

ATTACHMENT A

RESOLUTION NO. _____

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SAN RAFAEL
AUTHORIZING THE CITY MANAGER TO SIGN A PROFESSIONAL
SERVICES AGREEMENT WITH COMMUNITY DESIGN + ARCHITECTURE
FOR PREPARATION OF THE
DOWNTOWN SAN RAFAEL STATION AREA PLAN (P10-002)
(TERM OF AGREEMENT FROM AUGUST 2, 2010 AND ENDING ON
FEBRUARY 29, 2012 – MAY BE CONTINUED AN ADDITIONAL PERIOD OF
THREE MONTHS WITH APPROVAL OF CITY MANAGER IN AN AMOUNT
NOT TO EXCEED \$400,000)**

WHEREAS, on May 3, 2010, the City of San Rafael received a Station Area Planning grant in the amount of \$528,000 to help fund station area plans for vicinity around the Downtown and Civic Center SMART stations; and,

WHEREAS, the City has determined that professional planning and design services are required to assist staff with the preparation and production of the Downtown Station Area Plan; and,

WHEREAS, the City issued a Request for Proposals to over 70 firms, receiving 12 submittals for the Downtown San Rafael Station Area Plan; and,

WHEREAS, City staff, together with members of the Joint Project Team, the project's inter-agency partnership, selected three firms to interview; and,

WHEREAS, after extensive reference checks on the finalists, City staff determined that the firm of Community Design + Architecture has the experience in station area planning, multimodal access and transit operations, community workshops, and implementation plans appropriate for the project; and,

WHEREAS, the Community Design + Architecture has offered to provide certain specialized planning, circulation, and design services in connection with this Project.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES RESOLVE, DETERMINE AND ORDER AS FOLLOWS:

The MAYOR and CITY CLERK are authorized to execute, on behalf of the City of San Rafael, a professional services agreement with Community Design + Architecture for preparation of the Downtown San Rafael Station Area Plan, a copy of which is hereby attached as Attachment A and by this reference made a part hereof, for an amount not to exceed \$400,000.

I, ESTHER C. BEIRNE, Clerk of the City of San Rafael, hereby certify that the foregoing Resolution was duly and regularly introduced and adopted at a regular meeting of the City Council of said City held on Monday, the 2nd day of August, 2010 by the following vote, to wit:

AYES: COUNCILMEMBERS:

NOES: COUNCILMEMBERS:

ABSENT: COUNCILMEMBERS:

Esther C. Beirne, City Clerk

AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement is made and entered into this 2nd day of August, 2010, by and between the CITY OF SAN RAFAEL (hereinafter "**CITY**"), and Community Design + Architecture, a California corporation (hereinafter "**CONSULTANT**").

RECITALS

WHEREAS, on May 3, 2010, the City of San Rafael received a Station Area Planning grant in the amount of \$528,000 to help fund station area plans for vicinity around the Downtown and Civic Center SMART stations; and,

WHEREAS, the City has determined that professional planning and design services are required to assist staff with the preparation and production of the Downtown Station Area Plan; and,

WHEREAS, the City issued a Request for Proposals to over 70 firms, receiving 12 submittals for the Downtown San Rafael Station Area Plan; and,

WHEREAS, City staff, together with members of the Joint Project Team, the project's inter-agency partnership, selected three firms to interview; and,

WHEREAS, after extensive reference checks on the finalists, City staff determined that the firm of Community Design + Architecture has the experience in station area planning, multimodal access and transit operations, community workshops, and implementation plans appropriate for the project; and,

WHEREAS, the Community Design + Architecture has offered to provide certain specialized planning, circulation, and design services in connection with this Project.

AGREEMENT

NOW, THEREFORE, the parties hereby agree as follows:

1. **PROJECT COORDINATION.**

A. **CITY.** The City Manager shall be the representative of the **CITY** for all purposes under this Agreement. The Principal Planner for Long-Range Planning is hereby designated the **PROJECT MANAGER** for the **CITY**, and said **PROJECT MANAGER** shall supervise all aspects of the progress and execution of this Agreement.

B. **CONSULTANT.** **CONSULTANT** shall assign a single **PROJECT DIRECTOR** to have overall responsibility for the progress and execution of this Agreement for **CONSULTANT**. Timothy Rood is hereby designated as the **PROJECT DIRECTOR** for **CONSULTANT**. Should circumstances or conditions subsequent to the execution of this Agreement require a substitute **PROJECT DIRECTOR** for any reason, the **CONSULTANT** shall notify the **CITY** within ten (10)

business days of the substitution. The PROJECT DIRECTOR designee shall be subject to the prior written approval of the PROJECT MANAGER.

2. DUTIES OF CONSULTANT.

CONSULTANT shall perform the duties and/or provide services as described in the Scope of Work in Exhibit A attached and incorporated herein.

3. DUTIES OF CITY.

CITY shall pay the compensation as provided in Paragraph 4, and perform the duties as described in Exhibit A, under Client Responsibilities, attached and incorporated herein.

4. COMPENSATION.

For the full performance of the services described herein by **CONSULTANT**, **CITY** shall pay **CONSULTANT** as described in Exhibit A attached and incorporated herein.

Payment will be made monthly upon receipt by PROJECT MANAGER of itemized invoices submitted by **CONSULTANT**, for a total project amount not to exceed \$400,000.

5. TERM OF AGREEMENT.

The term of this Agreement shall commence on August 2, 2010 and shall terminate on February 29, 2012. Upon mutual agreement of the parties, and subject to the approval of the City Manager, the term of this Agreement may be extended in writing for an additional period of three months.

6. PROVISIONS OF FUNDING AGREEMENT TO APPLY

CONSULTANT acknowledges that **CITY** is subject to the requirements of the **SMART CORRIDOR SAN RAFAEL FUNDING AGREEMENT** dated July 16, 2010 between **CITY** and the Metropolitan Transportation Commission (hereafter “the **FUNDING AGREEMENT**”), which is incorporated herein by reference and a copy of which has been provided to **CONSULTANT**. **CONSULTANT** agrees that **CONSULTANT** and all Subconsultants retained or used by **CONSULTANT** in the performance of this Agreement, shall be subject to the rights and duties of the “Recipient” referred to in the following Terms and Conditions of the **FUNDING AGREEMENT**, and that **CONSULTANT** will incorporate such Terms and Conditions into any and all agreements **CONSULTANT** enters into with Subconsultants for the performance of this Agreement:

- Sections 4 (“Retention of Records”);
- Section 5 (“Audits”);
- Section 6 (“License to Work Products”);
- Section 7 (“Equal Employment Opportunity”)
- Section 8 (“Disadvantaged Business Enterprises (DBE)”))

Section 9 (“Title VI of the Civil Rights Act of 1964”);
Section 10 (“Access Requirements for Individuals with Disabilities”);
Section 11 (“State Energy Conservation Plan”);
Section 12 (“Debarment”);
Section 13 (“Clean Air and Water Pollution Acts”);
Section 14 (“Lobbying”);
Section 17 (“Compliance with Laws”);
Section 18 (“Identification of Documents”); and
Section 19 (“Subcontracts”).

7. TERMINATION.

A. **Discretionary.** Either party may terminate this Agreement without cause upon thirty (30) days written notice mailed or personally delivered to the other party. In such event, **CONSULTANT** shall be entitled to payment for costs incurred for incomplete deliverables, up to the maximum amount payable for each deliverable.

B. **Cause.** Either party may terminate this Agreement for cause upon fifteen (15) days written notice mailed or personally delivered to the other party, and the notified party's failure to cure or correct the cause of the termination, to the reasonable satisfaction of the party giving such notice, within such fifteen (15) day time period. If **CITY** terminates for cause, **CONSULTANT** shall be entitled only to costs incurred for work product acceptable to **CITY**, not to exceed the maximum amount payable under this Agreement for such work product.

C. **Effect of Termination.** Upon receipt of notice of termination, neither party shall incur additional obligations under any provision of this Agreement without the prior written consent of the other.

D. **Return of Documents.** Upon termination, any and all **CITY** documents or materials provided to **CONSULTANT** and any and all of **CONSULTANT's** documents and materials prepared for or relating to the performance of its duties under this Agreement, shall be delivered to **CITY** as soon as possible, but not later than thirty (30) days after termination.

8. OWNERSHIP OF DOCUMENTS.

The written documents and materials prepared by the **CONSULTANT** in connection with the performance of its duties under this Agreement, shall be the sole property of **CITY**. **CITY** may use said property for any purpose, including projects not contemplated by this Agreement. **CONSULTANT** shall not be liable to **CITY** for any damages or expenses incurred by **CITY** arising from any modifications to documents prepared by **CONSULTANT** which are made without **CONSULTANT'S** advice after delivery of such documents to **CITY**, nor shall **CONSULTANT** be liable to **CITY** for use of such documents by **CITY** for projects other than the Project within the scope of this Agreement. Notwithstanding anything in the foregoing to the contrary, **CONSULTANT** hereby agrees that **CONSULTANT** and all Subconsultants retained or used by **CONSULTANT** in the performance of this Agreement are also bound by and will be subject to the

provisions of Section 6 of Attachment C to the **FUNDING AGREEMENT**, entitled “LICENSE TO WORK PRODUCT.”

9. INSPECTION AND AUDIT.

Upon reasonable notice, **CONSULTANT** shall make available to **CITY**, or its agent, for inspection and audit, all documents and materials maintained by **CONSULTANT** in connection with its performance of its duties under this Agreement. **CONSULTANT** shall fully cooperate with **CITY** or its agent in any such audit or inspection. **CONSULTANT** hereby agrees that **CONSULTANT** and all Subconsultants retained or used by **CONSULTANT** in the performance of this Agreement are also bound by and will comply with the provisions of Section 4, entitled “RETENTION OF RECORDS”, and 5, entitled “AUDITS”, of Attachment C to the **FUNDING AGREEMENT**.

10. ASSIGNABILITY.

The parties agree that they shall not assign or transfer any interest in this Agreement nor the performance of any of their respective obligations hereunder, without the prior written consent of the other party, and any attempt to so assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect.

11. INSURANCE.

A. During the term of this Agreement, **CONSULTANT** shall maintain, at no expense to **CITY**, the following insurance policies:

1. A comprehensive general liability insurance policy in the minimum amount of one million (\$1,000,000) dollars per occurrence for death, bodily injury, personal injury, or property damage;
2. An automobile liability (owned, non-owned, and hired vehicles) insurance policy in the minimum amount of one million (\$1,000,000) dollars per occurrence;
3. If any licensed professional performs any of the services required to be performed under this Agreement, a professional liability insurance policy in the minimum amount of one million (\$1,000,000) dollars to cover any claims arising out of the **CONSULTANT's** performance of services under this Agreement.

B. The insurance coverage required of the **CONSULTANT** by section 11. A., shall also meet the following requirements:

1. The insurance shall be primary with respect to any insurance or coverage maintained by **CITY** and shall not call upon **CITY's** insurance or coverage for any contribution;
2. Except for professional liability insurance, the insurance policies shall be endorsed for contractual liability and personal injury;

3. Except for professional liability insurance, the insurance policies shall be specifically endorsed to include the **CITY**, its officers, agents, employees, and volunteers, as additionally named insureds under the policies.

4. **CONSULTANT** shall provide to City's Risk Manager, (a) Certificates of Insurance evidencing the insurance coverage required herein, and (b) specific endorsements naming **CITY**, its officers, agents, employees, and volunteers, as additional named insureds under the policies.

5. The insurance policies shall provide that the insurance carrier shall not cancel the terms and conditions of said insurance policies except upon thirty (30) days written notice to City's Risk Manager. The **CONSULTANT** will notify **CITY** within five (5) days of having knowledge of any pending modification to the limits of liability or reductions in coverage.

6. If the insurance is written on a Claims Made Form, then, following termination of this Agreement, said insurance coverage shall survive for a period of not less than five years;

7. The insurance policies shall provide for a retroactive date of placement coinciding with the effective date of this Agreement;

8. The insurance shall be approved as to form and sufficiency by **PROJECT MANAGER** and the City Attorney.

C. If it employs any person, **CONSULTANT** shall maintain worker's compensation and employer's liability insurance, as required by the State Labor Code and other applicable laws and regulations, and as necessary to protect both **CONSULTANT** and **CITY** against all liability for injuries to **CONSULTANT's** officers and employees.

D. Any deductibles or self-insured retentions in **CONSULTANT's** insurance policies must be declared to and approved by the City's Risk Manager and the City Attorney. At **CITY's** option, the deductibles or self-insured retentions with respect to **CITY** shall be reduced or eliminated to **CITY's** satisfaction, or **CONSULTANT** shall procure a bond guaranteeing payment of losses and related investigations, claims administration, attorney's fees and defense expenses.

12. INDEMNIFICATION.

A. Except as provided in Paragraph (B), **CONSULTANT** shall indemnify, release, defend and hold harmless **CITY**, its officers, and employees, against any claim, demand, suit, judgment, loss, liability or expense of any kind, including attorney's fees, arising out of or resulting in any way, in whole or in part, from any acts or omissions, intentional or negligent, of **CONSULTANT** or **CONSULTANT'S** officers, agents and employees in the performance of their duties and obligations under this Agreement.

B. Where the services to be provided by **CONSULTANT** under this Agreement are design professional services to be performed by a design professional as that term is defined under Civil Code Section 2782.8, **CONSULTANT** shall, to the fullest extent permitted by law, indemnify, release, defend and hold harmless **CITY**, its officers, and employees, against any claim, demand, suit, judgment, loss, liability or expense of any kind, including attorney's fees, that arises out of, pertains to, or relates to the negligence, recklessness, or willful misconduct of **CONSULTANT** in the performance of its duties and obligations under this Agreement.

C. Notwithstanding anything in this Section 12 to the contrary, **CONSULTANT'S** indemnification and defense obligations hereunder shall also extend to and include any indemnification obligations or liabilities of the "Recipient" pursuant to Section 15 of the Terms and Conditions of the **FUNDING AGREEMENT**, entitled "INDEMNIFICATION", including but not limited to the duty to defend the persons and entities named in said Section 15.

13. NONDISCRIMINATION.

CONSULTANT shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, ancestry, national origin or disability in connection with or related to the performance of its duties and obligations under this Agreement.

14. COMPLIANCE WITH ALL LAWS.

CONSULTANT shall observe and comply with all applicable federal, state and local laws, ordinances, codes and regulations, in the performance of its duties and obligations under this Agreement. **CONSULTANT** shall perform all services under this Agreement in accordance with these laws, ordinances, codes and regulations. **CONSULTANT** shall release, defend, indemnify and hold harmless **CITY**, its officers, agents and employees from any and all damages, liabilities, penalties, fines and all other consequences from any noncompliance or violation of any laws, ordinances, codes or regulations.

15. NO THIRD PARTY BENEFICIARIES.

CITY and **CONSULTANT** do not intend, by any provision of this Agreement, to create in any third party, any benefit or right owed by one party, under the terms and conditions of this Agreement, to the other party.

16. NOTICES.

All notices and other communications required or permitted to be given under this Agreement, including any notice of change of address, shall be in writing and given by personal delivery, or deposited with the United States Postal Service, postage prepaid, addressed to the parties intended to be notified. Notice shall be deemed given as of the date of personal delivery, or if mailed, upon the date of deposit with the United States Postal Service. Notice shall be given as follows: (alternative contact information for daily project communications is also shown below)

TO CITY: Linda M. Jackson
Project Manager
San Rafael Community Development Department
P.O. Box 151560
San Rafael, CA 94915-1560

Phone: 415-485-3067
Email: linda.jackson@cityofsanrafael.org
FAX: 415-485-3184

TO CONSULTANT: Timothy Rood
Project Director
Community Design + Architecture
350 Frank Ogawa Plaza, 5th Floor
Oakland, CA 94612

Phone: 510-839-4568
Email: tim@community-design.com
FAX: 510-839-4570

17. INDEPENDENT CONSULTANT.

For the purposes, and for the duration, of this Agreement, **CONSULTANT**, its officers, agents and employees shall act in the capacity of an Independent **CONSULTANT**, and not as employees of the **CITY**. **CONSULTANT** and **CITY** expressly intend and agree that the status of **CONSULTANT**, its officers, agents and employees be that of an Independent **CONSULTANT** and not that of an employee of **CITY**.

18. ENTIRE AGREEMENT -- AMENDMENTS.

A. The terms and conditions of this Agreement, all exhibits attached, and all documents expressly incorporated by reference, represent the entire Agreement of the parties with respect to the subject matter of this Agreement.

B. This written Agreement shall supersede any and all prior agreements, oral or written, regarding the subject matter between the **CONSULTANT** and the **CITY**.

C. No other agreement, promise or statement, written or oral, relating to the subject matter of this Agreement, shall be valid or binding, except by way of a written amendment to this Agreement.

D. The terms and conditions of this Agreement shall not be altered or modified except by a written amendment to this Agreement signed by the **CONSULTANT** and the **CITY**.

E. If any conflicts arise between the terms and conditions of this Agreement, and the terms and conditions of the attached exhibits or the documents expressly incorporated by reference, the terms and conditions of this Agreement shall control.

19. SET-OFF AGAINST DEBTS.

CONSULTANT agrees that **CITY** may deduct from any payment due to **CONSULTANT** under this Agreement, any monies which **CONSULTANT** owes **CITY** under any ordinance, agreement, contract or resolution for any unpaid taxes, fees, licenses, assessments, unpaid checks or other amounts.

20. WAIVERS.

The waiver by either party of any breach or violation of any term, covenant or condition of this Agreement, or of any ordinance, law or regulation, shall not be deemed to be a waiver of any other term, covenant, condition, ordinance, law or regulation, or of any subsequent breach or violation of the same or other term, covenant, condition, ordinance, law or regulation. The subsequent acceptance by either party of any fee, performance, or other consideration which may become due or owing under this Agreement, shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, condition, covenant of this Agreement or any applicable law, ordinance or regulation.

21. COSTS AND ATTORNEY'S FEES.

The prevailing party in any action brought to enforce the terms and conditions of this Agreement, or arising out of the performance of this Agreement, may recover its reasonable costs (including claims administration) and attorney's fees expended in connection with such action.

22. CITY BUSINESS LICENSE / OTHER TAXES.

CONSULTANT shall obtain and maintain during the duration of this Agreement, a **CITY** business license as required by the San Rafael Municipal Code. **CONSULTANT** shall pay any and all state and federal taxes and any other applicable taxes. **CITY** shall not be required to pay for any work performed under this Agreement, until **CONSULTANT** has provided **CITY** with a completed Internal Revenue Service Form W-9 (Request for Taxpayer Identification Number and Certification).

23. APPLICABLE LAW.

The laws of the State of California shall govern this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day, month and year first above written.

CITY OF SAN RAFAEL

CONSULTANT

City Manager

By: _____
Title: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A

Community Design + Architecture

Scope of Services and Fee

(Under separate cover if viewing the electronic version)