

CALL TO ARTISTS: CITY OF TUALATIN VETERANS PLAZA SERVICE INSPIRED PUBLIC ART INSTALLATION - (2) PEDESTALS

Tualatin Lake at the Commons | 8325 SW Nyberg Street, Tualatin, OR



The City of Tualatin invites artists/artist teams to submit their qualifications for City of Tualatin's Veterans Plaza Service Inspired Public Art Installation to be installed with Veteran Plaza improvements.

DEADLINE FOR SUBMISSION OF QUALIFICATIONS: July 26, 2023 at 5pm PDT

Further information about the project can be accessed [here](#).

Veterans Plaza Service Inspired Public Art

The City of Tualatin invites artists/artist teams to submit their qualifications for City of Tualatin's Veterans Plaza Service Inspired Public Art Installation. The site is located at Tualatin Commons, termed the "community living room," serving as the heart of the city and center of local commerce and businesses. Two service inspired public art commissions are planned as part of the Veterans Plaza project, which begins construction in 2024. This request for qualifications is for one commission, the (2) Pedestals (Locations B-1 & B-2). See plan and site photos for locations. The second opportunity can be viewed [here](#). Artists are invited to submit for both opportunities separately.

A two-part selection process, to include selection of semifinalists based on qualifications and then a submission of proposal & presentations, will be used. Each artist/artist team selected as a semifinalist will receive a \$2,500 stipend. The budget available for the commission is \$80,000. Preference may be given to artists living/working in the Pacific Northwest, if quality is otherwise similar. Semifinalists selected to submit proposals must present in person before the Selection Panel in Tualatin, Oregon.

Submissions of qualifications must be received by 5pm, Pacific Time, July 26, 2023. Further information about the project can be found [here](#).

Project Background

The City of Tualatin is a dynamic, vibrant community conveniently located just 12 miles south of Portland and 30 miles north of Salem, the state capital. It is situated along Interstate-5 between Interstate-205, Highway 99W, and Highway 217 with access to the commuter rail servicing the greater Portland Metropolitan region. Tualatin is one of the fastest-growing cities in Oregon and is known for its high quality of life.

The project site is located 2,000 feet from Interstate-5, in downtown Tualatin, known locally as Tualatin Commons, a 5.17 acre plaza surrounding a small man-made lake (see map: [Google Maps](#)). It is termed the "community living room," serving as the heart of the city and center of local commerce and businesses. Surrounding the public gathering space is a mix of high-quality residential dwellings, retail, and professional service employment opportunities. The space hosts many special events including the West Coast Giant Pumpkin Regatta, which draws upwards of 20,000 people, summer concerts, and other local events and celebrations.

PROJECT SITE

The project site is located on the East side of Tualatin Lake at the Commons, between SW Seneca Street and SW Nyberg Street (see [Drone Shot](#) of site). It is accessed from the pedestrian walkway that loops the lake and two adjacent surface parking lots. The space juts out into the lake and is west facing. From community feedback the following qualities were deemed the most important for the Tualatin Commons site:

- Openness (no rail along the main plaza border with the lake, wide sky view, easy access from adjacencies)
- Adjacency to water (view, calming, light reflection)
- Wildlife (ducks and eagles due to nearby wetland)
- Organic/Curvilinear (not dominated by straight lines, even rails are undulating)
- Wind (site isn't windy, but there is often a light breeze)
- Freeway ambient background noise

- Light (foggy/misty with soft light effect in the mornings with blinding sunsets at night; site has western exposure)
- Views (to sky, across lake, from SW Seneca St. and Martinazzi Ave.; exposure to I-5)

VETERANS PLAZA PROJECT

Planning for the Veterans Plaza began in October 2019 with a robust community involvement process. Over 1,550 people participated in the planning process and included diverse community representatives from Veterans of Foreign Wars, Forward Assist, American Legion, Tualatin Arts Advisory Committee, Tualatin Parks Advisory Community, Tualatin Commercial Citizens Involvement Organization, student youth representatives, several unaffiliated veterans who live and/or work in Tualatin, the Mayor and many other members of the public.

Initial planning focused on engaging the community to create a vision for the Veterans Plaza. During that time information was gathered from community events, focus groups, and a Stakeholder Advisory Committee (SAC) to determine the (5) core project themes and select the preferred site. The community determined “who” the memorial should honor and defined the desired objectives of each core theme. Selected themes include **connection, shared values, engagement, timelessness, and experience** and should specifically **honor**:

- All military service members & branches
- Military family members
- Freedom & peace, not war
- Hidden heroes (civilian support)

Public comment stated that the Veterans Plaza **should not**:

- Emphasize war or glorify violence in any manner and should focus on service and positive messaging.
- Be focused on providing large amounts of information, but should focus on being an inclusive space, welcoming.

Additional information can be found in the complete [Veterans Memorial Concept Planning & Site Selection Report & Appendices](#).

A final vision for the site was finalized with the preparation of design alternatives and a community selected preferred alternative. This phase of the project is fully documented in [Veterans Plaza Design Plan Report](#). The [Veterans Plaza Preferred Plan & Render Package](#) can be consulted for rendered views and plan graphics of the proposed design.

The project is now in final design with the preparation of construction drawings underway. Construction is expected to begin in 2024.

Veterans Plaza Proposed Design

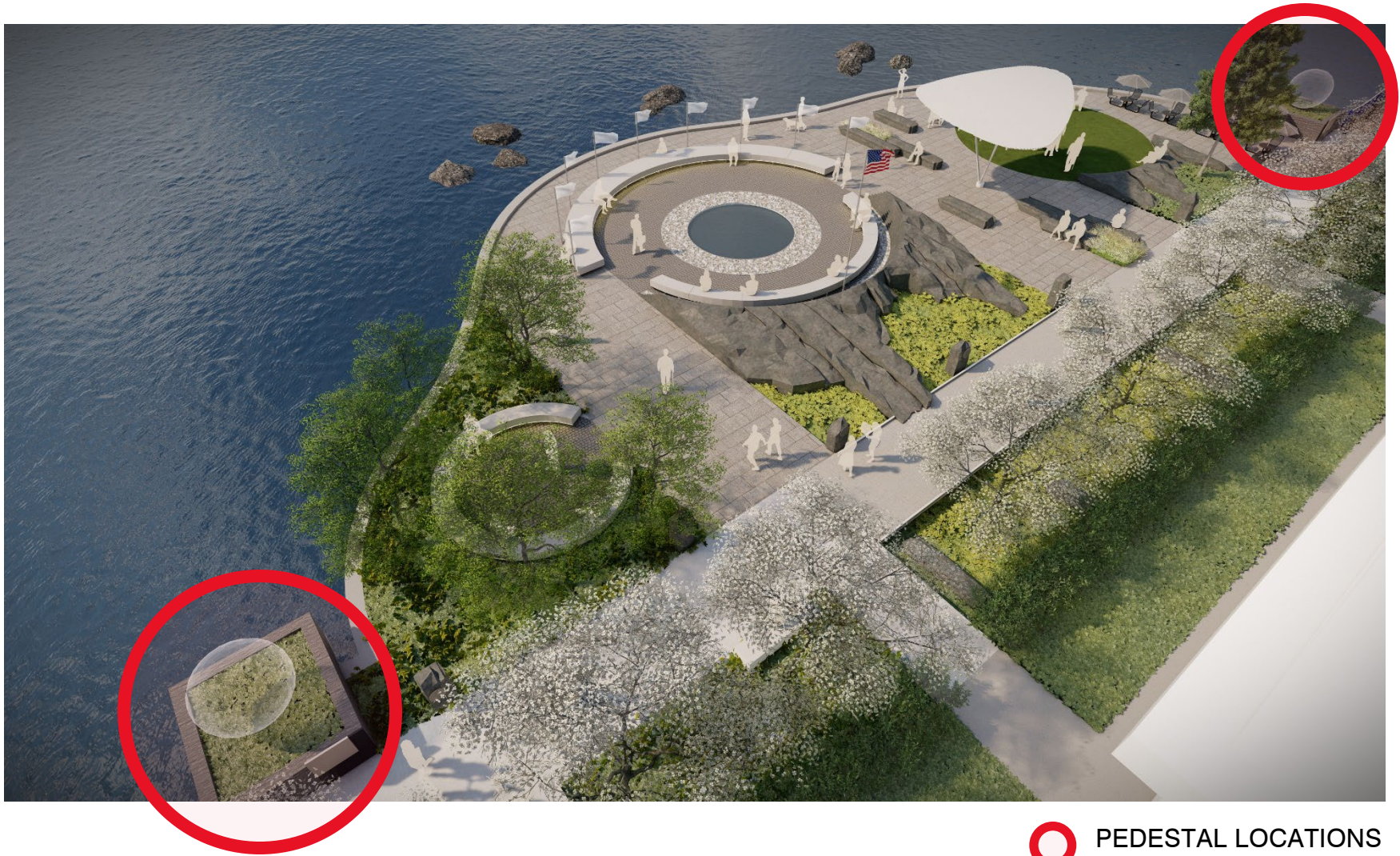


Main Plaza Enlargement – Plan View



 PEDESTAL LOCATIONS

Main Plaza – Perspective View



(2) Pedestals – Perspective View



Service Inspired Public Art Opportunity

The City of Tualatin places a high priority on public art. Goal #5 of [The City of Tualatin Parks and Recreation Master Plan](#) encourages supporting “the arts through programs, parks, and public spaces that reflect Tualatin’s identity, heritage, history, and expressive character.”

Two service inspired public art commissions are planned as part of the Veterans Plaza project (see locations “A,” “B-1,” and “B-2”). This request for qualifications is for one commission, **(2) Pedestals (Locations B-1 & B-2)**. Artwork will be guided by outcomes from earlier planning stages and should respond to both the site and planned Veterans Plaza improvements. Additional design parameters have been defined by the selection panel to include the following.

DESIGN PARAMETERS – (2) PEDESTALS (LOCATIONS B-1 & B-2)

The two pedestals serve as “bookends” for the contemplative area on site. The pedestals are roughly 10’ square and 3’-6” tall. Important considerations at these locations include the abundance of light/reflectivity from late afternoon to sunset, proximity to the lake, and high traffic noise. The pedestals will remain in place, but the outside brick will be resurfaced. The pedestals sit approximately 165 feet from one another. Each pedestal will showcase an art piece, for a total of two art pieces.

From community feedback the following qualities were deemed the most important for each service inspired public art piece. Each art piece is encouraged to be:

- Be welcoming and inclusive.
- Serve as a gateway for the central Veterans Plaza space.
- Include a storytelling or interpretive aspect that is universal.
- Incorporate multiple scales (so that the art piece may be appreciated in multiple ways or at multiple points of view)
- Interact with its environment (this may include, but is not limited to wind, water, sun/shadows, rain)
- Use materials that are natural, organic, or have a connection to the natural surroundings.
- Create a calming or meditative setting.

In addition, while it is not a requirement, the art pieces may incorporate white noise to mitigate surrounding traffic noise and support the contemplative nature of this space.

Budget

Each artist/artist team selected as a semifinalist will receive a \$2,500 stipend to prepare and present a proposal. This is inclusive of travel expenses. The artist/artist team is expected to present in person to a selection panel in Tualatin, Oregon.

The selected artist/artist team will receive \$80,000 for this opportunity to create a service inspired public art piece. This fee is inclusive of all project expenses including artist fees, design development, materials, fabrication, installation, any permits, and engineering if required, equipment, insurance and communication/coordination with the Veterans Plaza Service Inspired Art Selection Panel, Veterans Plaza design team, construction team and third-party contractors the artist may use to help fabricate and/or install the artwork.

The artist/artist team will be responsible for delivering and installing a completed artwork. The City of Tualatin will help coordinate installation with the artist(s), the construction contractor, and any third-party vendors, if necessary.

Eligibility

This opportunity is open to artists or artist teams nationally. Preference may be given to artists living/working in the Pacific Northwest, if quality is otherwise similar. Artist(s) who have military service experience/background are strongly encouraged to apply. Additionally:

- Applicants can apply as a single artist or artist team.
- Applicants cannot be a member of the Tualatin Arts Advisory Committee or an employee of the City of Tualatin.
- Artists must be 18 years of age or older.
- Artists must be able to deliver and install their artwork to Tualatin, Oregon.

The selected artist/artist team must be able to create, complete and deliver their artwork by the overall project completion date in Spring 2025. By the act of submitting qualifications in response to this Call to Artists, the Applicant certifies that it accepts all of the terms of the City’s Agreement for the Commission and Purchase of Art (hereafter “Agreement”, attached as Exhibit A) and warrants that the Applicant will fully meet all of the insurance requirements contained therein. If the Applicant wishes to amend or modify any terms of the Agreement, such amendment or modification must be requested in writing before July 26, 2023 at 5:00pm PDT. Proposed changes to the draft Agreement not stated by this deadline will not be considered. Requests made will be considered, but may not be agreed upon by the City for contract award.

Timeline

(all dates subject to change)

June 14, 2023	Phase 1 of Call to Artists Issued
June 28, 2023 at 6:00pm	Zoom Information Session
July 26, 2023 at 5pm	Deadline for submission of qualifications
August – September 2023	Panel Review
September 2023	Semifinalists Chosen & Invited to Submit Proposals
February 2024	Proposal Presentation & Selection of final artist/artist team
Fall 2024/Spring 2025	Service Inspired Public Art Installation

Submission of qualifications must be received by 5pm, Pacific Time, July 26, 2023.

Two-Part Selection Process

A two-part selection process includes selection of semifinalists based on qualifications, followed by a submission of proposals and presentations. The second phase of the selection process will require an in-person presentation. A selection panel including members of the Tualatin Arts Advisory Committee, Tualatin Parks Advisory Committee, Tualatin Youth Advisory Council, and local veterans/family members representing multiple military branches, will review artists’ qualifications and choose up to three semifinalists to prepare a proposal and presentation for the commission. The selection panel will be responsible for final artist/artist team selection. One finalist will be selected for the commission.

Semifinalist Selection Process

Criteria for selecting semifinalists to proceed to the Proposal & Presentation Phase includes, but is not limited to:

- Submission of all required application materials by deadline
- Quality of past work as exemplified in images and concise narrative.

- Artist's interest in project and its goals based on past planning efforts.
- Potential of the artist(s) to meet general goals described in past planning efforts, suggested design parameters, and planned Veteran Plaza improvements.
- Artistic Vibrancy*
- Potential to work successfully with the design and construction teams.

* Artistic vibrancy is defined as an artistic practice that:

- Demonstrates quality of process/collaboration.
- Embodies excellence of craft and skill.
- Demonstrates imagination and originality.
- Ability to work in a scale and with durable materials that are responsive to the site.
- Connects and engages with people across cultures and abilities.
- Provides multiple ways to access, approach, participate with and enjoy.
- Is relevant in a local and national context.

Finalist Selection Process

The purpose of the presentation is to allow the artist/artist team and panel to meet and the artist/artist team to present their proposals. Proposals should be based on outcomes from past planning efforts and should respond to the site and Veteran Plaza improvements. The interview is also an opportunity for the artist to better understand the context of the commission and the intentions of the final art piece. Both parties will be given an opportunity to ask questions.

Criteria for selecting the final artist/artist team includes, but is not limited to:

- Alignment with project goals documented in past planning efforts, suggested design parameters and responsiveness to the site and Veteran Plaza improvements.
- Demonstrated artistic vibrancy.
- Feasibility of the proposed concept.
- Demonstrated competency of materials and fabrication through own skills or subcontracted fabricators.
- Potential to work successfully with the project design team.
- Ease of maintenance and durability of materials.

The selection panel maintains the option to make no selection from submitted applications and to reopen the selection process or propose other methods of selection (including direct appointment) if no applicant is accepted.

How to Apply

To submit qualifications for the first phase of the Call to Artists, applicants can either upload the following items electronically via the [City of Tualatin's website](#), email Julie Ludemann at jludemann@tualatin.gov OR submit a paper copy mailed to the attention of Julie Ludemann at 18880 SW Martinazzi Ave, Tualatin, OR 97062. Alternatively, a paper copy can be hand delivered to Julie Ludemann at 8511 SW Tualatin Rd., Tualatin, OR 97062. Please note this is a request for qualifications NOT proposals – do not submit proposals for this opportunity. It is the responsibility of the applicant to complete and submit materials by the closing date: **5:00pm, Pacific Time, July 26th, 2023**. If you are applying as a team, please assign one person to apply and be the point of contact on behalf of the team.

Application must include the following:

- **Artist resume or CV and any applicable recognitions.** Two-page résumé uploaded as a PDF that outlines professional accomplishment and includes two professional references (name, affiliated organization, email address, and phone number). For team applications, include a 2-page résumé for each team member that is combined into one PDF.
- **Artist statement of interest.** Please submit responses to the following in **either** a written statement (1,500 words or less) or in an audio or video statement (no longer than 5 minutes). Please include the following:
 - o Why this project, its focus, location, and goals are of interest to you. For example, how do you foresee your work capturing outcomes from past planning efforts and responding to the suggested design parameters, site and Veteran Plaza improvements? Why do you feel you'd be a good match for the project?
 - o What is your capacity and/or experience to create this artwork?
 - o If you are applying as a team, describe your individual roles on the team and how you anticipate working together.
 - o What is your experience working with municipalities, local organizations, and stakeholders?
 - o What resources are typically required for installation?
 - o What general maintenance and conservation measures are typically needed for your outdoor public art?
- **Provide a description of how you typically approach public art.** Include general process from concept development to installation.
- **Provide a description of medium and materials typically used.**
- **Up to 8 past work samples.** These work samples are the primary way the artistic vibrancy and quality of your work will be judged. Provide up to two images, no larger than 5MB each, for each work sample. For each image, please provide a concise description and title, artist name, media, dimensions, year completed, budget, and location if applicable. Conceptual information is desirable but not required. If available, work samples should include similar past public projects. Artist teams are encouraged to submit work examples that were completed as a team.

If you have any questions, do not hesitate to contact us. You can also attend the information session.

Information Session

Zoom on June 28, 2023 at 6:00pm. Among others, Julie Ludemann from City of Tualatin Parks & Recreation Department, Brett Hamilton, Vice Chair of the Tualatin Arts Advisory Committee and member of the Service Inspired Veterans Public Art Selection Panel, and Nate Otani with the Veterans Plaza design team will be present to share information about this opportunity, answer questions and outline how to submit application materials. If you have questions about the Zoom info session or need any accommodation to attend, please email Julie Ludemann at jludemann@tualatin.gov.

Zoom meeting link: <https://us02web.zoom.us/j/84038640154>

Questions

If you have questions about the overall opportunity, would like to set up a time for a phone/video call, or have any other needs for assistance, please email/call Recreation Manager Julie Ludemann at jludemann@tualatin.gov or (503) 691-3082.

If you would like to be considered for this opportunity and don't have a computer or online access, please contact us for support.

If you would prefer these materials in another language, please contact Julie Ludemann at jludemann@tualatin.gov for translation services.

Interpretation services are available, please email Julie Ludemann at jludemann@tualatin.gov.

Servicio de interpretación disponible

Dịch vụ phiên dịch có sẵn

提供口译服务

Предоставляются услуги устного перевода

通訳サービスも利用可能です

통역 서비스 이용 가능

Appendix

EXHIBIT A

CITY OF TUALATIN AGREEMENT FOR THE COMMISSION AND PURCHASE OF ART

This Agreement for the Commission and Purchase of Art (the "Agreement") is entered by and between the City of Tualatin, a municipal corporation of the State of Oregon ("City"), and _____ ("Artist").

Section 1 - Agreement Documents. The Agreement Documents, which together form the complete Agreement between the parties, consist of the following documents in descending order of precedence: (i) this Agreement; (ii) any documents specifically referenced in this Agreement; (iii) the attached Scope of Work (Exhibit A); (iv) the invitation to bid/propose; and (v) Artist's bid/response. To the extent there is any conflict between the documents, the conflict is resolved by the order of precedence described above. There are no Agreement Documents other than those listed.

Section 2. Work. Artist shall complete all Work that is generally described in the Scope of Work (Exhibit A). Artist shall be solely responsible for all Work under this Agreement, including all services, labor, materials and supplies, documents, permits and other requirements to complete the Work, whether produced by Artist or any of Artist's subcontractors or Artists, except for those items identified as the responsibility of the City.

Section 3. Effective Date; Term; Renewal.

- A. Effective Date.** The effective date of this Agreement is the date both Parties sign this Agreement ("Effective Date"). If the parties sign on separate dates, the latter date shall be the Effective Date.
- B. Term.** The term of this agreement begins on the Effective Date and terminates on ____, unless otherwise renewed.
- C. Renewal.** The Parties may renew this agreement for an additional term or terms upon the mutual written consent of both parties, provided that in no event may this agreement, including renewals, extend beyond three (3) years.

Section 4. Standard of Care; Warranties.

- A.** Artist shall use that degree of care and skill ordinarily exercised by artists of the highest degree of artistic professionalism. The execution and fabrication of the Work shall be performed in a workmanlike manner, and the Work, as fabricated and installed, will be free of defects in material and workmanship, including but not limited to defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the work. Only the City may authorize extra (and/or change) Work. Failure of Artist to secure authorization for extra work shall constitute a waiver of all right to adjustment in the Agreement price due to such unauthorized extra work and Artist thereafter shall be entitled to no compensation whatsoever for the performance of such work. Artist warrants that maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist. These warranties shall survive for a period of five (5) years after final acceptance of the Work.
- B.** Artist further represents and warrants that (1) the Work is an original creation for the sole commission and benefit of the City, (2) the Work contains no material from copyrighted or unpublished works unless it is used with the written consent of the copyright owner and of the owner of any other right(s) to or in such other works, (3) the Work does not infringe any personal or property rights of others, whether common law or statutory, (4) the Work contains nothing libelous or contrary to the law, (5) Artist has not transferred, licensed or otherwise granted any rights of any kind in the Work to any other party, (6) Artist has the full power and authority to enter this Agreement. City shall provide notice to the Artist of any observed breach of such warranties with reasonable promptness and provide Artist an opportunity to cure, consistent with professional conservation standards, at no cost to the City.

Section 5. Independent Contractor; Responsibility for Taxes and Withholding; Anti-Kickback.

- A. Independent Contractor.** Artist will perform all Work as an independent contractor. The City reserves the right (i) to determine and modify the delivery schedule for the Work and (ii) to evaluate the quality of the Work Product; however, the City may not and will not control the means or manner of Artist's performance. Artist is responsible for determining the appropriate means and manner of performing the Work.
- B. Not an Officer, Employee or Agent.** Artist is not an "officer", "employee", or "agent" of the City, as those terms are used in ORS 30.265.
- C. Federal and State Taxes.** Artist is responsible for all federal or state taxes applicable to compensation or payments paid to Artist under this Agreement and, unless Artist is subject to backup withholding, City will not withhold from

{00843332; 1 }

CALL TO ARTISTS: CITY OF TUALATIN VETERANS PLAZA SERVICE INSPIRED PUBLIC ART INSTALLATION - (2) Pedestals

such compensation or payments any amount(s) to cover Artist's federal or state tax obligations. Artist is not eligible for any social security, unemployment insurance or workers' compensation benefits from City under this Agreement. Artist is not entitled to, and expressly waives all claims to City benefits, including but not limited to health and disability insurance, paid leave, and retirement.

- D. **Anti-Kickback.** Artist must comply with the Copeland "Anti-Kickback" Act (18 U.S.C. § 847) as supplemented in Department of Labor regulations (29 CFR part 3).
- E. **TIN and Certification.** Artist shall file with City an IRS Form W-9 request for Taxpayer Identification Number and **Certification** (<http://www.irs.gov/pub/irs-pdf/fw9.pdf>).

Section 6. Subcontracting.

- A. Artist's services are unique and as such, will not enter into any subcontracts for any of the Work required by this Agreement without City's prior written consent.
- B. If City permits a subcontract as set forth in subsection A, Artist shall not be relieved of any of its duties or obligations under this Agreement and must hold its subcontractor(s) to any and all public contracting rules and requirements.

Section 7. Agreement Price. City agrees to pay Artist the not to exceed price of _____, which is inclusive of all hours necessary to complete the Work. **(Check One Below)**

- City certifies that it has sufficient funds currently authorized to finance the full costs of this Agreement.
- Artist understands and agrees that City's payment of amounts under this Agreement is contingent on City receiving appropriations, limitations, allotments or other expenditure authority sufficient to allow City, in the exercise of its reasonable administrative discretion, to continue to make payments under this Agreement.

Section 8. Payment Process.

- A. **Payment Schedule.**
 - a. City shall pay Artist \$_____ upon Artist's completion of 50% of the Work as documented by Artist and inspected by City.
 - b. City shall pay Artist \$_____ upon Artist's completion of the Work, installation of the Work, receipt of final documentation, and final acceptance by City
- B. **Invoices.** Artist must furnish City an invoice for services on a monthly basis. The invoice must contain an itemized statement showing the number of hours worked on the project by Artist and the specific Work or portions of the Work performed.
- C. **Reimbursable Expenses.** City's payment for reimbursable expenses is limited to those reimbursable expenses set forth on Exhibit A, which are actually incurred by Artist and itemized on Artist's invoice for services.
- D. **Payment for Services.** City will pay Artist for services invoiced within thirty (30) days of receiving an itemized invoice ("net thirty"), unless City disputes the invoice, in which case City will only pay for those services not in dispute.

Section 9. Notice to Parties. Except as otherwise expressly provided in this Agreement, any communications between the parties hereto or notices to be given hereunder must be given in writing by personal delivery, mail facsimile, or email.

- A. **Notice by Personal Delivery.** Any communication or notice given by personal delivery is effective when actually delivered.
- B. **Notice by Mail.** Notice given by mail must be by postage prepaid, to Artist or City at the address, set forth herein, or to such other addresses or numbers as either party may indicate pursuant to this Section. Any communication or notice so addressed and mailed is effective five (five) days after mailing.
- C. **Notice by Email.** Any communication or notice given by email is effective upon the sender's receipt of confirmation generated by the recipient's email system that the notice has been received by the recipient's email system.
- D. **Party to be Notified.** Unless otherwise notified in writing as set forth above, notices must be given to the Project Managers. If a Party's Project Manager is changed, notification of the change must be promptly made in writing to

{00843332; 1 }

CALL TO ARTISTS: CITY OF TUALATIN VETERANS PLAZA SERVICE INSPIRED PUBLIC ART INSTALLATION - (2) Pedestals

the other party. If a party receives a communication from the other party not executed by the Project Manager, the party may request clarification by the other party's Project Manager, which must be promptly furnished.

1. **City's Project Manager**
Name, Title, Address, Phone, Email
2. **Artist's Project Manager**
Name, Title, Address, Phone, Email

Section 10. Party Obligations

- A. **City's Obligations.** In addition to obligations of City described in other parts of the Agreement Documents, City will respond in a timely manner to all properly submitted requests from Artist and cooperate with Artist to promptly review, comment on and approve all proposals and work that comply with the requirements of this Agreement.
- B. **Artist Duty to Inform.** Artist shall give prompt written notice to City if, at any time during the performance of this Agreement, Artist becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with the Agreement, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Artist shall constitute neither agreement with nor acquiescence in Artist's statement or claim and shall not constitute a waiver of any of City's rights.

Section 11. Assignment of Agreement. No assignment of any rights, duties, responsibilities, or interests in the Agreement will be binding on the other party without the written consent of the party sought to be bound. No assignment will release or discharge the assignor from any duty or responsibility under the Agreement Documents.

Section 12. Successors and Assigns. The provisions of this Agreement are binding upon and inure to the benefit of the parties, their respective successors, and permitted assigns.

Section 13. Severability. If any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions will not be affected, and the rights and obligations of the parties must be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid.

Section 14. Merger Clause; Waiver. This Agreement, including all Agreement Documents, constitute the entire agreement between the parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement will bind the parties unless in writing and signed by both parties and all necessary City approvals have been obtained.

Section 15. Agreement Construction. This Agreement shall not be construed against either party regardless of which party drafted it. Other than as modified by this Agreement, the applicable rules of Agreement construction and evidence will apply.

Section 16. Ownership; Intellectual Property; Deaccessioning of Artwork.

- A. **Copyright and License.** Artist retains all rights under the Copyright Act of 1976 (17 U.S.C. § 101, et seq.), and all other rights in and to the Work and Work Product, except as modified by this Agreement. As the Work is unique, Artist shall not make any additional exact duplicate, reproductions of the final Work, nor shall Artist grant permission to others to do so, except with the written permission of the City.
- B. **Ownership.** City shall own and possess the Work, and retain those rights, unless and until deaccessioned.
- C. **Artist Intellectual Property.** All pre-existing trademarks, service marks, patents, copyrights, trade secrets, and other propriety rights of Artist are and will remain the exclusive property of Artist. Notwithstanding the foregoing, Artist hereby grants to City an irrevocable, nonexclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Artist Intellectual Property, and to authorize others to do the same on City's behalf.
- D. **Third Party Works.** In the event that Work Product is Third Party Intellectual Property, Artist must secure on the City's behalf and in the City's name, an irrevocable, nonexclusive, perpetual, royalty free license to use, reproduce, prepare derivative works based upon, distribute copies of, perform and display the Third Party Intellectual Property, and to authorize others to do the same on City's behalf.

{00843332; 1 }

CALL TO ARTISTS: CITY OF TUALATIN VETERANS PLAZA SERVICE INSPIRED PUBLIC ART INSTALLATION – (2) Pedestals

E. Deaccessioning the Artwork. Artist expressly grants to City, and city reserves the right, to deaccession the Work in accordance with City procedures. City will use best efforts to notify Artist if the Work is being considered for deaccessioning. Artist may attend any public meetings related to the decision to deaccession the Work. In the event the City decides to deaccession the Work, Artist shall have the first right of refusal to purchase the Work at current market value, providing it stands alone and is not integrated into a larger piece.

Section 17. Records Maintenance; Access. Artist must maintain all financial records relating to this Agreement in accordance with generally accepted accounting principles, and any other records pertinent to this Agreement in such a manner as to clearly document Artist's performance, for a minimum period of three (3) years from the date of final payment or termination of this Agreement. City may have access to all documents, whether in paper, electronic, or other form, to perform examinations and audits and make excerpts and transcripts.

Section 18. No Third-Party Beneficiaries. There are no intended third-party beneficiaries to this Agreement. Artist and the City are the only parties to this Agreement and are intended to be the only entities entitled to exercise and enforce the rights and obligations created by this Agreement.

Section 19. Nondiscrimination; Compliance with Applicable Law. Artist agrees that no person shall, on the grounds of race, color, religion, sex, marital status, familial status, domestic partnership, national origin, age, mental or physical disability, sexual orientation, gender identity, source of income, or veteran status suffer discrimination in the performance of this Agreement. Artist must comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to the Work under this Agreement. Artist will not discriminate against minority-owned, women-owned, or emerging small businesses. Artist must include a provision in each subcontract requiring subcontractors to comply with the requirement of this provision.

Section 20. Public Contracting Requirements. Artist must comply with provisions of ORS 279A.110; 279B.220, 279B.225, 279B.230, and 279B.235, which are incorporated by reference herein. City's performance under the Agreement is conditioned upon Artist's compliance.

Section 21. Certification of Compliance with Tax Laws. As required by ORS 279B.110(2)(e), Artist represents and warrants that Artist has complied with the tax laws of this state, the City, and applicable political subdivisions of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317 and 318, hereafter ("Tax Laws"). Artist further covenants to continue to comply with the Tax Laws during the term of this Agreement and Artist covenants and acknowledges that the failure to comply with the Tax Laws is a default for which City may terminate this Agreement and seek damages.

Section 22. Registered in Oregon and City of Tualatin. If Artist is not domiciled in or registered to do business in the State of Oregon, Artist must promptly provide to the Oregon Department of Revenue and the Secretary of State Corporation Division all information required by those agencies relative to this Agreement. Artist must demonstrate its legal capacity to perform the Work under this Agreement in the State of Oregon prior to entering into this Agreement. Artist must have or acquire a City business license prior to executing this Agreement.

Section 23. Use of Recycled Products. Artist shall, to the maximum extent economically feasible in the performance of this Agreement, use recycled paper (as defined in ORS 279A.010(1)(ee)), recycled PETE products (as defined in ORS 279A.010(1)(ff)), and other recycled products (as "recycled product" is defined in ORS 279A.010(1)(gg)).

Section 24. Force Majeure. Neither City nor Artist will be held responsible for delay or default caused by fire, riot, pandemic or epidemic, acts of God, terrorist acts, or other acts of political sabotage, or war where such cause was beyond the reasonable control of City or Artist despite reasonable efforts, respectively.

Section 25. Survival. All rights and obligations of the parties will cease upon termination or expiration of this Agreement, except for the rights and obligations of a party for payment of completed Work, indemnity, dispute resolution, maintenance of insurance, and those provisions, including, but not limited to, provisions concerning property rights and governing laws which, by their nature, must survive termination to accomplish the intent of the parties as expressed in this Agreement.

Section 26. Joint and Several Liability. In the event Artist includes more than one person or entity, all such persons or entities will be jointly and severally liable for all conditions herein.

Section 27. Indemnification.

A. General Indemnity. Artist must defend, save, hold harmless, and indemnify the City, its officers, employees, elected officials, and agents from and against all claims, suits, actions, losses, damages, liabilities, costs and expenses of any nature whatsoever, including attorneys' fees, resulting from, arising out of, or relating to the activities of Artist or its officers, employees, subcontractors, or agents under this Agreement, or a breach of any representation or warranty under this Agreement. Notwithstanding the foregoing, Artist's indemnity and defense

{00843332; 1 }

obligations arising out of professional errors and omissions is provided to the extent caused by Artist's negligent acts, errors, or omissions.

- B. **Indemnity for infringement claims.** Without limiting the general indemnity, Artist expressly agrees to defend, indemnify, and hold City, its officers, employees, elected officials, and agents harmless from any and all claims, suits, actions, losses, liabilities, costs, expenses, including attorneys' fees, and damages arising out of or related to any claims that the Work, the work product or any other tangible or intangible items delivered to the City by Artist that may be the subject of protection under any state or federal intellectual property law or doctrine, or the City's use of the Work, the work product or any other tangible or intangible items delivered to the City by Artist infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design, or other proprietary right of any third party; provided, that City shall provide Artist with prompt written notice of any infringement claim.
- C. **Control of defense and settlement.** Artist shall have control of the defense and settlement of any claim that is subject to indemnity; however, neither Artist nor any attorney engaged by Artist shall defend the claim in the name of the City, nor purport to act as legal representative of the City or any of its officers, employees, or agents, without first receiving from the City, in a form and manner determined appropriate by the City, authority to act as legal counsel for the City, nor shall Artist settle any claim on behalf of the City without the approval of the City. The City may, at its election and expense, assume its own defense and settlement in the event that the City determines that Artist is prohibited from defending the City, or is not adequately defending the City's interests, or that an important governmental principle is at issue and the City desires to assume its own defense.

Section 28. Insurance. Artist must provide City with evidence of the following insurance coverages prior to execution of this Agreement. A copy of each insurance policy, issued by a company currently licensed in the State of Oregon in a form satisfactory to City certifying to the issuance of such insurance, must be furnished to City. All policies must be written on an "occurrence basis." Artist must provide for not less than 30 days' written notice to City before they may be revised, non-renewed, canceled, or coverage reduced. If the policy lapses during performance, City may treat said lapse as a breach; terminate this Agreement and seek damages; withhold progress payments without impairing obligations of Artist to proceed with work; pay an insurance carrier (either Artist's or a substitute) the premium amount and withhold the amount from payment to Artist; and use any other remedy provided by this Agreement or by law.

- A. **Automobile.** Comprehensive automobile and vehicle liability insurance covering claims for injuries to members of the public and/or damages to property of others arising from the use of motor vehicles, including on-site and off-site operations, and owned, non-owned, or hired vehicles, with \$1,000,000 combined single limits.
- B. **General Liability.** Commercial general liability insurance covering claims for injuries to members of the public or damage to property of others arising out of any act or omission of Artist or of any of its employers, agents, or subcontractors, with \$2,000,000 per occurrence and in the aggregate.
- C. **Professional Liability.** Professional Liability Insurance of \$2,000,000 per occurrence and in the aggregate, including contractual liability coverage. If Artist proposes using subcontractors, City may require subcontractors to provide professional liability insurance, provided the amount and form of coverage complies with this Section.
- D. **Policy Coverage.** Coverage provided by this policy(ies) must be primary and any other insurance carried by City is excess. Artist will be responsible for any deductible amounts payable under all policies of insurance.
- E. **Workers Compensation.** Artist, its subcontractors, if any, and all employers working under this Agreement are subject employers under the Oregon Worker's Compensation Law and must comply with ORS 656.017.

Section 29. Default; Remedies; Termination.

- A. **Default by Artist.** Artist is in default under this Agreement if Artist commits any material breach or default of any covenant, warranty, obligation or agreement under this Agreement, fails to perform the Work under this Agreement within the time specified herein or any extension thereof, or so fails to pursue the Work as to endanger Artist's performance under this Agreement in accordance with its terms, and such breach, default or failure is not cured within fourteen (14) calendar days after City's notice, or such longer period as City may specify in such notice.
- B. **City's Remedies for Artist's Default.** In the event Artist is in default, City may, at its option, pursue any or all of the remedies available to it under this Agreement and at law or in equity; including, but not limited to:
 - (i) Termination of this Agreement;
 - (ii) Withholding all monies due for Work and Work Products that Artist has failed to deliver within any scheduled completion dates or has performed inadequately or defectively;

{00843332; 1 }

CALL TO ARTISTS: CITY OF TUALATIN VETERANS PLAZA SERVICE INSPIRED PUBLIC ART INSTALLATION – (2) Pedestals

- (iii) Initiation of an action or proceeding for damages, specific performance, or declaratory or injunctive relief;
- (iv) Exercise of its right of setoff.

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. If a court determines that Artist was not in default, then Artist is entitled to the same remedies as if this Agreement was terminated.

C. Default by City. City is in default under this Agreement if:

- (i) City fails to pay Artist any amount pursuant to the terms of this Agreement, and City fails to cure such failure within thirty (30) calendar days after Artist's notice or such longer period as Artist may specify in such notice; or
- (ii) City commits any material breach or default of any covenant, warranty, or obligation under this Agreement, and such breach or default is not cured within thirty (30) calendar days after Artist's notice or such longer period as Artist may specify in such notice.

D. Artist's Remedies for City's Default. In the event City terminates the Agreement, or in the event City is in default and whether or not Artist elects to exercise its right to terminate the Agreement, Artist's sole monetary remedy is (i) with respect to services compensable on an hourly basis, a claim for unpaid invoices, hours worked within any limits set forth in this Agreement but not yet billed, authorized expenses incurred and interest of two-thirds of one percent per month, but not more than eight percent per annum, and (ii) with respect to deliverable based Work, a claim for the sum designated for completing the deliverable multiplied by the percentage of Work completed and accepted by City, less previous amounts paid and any claim(s) that City has against Artist. In no event will City be liable to Artist for any expenses related to termination of this Agreement or for any anticipated profits. If previous amounts paid to Artist exceed the amount due to Artist under this subsection, Artist must pay immediately any excess to City upon written demand provided.

E. Mutual Termination. City and Artist may terminate this Agreement by mutual written consent at any time.

F. Termination by City. At its sole discretion, City may terminate this Agreement:

- (i) For any reason upon thirty (30) days' prior written notice by City to Artist;
- (ii) Immediately upon written notice if City fails to receive funding or expenditure authority at levels sufficient to pay for the Work or Work Products; or
- (iii) Immediately upon written notice if federal or state laws, regulations, or guidelines are modified or interpreted in such a way that the City's purchase of the Work or Work Products under this Agreement is prohibited or City is prohibited from paying for such Work or Work Products from the planned funding source.
- (iv) City may terminate this Agreement immediately upon written notice by City to Artist if Artist is in default of this Agreement.

G. Termination by Artist. Artist may terminate this Agreement with such written notice to City upon the occurrence of the following events.

- (i) City is in default because City fails to pay Artist any amount pursuant to the terms of this Agreement, and City fails to cure such failure within thirty (30) calendar days after Artist's notice of the failure to pay or such longer period as Artist may specify in such notice; or
- (ii) City is in default because City commits any material breach or default of any covenant, warranty, or obligation under this Agreement, fails to perform its commitments hereunder within the time specified or any extension thereof, and City fails to cure such failure within thirty (30) calendar days after Artist's notice or such longer period as Artist may specify in such notice.

H. Return of Property upon Termination. Upon termination of this Agreement for any reason whatsoever, Artist must immediately deliver to City all of City's property (including without limitation any Work or Work Products for which City has made payment in whole or in part) that is in the possession or under the control of Artist in whatever stage of development and form of recordation such City property is expressed or embodied at that time. Upon receiving a

{00843332; 1 }

notice of termination of this Agreement, Artist must immediately cease all activities under this Agreement, unless City expressly directs otherwise in such notice of termination. Upon City's request, Artist must surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the Work and the Work Products.

- I. **City's Remedies Cumulative.** In the event of termination, in addition to the remedies provided herein, City shall have any remedy available to it in law or equity. City shall also have such remedies as are available to it in law or equity for Artist's breach without the requirement that City first terminate this Agreement.

Section 30. Dispute Resolution.

- A. **Process.** If Artist disagrees with a decision of the City under this Agreement, Artist must provide written notice to the City's Project Manager of Artist's disagreement, and include all relevant information and exhibits, within thirty (30) days of Artist's knowledge of the decision to which Artist disagrees. The City's Project manager will review the information and meet with Artist to attempt to come to resolution on the dispute and process any necessary Change Order. If City and Artist are unable to come to resolution, the City's Project Manager will issue a written decision outlining the City's reasons to decline Artist's request regarding the dispute.
- B. **Complaint.** Any claim that cannot be resolved between the parties as set forth shall be initiated by filing a complaint in the appropriate court as provided in this Agreement. The claim and all cross and counter-claims filed in response to the complaint shall be submitted to mediation. If the parties cannot agree on a mediator, the Presiding Judge for Washington County will select the mediator. Only if the dispute cannot be resolved by mediation, will the parties proceed to litigate the claim in court.

Section 31. Attorney Fees. If any suit, action, arbitration or other proceeding is instituted upon this Agreement or to enforce any rights herein or otherwise pursue, defend or litigate issues related to this Agreement, each party will be liable for their own attorneys' fee and costs, including those on appeal. The parties each agree and hereby waive any right to attorney fees granted by statute or rule that conflicts with this provision.

Section 32. Overtime. Artist shall pay employees for overtime work performed under the terms of this Agreement in accordance with ORS 653.010 to ORS 653.261 and the Fair labor standards Act of 1938. (29 USC §§ 201 *et. seq.*)

Section 33. Confidentiality and Protection of Personal Information. Provider acknowledges that some of the material and information that may come into its possession or knowledge in connection with this Agreement or its performance may consist of information that is exempt from disclosure to the public under Oregon's Public Records Laws, the Oregon Consumer Identity Theft Protection Act, ORS 646A.600- 646A.628, or other state or Federal statutes. Artist agrees to hold such information in strictest confidence and not to make use of such information for any purpose other than the performance of this Agreement, to release it only to authorized employees or subcontractors requiring such information for the purposes of carrying out this Agreement, and not to release, divulge, publish, transfer, sell, disclose, or otherwise make the information known to any other party without City's express written consent or as provided by law.

Section 34. Execution of Agreement; Electronic Signature. This Agreement may be executed in one or more counterparts, all of which when taken together constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Each copy of the Agreement so executed constitutes an original. A signature of a party provided by email, "pdf," or other electronic data file constitutes an original signature of that party.

Section 35. Governing Law; Venue; Consent to Jurisdiction; Jury Trial Waiver. This Agreement is governed by and will be construed in accordance with the laws of the State of Oregon without regard to principles of law. Any claim, action, suit or proceeding (collectively, "Claim") between City and Artist that arises from or relates to this Agreement shall be brought and conducted solely and exclusively within the Circuit Court of Washington County for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it shall be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. In no event will this Section be construed as a waiver of any form of defense or immunity from any Claim or from the jurisdiction of any court. Artist, BY EXECUTION OF THIS AGREEMENT, HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF SAID COURTS. Any litigation arising under or as a result of this Agreement shall be tried to the court without a jury.

Section 36. Authority to Bind. City and Artist each represent and warrant that the individual(s) executing this Agreement have taken all steps necessary to secure full authority to bind the City and Artist, respectively, for the acts, expenditures, and obligations contemplated in this Agreement to be performed by each of them. BY EXECUTION OF THIS AGREEMENT, EACH PARTY HEREBY ACKNOWLEDGES THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

{00843332; 1 }

CALL TO ARTISTS: CITY OF TUALATIN VETERANS PLAZA SERVICE INSPIRED PUBLIC ART INSTALLATION – (2) Pedestals

ARTIST, BY EXECUTION OF THIS AGREEMENT, HEREBY ACKNOWLEDGES THAT ARTIST HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

APPROVED AND ENTERED this ____ day of _____ 20 ____.

ARTIST

CITY OF TUALATIN

By _____

By _____

Title _____

INSERT CITY OFFICIAL,
INSERT CITY TITLE

APPROVED AS TO LEGAL FORM

Artist's Federal ID Number or
Social Security Number

City Attorney