

**THIRD AMENDMENT TO THE
PROFESSIONAL SERVICES AGREEMENT
FOR
ENGINEERING SERVICES FOR FRISBIE PARK EXPANSION PROJECT
CITY PROJECT NO. 150304**

1. PARTIES AND DATE.

This Third Amendment to the Professional Services Agreement ("Third Amendment") is made and entered into this *November 14, 2017*, by and between the City of Rialto, a California municipal corporation, ("City"), and *Community Works Design Group, Inc., a California corporation* ("Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties" in this Third Amendment.

2. RECITALS.

2.1 Agreement. City and Consultant entered into that certain Professional Services Agreement dated *July 12, 2016*, ("Agreement"), whereby Consultant agreed to provide professional services related to the Phase I Engineering Services for the Frisbie Park Expansion and Cactus/Randall Park Development, City Project Nos. 150304 and 150303, respectively (the "Project"), to the City. The initial contract amount was Two Hundred Twenty-Seven Thousand, Eight Hundred Eighty Dollars and No Cents (\$227,880).

2.2 First Amendment to Agreement. City and Consultant entered into that certain First Amendment to Professional Services Agreement dated *March 14, 2017*, ("First Amendment"), whereby Consultant agreed to provide Phase II professional services related to Engineering Services for the Cactus/Randall Park Development Project, City Project No. 150303, (the "Cactus/Randall Park Development"), to the City. The First Amendment contract amount was Three Hundred Fifteen Thousand, Six Hundred Eleven Dollars and No Cents (\$315,611).

2.3 Second Amendment to Agreement. City and Consultant entered into that certain Second Amendment to Professional Services Agreement dated *May 9, 2017*, ("Second Amendment"), whereby Consultant agreed to provide Phase II professional services related to Engineering Services for the Frisbie Park Expansion Project, City Project No. 150304, (the "Frisbie Park Expansion Project"), to the City. The Second Amendment contract amount was Seven Hundred Eighty Nine Thousand, Three Hundred Twenty Two Dollars and No Cents (\$789,322).

3. TERMS.

3.1 Scope of Services. The following is added to Section 1.1 "Scope of Services":

In compliance with all terms and conditions of the First and Second Amendments, Consultant agrees to perform the professional services set forth in the Scope of Services described in the Consultant's letter dated October 12, 2017, included as **Exhibit "A"** to the Third Amendment, which is attached hereto and is incorporated herein by reference. In providing services under this Third Amendment, the Consultant will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances.

3.2 Compensation. The following is added to Section 2.1 "Maximum Contract Amount":

For the Services rendered pursuant to this Third Amendment, Consultant shall be compensated by City in accordance with the Schedule of Compensation, identified in the Consultant's letter dated October 12, 2017, included as **Exhibit "A"** to this Third Amendment, covering the Frisbie Park Expansion, not exceeding the amount of **One Hundred Ten Thousand Six Hundred and Fifty Five Dollars and no cents (\$110,655.00)** (hereinafter referred to as the "Third Amendment Amount"), except as may be provided pursuant to Section 1.8 of the Agreement. The professional services fee due CWDG upon completion of the work contained within the original agreement, first amendment to the agreement, second amendment to the agreement, and this third amendment, for work on Joe Sampson (Cactus-Randall) Park and Frisbie Park, totals **One Million Four Hundred Forty Three Thousand Four Hundred and Sixty Eight Dollars (\$1,443,468)**. The method of compensation shall be as set forth in **Exhibit "A."** Compensation for necessary expenditures for reproduction costs, telephone expenses, and transportation expenses must be approved in advance by the Contract Officer designated pursuant to Section 4.2 of the Agreement and will only be approved if such expenses are also specified in the Schedule of Compensation. The Third Amendment Amount shall include the attendance of Consultant at all Project meetings reasonably deemed necessary by the City. Consultant shall not be entitled to any increase in the Third Amendment Amount for attending these meetings. Consultant hereby acknowledges that it accepts the risk that the services identified in the Scope of Services may be more costly and/or time-consuming than Consultant anticipates. The maximum amount of city's payment obligation under this Third Amendment is the amount specified herein. If the City's maximum payment obligation is reached before the Consultant's Services under this Third Amendment are completed, Consultant shall nevertheless complete the Work without liability on the City's part for further payment beyond the Third Amendment Amount. If City requests additional work not included in the Scope of Services identified in the Third Amendment and as described in the Consultant's letter dated October 12, 2017 included as **Exhibit "A"**, Consultant and City shall negotiate the additional work requested, and shall mutually agree on the amount of additional compensation associated with the requested additional work. No additional work may be undertaken by the Consultant unless a separate Amendment to this Agreement is first approved by both the City and Consultant.

3.3 Method of Payment. The following paragraph is hereby added to Section 2.2 "Method of Payment" of the Agreement:

Unless some other method of payment is specified in the Schedule of Compensation for the Second Amendment, described in the Consultant's letter dated October 12, 2017, included as **Exhibit "A"**, in any month in which Consultant wishes to receive payment, no later than the tenth (10) working day of such month, Consultant shall submit to the City, in a form approved by the Contract Officer, an invoice for services rendered prior to the date of the invoice. Such requests shall be based upon the amount and value of the services performed by Consultant and accompanied by such reporting data including an

itemized breakdown of all costs incurred and tasks performed during the period covered by the invoice, as may be required by the City. City shall use reasonable efforts to make payments to Consultant within thirty (30) days after receipt of the invoice or a soon thereafter as is reasonably practical. There shall be a maximum of one payment per month.

3.4 Schedule of Performance.

A. The following paragraph is hereby added to Section 3.1 "Time of Essence" of the Agreement:

Time is of the essence in the performance of the Third Amendment of the Agreement. The time for completion of the services to be performed by Consultant is an essential condition of the Third Amendment of the Agreement. Consultant shall prosecute regularly and diligently the Work of the Third Amendment of the Agreement according to the agreed upon Schedule of Performance identified in the Consultant's letter dated October 12, 2017, included as **Exhibit "A"** to the Third Amendment.

B. The following paragraph is hereby added to Section 3.2 "Schedule of Performance" of the Agreement:

Consultant shall commence the Services pursuant to the Third Amendment of the Agreement upon receipt of a written notice to proceed given by the City, and shall perform all Services within the time period(s) established in the Schedule of Performance, identified in the Consultant's letter dated October 12, 2017, included as **Exhibit "A"** to the Third Amendment. When requested by Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer, but such extensions shall not exceed one hundred eighty (180) days cumulatively; however, the City shall not be obligated to grant such an extension.

C. The following paragraph is hereby added to Section 3.4 "Term" of the Agreement:

Unless earlier terminated as provided elsewhere in the Agreement, the Services pursuant to the Third Amendment of the Agreement shall commence upon the effective date of the Third Amendment and continue in full force and effect until completion of the Services, as provided in the Schedule of Performance described in the Consultant's letter dated October 12, 2017, included as **Exhibit "A"**, and pursuant to Section 3.2 of the amended Agreement, unless extended by mutual written agreement of the Parties.

3.5 Continuing Effect of Agreement. Except as amended by this Third Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Third Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement as amended by this Third Amendment.

3.6 Adequate Consideration. The Parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Third Amendment.

3.7 Counterparts. This Third Amendment may be executed in duplicate originals, each of which is deemed to be an original, but when taken together shall constitute but one and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the City and the Consultant have caused this Third Amendment of the Agreement to be executed the day and year first above written.

CITY OF RIALTO, CALIFORNIA

APPROVED BY THE CITY COUNCIL:

By _____
Deborah Robertson
Mayor

Date _____

Agreement No. _____

ATTEST:

By _____
Barbara A. McGee
City Clerk

APPROVED AS TO FORM:

By _____
Fred Galante, Esq.
City Attorney

RECOMMENDED:

By _____
Robert G. Eisenbeisz, P.E.
Public Works Director/City Engineer

CONSULTANT

By: Community Works Design Group, Inc., a California corporation

Firm/Company Name

By: _____
Signature (notarized)

By: _____
Signature (notarized)

Name: _____

Name: _____

Title: _____

Title: _____

(This Agreement must be signed in the above space by one of the following: Chairman of the Board, President or any Vice President)

(This Agreement must be signed in the above space by one of the following: Secretary, Chief Financial Officer or any Assistant Treasurer)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that document.

State of _____)
County of _____)ss

State of _____)
County of _____)ss

On _____
before me, _____
personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

On _____
before me, _____
personally appeared _____
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signatures(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

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WITNESS my hand and official seal.

WITNESS my hand and official seal.

Notary Signature:

Notary Signature:

Notary Seal:

Notary Seal: