

St. Louis City Ordinance 63986

FLOOR SUBSTITUTE

BOARD BILL NO. [96] 335

INTRODUCED BY ALDERMEN PAUL M. BECKERLE , FRANCIS SLAY ,
MARTIE J. ABOUSSIE , NANCY WEBER , FREEMAN BOSLEY, SR., , DANIEL
GRUEN , STEPHEN GREGALI , MARGARET VINING , BENNICE JONES-KING
, JAMES SONDERMAN , GREGORY CARTER , MARY ROSS

WHEREAS, Ordinance 19969, approved March 13, 1900, authorized the erection of a city owned building in Forest Park which, "together with the site upon which it is located, shall be devoted to the use of this institution forever for the exhibition of pictures and sculpture and such other means as are usual in such institution for the education of the public in art..."; and

WHEREAS, in 1904 a building for these purposes was erected by the Louisiana Purchase Exposition Company on Art Hill in Forest Park and eventually presented to the City by said Exposition Company; and WHEREAS, under authority of the Act of the General Assembly of the State of Missouri approved March 7, 1907 (Laws of Missouri 1907, p.94), the voters of the City of St. Louis at an election on April 2, 1907 approved a "mill-tax" for the establishment, maintenance or extension of a Museum of Art; pursuant to Ordinance 22903, approved March 19, 1907, the mayor appointed an administrative board of the Art Museum; and Ordinance 26430, approved May 25, 1912, abolished the previous board of control of the City Art Museum established by Ordinance 24195, approved February 23, 1908 as amended by Ordinance 24524, approved July 6, 1909 and directed said board of control to transfer and deliver property in its possession or under its control belonging to the City to the thereby established City Art Museum administrative board; and

WHEREAS, until January 1, 1972 the City Art Museum facilities in Forest Park were: operated by said administrative board of control pursuant to then Sections 184.020 et seq. of the Revised Statutes of Missouri; expanded, remodeled, repaired and improved by the sale of bonds by the City of St. Louis; and tax supported only by property owners of the City of St. Louis; and

WHEREAS, Section 184.360.2 of the Revised Statutes of Missouri, states that all buildings, property and facilities of the existing publicly owned and operated art museum shall become the property of and vest in the Art Museum Subdistrict of the Metropolitan Zoological Park and Museum District of the

City of St. Louis and County of St. Louis (the "Art Museum Subdistrict") on the date of its establishment; and

WHEREAS, the Art Museum Subdistrict is the successor to the administrative board of control having been duly constituted as of January 1, 1972, pursuant to votes of the qualified voters of the City of St. Louis and County of St. Louis at an election April 6, 1971, and pursuant to Section 184.350 of the Revised Statutes of Missouri; and

WHEREAS, on May 15, 1984, the City's Board of Public Service issued Permit No. 93000 granting the Art Museum Subdistrict permission to expand its basement into the underground area west of the then existing Art Museum; and

WHEREAS, the Art Museum Subdistrict has improved the Art Museum facilities in Forest Park; and

WHEREAS, the Art Museum Subdistrict desires to improve further its existing buildings and facilities and to expand and make improvements upon the property adjacent to its existing facilities as an integral part of the operations of the Art Museum Subdistrict; and

WHEREAS, the City's Forest Park Master Plan adopted by the Community Development Commission on December 5, 1995, as amended (the "Master Plan") states that the Art Museum is highly valued and should remain in Forest Park, and contemplates expansion of the Art Museum on up to four acres on Art Hill and recommends numerous improvements in Forest Park, including improvements in the area of Art Museum; and

WHEREAS, this Ordinance has been recommended by the Board of Estimate and Apportionment and by the Board of Public Service; and

WHEREAS, the Board of Aldermen finds that it is in the best interest of the City of St. Louis to authorize and direct the Mayor and the Comptroller to execute and enter into a lease to the Art Museum Subdistrict of 4.0 acres of land more or less adjacent to the Existing Art Museum in Forest Park, all as hereinafter provided;

BE IT ORDAINED BY THE CITY OF ST. LOUIS AS FOLLOWS:

SECTION ONE. The Mayor and the Comptroller of the City of St. Louis shall be and hereby are authorized and directed to enter into that certain Lease attached hereto as Exhibit 1, incorporated herein and made a part of this ordinance by this reference, by and between the City, as lessor, and the Art

Museum Subdistrict of the Metropolitan Zoological Park and Museum District of the City of St. Louis and County of St. Louis, as lessee, of 4.0 acres of land, more or less, in Forest Park, as described in such Lease, for purposes as set forth in such Lease.

SECTION TWO. All rental payments under Section 3 of said Lease shall be held by the Comptroller of the City of St. Louis in an account for the use and benefit of the Department of Parks, Recreation and Forestry of the City of St. Louis as provided in the Lease.

SECTION THREE. The design, installation and performance of the Public Works, as described and provided for in Section 15 of the Lease, to wit: (a) to implement a portion of the Master Plan and increase public safety, redesign and reconstruct the intersection of Government Drive with Fine Arts Drive as a 90 degree "T" junction with improved sightlines and a pedestrian and bike path crossing; (b) in the area between the intersection of Government Drive and Fine Arts Drive and Fine Arts Drive at the western edge of the Leased Premises, install sidewalks, lighting and curbing per the Master Plan, and repair and replace as necessary: (i) all sidewalks and curbing; and (ii) drains and drain covers; (c) restore the Statue of St. Louis; and (d) replace and improve tree plantings to the west of the Existing Museum on the north side of Fine Arts Drive per the Master Plan, are hereby authorized. The cost estimated by the Board of Public Service as \$499,344 shall be paid out of the payment to be made by the Art Museum Subdistrict pursuant to Section 15 of the Lease and from the funds on deposit in the hereinafter created Art Museum Subdistrict Public Works Account. Such work shall be done using materials specified by the Board of Public Service, and in accordance with detailed plans and specifications finally adopted and approved by the Board of Public Service before bids are advertised therefor.

SECTION FOUR. An Art Museum Subdistrict Public Works Account is hereby established in the Special Park Fund established by Ordinance 51336 and referred to as the Forest Park Fund by Ordinance 61988 and the funds paid by the Art Museum Subdistrict pursuant to Section 15 of said Lease shall be deposited therein.

SECTION FIVE. This being an ordinance providing in part for public works and improvements, it is hereby declared to be an emergency measure pursuant to Article IV Sections 19 and 20 of the Charter of the City of St. Louis, and shall take effect immediately upon approval by the Mayor or its adoption over his disapproval.

EXHIBIT 1
B.B. 335 (F.S.)
1/24/97

LEASE AGREEMENT
CITY OF ST. LOUIS, MISSOURI
TO
ART MUSEUM SUBDISTRICT OF THE
METROPOLITAN ZOOLOGICAL PARK AND MUSEUM DISTRICT
OF THE CITY OF ST. LOUIS AND COUNTY OF ST. LOUIS

This Lease ("this Lease"), made and entered into this _____ day of _____, 1997 (the "Date of this Lease") between the City of St. Louis, Missouri (the "City") and the Art Museum Subdistrict of the Metropolitan Zoological Park and Museum District of the City of St. Louis and County of St. Louis (the "Subdistrict") witnesses that:

WHEREAS, the Subdistrict operates an Art Museum building and facilities located on the property described on Exhibit A attached hereto and incorporated herein by reference (the "Existing Art Museum"); and

WHEREAS, the Mayor and Comptroller of the City, acting for and on behalf of the City pursuant to the City Charter and Ordinance _____ (B.B. 335) have been authorized and directed to lease to the Subdistrict 4.0 acres, more or less, of land situated in Forest Park described in Exhibit B and depicted in Exhibit C hereto, subject to and in accordance with the terms, covenants and conditions set forth in this Lease; and

WHEREAS, this Lease has been reviewed and favorably recommended in writing by the Board of Public Service, and approved by the City Counselor as to form and as being, except as otherwise expressly noted herein, in all respects consistent with Ordinance 59741, which is codified as Chapter 22.42 of the Revised Code of the City of St. Louis, 1994, Annotated (the "Code") prior to the adoption of Ordinance _____ (B.B.#335); and

WHEREAS, except as otherwise expressly noted herein, this Lease complies with all of the terms and conditions required by Ordinance 59741 and all

procedures specified by said ordinance have been followed with respect to this Lease; and

WHEREAS, pursuant to Sections 24.04.030 G and 24.04.050 of the Code, the City's Heritage and Urban Design Code is inapplicable to property owned or controlled by the administrative board of control to which the Subdistrict is the successor;

NOW, THEREFORE, in consideration of the premises and of the mutual promises, undertakings and agreements hereinafter set forth, the City and the Subdistrict hereby agree as follows:

1. LEASED PREMISES. The City hereby leases to the Subdistrict and the Subdistrict hereby leases from the City, subject to all the provisions of this Lease, those certain tracts of land (the "Leased Premises") described in Exhibit B and depicted on Exhibit C hereto, which are incorporated herein by this reference, which Leased Premises are adjacent to and abut the Existing Art Museum. The Leased Premises are subject to easements, rights of way, restrictions or covenants of record, if any, and existing rights of way for sewers, pipelines, conduits and utilities. The Subdistrict pledges to cooperate with third parties which provide utility service to the Leased Premises in the repair and reconstruction of existing utility conduits running through the Leased Premises. The Subdistrict acknowledges that it is taking the Leased Premises in its current, "as is", condition.

2. TERM. The initial term of this Lease shall be fifty (50) years from the Date of this Lease. Section 5.d. of Ordinance 59741 to the contrary notwithstanding, at the end of the initial term, (a) this Lease shall automatically be renewed, for one additional renewal term of fifty (50) years at the option of the Subdistrict, upon the same terms and conditions hereof, and (b) thereafter this Lease may be automatically renewed for an unlimited number of successive renewal terms of fifty (50) years each, upon the same terms and conditions hereof, unless (i) the Subdistrict shall give written notice to the City at least ten (10) years prior to the expiration of such renewal term of its election not to renew the term of this Lease, or (ii) the City shall give notice to the Subdistrict at least ten (10) years prior to the expiration of such renewal term of its election not to renew the term of this Lease; provided, that the election by the City to terminate this Lease may be effected only by an ordinance which has first been recommended for passage and referred to the Board of Aldermen by the City's Board of Estimate and Apportionment. Notwithstanding Ordinance 59741, the City and the Subdistrict acknowledge that the Subdistrict will be expending funds and constructing improvements on the Leased Premises, and such expenditures and

construction shall create a basis and consideration for expecting the Lease to be renewed.

3. RENT. As and for rent throughout the initial term and any renewal term hereof, the Subdistrict shall pay upon demand to the City rent in the amount of One Dollar (\$1.00) per year; the receipt of such payment for the entire initial term hereof is hereby acknowledged by the City. Such rent shall be paid to the City's Comptroller to be held in a special fund for the account of the City's Department of Parks, Recreation and Forestry, to wit, the Special Park Fund established by Ordinance 51336 and referred to as the Forest Park Fund by Ordinance 61988.

4. FOREST PARK IMPROVEMENTS.

(a) The Subdistrict agrees to make during the term of this Lease certain improvements to Forest Park (the "Forest Park Improvements"), collectively having a cost of \$7,000,000, less the cost of the public works which are the subject of Section 15 of this Lease and Section 3 of Ordinance _____ (B.B.# 335) (the "Public Works"). The Forest Park Improvements shall consist of the "Phase I Forest Park Improvements" and the "Phase II Forest Park Improvements".

(b) Both the Phase I and the Phase II Forest Park Improvements are intended not to be inconsistent with the City's Forest Park Master Plan approved by the Community Development Commission on December 5, 1995, as amended (the "Master Plan"). The Forest Park Improvements shall consist of (i) improvements listed on Exhibit E hereto, which is incorporated herein by this reference, and/or (ii) other improvements jointly agreed to by the Subdistrict and the Director of Parks, Recreation and Forestry and approved by the Board of Aldermen by resolution.

(c) The Phase I Forest Park Improvements shall have a cost of \$3,500,000, less the cost of the Public Works described in Section 15 of this Lease and Section 3 of Ordinance _____ (B.B.#335), and the Phase I Forest Park Improvements shall be substantially completed by December 31, 2004.

(d) The Phase II Forest Park Improvements shall have a cost of \$3,500,000 and shall be substantially completed by December 31, 2011; provided, that in the event prior to December 31, 2004, the City has expended funds, which when added to funds on hand or pledged to complete projects implementing the Master Plan, aggregate \$79 Million, then the Subdistrict shall use its best

efforts to accelerate completion of the Phase II Forest Park Improvements to coincide with the date which is the latest of:

(i) December 31, 2004;

(ii) when the balance of the projects for the Master Plan will be completed by the City; or

(iii) four years after the delivery of the notice described in the next sentence. The City shall provide the Subdistrict written notice of the estimated date of the completion of the projects for the Master Plan.

(e) The cost of the Forest Park Improvements shall include the following components, as may be applicable, which are attributable to the Forest Park Improvements: general requirements, building permit fees, demolition and removals, earthwork, paving and striping, curbs, drainage structures and tie-ins, landscape, irrigation, planters, electrical and lighting, traffic signalization, architectural, design, engineering, planning, professionals and construction fees, labor, materials, supplies, equipment, reasonable related administrative costs (including, but not limited to, bond and insurance premiums), reasonable related overhead, actual out-of-pocket costs which are a material component of the improvements and contingency. The Subdistrict shall provide to the City the information reasonably necessary to determine the cost of the Forest Park Improvements.

(f) The Forest Park Improvements shall be installed pursuant to plans and specifications approved or provided by the City's Board of Public Service. The design of the Forest Park Improvements will be the subject of a review process as provided with respect to "Privately Funded Projects" by the Master Plan as indicated on Exhibit F hereto, which is incorporated herein by this reference. All necessary building, excavation, electrical and mechanical permits required by law or ordinance will be obtained by the Subdistrict or its contractors in the normal course. Prior to the commencement of installation and construction of any Forest Park Improvement, the Subdistrict will obtain and maintain in force during installation and construction, insurance in amounts specified by the Board of Public Service and payment and performance bonds on which the City will be an additional obligee, for the full amount of each contract let to perform such improvements.

(g) Upon completion of each improvement, the Subdistrict will advise the Director of Parks, Recreation and Forestry and ask the Director to request the Board of Public Service to accept the improvement on behalf of the City and

such request shall promptly be granted if such improvement is completed substantially in accordance with the plans and specifications approved pursuant to Section 4(f) hereof. The completion by the Subdistrict and acceptance by the City of each item of Forest Park Improvements shall be reported by the Subdistrict in its subsequent report required by Section 18 hereof.

(h) Upon acceptance by the City from the Subdistrict of each item of Forest Park Improvements, the City thereafter shall be solely responsible for all costs of same, including but not limited to, the costs of maintenance, repair, operation and all other expenses associated with such item of Forest Park Improvements and the Subdistrict shall have no interest of any kind therein.

(i) The time periods provided for commencement or completion of the Forest Park Improvements, or for any other performance obligations under this Lease, shall be extended for delays beyond the Subdistrict's reasonable control. For example, the Subdistrict shall not be responsible for any delays caused by legal authority, strikes, lockouts, labor disputes, riots, weather conditions, fire or other casualties, tornadoes, cyclones, floods, acts of God, war, invasion or acts of a public enemy, accidents, government restrictions or priorities regarding acquisition or use of material, unanticipated or unusual site conditions, failure or delay in obtaining necessary permits of any governmental or quasi-governmental agency following application therefor, litigation challenging any right of the Subdistrict, its successors or assigns with respect to a Forest Park Improvement or this Lease, or other inability upon the part of the Subdistrict to obtain materials or labor, or inability to perform not growing out of its own fault, or for delays caused by the City, state or federal government. The Subdistrict shall give the Board of Public Service notice of the cause of the delay and a reasonable estimate of the amount of such delay. In addition to the above, the Board of Aldermen shall upon the application by the Subdistrict to such Board, have the authority by resolution, to extend the time limits for commencement or completion of any portion of the Forest Park Improvements or other performance obligations of the Subdistrict to a time certain, upon finding that:

(i) Subdistrict, its successors or assigns have exercised reasonable care to insure commencement or completion of the matter in question, or

(ii) The delay in commencing or completing performance was not caused by an unreasonable act or failure to act on the part of the Subdistrict, its successors or assigns.

(j) Representatives of the Subdistrict and the City shall meet on an annual basis to discuss the status of planning and work on the Forest Park Improvements and any current Subdistrict issues. The City shall give the Subdistrict thirty (30) days written notice of the time and date for such meeting.

(k) Upon completion of all the Phase I and Phase II Forest Park Improvements respectively, the Subdistrict shall give written notice to the City. The Director of Parks, Recreation and Forestry (or his designee) shall review the Subdistrict's written records to determine whether the amount of improvements required in each Phase have been completed, and if same have been, the Director shall issue a certificate of completion to the Subdistrict and file a copy thereof with the Secretary of the Board of Public Service. The certification of completion of Phase I and Phase II Forest Park Improvements shall be reported by the Subdistrict in its subsequent report required by Section 18 hereof.

5. USE. The Leased Premises shall be held and maintained by the Subdistrict: (a) for the use and benefit of the citizens of the Subdistrict and the public generally for Subdistrict purposes, as provided in Section 184.352 (1) R.S.Mo.; or (b) for the purposes of collection and exhibition of pictures, statuary and other works of art and whatever else may be of artistic interest and appropriate for exhibition in an art gallery or museum for instruction in art and in general for the promotion by all proper means of aesthetic or artistic education, whichever is more restrictive, as well as, parking (subject to the limitations as hereinafter provided), bookstore, gift shop, concession, restaurant, food service, theater, auditorium or other facilities and activities ancillary thereto.

6. OPERATION OF LEASED PREMISES.

(a) Any structure, work of art, fence, fixture or facility constructed, erected or renovated on the Leased Premises pursuant to this Lease shall be and remain the property of the Subdistrict. Upon removal by the Subdistrict of any structure, work of art, fence, fixture, roadway or facility constructed, erected or renovated on the Leased Premises pursuant to this Lease, the surface of the Leased Premises shall be restored to a condition suitable for park purposes at the sole cost and expense of the Subdistrict, pursuant to specifications approved by the City's Board of Public Service in writing, such approval not to be unreasonably withheld.

(b) The Subdistrict at any time during the term of this Lease shall have the right to locate or erect works of art upon the Leased Premises. In addition, and notwithstanding any provisions of the Master Plan, Ordinance 59741, Ordinance 63769 and any other ordinances, resolutions or policies of the City

relating thereto to the contrary, the Subdistrict shall be entitled and is expressly authorized to construct upon the Leased Premises additions to the Existing Art Museum, or construct other structures, buildings or improvements upon the Leased Premises, in accordance with the provisions of this Section 6. Site planning, building and construction design, and land use for the Leased Premises (subject to the use limitations set forth in Section 5 of this Lease), shall be determined solely by the Subdistrict pursuant to its own planning process, which shall be reviewed and commented on by an eight (8)-member advisory committee which shall be comprised of a licensed Missouri architect appointed by the Director of Parks, Recreation and Forestry, a licensed Missouri architect appointed by the Alderman in whose ward the Leased Premises is located, the Dean of the School of Architecture of Washington University (or if he is unable or unwilling to serve, then a licensed Missouri architect appointed by the Mayor of the City of St. Louis), four (4) members appointed by the Subdistrict who have experience or expertise in the areas of art, architecture, urban design, landscaping, engineering, building construction and/or museums, and the then president of the Subdistrict, who shall serve as the chairman of the advisory committee. The Subdistrict's plans for site planning, building and construction design, and land use on the Leased Premises shall be subject to review only by the Forest Park Advisory Board, the Heritage and Urban Design Commission and shall be subject to approval of the Board of Public Service, for compliance with the following design limitations from the Master Plan, which shall be the sole design review requirements:

- (i) the total area of all buildings or structures on the Leased Premises may not exceed a maximum site coverage ratio of 72% of the land area within the Leased Premises;
- (ii) the maximum height of any buildings or structures constructed on the Leased Premises may not exceed the upper height of the now existing cornices of the main Cass Gilbert building that is part of the Existing Art Museum;
- (iii) expansion of "built area" (buildings, roads, sidewalks, etc.) may not exceed a maximum site coverage ratio of 85% of the Leased Premises;
- (iv) construction of up to a maximum of 575 underground parking spaces beneath any new building or buildings;
- (v) provision of bike parking to serve bike path users; and
- (vi) no expansion of the net amount of paved surface parking area located on the Leased Premises and the Existing Art Museum. So long as the proposed

construction complies with the design limitations set forth in (i)-(iv) and (vi) in the prior sentence, such construction shall be exempt from the application of the single family zoning code limitations which are currently applicable to the Leased Premises. Subdistrict shall submit construction plans for any such building or structure to the building code plan review officials of the City for a determination of whether such buildings or structures comply with the applicable provisions of the building codes then in effect generally within the City at the time of the submission of such construction plans, and building permits for any such structure or building meeting the building code requirements shall be issued by the appropriate City building officials upon such determination.

(c) City and Subdistrict acknowledge and agree that the Subdistrict's property, including any additions, structures or improvements on the Leased Premises, for the term of this Lease, shall not be subject to the review or other requirements of the City's Heritage and Urban Design Code, and that the design criteria stated in Section 6(b) hereof, notwithstanding any provision or recommendation of the Master Plan, Ordinance 59741, Ordinance 63769 and any other ordinances, restrictions or policies of the City relating thereto, shall govern the design and construction of all additions, structures or improvements of the Subdistrict on the Leased Premises, to the exclusion of any other design or review standards or procedures of the City, now existing or hereafter adopted by the City.

(d) The Subdistrict is also expressly authorized to demolish the Art Museum's western underground basement expansion which is the subject of Board of Public Service Permit Number 93000 (the "Permit") and located in the area described in Exhibit A attached hereto and incorporated herein by this reference (the "Permit Area"). In the event the Permit is surrendered by the Subdistrict, the Permit Area shall immediately be added to the description of the Leased Premises and thereafter such area shall become part of the Leased Premises and subject to all of the terms and conditions of this Lease.

7. INDEMNIFICATION. The Subdistrict shall indemnify and hold harmless the City, and all its departments, boards, officers, agents, and employees from all suits, actions, loss, expense, or claims of any kind whatsoever, including attorneys' fees or expenses, arising out of or relating in any way to the execution, performance, or non-performance of this Lease or the operation, use or occupancy of the Leased Premises, whether or not covered by insurance. The Subdistrict shall, at the City's option, defend the City, at the Subdistrict's sole expense, against any such claim, suit or action. This provision shall not apply, however, to any such liability as may be the result of the negligence or willful

misconduct of the City or the City's employees or agents acting within the scope of their employment or agency.

8. **REPAIRS, MAINTENANCE AND EXPENSES.** All costs and expenses of any kind whatever of operating and maintaining or which are related to the Leased Premises shall be borne by the Subdistrict, including, but not limited to the costs and expenses of the maintenance of all grass, trees, shrubbery and other landscaping from time to time on the Leased Premises. All buildings, structures, works of art, fences, fixtures, parking and other facilities of Subdistrict and all other improvements of Subdistrict erected within the Leased Premises pursuant to this Lease shall be properly maintained and kept in good repair by and at the sole cost and expense of the Subdistrict.

9. **EXPENSES.** Charges for all utilities, including but not limited to, water, electricity, telephone, power, heat, refrigeration, sewage and waste disposal within the Leased Premises shall be paid at the sole cost and expense of the Subdistrict.

10. **NONDISCRIMINATION.** The Subdistrict agrees that in the use of the Leased Premises, it will not exclude or discriminate against any person solely because of race, color or creed, gender or sexual orientation, or for any reason not sanctioned by law and not applicable alike to persons generally in the use of said Leased Premises.

11. **LICENSES AND PERMITS.** The Subdistrict will secure and keep in force all licenses and permits required for its use of the Leased Premises. Except as otherwise specifically provided in this Lease, nothing in this Lease shall be construed to exempt the Subdistrict from the provisions of any City ordinance of general applicability.

12. **COMMERCIAL ADVERTISEMENTS.** No exterior commercial advertisements on the Leased Premises not related to sponsorship of Subdistrict exhibits or Subdistrict-related events shall be visible to the public from outside the Leased Premises.

13. **INSPECTION.** From time to time during the term of this Lease, authorized personnel of the City shall, at reasonable hours, with reasonable advance notice to the Subdistrict, and subject to and in compliance with all Subdistrict's security procedures, be permitted to enter upon and inspect the Leased Premises in order to ascertain that the Leased Premises are being properly maintained and kept in repair and good order by the Subdistrict.

14. INSURANCE.

(a) The Subdistrict shall at its sole cost, procure and maintain on file with the City's Comptroller at all times during the initial term and any renewal term of this Lease certificates or other evidence of insurance as specified in Section 14(b) hereof. The policies described in Section 14(b)(i) shall name "The City of St. Louis and its officers, agents, and employees" as additional insureds, and shall be issued by financially sound insurers approved by the City's Comptroller, such approval not to be unreasonably withheld; provided such insurer shall be deemed acceptable to the City's Comptroller if issued by any company rated "B" or better by Bests Rating Service or any equivalent rating by any successor insurance rating service.

(b) (i) Comprehensive Liability Insurance (to include premises, operations, products, and completed operations and personal and bodily injury including death), shall be provided in the initial minimum amounts specified below:

	Each Occurrence Aggregate	
Bodily Injury	\$1,000,000	\$1,000,000
Umbrella Coverage	\$10,000,000	

(ii) Worker's compensation insurance as required by law.

(c) Prior to cancellation of any insurance policy, the City shall be given thirty (30) days written notice.

(d) From time to time, but not more frequently than once every five (5) years, the levels or nature of insurance required to be maintained by the Subdistrict under Section 14(b)(i) shall be reviewed upon the written request of the City's Comptroller or the Subdistrict to determine whether such levels or nature of coverage are consistent with those maintained by other parties engaged in similar activities in similar locations, and the levels of required coverage shall be reasonably adjusted.

(e) The Subdistrict may, with the prior written consent of the City's Comptroller, engage in a self insurance program to cover the risks described in this Section 14 which is based on actuarial reports, provided that the Subdistrict shall provide the City written evidence from an independent insurance consultant that such self insurance program is consistent with those maintained by similar businesses which are similarly situated to the Subdistrict.

(f) The Subdistrict shall not be in default under this Lease for failure to maintain the insurance described in Section 14(b)(i) to the extent and during the period such insurance is not commercially available, provided that the Subdistrict shall provide the City written evidence from an independent insurance consultant that such insurance is not reasonably available and that similar businesses which are similarly situated to the Subdistrict are also unable to maintain similar insurance due to commercial unavailability, provided further the Subdistrict shall promptly establish a self insurance program pursuant to Section 14(e) of this Lease.

(g) The Subdistrict shall obtain and maintain payment and performance bonds as and to the extent required by Section 107.170 of the Revised Statutes of Missouri, as amended, for construction projects. The Subdistrict shall name the City as an additional obligee on such bonds to the extent of the City's financial and insurable interest.

15. PUBLIC WORKS. The Subdistrict shall pay to the City on or before fifteen (15) days after the execution of this Lease, the sum of \$499,344 which the City will deposit in the Art Museum Subdistrict Public Works Account established in Section Four of Ordinance _____ (B.B. 335) and will utilize the amounts on deposit in such account solely for the design, installation and performance of certain Public Works in Forest Park which are contemplated by and/or consistent with the Master Plan and related to the Leased Premises, to wit:

(a) to implement a portion of the Master Plan and increase public safety, redesign and reconstruct the intersection of Government Drive with Fine Arts Drive as a 90 degree "T" junction with improved sightlines and a pedestrian and bike path crossing;

(b) in the area between the intersection of Government Drive and Fine Arts Drive and Fine Arts Drive at the western edge of the Leased Premises, install sidewalks, lighting and curbing per the Master Plan, and repair and replace as necessary: (i) all sidewalks and curbing; and (ii) drains and drain covers;

(c) restore the Statue of St. Louis; and

(d) replace and improve tree plantings to the west of the Existing Museum on the north side of Fine Arts Drive per the Master Plan, are hereby authorized. Such work shall be done using materials specified by the Board of Public Service, and in accordance with detailed plans and specifications finally adopted and approved by the Board of Public Service before bids are advertised

therefor. The Board of Public Service shall cause the Public Works to be performed in accordance with its customary procedures.

16. **MINORITY PARTICIPATION.** As specified in Exhibit D hereto, which is incorporated herein by this reference, the Subdistrict agrees to maximum utilization of minority business enterprises in construction on the Leased Premises. The Subdistrict agrees to conform to all applicable federal, state and local equal opportunity laws. The Subdistrict agrees to designate one of its employees as a Minority Participation Administrator, and to notify the City of the name, business address and telephone number of such administrator. During periods of major construction on the Leased Premises the Subdistrict shall report monthly to the City's contract compliance officer the level of MBE and WBE participation in such construction projects. Such reports shall identify the MBE and WBE participants and set forth the amounts paid to such participants and the total project cost.

17. **REPRESENTATIONS.**

(a) The Subdistrict represents and warrants to the City that the Subdistrict's execution, delivery and performance of this Lease, including but limited to use of Subdistrict tax revenues to fund any and all of the financial obligations and agreements of the Subdistrict under this Lease, will not conflict with or violate any constitutional provision, statute, rule, order or regulation of any governmental body applicable to the Subdistrict and will not conflict with or violate any bylaw or rule however denominated of any government or governmental agency applicable to the Subdistrict. The Subdistrict represents and warrants that the execution and delivery of this Lease has been duly authorized by the Subdistrict's Board of Commissioners and that no further authorizations or approvals of the Subdistrict or of any third party or agency are needed or will be needed with respect to the performance by the Subdistrict of any of its obligations or agreements under the Lease throughout the term of this Lease (except for such routine and customary authorizations, permits or approvals as are described in this Lease).

(b) The City represents and warrants to the Subdistrict that the City's execution, delivery and performance of this Lease, will not conflict with or violate any constitutional provision, statute, rule, order or regulation applicable to the City and will not conflict with or violate the Charter of the City of St. Louis. The City represents and warrants that the execution and delivery of this Lease has been duly authorized by the City's Board of Aldermen and that no further authorizations or approvals of the City or of any third party or agency or governmental body are needed or will be needed with respect to the

performance by the City of any of its obligations or agreements under the Lease throughout the term of this Lease (except for such routine and customary authorizations, permits and approvals as are necessary in connection with the Public Works).

18. ANNUAL REPORT. Notwithstanding Ordinance 59741, the Subdistrict shall submit to the City's Director of Parks, Recreation and Forestry and the Forest Park Advisory Board its written bi-annual reports for its prior fiscal years on or before March 31 of every other year describing in detail the activities and operations of the Subdistrict and an update of its current long-range plans.

19. DEFAULT, TERMINATION AND REMEDIES. Notwithstanding Section 5.d. of Ordinance 59741 to the contrary:

(a) The following conditions will, upon expiration of any cure period set forth in Section 19(b), constitute a breach of this Lease:

(i) failure of the Subdistrict to make lease payments or failure of the Subdistrict to maintain the insurance required in Section 14 of this Lease; or

(ii) if the Subdistrict attempts to assign, sublease or otherwise transfer its rights, interests or obligations without prior ordinance approval from the City's Board of Aldermen; provided no such approval shall be required for any assignment, sublease or transfer in connection with any financing of the Subdistrict which is subordinate to this Lease; provided, further, that no such approval shall be required for assignment, transfer or sublease by the Subdistrict to any successor in interest to the rights and the current statutory functions and obligations of the Subdistrict; or

(iii) any violation by the Subdistrict of the use limitations set forth in Section 5 hereof; or

(iv) failure of the Subdistrict to commence and complete the Forest Park Phase I and Phase II Improvements as required in Section 4 hereto; or

(v) failure of the Subdistrict to pay the sum of \$499,344 for certain Public Works in Forest Park on or before fifteen (15) days after the execution of this Lease as required in Section 15 hereto.

(b) Subdistrict may cure any default hereunder within sixty (60) days after written notice of a default under Section 19(a)(i) or (v) above or within one (1)

year after written notice of a default under Sections 19(a)(ii), (iii) or (iv) above from the City's Board of Estimate and Apportionment to the Subdistrict by registered or certified mail; provided that if the default is of such a character as cannot reasonably be cured within such periods, if the Subdistrict demonstrates good cause for additional time, Subdistrict shall be entitled to an additional sixty (60) days for any default under Section 19(a)(i) or (v) or an additional two (2) years for any default under Section 19(a)(ii), (iii) or (iv) above to cure said default. A default under Section 19(a) shall constitute a breach of this Lease and if not cured within the applicable cure periods set forth in this Section 19(b), this lease shall be immediately terminated and forfeited.

(c) Upon the violation of any provision of this Lease by the Subdistrict, the City shall be entitled to exercise any remedies available in equity and at law, including, but not limited to, specific performance. Subdistrict's remedies against the City for any violation of the Lease shall be limited to injunctive or other equitable relief except in the case of an intentional or willful breach by the City.

20. RE-ENTRY.

(a) If this Lease shall be terminated pursuant to Section 19 hereof, or if this Lease is not renewed by the City pursuant to Section 2 hereof, the Subdistrict shall have the right to promptly (and in all events by the end of the term of this Lease if this Lease is not renewed) remove all or any of its property therefrom (which property shall remain the property of the Subdistrict), including any personal property or any structure or portions thereof which it has placed on the Leased Premises; provided that upon completion of any removal of such property or structure, the Subdistrict shall notify the City and thereafter the City or its agents and servants may immediately re-enter the Leased Premises and any property or structure which remains after said notice shall become the property of the City; provided that if the Subdistrict shall make a determination to remove any or all buildings on the Leased Premises, the Subdistrict shall notify the City and the City shall have an option for a period of three (3) months following notice from the Subdistrict to purchase such buildings which are to be removed for a purchase price equal to the fair market value of such buildings, provided, further that if the Subdistrict shall make a determination to remove any or all buildings on the Leased Premises, the Subdistrict shall be obligated to restore the Leased Premises to a condition suitable for park purposes at the sole cost and expense of the Subdistrict.

(b) If this Lease shall be terminated by the Subdistrict pursuant to Section 2 hereof, the Subdistrict shall have the right to promptly (and in all events by the

end of the term of this Lease) remove all or any of its property therefrom (which property shall remain the property of the Subdistrict), including any personal property or any structure or portions thereof which it has placed on the Leased Premises; provided that upon completion of the removal of such property or structure the Subdistrict shall notify the City and thereafter the City or its agents and servants may immediately re-enter the Leased Premises and any property or structure which remains after said notice shall become the property of the City; provided, further if requested to do so by the City or if the Subdistrict shall make a determination to remove any or all buildings on the Leased Premises, the Subdistrict shall be obligated to restore the Leased Premises to a condition suitable for park purposes at the sole cost and expense of the Subdistrict;

(c) The obligations of the Subdistrict under this Section 20 shall survive for one (1) year after any termination of this Lease.

21. **NON-ASSIGNABILITY.** Without the prior written consent of the other party first obtained, neither party shall assign, transfer or sublease, in whole or in part, this Lease or such party's interest in the Leased Premises, provided, notwithstanding Sections 3.94.010 and 3.94.020 of the Code, such consent may be granted by the Board of Aldermen on behalf of the City, provided, further, that the City's prior consent shall not be required for any contract with, or sublease of the Leased Premises to a person operating a parking facility, bookstore, gift shop, concessions, restaurant, food service, theater, auditorium or other facility which is a permitted use in Section 5 hereof, and provided, further that the City's prior written consent shall not be required in connection with any assignment, transfer or sublease to any successor in interest to the rights and the current statutory functions and obligations of the Subdistrict. Except as expressly allowed by this Section 21, any assignment of this Lease shall be null and void and of no effect.

22. **SUCCESSORS AND ASSIGNS.** Subject to Section 21 hereof, the covenants and agreements contained in this Lease shall bind and inure to the benefit of the City, its successors and assigns, and to the benefit of the Subdistrict, its successors and assigns.

23. **GOVERNING LAW.** This Lease and the rights and liabilities of the parties to this Lease shall be governed by the laws of the State of Missouri. If any provision of this Lease is invalidated by judicial decision or statutory enactment, the invalidity of any such provision will not affect the validity of any other provisions of this Lease.

24. CAPTIONS. The captions or headings of the several sections of this Lease are for convenience only and shall not define, limit or construe the contents of such sections.

25. NON-WAIVER. No failure of either party to exercise any power given under this Lease or to insist upon strict compliance with the undertakings, duties and obligations of the other party hereunder, and no custom or practice of either party at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the provisions, covenants, terms and conditions of this Lease.

26. NOTICES AND ADDRESSES. All notices, demands, requests or replies provided for or permitted by this Lease shall be in writing and may be delivered by any one of the following methods: (1) by personal delivery; (2) by deposit with the United States Postal Service as certified or registered mail, return receipt request, postage prepaid to the addresses stated below; (3) by prepaid telegram; or (4) by deposit with an overnight express delivery service. Notice by personal delivery shall be deemed effective at the time of personal delivery. Notice deposited with the United States Postal Service in the manner described above shall be deemed effective three (3) business days after deposit with the Postal Service. Notice by telegram or overnight express delivery shall be deemed effective one (1) business day after transmission to the telegraph company or after deposit with an overnight express delivery service.

For purposes of notice, demand, request, reply or repayment, if to the City, delivery shall be to the City's Comptroller at the following address:

Comptroller of the City of St. Louis
Room 212, City Hall
St. Louis, Missouri 63103

and

Director, Department of Parks,
Recreation and Forestry
Forest Park
5600 Clayton Road
St. Louis, Missouri 63110

If to the Subdistrict, delivery shall be to:

Director

St. Louis Art Museum
#1 Fine Arts Drive
St. Louis, Missouri 63110

with a copy to:

Sam Fox
Harbour Group
7701 Forsyth Blvd.
St. Louis, MO 63105

and

Christian B. Peper, Sr.
Peper, Martin, Jensen, Maichel and Hetlage
720 Olive Street, 24th Floor
St. Louis, Missouri 63101

Each party shall have the right to designate a different address or addressee within the United States of America by giving of notice in conformity with this Section 26.

27. GENDER. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders.

28. MEMORANDUM OF LEASE. The parties shall record a Memorandum of this Lease in the real estate records of the City of St. Louis, Missouri.

IN WITNESS WHEREOF, this Lease is executed the day and year first above written.

CITY OF ST. LOUIS

By:
Freeman R. Bosley, Jr., Mayor

By:
Darlene Green, Comptroller

(SEAL)

, City Register

APPROVED AS TO FORM:

, City Counselor

ART MUSEUM SUBDISTRICT OF THE METROPOLITAN ZOOLOGICAL
PARK AND MUSEUM DISTRICT OF THE CITY OF ST. LOUIS AND COUNTY
OF ST. LOUIS

(SEAL) By:

EXHIBIT A
Existing Art Museum

[A-1 Existing Site Other Than Permit Area] [A-2 - Permit Area]

A tract of land which comprises the St. Louis Art Museum property in Forest Park in Section 13, Township 45 North - Range 6 East, City of St. Louis, Missouri and being more particularly described as:

Beginning at a point reached by the following courses and distances:

Beginning at the Southeast corner of Lot 33 of "Catlin Tract", a City of St. Louis subdivision in City Block 5539-E, said point being also a point in the North line of Lindell Boulevard, 50 feet wide; thence South 40 degrees 22 minutes 21 seconds West 3,055.40 feet to actual point of beginning, said point of beginning being a point in the Southwest line of Fine Arts Drive (average face of curb line); thence Southeastwardly along said Southwest line of Fine Arts Drive (average face of curb line) South 47 degrees 58 minutes 00 seconds East 162.34 feet to a point; thence South 45 degrees 13 minutes 37 seconds East 77.12 feet to a point in the Southwest line of Fine Arts Drive (average face of curb line); thence continuing along said Southwest line of Fine Arts Drive, South 44 degrees 14 minutes 41 seconds East 1.06 feet to a point; thence leaving said Southwest line of Fine Arts Drive; thence along a curve to the left whose radius point bears South 45 degrees 45 minutes 19 seconds West 24.50 feet from the last mentioned point, a distance of 40.01 feet to a point; curve to the left whose radius point bears South 47 degrees 48 minutes 32 seconds East 12.50 feet from the last mentioned point, a distance of 22.99 feet to a point; thence South 63 degrees 11 minutes 57 seconds East 20.46 feet to a point; thence South 42 degrees 13 minutes 28 seconds West 23.30 feet to a point; thence South 47 degrees 46 minutes 32 seconds East 12.50 feet to a point; thence along a curve to the right whose radius point bears North 49 degrees 05 minutes 31 seconds West 250.00 feet from the last mentioned point, a distance of 183.24 feet to a point; thence South 56 degrees 29 minutes 55 seconds West

48.45 feet to a point; thence North 81 degrees 12 minutes 12 seconds West 78.64 feet to a point in the Northeast line of Valley Drive (average face of curb line); thence Northwestwardly along said Northeast line of Valley Drive (average face of curb line and its prolongation) North 42 degrees 36 minutes 10 seconds West 306.76 feet to a point; thence leaving Valley Drive, along a curve to the right whose radius point bears North 47 degrees 23 minutes 50 seconds East 18.00 feet from the last mentioned point, a distance of 26.50 feet to a point; thence North 41 degrees 45 minutes 40 seconds East 126.45 feet to a point; thence North 48 degrees 14 minutes 20 seconds West 193.79 feet to a point; thence North 41 degrees 45 minutes 40 seconds East 134.00 feet to a point; thence South 48 degrees 14 minutes 20 seconds East 193.84 feet to a point; thence North 42 degrees 03 minutes 00 seconds East 223.56 feet to a point; thence along a curve to the right whose radius point bears South 47 degrees 57 minutes 00 seconds East 25.00 feet from the last mentioned point, a distance of 39.26 feet to a point in the aforesaid Southwest line of Fine Arts Drive (average face of curb line); thence Southeastwardly along said Southwest line of Fine Arts Drive (average face of curb line) South 47 degrees 58 minutes 00 seconds East 175.01 feet to the actual point of beginning.

A-2 Excluding all areas described in A-2 below:

A tract of land which comprises the St. Louis Art Museum property in Forest Park in Section 13, Township 45 North - Range 6 East, City of St. Louis, Missouri and being more particularly described as:

Beginning as a point reached by the following courses and distances:

Beginning at the southeast corner of Lot 33 of "Catlin Tract", a City of St. Louis subdivision in City Block 5539-E, said point being also a point in the north line of Lindell Blvd., 50 feet wide, thence south 40 degrees 22 minutes 21 seconds west 3055.40 feet to a point, thence north 47 degrees 58 minutes 00 seconds west 175.01 feet to a point, thence along a curve to the left whose radius point bears south 42 degrees 01 minute 59 seconds west 24.99 feet from the last mentioned point, a distance of 39.25 feet to a point, thence south 42 degrees 03 minutes 00 seconds west 773.56 feet to the actual point of beginning, thence south 42 degrees 03 minutes 00 seconds west 11.24 feet to a point, thence south 41 degrees 45 minutes 40 seconds west, 122.76 feet to a point, thence north 48 degrees 14 minutes 20 seconds west 193.79 feet to a point, thence north 41 degrees 45 minutes 40 seconds east 134.00 feet to a point, thence south 48 degrees 14 minutes 20 seconds east 193.84 feet to the actual point of beginning and containing 0.596 acres according to calculations by Volz, Inc. On January 22, 1997.

EXHIBIT B
Leased Premises

Two parcels of land in Section 13, Township 45 North--Range 6 East, City of St. Louis, Missouri, and being more particularly described as:

A tract of land in Section 13, Township 45 North - Range 6 East, City of St. Louis, Missouri and being more particularly described as:

Beginning at a point reached by the following courses and distances:

Beginning at the Southeast corner of Lot 33 of "Catlin Tract", a City of St. Louis subdivision in City Block 5539-E, said point being also a point in the North line of Lindell Boulevard, 50 feet wide; thence South 40 degrees 22 minutes 21 seconds West 3055.40 feet to a point; thence North 47 degrees 58 minutes 00 seconds West 175.01 feet to a point; thence along a curve to the left whose radius point bears South 42 degrees 01 minute 59 seconds West 24.99 feet from the last mentioned point, a distance of 39.25 feet to a point; thence South 42 degrees 03 minutes 00 seconds West 33.69 feet to the actual point of beginning; thence South 42 degrees 03 minutes 00 seconds West 189.87 feet to a point; thence North 48 degrees 14 minutes 20 seconds West 193.84 feet to a point; thence South 41 degrees 45 minutes 40 seconds West 134.00 feet to a point; thence South 48 degrees 14 minutes 00 seconds East 193.79 feet to a point; thence South 41 degrees 45 minutes 40 seconds West 126.45 feet to a point; thence along a curve to the left whose radius point bears South 48 degrees 14 minutes 18 seconds East 18.00 feet from the last mentioned point, a distance of 26.50 feet to a point; thence North 48 degrees 14 minutes 20 seconds West 318.60 feet to a point; thence North 41 degrees 41 minutes 18 seconds East 469.68 feet to a point; thence South 47 degrees 58 minutes 00 seconds East 303.98 feet to the actual point of beginning and containing 2.6665 acres according to calculations by Volz, Inc. on December 26, 1995.

TOGETHER WITH:

A tract of land in Section 13, Township 45 North - Range 6 East, City of St. Louis, Missouri and being more particularly described as:

Beginning at a point reached by the following courses and distances:

Beginning at the Southeast corner of Lot 33 of "Catlin Tract", a City of St. Louis subdivision in City Block 5539-E, said point being also a point in the North line of Lindell Boulevard, 50 feet wide; thence South 40 degrees 22 minutes 21 seconds West 3055.40 feet to a point; thence South 47 degrees 58 minutes 00 seconds East 162.34 feet to a point; thence South 45 degrees 13 minutes 37 seconds East 77.12 feet to a point; thence South 44 degrees 14 minutes 41 seconds East 1.06 feet to a point; thence along a curve to the left whose radius point bears South 45 degrees 45 minutes 19 seconds West 24.50 feet from the last mentioned point, a distance of 40.01 feet to a point; thence South 42 degrees 11 minutes 28 seconds West 31.37 feet to the actual point of beginning; thence South 47 degrees 58 minutes 00 seconds East 258.52 feet to a point; thence South 42 degrees 11 minutes 28 seconds West 215.00 feet to a point; thence North 47 degrees 58 minutes 00 seconds West 183.19 feet to a point; thence along a curve to the right whose radius point bears North 43 degrees 07 minutes 08 seconds West 275.00 feet from the last mentioned point, a distance of 158.93 feet to a point; thence along a curve to the left whose radius point bears North 19 degrees 40 minutes 09 seconds West 250.00 feet from the last mentioned point, a distance of 128.38 feet to a point; thence North 47 degrees 46 minutes 32 seconds West 12.50 feet to a point; thence North 42 degrees 13 minutes 28 seconds East 23.30 feet to a point; thence North 63 degrees 11 minutes 57 seconds West 20.46 feet to a point; thence along a curve to the right whose radius point bears North 26 degrees 48 minutes 03 seconds East 12.50 feet from the last mentioned point, a distance of 22.99 feet to a point; thence North 42 degrees 11 minutes 28 seconds East 207.43 feet to the actual point of beginning and containing 1.3335 acres according to calculations by Volz, Inc. on December 26, 1995.

TOGETHER WITH all appurtenances, tenements, hereditaments, accretions, rights, privileges, easements and immunities appertaining thereto, and all gaps, gores, strips or spits of land lying between the above described parcels and the "Existing Art Museum" described on Exhibit A to the Lease of which this Exhibit B is attached, it being the intent hereof for the City to lease to the Subdistrict all of the land within the outside periphery of the property depicted on Exhibit C to the Lease of which this Exhibit B is attached not included within the property described on such Exhibit A.

EXHIBIT C
Leased Premises

EXHIBIT D

POLICY STATEMENT OF ST. LOUIS ART MUSEUM REGARDING DISADVANTAGED BUSINESS ENTERPRISE PARTICIPATION

It is the policy of the St. Louis Art Museum ("Museum") to ensure the maximum utilization of qualified minority business enterprises ("MBEs") and qualified women's business enterprises ("WBEs") in the proposed Museum Improvement Project, while the same time achieving a competitive contract price for goods and services of high quality.

A MBE is defined as a business which is at least fifty-one percent (51%) owned and controlled by minority group members. Controlled means that the minority ownership must exercise actual day-to-day management of the business. Minority groups covered by this policy include Black-Americans, Hispanic-Americans, Native-Americans, and Asian-Pacific Americans.

A WBE is defined as an independent business concern which is at least fifty-one (51%) owned by a woman or women, who also control and operate it. Determination of whether a business is at least fifty-one percent (51%) owned by a woman or otherwise qualified WBE which is fifty-one percent (50%) owned by a married woman in a community property State will not be disqualified because her husband has a fifty percent (50%) interest in her share.

Maximum utilization means, with respect to the proposed improvement projects, that the general contractor shall take all reasonable steps: (i) to provide MBEs and WBEs (collectively referred to as Disadvantaged Business Enterprises or "DBE") with the maximum opportunity to compete for all construction contracts and subcontracts, and to furnish supplies and labor ("Subcontracts"); and (ii) to provide, as reference points, that at least twenty-five percent (25%) of all work for the project as a whole will be performed by MBEs and that at least five percent (5%) of all work on the project will be performed by WBEs.

Ordinarily, the main criteria to be used in selection of this successful general contractor for a particular project are: (i) competitive price; (ii) quality of work; (iii) ability to meet or exceed reference points; (iv) favorable contract terms, and (v) qualifications of contractor. In selecting the successful bidder, the Museum's management may give such relative weight to each criterion as it deems appropriate.

The general contractor shall make a good faith effort to replace with another DBE any DBE subcontractor who is unable to perform satisfactorily. Replacement firms must be approved by the Museum.

Each general contract shall make adequate provision to compensate the Museum for damages in the event the actual dollar amount paid to DBE falls short of the amount to be paid as set forth in the bid as awarded. The foregoing policy shall be implemented, and DBE utilization shall be evaluated in the context of the dollar value of the following factors:

- (a) A contract or subcontract awarded to DBEs.
- (b) A subcontractor with a joint venture eligible under the DBE standards equal to the percentage of the ownership and control of the DBE partner in the joint venture.
- (c) Expenditures to DBEs who perform a commercially useful function in the contract. A DBE is considered to perform a commercially useful function when responsible for the execution of a distinct element of the work of a contract and the carrying out of the responsibilities by actually performing, managing and supervising the work involved.
- (d) Expenditures to a DBE manufacturer.
- (e) Expenditures for materials and supplies required under a contract and obtained from a DBE regular dealer.
 - 1) A regular dealer is a firm that owns, operates, or maintains a store, which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business and in its own name, the purchase and sale of products in question.
 - 2) A regular dealer in such bulk items as steel, cement, gravel, stone and petroleum products need not keep such products in stock if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section (i.e. a truck hauler is a regular dealer when the firm owns, operates, maintains, or leases, operates and maintains, the distribution equipment for the delivery of the above products to the public in the usual course of business; ad hoc performance for one contractor or select group of contractors does not qualify as a regular dealer).

3) A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor (i.e. a supplier who produces goods from raw materials or substantially alters them before resale).

(f) The following expenditures to DBE firms that are not regular dealers or manufacturers: The fees charged for delivery of materials and supplies required on a job site (but not the cost of the materials and supplies themselves) when the hauler or trucker is not also the manufacturer of or a regular dealer in the materials and supplies, provided that the fee is determined by the Museum to be reasonable as compared with fees customarily allowed for similar service.

A contractor's good faith efforts to meet the DBE reference point may include, but are not limited to, such items as the following:

1. Attended a pre-bid meeting, if any, schedules by the Museum to inform DBEs of contracting and subcontracting opportunities;
2. Advertised in general circulation trade association and socially and economically disadvantaged business-directed media concerning the subcontracting opportunities;
3. Provided written notice to a reasonable number of specific DBEs that their interest in the contract is solicited, in sufficient time to allow the DBEs to participate effectively;
4. Followed up on initial solicitations of interest by contracting DBEs to determine with certainty whether the DBEs were interested;
5. Selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);
6. Provided interested DBEs adequate information about plans, specifications and requirements of the contract;
7. Negotiated in good faith with interested DBEs not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;
8. Made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the Museum or by the bidder; and

9. Made effective use of the services of available disadvantaged business trade organizations, minority contractors' group, local, state and federal disadvantaged business assistance offices and other organizations that provide assistance in the recruitment and placement of DBEs.

The general contractor shall make a good faith effort to replace with another DBE any DBE subcontractor who is unable to perform satisfactorily. Replacement firms must be approved by the Museum.

Each general contract for a project shall provide a reasonable retainage to be withheld until the date of substantial completion. Pending completion of the contract, amounts paid to DBEs shall be reported to the Museum on a monthly basis. Prior to the release of the retainage, the general contractor shall file a list with the Museum showing the DBEs used and the work performed. The list shall show the actual dollar amount paid to each DBE that is applicable to the percentage participation established in the contract. The general contract shall provide that in the event the actual dollar amount paid to DBE falls short of the amount to be paid as set forth in the bid as awarded, the Museum may sustain damages, the exact extent of which would be difficult or impossible to ascertain. Therefore, in order to liquidate such damages, the contract shall provide that the monetary difference between the amount to be paid to the DBEs as set forth in the bid as awarded less the amount actually paid to the DBEs for performing a commercially useful function will be deducted from the contractor's payments as liquidated damages. No such deduction will be made when, for reasons beyond the reasonable control of the contractor, the stated DBE participation is not met. Any amount so deducted will be donated to organizations offering scholarship and/or internship programs for disadvantaged or disabled youth, with preference given to scholarships and internships in the fields of pictures, statuary and other works of art, or used by the Museum for such scholarship and/or internship programs as may be sponsored or operated by the Museum. The Museum shall report to the City's contract compliance officer the occurrence and amount of any such deduction and the organization to which the money is donated or the use made thereof by the Museum for scholarship and/or internship programs.

EXHIBIT E

FOREST PARK IMPROVEMENTS

ART HILL/GRAND BASIN AREA

* Restore walls and formal design elements of Grand Basin.

- * Provide formal, tree-lined sweeping pedestrian promenade at the crest of Art Hill which terminates at scenic overlooks near the existing circular parking areas. Provide site furnishings and public art.
- * Surround the promenade and overlooks with flowering ornamental, canopy and evergreen trees, ornamental lighting, benches, and, possibly public art and/or historically informational and interpretive material relating to the 1904 World's Fair.
- * Provide major evergreen and upland forest plantings which relate to the area's winter use and give the impression of a change of vegetation as one moves higher in elevation from the bottomlands to the uplands.
- * Flank the basin and accentuate its grand pedestrian avenues with formal rows of lighting and flowering ornamental trees, backed by canopy trees which relate to surrounding landscapes.
- * Reconstruct Grand Basin walls and stairs.
- * Use decorative paving, plantings, canopy trees and other aesthetic features to create the "Promenade" at the base of Art Hill around Basin.
- * Improve pedestrian links to Post-Dispatch Lake.
- * Install provisions and facilities for a temporary performance stage in Grand Basin for occasional special events.
- * Reconfigure existing parking lots at the top of Art Hill.
- * Provide formal hillside paths which provide access to the base of hill and Grand Basin.
- * Provide water edge stairways and seating platforms to allow direct water access.

VALLEY DRIVE

- * Remove roadway to allow improved forest connection and provide ecological benefits.
- * Replace roadway with paths/trails and utilize a small portion for the Art Museum's service loop road.

THE PROMENADE

- * Provide a formal, 15' wide paved promenade which links Grand Basin and Art Hill with Post-Dispatch Lake and its boathouse.
- * Provide site furnishings, landscape lighting and water access.
- * Provide a pedestrian plaza at the existing Jahn Monument.

FINE ARTS DRIVE

- * Remove the angle parking immediately west of the intersection to reduce traffic confusion and congestion.
- * Utilize decorative textured pavement in front of the Art Museum to improve aesthetics, reduce traffic speed and highlight the area as a pedestrian crossing zone which connects the museum with Art Hill and Grand Basin.
- * Remove on-street and angled parking in front of the Art Museum and relocate to two reconfigured parking areas adjacent to the Art Hill crest and overlooks (the existing total of +200 cars to remain).
- * Provide a service road loop around the Art Museum which connects its parking and service areas to the west side and rear of the building.
- * Slightly widen Fine Arts Drive south of the museum to accommodate safe two-sided, on street parking.

FOREST PARK, GENERALLY

* Projects which improve the "Active Space System", "Architecture and Infrastructure" and "Access, Circulation and Parking" in Forest Park in a manner not inconsistent with the Master Plan and which are agreed to by the Director of the Department of Parks, Recreation and Forestry. It is anticipated that the Subdistrict will obtain an architect to design a number of additional improvements to the Existing Art Museum. It is also anticipated that such architect will also be consulted by the Subdistrict as to Forest Park Improvements, by advising the Subdistrict and making recommendations for improvements in the area of the Subdistrict. The architect's recommendations will be the basis for a number of the Forest Park Improvements to be considered and proposed by the Subdistrict.

Approved: _____, 1997

EXHIBIT F

REVIEW PROCESS
PRIVATELY FUNDED PROJECTS

Legislative History					
1ST READING	REF TO COMM	COMMITTEE	COMM SUB	COMM AMEND	VOTE
01/10/97	01/10/97	P&E	01/24/97	01/24/97	
2ND READING	FLOOR AMEND	FLOOR SUB	VOTE	PERFECTN	PASSAGE
01/17/97		01/24/97		01/24/97	01/17/97
ORDINANCE	VETOED		VETO OVR		EFFECTIVE

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