

# ***CITY OF FOUNTAIN***

## **ARCHITECTURAL AGREEMENT**

***THIS AGREEMENT*** made and entered into the day and year set forth below, by and between **THE CITY OF FOUNTAIN, COLORADO**, a municipal corporation, hereinafter referred to as the "City" and \_\_\_\_\_, hereinafter referred to as the "Architect"

### **WITNESSETH:**

In consideration of the mutual covenants and obligations herein expressed, it is agreed by and between the parties hereto as follows:

1. **SCOPE OF WORK.** The Architect agrees to provide services and an end product described in "Exhibit A", consisting of \_\_\_\_\_ pages and incorporated herein by this reference, hereinafter the "Work." The Architect shall provide other Work and end products as may be agreed upon in writing from time to time by the parties.
2. **STANDARD OF CARE.** The Architect agrees that the performance of Work pursuant to the requirements of this Agreement shall conform to current architectural standards, and that Architect shall use its best skill and workmanship to provide a product of the quality conforming to the architectural standards.
3. **WORK SCHEDULE.** The work shall be substantially complete within four hundred (400) calendar days from the written Notice to Proceed.
4. **TIME OF COMMENCEMENT AND COMPLETION OF WORK.** The Work to be performed pursuant to this Agreement shall be initiated within ten (10) days following execution of this Agreement. Time is of the essence. Any extensions of the time limit set forth above must be agreed upon in writing by the parties hereto.
5. **EARLY TERMINATION BY CITY.** Notwithstanding the time periods contained herein, the City may terminate this Agreement at any time without cause by providing written notice of termination to the Architect. Such notice shall be delivered at least fifteen (15) days prior to the termination date contained in said notice unless otherwise agreed in writing by the parties.

All notices provided under this Agreement shall be effective when mailed, postage prepaid and sent to the following addresses:

If Architect:

If City:

Michael Fink, P.E.  
Water Resources Engineer  
City of Fountain  
116 S. Main Street  
Fountain, CO 80817

In the event of any such early termination by the City, the Architect shall be paid for Work rendered prior to the date of termination, subject only to the satisfactory performance of the Architect's obligations under this Agreement. Such payment shall be the Architect's sole right and remedy for such termination.

6. **DESIGN, PROJECT, INDEMNITY AND INSURANCE RESPONSIBILITY.** The Architect shall be responsible for the quality, technical accuracy, timely completion and the coordination of all Work rendered by the Architect, including but not limited to designs, plans, reports, specifications, and drawings and shall, without additional compensation, promptly remedy and correct any errors, omissions, or other deficiencies. The Architect shall indemnify, save and hold harmless the City, its officers and employees in accordance with Colorado law, from all damages whatsoever claimed by third parties against the City; and for the City's costs and reasonable attorneys fees, arising directly or indirectly out of the Architect's performance of any of the Work furnished under this Agreement. The Architect shall maintain insurance in the kinds and amounts set forth in "Exhibit B".
7. **COMPENSATION.** In consideration of the Work to be performed pursuant to this Agreement, the City agrees to pay Architect the fees set forth in "Exhibit A" plus reimbursable direct costs. Monthly partial payments based upon the Architect's billings and itemized statements are permissible. Architect shall use billing rates as specified in "Exhibit A". The Architect shall bill its charges to the City periodically, but no more frequently than once each month. The itemized invoices from the Architect shall include:
  - a. A statement of the percentage completion of the Work accomplished during the billing period, with supporting documentation acceptable to the City; and
  - b. An itemized list of reimbursable expenses and, where applicable, copies of invoices for outside work or materials.

The amounts of all such partial payments shall be based upon the Architect's City-verified progress in completing the Work to be performed pursuant hereto and upon the City's approval of the Architect's actual reimbursable expenses. The City shall make final payment following acceptance of the Work. Upon final payment, all designs, plans, reports, specifications, drawings, and other Work rendered by the Architect shall become the sole property of the City.

8. **CITY REPRESENTATIVE.** The City designates Michael Fink, Water Resources Engineer its project representative who shall make, within the scope of his authority, all necessary and proper decisions with reference to the project. All requests for contract interpretations, change orders, and other clarification or instruction shall be directed to the City Representative.
9. **ARCHITECT REPRESENTATIVE.** The Architect designates \_\_\_\_\_ as Project Manager, as its project director to manage and supervise the performance of this Agreement on behalf of the Architect. Associated with the project manager shall be staff members whose experience and qualifications are appropriate for this project.
10. **PROJECT DOCUMENTS.** Upon conclusion of the project and before final payment, the Architect shall provide to the City one (1) hard copy and one (1) electronic copy of the Project Documents. Upon final payment, all Project notes, reports, computer programs (non-proprietary), computer input and output, analyses, tests, maps, surveys, or any other final Project products developed specifically for the Project are and shall remain the sole and exclusive property of the City. The Architect shall not provide copies of any material prepared hereunder to any other party without the prior written consent of the City.
11. **PROGRESS REPORT.** Architect shall provide monthly progress reports and progress meetings. Failure to provide any required monthly report or conduct the required progress meetings may, at the option of the City, suspend the processing of any partial payment request.
12. **INDEPENDENT CONTRACTOR.** The Work to be performed by Architect is that of an independent contractor and not of an employee of the City of Fountain. The City shall not be responsible for withholding any portion of Architect's compensation hereunder for the payment of FICA, Workers' Compensation, other taxes or benefits or for any other purpose.
13. **INSPECTION.** The City, through its authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed under this Agreement.
14. **CHANGES.** The City may, from time to time, require changes in the scope of the work to be performed hereunder. In the event such changes cause an increase or

decrease in the work to be performed by the Architect or the time for such performance, the compensation to be paid to the Architect and time of performance shall be equitably adjusted.

- a. In giving instructions, the Project Manager shall have authority to make changes in the Project, which are not inconsistent with the purpose of the Project, but otherwise, except in an emergency endangering life or property, no extra work or change shall be made unless pursuant to a written order by the Project Manager and no claim for an addition to the Contract sum shall be valid unless so ordered.
- b. The value of any such extra work or change shall be determined in one or more of the following ways: (1) extra work lump sum; (2) time and materials; or (3) according to established hourly billing rate upon the agreement of the parties.

15. **DELAYS AND EXTENSION OF TIME.** If the Architect is delayed at any time in the progress of the Project by any act or neglect of the City or of its employees or by any other contractor employed by the City, or by changes ordered in the Project, or by strikes, lockouts, fire, unusual delay in transportation, unavoidable casualties, causes beyond the Architect's control, or by any cause which the Project Manager decides shall justify the delay, then the time of the completion of the Project shall be extended for such reasonable time as the Project Manager may decide.

No such Extension of time shall be made retroactive of the date a delay has been established by the Project Manager. In the case of continuing cause of delay, only one claim is necessary for Extension of Time.

16. **SUSPENSION.** Without terminating this Agreement or breaching the obligations hereunder, the City may, at its pleasure, suspend the Work of the Architect hereunder. Such suspension may be accomplished by giving the Architect written notice, which shall set forth the reasons for the suspension, seven (7) days in advance of the suspension date. Upon receipt of such notice, the Architect shall cease its work in as efficient a manner as possible in order to keep its total charges to the City for Work under the Agreement to a minimum. In the event that the period of suspension exceeds ninety- (90) days, the terms of the Agreement shall be subject to renegotiation, and either party may terminate the Project on the suspended portion of the Project.

17. **PERSONAL WORK.** It is understood that the City enters into this Agreement based on the special abilities of the Architect and that this Agreement shall be considered as an Agreement for personal Work. Accordingly, the Architect shall neither assign any responsibilities nor delegate any duties arising under this Agreement without the prior written consent of the City.

18. **ACCEPTANCE NOT WAIVER.** The City's approval of drawings, designs, plans, specifications, reports, and incidental work or materials furnished hereunder shall not in any way relieve the Architect of responsibility for the quality or technical accuracy of the Work. The City's approval or acceptance of, or payment for, any of the Work shall not be construed to operate as a waiver of any rights or benefits provided to the City under this Agreement.
19. **DEFAULT.** Each and every term and condition hereof shall be deemed to be a material element of this Agreement. In the event either party should fail or refuse to perform according to the terms of this Agreement, such party may be declared in default.
20. **REMEDIES.** In the event a party has been declared in default, such defaulting party shall be allowed a period of ten (10) days within which to cure said default. In the event the default remains uncorrected, the party declaring default may elect to (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity. If the non-defaulting party commences legal or equitable actions against the defaulting party, the defaulting party shall be liable to the non-defaulting party for the non-defaulting party's reasonable attorney fees and costs incurred because of the default; provided that payment of attorney's fees by the City Council is subject to appropriation of funds by the City Council for payment of such attorney's fees.
21. **BINDING EFFECT.** This writing, together with the exhibits hereto, constitutes the entire Agreement between the parties and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.
22. **APPROPRIATION OF FUNDS BY THE CITY COUNCIL.** Payment by the City under the provisions of this Agreement after calendar year 2016 is subject to appropriation of funds by the City Council.
23. **LAW/SEVERABILITY.** The laws of the State of Colorado, Charter and ordinances of the City of Fountain, and the Fountain Municipal Code shall govern the construction, interpretation, execution and enforcement of this Agreement. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement.

THE CITY OF FOUNTAIN, COLORADO

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

ARCHITECT

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

DRAFT