

**A RESOLUTION AUTHORIZING TRANSITION AREA DESIGN WORKSHOPS**

**Resolution No. 24/2009-10**

WHEREAS, the Town desires the assistance of a private consulting firm in the performance of certain specialized professional services; and

WHEREAS, since the early 1980s the Town has been involved in planning for long-term land use, including development and conservation, of the area referred to as the 'Transition Areas,' and

WHEREAS, following citizen advisory board and community review of planning concepts for this area, the Town desires to obtain focused participation on design elements and concepts that can be applied in selected portions of the Transition Areas; and

WHEREAS, the Designer is uniquely qualified to assist with these tasks due extensive familiarity with the area; such familiarity will be of great assistance to facilitating completion of the project in a timely manner;

NOW THEREFORE, BE IT RESOLVED by the Carrboro Board of Aldermen that the Aldermen authorize the Town Manager to sign a Professional Services Agreement with the Durham Area Designers to assist with design workshops for Carrboro's Transition Areas.



## PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made and entered into this \_\_\_ day of \_\_\_\_\_, in the year

2009 \_\_\_, by and between the Town of Carrboro (hereinafter called "Town") and Durham Area Designers (hereinafter called the "Designer"), whose addresses are 301 W. Main Street, Carrboro, NC 27510 and 111 W. Main Street, Durham, NC 27701.

WITNESSETH

WHEREAS, the Town desires the assistance of a private consulting firm in the performance of certain specialized professional services; and

WHEREAS, since the early 1980s the Town has been involved in planning for long-term land use, including development and conservation, of the area referred to as the 'Transition Areas,' and

WHEREAS, following citizen advisory board and community review of planning concepts for this area, the Town desires to obtain focused participation on design elements and concepts that can be applied in selected portions of the Transition Areas; and

WHEREAS, the Designer is uniquely qualified to assist with these tasks due to extensive familiarity with the area; such familiarity will be of great assistance to facilitating completion of the project in a timely manner;

NOW THEREFORE, the Town and Designer, for consideration hereinafter stipulated, mutually agree as follows:

The Designer agrees to perform the required professional services including, but not limited to pre-project planning, preparation of presentations for the design workshops, conducting the workshops and documenting the findings.

### ARTICLE 1- SCOPE OF SERVICES

#### **Description of work required**

#### **Task 1. Project Communication/regular meetings**

Designer will communicate regularly with the Town staff, at a minimum of once a week. Staffs of the Planning and Public Works departments are to be involved in these meetings.

*Deliverables:* Weekly communication with staff.

#### **Task 2. Project Kick-off Meeting**

Designer will meet with Town staff to review the scope of services and project timeline and discuss the financial administration of the contract/agreement. Clarification of desired modifications will occur at this time. The meeting will cover design procedures and decision-making so that information and communication can be handled quickly and efficiently amongst all involved parties.

*Deliverables:* Town staff will keep meeting notes for the project file.

#### **Task 3. Prepare for Design Workshop**

Designer will review existing background information on the project, determine the goals of the workshop with the Town, and prepare base mapping and exhibits needed for the workshop, including the evaluation of known and anticipated roadway design/cross-section alternatives (taking into consideration existing and expected traffic levels) for arterials in Transition Areas (principally Homestead Road and Old NC 86).

*Deliverables:* Staff will keep meeting notes for the project file. Presentation materials, including graphics, photographs, maps.

#### **Task 4. Client Review**

Designer will meet with Town staff to set workshop agenda. Any decisions regarding the workshop activities shall be clearly stated at the conclusion of the review and described in the meeting notes.

*Deliverable:* Town staff will keep meeting notes for the project file.

#### **Task 5. Follow-up to Workshop**

Designer will review charrette plans for commonalities and key points, will document the charrette plans and narrative, will meet with Town and stakeholders to review raw data, agree on key issues, will prepare final presentation, and present to stakeholders (one meeting), and Town Officials (one meeting).

*Deliverables:* Report with written summary of the workshop proceedings and graphics from the workshop; Recommendations narrative and support graphics. All materials submitted in paper and electronic forms, suitable for copying and web-posting.

**To discuss: Best strategy for evaluating roadway design/cross-section alternatives (taking into consideration existing and expected traffic levels) for arterials in Transition Areas (principally Homestead Road and Old NC 86).**

#### **ARTICLE 2 – TIMELINE**

Review by Board of Aldermen October 6

Execution of professional services agreement by October 9

Project kick-off meeting by October 9

Property owner meeting by mid-October (staff arranges and conducts)

Design Workshop #1/Public feedback information session by October 28

Design Workshop #2 by February 2010

Final design and other project deliverables by early spring, 2010

### **ARTICLE 3- COMPENSATION AND PAYMENTS**

#### **3. A. Summary of Fees and Expenses**

**3. B.** As compensation for the work outlined above, Durham Area Designers will be paid the lump sum fee of \$ 15,000, with reimbursement of up to \$3,000 for printing, supplies, and publishing expenses. Payments will be made to the Designer at the conclusion of Task 5, completion of the project upon submission of an accompanying invoice, and upon approval by the Town. Payment will be due within 30 days from the date of the Town's receipt of the invoice.

**3. C.** With submittal of a final invoice for an individual assignment, the Designer is required to state "Final Invoice" and described that upon receipt of payment, no more invoices will be submitted and no more compensation expected.

### **ARTICLE 4 – DATA AND SERVICES TO BE FURNISHED BY THE TOWN**

**4. A.** The Town shall assist the Designer in coordination of the Project and review of completed material provided by the Designers in an expeditious manner so as to facilitate preparation and acceptance of the appropriate documents.

**4. B.** The Town shall appoint a primary project manager that will be the Designer's main contact for the Project. The Project Manager shall keep the Designer apprised of all relevant information that could affect the work. The Town shall work with the Designer for maximum access to needed information and/or expertise related to the design of the bus shelters.

### **ARTICLE 5 – MISCELLANEOUS PROVISIONS**

#### **5. A. Conferences, Inspection of Work**

Designer will be represented by a responsible member of the Durham Area Designers at any meetings or consultations deemed necessary by the Town or the Designer. All conferences held will be in Carrboro, North Carolina.

#### **5. B. Designer's Responsibility**

The Designer shall be fully and totally responsible for the accuracy and completeness of all work performed under this agreement and shall indemnify and save harmless the Town and shall be fully liable for any additional costs and all claims against the Town which may arise due to errors, omissions, or negligence of the Designer or any sub consultants in performing the work required by this agreement.

If, during the duration of the agreement, the Designer receives instructions or directions which are considered beyond the scope of work outlined in this agreement, all work shall be suspended until the matter is resolved. The Designer shall immediately notify the Town in writing with a description and justification for the claim of extra work. The Designer shall not continue work until written notice to proceed is given.

If the Designer receives incorrect instruction of direction as it relates to the individual scope of work for an assignment, the consultant will contact the Town with the details of the out of scope items. The Designer and Town will mutually agree upon what direction to pursue before any additional work is undertaken for that specific assignment. If additional services are required, then a new scope of work and estimate will be prepared and once agreed upon, a letter from the Town will act as the notice to proceed for the agreed upon services.

The Designer shall defend, indemnify, and hold harmless the Town of Carrboro, its officers and employees from any claim, demand, suit, liability, judgment and expense (including attorney's fees and other costs of litigation) arising out of or relating to injury, disease, or death of persons or damage to or loss of property resulting from or in connection with the negligent performance of this contract by the Designer, its agents, employees, and sub consultants or any one for whom the Designer may be responsible. The obligations, indemnities and liabilities assumed by the Designer under this paragraph shall not extend to any liability caused by the negligence of the Town or its employees. The Designer's liability shall not be limited by any provisions or limits of insurance set forth in this contract.

The Designer shall indemnify and hold harmless the Town from any claim, demand, suit, liability, judgment, and expense involving damage or loss to the Designer's equipment, (including vandalism, theft, fire, and acts of God) arising out of or relating to work performed under this agreement. The obligations, indemnities and liabilities assumed by the Designer under this paragraph shall not extend to any liability caused by the negligence of the Town or its employees. The Designer's liability shall not be limited by any provisions or limits of insurance set forth in this agreement.

5. C. The Professional services provided by the Designer under this agreement will be performed, findings obtained, and recommendations prepared in accordance with generally accepted principles and practices.

5. E. The Designer agrees to maintain all books, documents, papers, accounting records, computer files, and other information pertaining to cost incurred on this project and to make such materials available at its office at all reasonable times during the contract period and for five (5) years from the date of final payment.

5. E. The Designer will provide to the town Certificate of Professional Liability insurance for a minimum of \$1,000,000 prior to the execution of this agreement, unless waived by the Town Manager.

Pursuant to N.C.G.S 97-19, the Designer is, prior to beginning services, required to show proof of coverage issued by a workers' compensation insurance carrier, or a certificate of compliance issued by the Department of Insurance for a self-insured Designer, stating that it has complied with N.C. G.S. 97-93, irrespective of whether the Designer has regularly in service fewer than three (3) employees in the same business within the State of North Carolina, and each Designer

shall be hereinafter liable under the Workers' Compensation Act for payment of compensation and other benefits to its employees for any injury or death due to accident arising out of and in the course of performance of the work insured by the Designer.

**5. F.1 Covenant against contingent fees**

The Designer warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for the Designers, to solicit or secure this contract and that he has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Designer, any fee, commission, percentage, brokerage fee, gifts, or any consideration, contingent upon or resulting from the award or making of this agreement. For breach or violation of this warranty, the State shall have the right to annul this agreement without liability, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such fee, commission, brokerage fee, gift or contingent fee.

**5. F.2 Ownership of documents**

All tracings, documents, technical reports, charts, plans, specifications, photographic negatives, survey notes, computations, and maps and other data prepared and obtained under the terms of the contract shall be delivered to and become property of the Town without restriction or limitation on their use. However, in the event of any reuse or alteration of any documents furnished to the Town, such alteration or reuse shall be the Town's sole risk. In the case of an agreement involving preliminary plans only, no commitment is stated or implied that would constitute a limitation on the subsequent use of the plans or ideas incorporated therein of preparation of construction plans.

**5. F 3. Changes to work**

All changes in the work will be included in supplemental agreements, which will be executed prior to beginning of each supplemental work. The supplemental work will be approved by Town prior to doing the work.

**5. F.4. Delays and extensions**

Reasonable extension of time for unforeseen delays may be made by mutual consent of all parties involved.

**5. f.5. Termination or abandonment**

Should the Town for any reason whatsoever decide to cancel or to terminate the use of the Designer's services, it will furnish thirty (30) days written notice thereof to the Designer who will immediately terminate work, but shall bring to a reasonable stage of completion those items whose value would be otherwise lost without such necessary further work, as may be directed by the Town and will turn over to the Town all data, environmental documents, technical reports, charts, survey notes, figures, drawings, and other records or information collected or secured herein, whether partial or complete. Upon such termination the fee to be paid the Designer will be equitable to cover all services rendered, using a proportional amount of the total fee based on the ratio of the amount of work done to the total amount of work which was to have been performed, less prior partial payments which have been made.

**5. f.6. Disputes**

If a dispute occurs between the Town and the Designer arising out of or relating to the Agreement or an alleged breach thereof, the Town and Designer agree to attempt to resolve the dispute by engaging in good faith negotiations. If the dispute cannot be resolved by negotiations then the Town and the Designer agree that as a condition precedent to commencing a lawsuit to submit the dispute to non-binding mediation. The parties agree to exercise good faith efforts to complete any such mediation within 60 days after the demand for mediation of the dispute has been delivered, and if mediation is not completed within 60 days the party demanding mediation may proceed to litigation.

**5. F.7. General compliance with laws**

The Designer will comply with all laws, ordinances and regulations, Federal, state, and local applicable to the work.

The Designer shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, disability, sexual orientation or gender expression/identity.

**5. f.8. Disadvantage, minority, or women business enterprises (race and gender neutral) Policy**

It is the policy of the Town that small businesses shall have an equal opportunity to compete fairly for and to participate in the performance of contracts.

**Obligation**

In compliance with *Title VI, 23 CRF 200, 230, 635, 117 (d) and (c) and 49 CRR Parts 21 and 26*, the Designer and subconsultant shall not discriminate on the basis of race, religion, color, creed, national origin, age, disability or sex in the performance of this contract. The Designer and subcontract shall also not discriminate on the basis of sexual orientation or gender expression/identity. Failure by the firm to comply with these requirements is a material breach of this agreement, which will result in the termination of this agreement or such other remedy, as the Town deems necessary.

**5. F. 9. Subletting, assignment, or transfers**

There shall be no assignment, subletting, or transfer of the interest of the Designer in any of the work covered by the agreement without the written consent of the Town, except that the Designer may, with prior notification of such action to the Town, sublet property searches and related services without further approval of the Town.

**5. F.10 Designer's endorsement of plans, etc.**

The Designer will endorse all environmental documents, reports, surveys, computations, maps, plans, specifications, estimates, and engineering data furnished by him/her.

**5. F.11 Work standards**

All work by the Designer is to be done in a manner satisfactory to the Town and in accordance with the established customs, practices, and procedures of the.

**5. F.12 Personnel**

The Designer or any subconsultant for the Designers which are employed to provide services for this project shall not engage the services of any person or persons now in the employment of the Town during the time of this agreement without written consent of the Town.

Failure to comply with the terms stated above shall be grounds for termination of this contract and/or not being considered for selection of work on future contracts for a period of one year.

IN TESTIMONY WHEREOF, the parties have caused these presents to be executed by their proper officials thereunto duly authorized as of the dates below indicated

EXECUTED by the TOWN this \_\_\_\_\_ day of \_\_\_\_\_, 2009

SEAL:

TOWN OF CARRBORO

By: \_\_\_\_\_  
Steven Stewart, Town Manager

ATTESTED

By: \_\_\_\_\_  
Sarah Williamson, Town Clerk

Approved as to execution: \_\_\_\_\_

The instrument has been pre-audited in the manner required by Local Government Budget and Fiscal Control Act.

By: \_\_\_\_\_  
L. Bingham Roenigk  
Assistant Town Manager and Finance Officer

EXECUTED BY THE DESIGNER this \_\_ day of \_\_\_\_\_, \_\_\_\_\_

SEAL: Designer

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

Dan Jewell

Title

Attested by: \_\_\_\_\_

DRAFT