

CONTRACT FOR ARCHITECTURAL AND ENGINEERING DESIGN  
SERVICES FOR THELMA BOLTIN CENTER IMPROVEMENTS

THIS CONTRACT is entered into this \_\_\_\_ day of \_\_\_\_\_, 2020, by the CITY OF GAINESVILLE, FLORIDA, a municipal corporation chartered in the State of Florida (“CITY”), and WANNEMACHER JENSEN ARCHITECTS, INC. (“CONTRACTOR”), a Florida corporation.

WHEREAS, the CITY is seeking architectural and engineering design services for improvements of the Thelma Boltin Center located at 516 NE 2nd Ave., Gainesville, Florida 32601, and CONTRACTOR is qualified, willing, and was awarded the project through a competitive solicitation.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants contained herein, the Parties agree as follows:

1. **EFFECTIVE DATE and TERM OF CONTRACT.** The term of this Contract shall commence upon execution and shall end sixteen (16) months thereafter, unless earlier terminated.

2. **SCOPE OF SERVICES and CONTRACT DOCUMENTS.** The CONTRACTOR shall furnish the labor, materials, and equipment to perform this Contract as provided by the following enumerated Specifications and Documents (“Contract Documents”), incorporated by reference and made part of this Contract:

- a. This Contract
- b. Addendum No. 1 dated January 31, 2020
- c. City of Gainesville Request for Qualifications #WSPP-200004-DM
- d. Proposal of Wannemacher Jensen Architects, Inc. dated October 19, 2020.

In the event of conflict or inconsistency between the Contract Documents, the order of precedence for interpretation shall be the order in which the Contract Documents are listed above. Conflict or inconsistency within a particular contract document shall be resolved by having the more specific reference to the matter prevail.

3. **TIME FOR PERFORMANCE.** The Parties agree that time is of the essence for the Scope of Services. All work shall be performed in accordance with the time frames in the Proposal, and shall be completed by no later than sixteen months from the date of execution of this Contract.

4. **COMPENSATION/PAYMENT.** The CITY shall pay Two Hundred Four Thousand Thirty Dollars (\$204,030.00) to the CONTRACTOR for the faithful performance of this Contract in the sums due upon verified invoice within thirty (30) days of receipt of invoice by Electronic Funds Transfer (EFT) or VISA. CONTRACTOR shall submit invoice within 10 business days after services have been provided. CITY shall make payments in accordance with the Local Government Prompt Payment Act, Sections 218.70, et. seq., Florida Statutes.

5. **ADDITIONAL DESIGN SERVICES.** In the event that construction bids exceed the CITY's \$2 million budget, the CONTRACTOR will work with the CITY to redesign the scope of work as necessary to bring the project back under budget. These additional design services, if necessary, will be performed by the CONTRACTOR at no additional cost to the CITY.

6. **MULTI-YEAR CONTRACT.** The obligations of the CITY as to any funding required pursuant to this Contract shall be limited to an obligation in any given year to budget and appropriate from legally available funds, after monies for essential CITY services have been budgeted and appropriated, sufficient monies for the funding that is required during that year. Notwithstanding the foregoing, the CITY shall not be prohibited from pledging any legally available non-ad valorem revenues for any obligations heretofore or hereafter incurred, which pledge shall be prior and superior to any obligation of the CITY pursuant to this Contract.

7. **INDEMNIFICATION.** CONTRACTOR shall indemnify the CITY, its officials, agents and employees, and hold it harmless from suits, actions, damages, liability, expenses, losses and costs, including, but not limited to reasonable attorney's fees in connection with loss of life, bodily or personal injury, or property damage arising from or occasioned by any act or omission or negligence or intentional wrongdoing on the part of the CONTRACTOR and other persons employed or utilized by the CONTRACTOR. This indemnification will survive and be in full force and effect after any termination or expiration of this Contract.

8. **INSURANCE.**

A. During the term of this Contract, CONTRACTOR shall maintain insurance as follows:

- Worker's Compensation Insurance providing coverage in compliance with Chapter 440, Florida Statutes.
- Professional Liability Insurance \$1,000,000 per occurrence (combined single limit for bodily injury and property damage).
- Public Liability Insurance (other than automobile) consisting of broad form comprehensive general liability insurance including contractual coverage \$1,000,000 per occurrence (combined single limit for bodily injury and property damage).
- Automobile Liability Insurance Property Damage \$500,000 per occurrence (combined single limit for bodily injury and property damage).

B. Prior to the effective date of this Contract, CONTRACTOR shall provide to CITY a certificate of insurance certifying such insurance and naming CITY as additional insured and that CITY will be notified in writing at least thirty (30) days before any such insurance is canceled or materially changed.

C. Insurance must be written by a company licensed to do business in the State of Florida and satisfactory to CITY.

9. **SOVEREIGN IMMUNITY.** Nothing in the Contract Documents shall be interpreted as a waiver of the CITY's sovereign immunity as granted under Section 768.28, Florida Statutes.

10. TERMINATION.

A. If the CONTRACTOR fails to observe or perform in accordance with the Contract Document (a "Default"), then the CITY, after providing at least ten (10) days written notice to the CONTRACTOR of the Default and the CITY's intent to terminate if such Default continues unremedied during the ten (10) day period, may terminate this Contract without prejudice to any other rights or remedies the CITY may have under this Contract and Florida law.

B. This Contract may be terminated by the CITY, without cause, upon thirty (30) days written notice to the CONTRACTOR. In the event this Contract is so terminated, the CONTRACTOR shall be compensated for services rendered through the effective date of the termination.

11. INDEPENDENT CONTRACTOR. CONTRACTOR shall be considered an independent contractor and as such shall not be entitled to any right or benefit to which CITY employees are or may be entitled to by reason of employment. Except as specifically noted in the Contract Documents, CONTRACTOR shall be solely responsible for the means, method, techniques, sequences, and procedures utilized by the CONTRACTOR for the full performance of the Contract.

12. INTELLECTUAL PROPERTY AND WORK PRODUCT.

A. Ownership and Publication of Materials. All reports, information, data, and other materials prepared by the CONTRACTOR pursuant to the Contract Documents, except those separately identified in the Scope of Services or in other written agreements between the Parties, are owned by the CITY. The CITY has the exclusive and unrestricted authority to release, publish or otherwise use, in whole or in part, information contained therein and relating thereto. No material produced in whole or in part under the Contract Documents may be copyrighted or patented in the United States or in any other country without prior written approval of the CITY.

B. Intellectual Property. CONTRACTOR warrants that it owns or has rights to use all intellectual property used for the scope of each project, including patent rights, copyrights, or other intellectual property rights, except with respect to designs, processes or products of a particular manufacturer expressly required by the CITY.

13. RECORDS AND RIGHT-TO-AUDIT. CONTRACTOR shall maintain records sufficient to document completion of the scope of services established by the Contract Documents. These records shall be subject at all reasonable time to review, inspect, copy and audit by persons duly authorized by the CITY. These records shall be kept for a minimum of three (3) years after termination of the Contract. Records that relate to any litigation, appeals or settlements of claims arising from performance under this Contract shall be made available until a final disposition has been made of such litigation, appeals, or claims.

14. CONTRACTOR'S ASSURANCES. CONTRACTOR warrants that the goods and services supplied to the CITY pursuant to this Contract shall at all times fully conform to the specifications set forth in the Request for Qualifications and be of the highest quality. In the event the CITY, in the CITY's sole discretion, determines that any product or services supplied pursuant to this Contract is defective or does not conform to the specifications set forth in the Invitation to Bid, the CITY reserves the right unilaterally to cancel an order or cancel this

Contract upon written notice to the CONTRACTOR and an opportunity to cure, and reduce commensurately any amount of money due the CONTRACTOR.

15. PUBLIC RECORDS. Florida has a very broad public records law and certain records of a contractor may be considered public records. Accordingly, by entering into an agreement with the CITY, CONTRACTOR must:

- a. Keep and maintain public records required by the CITY to perform the service.
- b. Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this chapter or as otherwise provided by law.
- c. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the contract if the CONTRACTOR does not transfer the records to the CITY.
- d. Upon completion of the contract, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the public agency to perform the service. If the CONTRACTOR transfers all public records to the CITY upon completion of the contract, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the contract, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the CITY.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (352) 393-8187, waiteed@cityofgainesville.org, ELIZABETH WAITE, CITY OF GAINESVILLE WSPP, P.O. BOX 490, STATION 24, GAINESVILLE, FL 32627-0490.

16. DISPUTE RESOLUTION. Except as otherwise provided in this Contract, any dispute concerning a question of fact or of interpretation of a requirement of the Contract which is not disposed of by mutual consent between the parties shall be decided by the City Manager or designee, who shall reduce the decision to writing and furnish a copy thereof to the parties. In connection with any dispute proceeding under this clause each party shall be afforded an opportunity to be heard and to offer evidence in support of its version of the facts and interpretation of the Contract. The City Manager or designee shall make such explanation as may be necessary to complete, explain or make definite the provisions of this Contract and the findings and conclusions shall be final and binding on both parties. Pending the final decisions of a dispute hereunder, CONTRACTOR shall proceed diligently with its performance of the Contract in accordance with the preliminary directions of the City Manager or designee.

17. ATTORNEY'S FEES AND COSTS. The prevailing party to any litigation filed in state or federal court, shall be entitled to attorney's fees and costs, including any attorney's fees and costs incurred on appeal.

18. FORCE MAJEURE. If the performance of the Contract is delayed by fire, lightning, earthquake, cyclone, or other such cause completely beyond the control of either the CITY or the CONTRACTOR, then the time for completion of the Contract shall be extended for a period equivalent to the time lost by reason of any of the aforesaid causes.

19. APPLICABLE LAW AND VENUE. This Contract shall be governed by and construed in accordance with the laws of the State of Florida, notwithstanding any Florida conflict of law provision to the contrary. In the event of any legal action under this Contract, venue shall be in Alachua County, Florida.

20. DEFAULT AND REMEDIES. The non-breaching party shall have available all remedies at law.

21. NOTICES. Any notices from either party to the other party must be in writing and sent by certified mail, return requested, overnight courier service or delivered in person with receipt to the following:

CITY:

City of Gainesville  
PRCA-WSPP  
Attn: Peter McNiece, Project Manager  
P.O. Box 490, Station 24  
Gainesville, FL 32627

CONTRACTOR:

Wannemacher Jensen Architects, Inc.  
Attn: Jason Jensen  
180 Mirror Lake Drive North  
St. Petersburg, FL 33701

22. SEVERABILITY. If any provision of this Contract is declared void by a court of law, all other provisions will remain in full force and effect.

23. INTEGRATION/MERGER. This Contract, together with the attached bid documents, contains the entire contract and understanding of the Parties regarding the matters set forth herein and supersedes all previous negotiations, discussions, and understandings, whether oral or written, regarding such matters. The Parties acknowledge that they have not relied on any promise, inducement, representation, or other statement made in connection with this agreement that is not expressly contained in this Contract. The terms of this Contract are contractual and not merely recital.

24. MODIFICATION AND WAIVER. The provisions of this Contract may only be modified or waived in writing signed by all the Parties. No course of dealing shall be deemed a waiver of rights or a modification of this Contract. The failure of any party to exercise any right in this contract shall not be considered a waiver of such right. No waiver of a provision of the Contract shall apply to any other portion of the Contract. A waiver on one occasion shall not be deemed to be a waiver on other occasions.

25. CAPTIONS AND SECTION HEADINGS. Captions and section headings used herein are for convenience only and shall not be used in construing this Contract.

26. ASSIGNMENT OF INTEREST. Neither party will assign or transfer any interest in the Contract without prior written consent of the other party.

27. SUCCESSORS AND ASSIGNS. The Parties each bind the other and their respective successors and assigns in all respects to all the terms, conditions, covenants, and provisions of this Contract.

28. THIRD PARTY BENEFICIARIES. This Contract does not create any relationship with, or any rights in favor of, any third party.

29. CONSTRUCTION. This Contract shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by one of the Parties. It is recognized that both Parties have substantially contributed to the preparation of this Contract.

30. EXHIBITS. All exhibits attached to this Contract are incorporated into and made part of this Contract by reference.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, or caused to be executed by their duly authorized officials, on the day and year first written above.

WANNEMACHER JENSEN  
ARCHITECTS, INC.:

CITY OF GAINESVILLE:

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

City Manager or Designee

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form and Legality:

\_\_\_\_\_  
City Attorney

This Form Document No. PRCA20-001 is a legal instrument approved by the City Attorney. Any deviations from its intended use should be authorized by the City Attorney. OFFICE USE ONLY: Vendor/Customer Number: