

Authorization to Legally Bind Bidder

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

(Signature of person authorized to bind Bidder) Dated

Print Name of Person signing as authorized to bind Bidder

Title of Person signing as authorized to bind Bidder

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: