

Agreement.

- 12.2. Liability Insurance: Provider shall maintain occurrence form commercial general liability and automobile liability insurance for the protection of Provider, City, its Councilors, officers, agents and employees. Coverage shall include personal injury, bodily injury (including death) and broad form property damage, including loss of use of property, occurring in the course of or in any way related to Provider's operations, in an amount not less than Two Million Dollars (\$2,000,000.00) combined single limit per occurrence. Such insurance shall name City as an additional insured.
- 12.3. Workers' Compensation Coverage: Provider certifies that Provider has qualified for State of Oregon Workers' Compensation coverage for all Provider's employees who are subject to Oregon's Workers' Compensation statute, either as a carrier insured employer as provided by ORS 656.407, or as a self-insured employer. Provider shall provide to City within ten (10) days after contract award a certificate of insurance evidencing coverage of all subject workers under Oregon's Workers' Compensation statutes insured by an insurance company satisfactory to City, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without thirty (30) days advance written notice to City. A copy of the certificate of self-insurance issued by the State shall be provided to City if the Provider is self-insured.
- 12.4. Professional Errors and Omissions: Provider shall provide City with evidence of professional errors and omissions liability insurance for the protection of Provider and its employees, insuring against bodily injury and property damage and arising out of or resulting from Provider's negligent acts, omissions, activities or services, in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit per occurrence. Such insurance shall be endorsed to include contractual liability.
- 12.5. Certificates: Provider shall furnish City certificates evidencing the date, amount, and type of insurance required by this Agreement. All policies will provide for not less than thirty (30) days written notice to City before they may be canceled.
- 12.6. Primary Coverage: The coverage provided by insurance required under this Agreement shall be primary, and any other insurance carried by City shall be excess.

13. Provider's Standard of Care

The City agrees that in accordance with generally accepted production practices, the Provider will be required to assume sole and complete responsibility for job site conditions during the course of production of the project, including safety of all persons and property. In the performance of its professional services, the Provider shall use that degree of care and skill ordinarily exercised under similar circumstances by reputable members of its profession practicing in the State of Oregon. The Provider will re-perform any services not meeting this standard without additional compensation. Provider's re-performance of any services, even if done at City's request, shall not be considered as a limitation or waiver by City of any other remedies or claims it may have arising out of Provider's failure to perform in accordance with the applicable standard of care or this Agreement.

14. Breach of Contract

- 14.1 Provider shall remedy any breach of this Agreement within the shortest reasonable time after Provider first has actual notice of the breach or City notifies Provider of the breach, whichever is earlier. If Provider fails to remedy a breach in accordance with

this section, City may terminate that part of the Agreement affected by the breach upon written notice to Provider, may obtain substitute services in a reasonable manner, and may recover from Provider the amount by which the price for those substitute services exceeds the price for the same services under this Agreement.

- 14.2 If the breach is material and Provider fails to remedy the breach in accordance with this section, City may declare Provider in default and pursue any remedy available for a default.
- 14.3 Pending a decision to terminate all or part of this Agreement, City unilaterally may order Provider to suspend all or part of the services under this Agreement. If City terminates all or part of the Agreement pursuant to this section, Provider shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after City ordered suspension of those services. If City suspends certain services under this Agreement and later orders Provider to resume those services, Provider shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.
- 14.4 To recover amounts due under this section, City may withhold from any amounts owed by City to Provider, including but not limited to, amounts owed under this or any other Agreement between Provider and City.

15. Mediation/ Trial without a jury

- 15.1 Should any dispute arise between the parties to this Agreement it is agreed that such dispute will be submitted to a mediator prior to any litigation and the parties hereby expressly agree that no claim or dispute arising under the terms of this Agreement shall be resolved other than first through mediation and only in the event said mediation efforts fail, through litigation. Any litigation arising under or as a result of this Agreement shall be tried in the Marion County Circuit Court without a jury. Each party agrees to be responsible for payment of its own professional fees, including attorneys' fees.
- 15.2 The parties shall exercise good faith efforts to select a mediator who shall be compensated equally by both parties. Mediation will be conducted in Silverton, Oregon, unless both parties agree in writing otherwise. Both parties agree to exercise good faith efforts to resolve disputes covered by this section through this mediation process. If either party requests mediation and the other party fails to respond within ten(10)days, or if the parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Marion County Circuit Court upon the request of either party. The parties shall have any rights at law or in equity with respect to any dispute not covered by this section.

16. Early Termination

- 16.1 This Agreement may be terminated prior to the expiration of the agreed upon terms:
 - 16.1.1 By mutual written consent of the parties; or
 - 16.1.2 By City for any reason within its sole discretion, effective upon delivery of written notice to Provider by mail or in person.

- 16.2 If City terminates the Agreement in whole or in part due to default or failure of Provider to perform services in accordance with this Agreement, City may procure, upon reasonable terms and in a reasonable manner, services similar to those so terminated. In addition to any other remedies the City may have, Provider shall be liable for all costs and damages incurred by City in procuring such similar service, and the Agreement shall be in full force to the extent not terminated.
- 16.3 If City terminates the Agreement for its own convenience, Provider shall be entitled to compensation for all services rendered prior to actual notice of the termination or the receipt of the City's written notice of termination, whichever is earlier.
- 16.4 Termination under any provision of this section shall not affect any right, obligation or liability of Provider or City which accrued prior to such termination. Provider shall surrender to City items of work or portions thereof, referred to in the Scope of the Project for which Provider has received payment, or City has made payment. City retains the right to elect whether or not to proceed with actual execution of the project.

17. Suspension of Work

City may suspend, delay or interrupt all or any part of the work for such time as the City deems appropriate for its own convenience by giving written notice thereof to Provider. An adjustment in the time of performance or method of compensation shall be allowed as a result of such delay or suspension unless the reason for the delay is within the Provider's control. City shall not be responsible for work performed by any subcontractors after notice of suspension is given by City to Provider. Should the City suspend, delay or interrupt the work and the suspension is not within the Provider's control, then the City shall extend the time of completion by the length of the delay and the method of compensation shall be adjusted to reflect the Provider's increase or decrease in its standard hourly rates.

18. Successors and Assignments

- 18.1. Each party binds itself, and any partner, successor, executor, administrator, or assign to this Agreement.
- 18.2. Neither City nor Provider shall assign or transfer their interest or obligation hereunder this Agreement without the written consent of the other party. Provider must seek and obtain City's written consent before subcontracting any part of the work required of Provider under this Agreement. Any assignment, transfer, or subcontract attempted in violation of this subsection shall be void.

19. Access to Records

City shall have access upon request to such books, documents, receipts, papers and records of Provider as are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of four (4) years unless within that time City specifically requests an extension. This clause shall survive the expiration, completion or termination of this Agreement.

20. Work is Property of City

All work, including but not limited to documents, drawings, papers, computer programs, and photographs, performed or produced by Provider under this Agreement shall be the property of City.

21. Errors

Provider shall perform such additional work as may be necessary to correct errors in the work required under this without undue delays and without additional cost.

22. Law of Oregon

This Agreement shall be governed by the laws of the State of Oregon. Venue shall be in Marion County, Oregon.

23. Adherence to Law

Provider shall adhere to all applicable federal and state laws, including but not limited to laws, rules, regulations, and policies concerning employer and employee relationships, workers' compensation, and minimum and prevailing wage requirements. Any certificates, licenses or permits which Provider is required by law to obtain or maintain in order to perform work described on Exhibit A, shall be obtained and maintained throughout the term of this Agreement.

24. Modification

Any modification of the provisions of this Agreement, in addition to those provided for in Section 5 of this Agreement, shall not be enforceable unless reduced to writing and signed by both parties.

25. Integration

This Agreement, including but not limited to Exhibits and Provider's proposal submitted to City, contains the entire and integrated agreement between the parties and supersedes all prior written or oral discussions, representations or agreements. In case of conflict among these documents the provisions of this Agreement shall control.

26. Payment for Labor or Materials.

Provider shall make prompt payment of any claim for labor, materials or services furnished to the Provider by any person in connection with this Agreement as such claim becomes due. Provider shall not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished to or on behalf of the Provider. If the Provider fails, neglects or refuses to make prompt payment of any such claim, the City may pay such claim to the person furnishing the labor, materials or services and charge the amount of the payment against funds due or to become due the Provider under this Agreement.

27. Miscellaneous / General

27.1. Force Majeure. Neither party shall be responsible for damages or be deemed to be in default of Agreement by reason of delays in performance due to acts of God; strikes, lockouts, or industrial disturbances; acts of public enemies; orders of the government of the United States, or the State of Oregon, or their departments, agencies, political subdivisions, or officials; acts of any civil or military authority; riots; epidemics; and similar occurrences outside the control of Provider. In the cause of such an event happening, the time of completion shall be extended accordingly.

27.2. Intellectual Property. The interest in any intellectual property, including but not limited to copyrights and patents of any type, arising from the performance of this Agreement

shall vest in the City. Provider shall execute any assignment or other documents necessary to effect this section. Provider may retain a nonexclusive right to use any intellectual property that is subject to this section. Provider shall transfer to the City any data or other tangible property generated by Provider under this Agreement and necessary for the beneficial use of intellectual property covered by this section.

- 27.3. Conflict of Interest. Except with City's prior written consent, Provider shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise Consultant's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.
- 27.4. No Waiver of Legal Rights. A waiver by a party of any breach by the other shall not be deemed to be a waiver of any subsequent breach.

The PROVIDER and the CITY hereby agree to all provisions of this AGREEMENT.

IN WITNESS WHEREOF, the parties by their signatures below enter into this Agreement this _____ day of _____, 2_____.

PROVIDER:

CITY OF SILVERTON:

Name of Firm

By _____
Christy S. Wurster
City Manager/City Recorder

By _____
Typed or
Printed Name: _____

Title: _____

Mailing
Address: _____

Mailing
Address:
306 S. Water Street
Silverton, OR 97381

Employer I.D. No. _____

Approved as to Form:
City Attorney