

ROUTING ORDER	(1) PUBLIC WORKS DEPARTMENT	(2) ARCHITECT	(3) FINANCE DEPARTMENT
	(4) LAW DEPARTMENT	(5) CITY MANAGER'S OFFICE	(6) CITY CLERK'S OFFICE
EFFECTIVE DATE	TERMINATION DATE	CONTRACT NUMBER:	
CITY		ARCHITECT	
CITY OF SPRINGFIELD 840 BOONVILLE, P.O. Box 8368 SPRINGFIELD, MO 65801-8368 PHONE: 417-864- FAX: 417-864- ATTN: DEPT: PUBLIC WORKS FOR SPRINGFIELD ART MUSEUM		NAME: ADDRESS: PHONE: FAX: ATTN:	

AGREEMENT FOR PROFESSIONAL ARCHITECTURAL SERVICES

THIS AGREEMENT, made and entered into this ____ day of _____, 20__, by the parties identified above.

WITNESSETH:

THAT, WHEREAS, the City of Springfield desires to engage the Architect to render certain technical and professional services hereafter described in connection with a project known as _____, more particularly described in **Exhibit A**;

WHEREAS, the Architect made certain representations and statements to the City with respect to the provision of such services and the City has accepted said proposal; and

WHEREAS, the Architect represents Architect is licensed by the Missouri Board for Architects, Professional Architects, and Land Surveyors to perform the services designated under this contract, and further represents that all survey services shall be done under the direction of an Architect licensed by the Missouri Board for Architects, Professional Architects, and Land Surveyors;

NOW, THEREFORE, for the considerations herein expressed, it is agreed by and between the City and the Architect as follows:

1. **Services.** The City agrees to engage the services of the Architect and the Architect agrees to perform the services hereinafter set forth in connection with projects described in **Exhibit A**.
2. **Addition to Services.** The City may add to the Architectural services or delete therefrom activities of a similar nature to those set forth in **Exhibit A**, provided that the total cost of such work does not exceed the fixed sum set forth below. The Architect shall undertake such changed activities only upon the direction of the City. All such directives and changes shall be in written form and prepared and approved by the office of the City Manager and shall be accepted and countersigned by the Architect.
3. **Exchange of Data.** All information, data, and reports as are in the City's possession and necessary for the carrying out of the work, shall be furnished to the Architect without charge, and the parties shall cooperate with each other in every way possible in carrying out the scope of services.
4. **Personnel.** The Architect represents that Architect will secure at Architect's own expense, all personnel required to perform the services called for under this contract by Architect. Such personnel shall not be employees of or have any contractual relationship with the City except as employees of the Architect. All of the services required hereunder will be performed by the Architect or under Architect's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services. None of the work or services covered by this contract shall be subcontracted without the written approval of the City.

5. **Term.** The services of the Architect shall commence as soon as practicable after the execution of this contract, unless otherwise directed in writing, and shall be undertaken and completed in such sequence as to assure their expeditious completion in the light of the purposes of the contract, but in any event, all of the services required hereunder shall be completed as set forth in the schedule for the project which is attached hereto as **Exhibit A**.

6. **Costs not to Exceed.** The City of Springfield is limited by law with respect to the amount of money it can pay. Therefore, the City has established a fixed sum for this contract, which cannot be exceeded unless this contract is amended. The Architect providing services hereunder shall be required to keep track of the amount of hours billable under this contract at all times; and any work in excess of the fixed sum shall not be eligible for payment. The Architect shall notify the City if Architect anticipates that the contract amount may be exceeded, in order to determine whether or not the City is prepared to increase the total compensation. The Architect shall establish a billing system showing the amount of money remaining on the contract, which shall be shown in each monthly billing.

7. **Payment.**

a. Conditioned upon acceptable performance. The City agrees to pay the Architect in accordance with the terms set forth in **Exhibit A**, which shall constitute complete compensation for all services to be rendered under this contract; provided, that where payments are to be made periodically to Architect for services rendered under this contract, the City expressly reserves the right to disapprove in whole or in part a request for payment where the services rendered during the period for which payment is claimed are not performed in a timely and satisfactory manner in accordance with the schedule and description of services set forth in **Exhibit A**.

b. **Total compensation not to exceed** It is expressly understood that in no event will the total compensation and reimbursement to be paid to the Engineer under the terms of this contract exceed the sum of _____ Dollars (\$_____).

8. **Termination of Contract.**

a. Termination for breach. Failure of the Architect to fulfill Architect's obligations under this contract in a timely and satisfactory manner in accordance with the schedule and description of services set forth in **Exhibit A** shall constitute a breach of the contract, and the City shall thereupon have the right to immediately terminate the contract. The City shall give written notice of termination to the Architect by one of three different means: Facsimile Transmission ("FAX") if Architect has a FAX number; U.S. Postal Service Mails; or by hand delivering a copy of the same to the Architect; or may give notice by any combination of the above methods. The date of termination shall be the date upon which notice of termination is hand delivered to Architect or given by FAX, or the third day following mailing of the notice of termination, whichever first occurs. In the event of termination for breach, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the Architect under this contract shall at the option of the City become its property, and the Architect shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials; provided, that the Architect shall not be relieved of liability to the City for damages sustained by the City by virtue of any such breach of the contract by the Architect.

b. Right to terminate in the absence of breach. Either party may terminate this contract for any reason, by serving notice of intent to terminate upon the other party by the means specified in paragraph A of this section. Such notice shall specify the date of termination, but in no event shall either party terminate the contract under this provision upon less than thirty (30) days' notice to the other party; provided, that the parties may mutually agree to waive the thirty (30) day requirement and to shorten the time for notice of termination. In the event of termination in the absence of breach, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the Architect under this contract shall at the option of the City become its property, and the Architect shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

9. **Conflicts.** No salaried officer or employee of the City and no member of the City Council shall have a financial interest, direct or indirect, in this contract. A violation of this provision renders the contract void. Any federal regulations and applicable provisions in Section 105.450 et seq. RSMo shall not be violated. Architect covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this contract. The Architect further covenants that in the performance of this contract no person having such interest shall be employed.

10. **Assignment.** The Architect shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto. Provided, however, that claims for money due

or to become due to the Architect from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City. Any such assignment is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this agreement, though City will attempt to so notify any such assignee.

11. **Confidentiality of Documents.** Any reports, data, design or similar information given to or prepared or assembled by the Architect under this contract which the City requests to be kept as confidential shall not be made available to any individual or organization by the Architect without prior written approval of the City.

12. **Discrimination.** The Architect agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Architect or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

a. **This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discriminations against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

b. **This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

13. The Architect agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, or political opinion or affiliation, against any employee of Architect or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder.

14. **Occupational License.** The Architect shall obtain and maintain an occupational license with the City of Springfield, Missouri, if required by city code and any required state or federal license. The cost for this occupational license shall be borne by the Architect. No contract will be executed by the City until this occupational license has been obtained.

15. **Compliance with Laws.** Architect agrees to comply with all applicable federal, state and local laws or rules and regulations applicable to the provision of services and products hereunder. Architect affirmatively states that payment of all local, state, and federal taxes and assessments owed by Architect is current.

16. **Affidavit for Contracts Over \$5,000.00.** That pursuant to Missouri Revised Statute Sections 285.525 through 285.550, if this contract exceeds the amount of \$5,000.00 and Architect is associated with a business entity, Architect shall provide an acceptable notarized affidavit stating that the associated business entity is enrolled in and participates in a federal work authorization program with respect to the employees working in connection with the contracted services, and that said business entity does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. Additionally, Architect must provide documentation for said business entity evidencing current enrollment in a federal work authorization program.

17. **Nonresident/Foreign Contractors.** The Architect shall procure and maintain during the life of this contract:

a. If the Architect is a foreign corporation, a certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of Section 351.570 RSMo.

b. A certificate from the Missouri Director of Revenue evidencing compliance with the transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230 RSMo.

18. **General Independent Contractor Clause.** This agreement does not create an employee/employer relationship between the parties. It is the parties' intention that the Architect will be an independent contractor and not the City's employee for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, Missouri

revenue and taxation laws, Missouri workers' compensation and unemployment insurance laws. The Architect will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Architect's activities and responsibilities hereunder. The Architect agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the Architect and the City, and the City will not be liable for any obligation incurred by the Architect, including but not limited to unpaid minimum wages and/or overtime premiums.

19. **City Benefits.** The Architect shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Worker's Compensation Program of the City.

20. **Liability and Indemnity.** The parties mutually agree to the following:

a. The Architect shall defend, indemnify, and hold the City harmless from and against all damages, losses, liabilities, expenses, and costs with respect to all claims, including, but not limited to, claims for personal injuries, wrongful death, and damages to property, which may be asserted against the City by any person or entity as the result of Architect's (or any of Architect's subcontractors) violation of statutory law, misrepresentation, copyright infringement, breach of contract, professional negligence, or ordinary negligence in the course of the performance of this contract, provided that the Architect is not obligated to indemnify or hold harmless the City from the City's own negligence or wrong doing.

b. The Architect shall indemnify and hold the City harmless from all wages or overtime compensation due its employees in rendering services pursuant to this agreement, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act or any other federal or state law.

c. In no event shall the City be liable to the Architect for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the City under this contract.

21. **Insurance.** Without limiting any of the other obligations or liabilities of the Architect, the Architect shall secure and maintain at its own cost and expense, throughout the duration of this Contract and until the work is completed and accepted by the City of Springfield, insurance of such types and in such amounts as may be necessary to protect it and the interests of the City of Springfield against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City of Springfield. Regardless of such approval, it shall be the responsibility of the Architect to maintain adequate insurance coverage at all times during the term of the Contract. Failure of the Architect to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability under the Contract Documents.

The certificates of insurance, including evidence of the required endorsements hereunder or the policies shall be filed with the City at the time that this contract is signed by the Architect. All insurance policies shall provide thirty (30) days written notice to be given by the insurance company in question prior to modification or cancellation of such insurance. Such notices shall be mailed, certified mail, return receipt requested, to:

City of Springfield - Public Works for Springfield Art Museum, P.O. Box 8368, Springfield, MO 65801-8368

Such policies shall name the City as an additional insured with limits of liability not less than the sovereign immunity limits for Missouri public entities calculated by the Missouri Department of Insurance as of January 1 each calendar year and published annually in the Missouri Register pursuant to Section 537.610, RSMo.

(See, <http://insurance.mo.gov/industry/sovimunity.php>.)

As of January 1, 2017, the minimum coverage for the insurance referred to herein shall be as set out below:

a. Workers' Compensation....Statutory coverage per RSMo 287.010 et seq
Employer's Liability..... \$1,000,000.00

b. Commercial General Liability Insurance, including coverage for Contractual Liability and Independent Contractors Liability. Such coverage shall apply to bodily injury and property damage on an "Occurrence Form Basis" with limits of at least Two

Million Seven Hundred Sixty-Two Thousand Seven Hundred Eighty-Nine and no/100 Dollars (\$2,762,789.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Fourteen Thousand Four Hundred Eighteen and no/100 Dollars (\$414,418.00) with respect to injuries and/or death of any one person in a single occurrence and an amount not less than at least \$1,000,000 for all claims to property arising out of a single occurrence and at least \$100,000 to any one owner with respect to damages to property. Architect agrees that the proceeds of such insurance policy shall first be used to pay any award, damages, costs, and/or attorney fees incurred by or assessed against City, its employees, officers and agents, before payment of any award, damages, costs or attorneys fees of Architect, its employees, officers or agents. Architect agrees to cause its insurer to name City as an additional insured on such insurance policy, including the City as an additional insured for coverage under its products-completed operations hazard, and said policy shall be primary and noncontributory.

c. Automobile Liability Insurance covering bodily injury and property damage for owned, non-owned and hired vehicles, with limits of at least Two Million Seven Hundred Sixty-Two Thousand Seven Hundred Eighty-Nine and no/100 Dollars (\$2,762,789.00) for all claims arising out of a single accident or occurrence and at least Four Hundred Fourteen Thousand Four Hundred Eighteen and no/100 Dollars (\$414,418.00) with respect to injuries and/or death of any one person in a single accident or occurrence.

d. Errors and Omissions Insurance. The Architect shall maintain a professional liability insurance policy in the amount of \$1,000,000.00 and its terms shall be subject to the approval of the City. This policy shall remain in full force and effect for a period of one year after completion and acceptance by the City of the construction of the project.

e. Subcontracts. In case any or all of this work is sublet, the Architect shall require the subcontractor to procure and maintain all insurance required in subparagraphs (A), (B) and (C) hereof and in like amounts. Contractor shall require any and all subcontractors with whom it enters into a contract to perform work on this project to protect the City of Springfield through insurance against applicable hazards or risks and shall, upon request of the City, provide evidence of such insurance.

f. Notice. The Architect and/or subcontractor shall furnish the City prior to beginning the work, the policy as specified in subparagraph (d), and satisfactory proof of carriage of all the insurance required by this contract, with the provision that policies shall not be canceled, modified or non-renewed without thirty (30) days written notice to the City of Springfield.

g. Legislative or Judicial Changes. In the event the scope or extent of the City's tort liability as a governmental entity as described in Section 537.600 through 537.650 RSMo is broadened or increased during the term of this agreement by legislative or judicial action, the City may require Architect, upon 10 days written notice, to execute a contract addendum whereby the Contractor agrees to provide, at a price not exceeding Contractor's actual increased premium cost, additional liability insurance coverage as the City may require to protect the City from increased tort liability exposure as the result of such legislative or judicial action. Any such additional insurance coverage shall be evidenced by an appropriate certificate of insurance and shall take effect within the time set forth in the addendum.

22. Ownership of Documents. All files and information will be submitted before or upon final approval and acceptance of the contract documents. All documents, including original drawings, calculations, computer runs, field notes, drawings, estimates, specifications, written design criteria and written reports are and remain the property of the Architect until such time as this Agreement is, for any reason, terminated, at which time they become the property of the City. The Architect shall furnish to the City, one set of reproducible record Mylar's of drawings, AutoCAD files and copies of estimates, specifications, written reports, and written design criteria, in consideration of which the City will use them fully in connection with the project and will not sell them.

23. Notices. All notices required or permitted hereinunder and required to be in writing may be given by FAX or by first class mail addressed to City and Architect at the addresses shown above. The date of delivery of any notice given by mail shall be the date falling on the third day after the day of its mailing. The date of delivery of notice by FAX transmission shall be deemed to be the date transmission occurs, except where the transmission is not completed by 5:00 p.m. on a regular business day at the terminal of the receiving party, in which case the date of delivery shall be deemed to fall on the next regular business day for the receiving party.

24. Jurisdiction. This agreement and every question arising hereunder shall be construed or determined according to the laws of the State of Missouri. Should any part of this agreement be litigated, venue shall be proper only in the Circuit Court of Greene County, Missouri.

25. Entire Agreement. This agreement contains the entire agreement of the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto, and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year herein stated.

REVIEWED FOR APPROVAL

Architect:

By: _____

Printed Name: _____

Title: _____

Date: _____

CERTIFICATE OF DIRECTOR OF FINANCE

I certify that the expenditure contemplated by this document is within the purpose of the appropriation to which it is to be charged and that there is an unencumbered balance of appropriated and available funds to pay therefor.

Director of Finance or Acting Director

CITY OF SPRINGFIELD, MISSOURI

By: _____
City Manager or his/her designee

Date: _____

APPROVED AS TO FORM

City Attorney or Assistant City Attorney