

CONTRACT

THIS CONTRACT (“Contract”), effective as of the ____ day of _____, 2021 (“Effective Date”), is made by and between and the **CITY OF ORLANDO, FLORIDA** (“City”), a Florida municipal corporation, the **COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF ORLANDO** (“CRA”), an entity created pursuant to Part III of Chapter 163, Florida Statutes, and **PERKINS & WILL ARCHITECTS, INC.**, a Delaware corporation. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

WITNESSETH:

WHEREAS, the CRA was created as a public body corporate and agency of the City of Orlando (“City”) for the purpose of, among others, carrying out the community redevelopment purposes of Ch. 163, Part III, Florida Statutes; and

WHEREAS, under the CRA’s policy and procedure, codified as section 1240.1 of the City’s policies and procedures manual, the Chief Procurement Officer has been authorized by the CRA to serve as the CRA’s principal procurement agent; and

WHEREAS, on June 1, 2020, the City on behalf of itself and the CRA issued a Request for Qualifications (“RFQ”), a copy of which is attached hereto as Exhibit “A”, for a consultant to provide downtown master planning and related services to the City and the CRA; and

WHEREAS, the City, the CRA, and Contractor desire to enter into this Contract for the Consultant to provide downtown master planning and related services for the City and the CRA related to the Downtown Orlando Community Redevelopment Area and the City’s greater downtown area; and

WHEREAS, the City and CRA are jointly sharing in the costs of a master plan for downtown Orlando and have allocated the costs of the project among themselves with the CRA paying for the services of Consultant and the City paying the cost of a separate transportation consultant providing engineering support to the project; and

WHEREAS, section 163.370(2)(h) Florida Statutes and Chapter 1 of the Downtown Orlando Community Redevelopment Area Plan specifically authorize the CRA to conduct studies and have plans made to carry out the redevelopment purposes set forth in the Plan and as contemplated in the RFQ.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained

herein and given one to the other, the sufficiency of which is hereby acknowledged, the parties agree as follows

I. SCOPE

The Consultant is to perform the work (“Work”) as defined in the Consultant’s proposed Scope of Services to the City and CRA (“Proposal”), which Proposal is attached hereto as Exhibit "B". Unless otherwise specified herein or in the Proposal, the Consultant is to furnish all materials, tools, equipment, manpower, and consumables to complete the Work set forth in the Proposal.

II. ORDER OF PRECEDENCE

For the resolution and interpretation of any inconsistencies in this Contract and/or the documents attached hereto and included herein by this reference, the precedence of these documents shall be given in the following order:

1. This Contract with any Attachments, including Addendums(s) and Amendment(s) hereto, but excluding Exhibit “A” (the RFP) and Exhibit “B” (Operator’s Proposal);
2. Consultant’s Proposal (Exhibit “B”);
3. City’s Request for Qualifications (Exhibit “A”);

III. TERM OF CONTRACT

The period of this Contract shall commence as of the Effective Date and all work shall be completed on or before December 31, 2022, unless such period is extended by the City’s Chief Procurement Officer or his designee and agreed to by the Consultant in writing.

IV. COMPENSATION

Consultant agrees to perform the Work and provide such services and materials as specified in its Proposal for the fee (“Fee”) of One Million Two Hundred Ninety Thousand Seven Hundred Fifty Dollars (\$1,290,750) as specified in said Proposal, which fee is inclusive of all costs, fees, expenses and taxes of any kind, including but not limited to any necessary travel costs of Consultant to satisfactorily perform the Work.

V. PAYMENT

Consultant shall invoice the CRA for the project management task in twelve equal monthly installments. The remainder of the Fee shall be invoiced by sub-task with 50% of a subtask fee invoiced at 50% completion of the work for such sub-task, and the

remaining 50% invoiced at 100% completion of the sub-task. All invoices received by the City and the CRA are payable within thirty (30) days from receipt, provided that all deliverables which are a prerequisite to such invoice have been received and approved respectively by City's Chief Procurement Officer and the CRA's Executive Director, or their designees, whose review shall be conducted in a timely manner and whose approval shall not be unreasonably withheld. For all amounts due and owing to Consultant after said thirty (30) day period, interest on the unpaid amounts shall accrue at the rate of one percent (1%) per month. All invoices shall be directed to the CRA Division Fiscal Manager, 400 South Orange Avenue, Orlando, Florida, 32801-3302, with a copy of all invoices separately sent to the Accounts Payable Section, City of Orlando, 400 South Orange Avenue, Orlando, Florida, 32801-3302.

NOTE: ALL INVOICES MUST CLEARLY INDICATE THE CONTRACT NUMBER AS STATED HEREIN.

Consultant shall not invoice the CRA more frequently than monthly.

VI. GENERAL CONDITIONS

A. Patents and Copyrights

1. Consultant shall pay all royalties and assume all costs arising from the use of any invention, design, process, materials, equipment, product or device in performance of the Work, which is the subject of patent rights or copyrights. Consultant shall, at its own expense, hold harmless and indemnify (including reasonable attorneys' fees) the City and the CRA against any claim of copyright infringement or any other violation of intellectual property rights related to the Work, or any part thereof, furnished under this Contract. Notwithstanding the foregoing, Consultant shall have no duty to indemnify or hold harmless the Owner under this Section for infringement claims related to documents or materials provided by or through the City or the CRA and incorporated into Consultant's design documents or Work.
2. The parties agree that the City and CRA jointly will be, the sole and exclusive owner of all right, title, and interest to the Work, including any copyrights and other intellectual property rights therein, in perpetuity throughout the universe. By means of example and not limitation, such rights include the right to use and reproduce any deliverables (or any portions thereof) provided

by Consultant to the City or CRA, including but not limited to the final report and master plan, for any purpose including but not limited to governmental and economic development purposes in publications, presentations, correspondence, advertising, slogans, marketing materials, posting on websites, and other distribution to citizens, stakeholders and other interested parties. The parties agree that upon completion of the Work and payment of all amounts properly due, all right, title, and interest including copyrights that Consultant and its subcontractor's may have in and to the Work and Proposal that has not been previously transferred to the CRA and City pursuant to subsection I hereof shall hereby transfer, assign over, and belong solely and exclusively to the City and the CRA jointly, except that upon transfer Consultant and its subcontractors shall retain the non-exclusive rights to identify themselves as the creators of the Work, and to use images and depictions of the Work as representative samples of their work. Such transfer to the City and the CRA is for all uses now existing, or which may exist in the future, including but not limited to the use of the Work for economic development, the promotion of downtown Orlando, and any other uses or purposes benefiting the City and the CRA. The City and CRA shall jointly own such materials and all trademarks and copyrights related thereto, including all renewals and extensions. The City and CRA shall have the right to obtain trademark and copyright registrations for such materials in their own names or in any name chosen by the City and CRA, and the City and CRA shall own all rights of copyright in the materials, as well as in any derivative works and reproductions made there from. Consultant and its subcontracts shall execute such documentation that the City or CRA may reasonably request to cause or evidence any such transfer of ownership of the materials. The City and the CRA shall have the right to use, photograph, depict, copyright photographs and depictions, submit for award, publish, distribute, and publicly display the Work and to create, use, copy, reproduce, publish, distribute, and display derivative or other works based on the Work worldwide in all forms of media now known or later developed, including but not limited to Web sites, advertising, media campaigns, direct mail, and educational

presentations. The City and CRA hereby have permission to identify the Consultant by name in connection with such use of the Work. The City and CRA shall also have the right to photograph and/or otherwise visually record (including but not limited to film, videotape, or other form of motion capture) Consultant and its subcontractors in relation to the creation of the Work and use such images in connection with the Work and other City and CRA activities. For any Work that is created or developed under this Contract that may be considered a “work of visual art” under the Visual Artists Rights Act of 1990 (17U.S.Code §106A), upon transfer of ownership as contemplated above and in subsection I below, Consultant hereby voluntarily, expressly, permanently, and irrevocably waives, or agrees to obtain a waiver from the author of the work of, any and all rights of attribution and integrity conferred by 17 U.S. Code § 106A(a) and all other rights of attribution and integrity that may arise under other federal, state, local, or foreign law. Use, modification, or authorization of reuse or modification by others, of Consultant’s Work in any manner without Consultant’s professional involvement will be at the City’s and the CRA’s sole risk and without liability to Consultant.

3. Any websites, domain names, social media accounts, phone numbers, or other social and marketing media and materials, including but not limited to logos and slogans, set up, created, or established by Consultant related exclusively to this Contract or the Work performed hereunder shall become the sole property of the City and the CRA. Upon termination of this Contract for any reason, or earlier upon the written request of the City or CRA, such websites, domain names, social media accounts, phone numbers, and any information necessary to operate or access the same shall be turned over to the City and CRA and shall become the sole and exclusive property of the City and CRA.
4. Consultant shall require all subcontractors to comply with the provisions of this Sub-section VI.A. in all subcontracts. The provisions of this Sub-section VI.A. shall survive termination of the Contract for any reason.

B. Termination for Default

The performance of Work under this Contract may be terminated by the City’s Chief Procurement Officer, in whole or in part, in writing, whenever the Chief

Procurement Officer shall determine that the Consultant has failed to comply with any term or condition of the Contract after the Consultant has been given written notice specifying the failure and requesting Consultant remedy such failure within not less than 15 days.

C. Termination for Convenience

The City's Chief Procurement Officer may terminate the Contract for convenience upon 15 calendar days written notice to the Consultant. In the event of such a notice of termination, Consultant shall use reasonable efforts to promptly cease all Work and minimize further Fees incurred by the City and the CRA prior to the date of termination. The City and CRA shall be liable for the payment of all Work properly performed prior to the effective date of termination. Provided Consultant has received all payments properly due under this Agreement, Consultant shall provide copies of all data, drafts and other deliverables or Work performed in whatever then current state of completion to the City and CRA.

D. Warranty

The Consultant shall perform the Work, including all services provided, consistent with the professional skill and care ordinarily provided by architects, planners, or other professional (as applicable to the person performing the work) practicing in the same or similar locality under the same or similar circumstances.

E. Time of Completion

Work shall be performed in accordance with the schedule set forth in the Proposal, unless otherwise agreed to in writing by the CRA's Executive Director, or designee. Notwithstanding the preceding, however, no party shall be liable to any other party for any loss or damage, resulting from any delay or failure to perform its contractual obligations within the time specified, due to acts of God, actions or regulations by any governmental entity or representative, strikes or other labor trouble, fire, or any other causes, contingencies or circumstances not subject to the non-performing parties reasonable control or avoidance. Any such causes of delay, even though existing on the date of the Contract or on the date of the start of Work, shall extend the time of a party's performance, by the length of the delays occasioned thereby, including delays reasonably incident to the resumption of normal Work schedules.

F. Indemnification and Insurance

1. Indemnity

The Consultant hereby agrees to indemnify and hold harmless the City, the CRA and their elected officials, officers, and employees, from and against any and all liability, claims, damages, demands, expenses, fees, fines, penalties, suits, proceedings, actions, and costs of actions, including reasonable attorneys' fees for trial and on appeal, arising from claims by third parties to the extent caused by the Consultant's, its officers', agents', and employees' negligent acts or omissions associated with this Contract.

2. Insurance.

Prior to commencing and at all times during the performance of any work under this Contract, Consultant shall maintain the following insurance policies to cover claims and damages arising from Consultant's and any of its subcontractors' activities for which Consultant is legally liable: (i) Worker's Compensation, as applicable, at the statutory amount and Employer's Liability with limits of \$1,000,000 each accident, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease; (ii) Commercial General Liability ("CGL") Insurance with combined single limits of One Million Dollars (\$1,000,000.00) per occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products/Completed Operations Aggregate; (iii) Commercial Automobile Liability Insurance, as applicable, with a combined single limit of One Million Dollars (\$1,000,000.00) per accident; and (iv) Professional Liability covering negligent acts, errors and omissions in the performance of professional services with policy limits of not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) in the aggregate. The City and CRA shall be added as additional insureds to the CGL policies and such policies shall be considered primary insurance without recourse to or contribution from any similar insurance carried by the City. Consultant shall provide to the City a copy of the applicable CGL insurance certificate(s) prior to any person entering upon the City property related hereto. The Consultant and its subcontractors shall require their insurance carriers, with respect to all insurance policies, except professional liability, to waive all rights of subrogation against the City and

the CRA, and their officers, elected officials, and employees.

G. Correction of Work

The Consultant shall promptly correct all Work reasonably rejected within a reasonable timeframe by the City or the CRA acting in good faith as failing to conform to this Contract in a material respect. The Consultant shall bear all costs of correcting such reasonably rejected Work to the extent it does not adhere to the Proposal.

H. Right to Audit Records

The City and CRA shall be entitled to audit the books and records of Consultant or any subcontractor to the extent that such books and records relate to the performance of the Contract or any subcontract. The Consultant shall retain and maintain financial records and other records relating to the contract for a period of five (5) years from the date of final payment under the Contract unless a shorter period is otherwise authorized in writing by the City or the CRA. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 5-year period and the Consultant has received written notice of the same, the records must be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 5-year period, whichever is later.

I. Information

Upon completion of a subtask by the Consultant and payment of all amounts properly due for such subtask by the CRA, all information and data developed for the City or the CRA by the Consultant or its employees, pursuant to this Contract related to such subtask, excluding previously copywritten materials, shall be the sole property of the City and the CRA and all rights therein are reserved by the City and the CRA.

J. Extra Work

1. Requested by the City or the CRA

The City or the CRA, without invalidating this Contract, may order changes in the Work within the general scope of this Contract consisting of additions, deletions, or other revisions, the Contract price and time being adjusted and mutually agreed in writing accordingly. All such changes in the Work

ordered by the City and the CRA shall be authorized by written Addendum to this Contract, and shall be executed under the applicable conditions of the Contract.

2. Additional Work requested by Consultant

If the Consultant plans to make a claim for an increase in the Contract price based upon new or unforeseen circumstances which result in the need for additional work outside the scope of the original Work, Consultant shall first before providing any additional goods or services related to such additional work give the City and the CRA written notice thereof and secure the prior written approval of the City's Chief Procurement Officer. No claim for extra work will be considered valid by the City or the CRA unless first submitted in writing and approved in writing by the City's Chief Procurement Officer.

K. Familiarity with the Work

The Consultant by executing this Contract, acknowledges full understanding of the extent and character of the Work required and the conditions surrounding the performance thereof. The City and the CRA will not be responsible for any alleged misunderstanding of the Work to be furnished or completed, or any misunderstanding of conditions surrounding the performance thereof. It is understood that the execution of this Contract by the Consultant serves as its stated commitment to fulfill all the conditions referred to in this Contract.

L. Notices.

All notices required or permitted to be given under this Agreement must be in writing and must be delivered to a party at the addresses set forth below (or such other address as may hereafter be designated by such party in writing). The parties' addresses for the delivery of all such notices are as follows:

CRA:	Thomas C. Chatmon, Jr.
	Executive Director
	Community Redevelopment Agency
	400 South Orange Avenue, 6th Floor
	Orlando, Florida 32801
	Fax: (407) 246-3359

Phone: (407) 246-3361

City: David Billingsley,
Chief Procurement Officer, CPSM, C.P.M.
City of Orlando
400 South Orange Avenue, 4th floor
Orlando, Florida 32891
Fax: (407) 246-2869
Phone: (407) 246-2291

Consultant: Cassie Branum, AICP, LEED AP
Perkins & Will Architects, Inc.
1315 Peachtree Street
Atlanta, Georgia 30309
Phone: (404) 443-7483
Email: Cassie.Branum@perkinswill.com

Notices shall be either: (1) personally delivered (including delivery by Federal Express or other courier service) to the addresses set forth above, in which case they shall be deemed delivered on the date of delivery; (2) sent by certified mail, return receipt requested, in which case they shall be deemed delivered on the date shown on the receipt unless delivery is refused or intentionally delayed by the addressee, in which event they shall be deemed delivered on the date of deposit in the U.S. Mail; or (3) transmitted via telecopier or email using a telecopier number or email address provided above, if any (or such other number or email address as receiving party may have designated in writing), in which case the delivery shall be deemed to have occurred on the day of the transmission, provided that the day of transmission is a business day in the City of Orlando, Florida, and the time of transmission is prior to 5:00 p.m. EST, or, if not, the first City business day after the transmission.

- M. Employment Eligibility; E-Verify System.** This Contract is subject to the terms, conditions, provisions and requirements of Section 448.095 of the Florida

Statutes which is incorporated herein by this reference. Pursuant to Section 448.095 of the Florida Statutes, Consultant represents and warrants that it has registered with and uses the E-Verify System to verify the work authorization status of all newly hired employees and shall continue to do so at all times during the term of the Contract. If Consultant enters into a contract with a subcontractor, the subcontractor must provide the Consultant with an affidavit stating that the subcontractor does not employ, contract with, or subcontract with an unauthorized alien

VII. MISCELLANEOUS PROVISIONS

- A.** The Consultant shall not employ subcontractors not identified in its Proposal without the advance written permission of the City's Chief Procurement Officer.
- B.** Assignment of this Contract shall not be made without the advance written consent of the City's Chief Procurement Officer.
- C.** No waiver, alterations, consent or modification of any of the provisions of this Contract shall be binding unless in writing and signed by the City's Chief Procurement Officer or designee and the Consultant.
- D.** The Consultant is to procure all permits, licenses, and certificates, or any such approvals of plans or specifications as may be required by federal, state and local laws, ordinances, rules, and regulations, for the proper execution and completion of the Work under this Contract.
- E.** All disputes between the parties shall be resolved in accordance with the City's Procurement Code, (Chapter 7 of the City Code).
- F.** This Contract is a non-exclusive Contract between the parties.
- G.** This Contract is deemed to be under and shall be governed by, and construed according to, the laws of the State of Florida.
- H.** Any litigation arising out of this Contract shall be had in the Courts of Orange County, Florida.
- I.** Consultant shall comply with all applicable federal, state, and local laws in the performance of work under the contract. To the extent applicable, Consultant shall comply with Florida public records laws, including Sections 119.0701(2) (b) 1 through 4 of the Florida Statutes. **IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER**

119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF THE PUBLIC RECORDS AT C/O DEPUTY CITY CLERK, RECORDS@CITYOFORLANDO.NET, TELEPHONE NUMBER (407) 246-3538, 400 s. ORANGE AVE., ORLANDO, FL 32801.

- J.** As to Consultant, the undersigned hereby warrants and certifies that they are authorized to enter into this Contract and to execute same on behalf of the Consultant as the act of the said Consultant.
- K.** This Contract, including any Exhibits hereto, contains all the terms and conditions agreed upon by the parties. No other agreements, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind either party hereto. In the event of any dispute or conflict between the provisions of this Contract and any exhibit or attachment hereto, the terms of this Contract shall control.
- L.** The City's Chief Procurement Officer or written designee shall have full and independent authority to act on behalf of the City and the CRA in matters related to this Contract, including but not limited to the sending and receiving of any notices required hereunder and including taking any actions for which another person is also authorized to act hereunder.
- M.** If any section, sentence, clause, phrase, provision, or other portion of this Contract is, for any reason, held invalid or unconstitutional by a court or other body of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions of the Contract.
- N.** This Contract is solely for the benefit of the parties to the Contract and no causes of action shall accrue upon or by reason hereof to or for the benefit of any third parties.
- O. PURSUANT TO FLORIDA STATUTES SECTION 558.0035(1)(C), AN INDIVIDUAL, EMPLOYEE, OR**

AGENT MAY NOT BE HELD INDIVIDUALLY LIABLE FOR NEGLIGENCE OCCURRING WITHIN THE COURSE AND SCOPE OF THIS AGREEMENT.

- P. To the fullest extent permitted by law, the total liability in the aggregate, of the Consultant and the Consultant's officers, directors, employees, agents, to the City and the CRA and any one claiming by, through or under the City and the CRA, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to the Consultant's services, the project, or this Agreement, from any cause or causes whatsoever, including but not limited to, the negligence, errors, omissions, strict liability, breach of contract, misrepresentation, or breach of warranty of the Consultant or the Consultant's officers, directors, employees, agents or independent professional associates, or any of them, shall not exceed and is limited to the greater of (a) the total compensation received by the Consultant; or (b) One Million (\$1,000,000.00) Dollars.
- Q. The Consultant and the City and the CRA mutually waive consequential damages, including but not limited to damages for loss of profits, damages due to errors in any BIM information, loss of revenues, loss of business and of business opportunities, for claims, disputes or other matters in question arising out of or relating to this Agreement.
- R. The Consultant shall review and perform a good faith evaluation, in accordance with the professional standards of care for its industry, of information provided to it by the City and CRA. Following its good faith evaluation of the information provided, the Consultant shall meet with the CRA's project representative to discuss the reliability of such information. The CRA and the Consultant shall mutually agree upon the information that can be relied upon by the Consultant and the Consultant shall be entitled to rely on the accuracy and completeness of that information. Thereafter, the Consultant shall provide prompt written notice to the City and to the CRA if the Consultant becomes aware of any error, omission or inconsistency in such information in the course of providing services to the City and CRA.

S. If the CRA fails to make payments properly due and owing to Consultant in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at Consultant’s option, cause for suspension of performance of services under this Agreement. Prior to any termination, Consultant shall provide CRA and City written notice of non-payment and allow CRA a period of thirty (30) days in which to make payment and cure the default. If Consultant elects to suspend services, Consultant shall give fifteen days’ written notice to the City and the CRA before suspending services. In the event of a suspension of services, Consultant shall have no liability to the City or the CRA for delay or damage caused the City or the CRA because of such suspension of services. Before resuming services, Consultant shall be paid all sums properly due prior to suspension and any reasonable expenses incurred in the interruption and resumption of Consultant’s services. Consultant’s fees for the remaining services and the time schedules shall be equitably adjusted.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the date first written above.

CITY OF ORLANDO, FLORIDA

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the City of Orlando, only.

By: _____
Chief Procurement Officer, City of Orlando

Date: _____, 2021

DAVID BILLINGSLEY, CPSM, C.P.M.
Name, Typed or Printed

ASSISTANT CITY ATTORNEY
ORLANDO, FLORIDA

Date: _____, 2021

**COMMUNITY REDEVELOPMENT AGENCY
OF THE CITY OF ORLANDO, FLORIDA**

APPROVED AS TO FORM AND LEGALITY
for the use and reliance of the Community
Redevelopment Agency of the City of Orlando, only.

By: _____
Chief Procurement Officer, City of Orlando

Date: _____, 2021

DAVID BILLINGSLEY, CPSM, C.P.M.
Name, Typed or Printed

ASSISTANT CITY ATTORNEY
ORLANDO, FLORIDA

Date: _____, 2021

CONSULTANT

By: _____
Signature

Name & Title, Typed or Printed

CORPORATE SEAL

Name of Company, Corp., etc.

Mailing Address

City, State and Zip

STATE OF FLORIDA }

COUNTY OF _____ }

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this ____ day of _____, 20____, by _____ (name of person) as _____ (type of authority, (e.g., officer, trustee, attorney in fact, etc.) for _____ (name of entity/party on behalf of whom instrument was executed).

Signature of Notary Public – State of Florida
Print, Type, or Stamp Notary Name: _____

(Affix Notary Stamp or Seal Above)

___ Personally Known or ___ Produced Identification
Type of Identification Produced _____

EXHIBIT “A”

REQUEST FOR QUALIFICATIONS

EXHIBIT “B”

CONSULTANT’S PROPOSAL