



220 South Street, Suite 201
West Lafayette, IN 47906
765.250.9209

2016 SERVICE AGREEMENT BETWEEN THE CITY OF WEST LAFAYETTE AND MKSK

This agreement is entered into, by, and between the City of West Lafayette, Indiana and MKSK of Indianapolis, Indiana for planning, landscape architecture, and urban design advisory services. This contract shall be known as the MKSK/City of West Lafayette Continuing Services contract.

Article I – Assumptions:

1. The Client will be the City of West Lafayette. The Consultant is to be MKSK: Eric Lucas, Principal in Charge; Evan Smith, Project Manager; and planning and design staff.
2. Services shall be performed as requested by the Client in accordance with Article II (Scope of Service). The primary Client contacts are the Public Works Director, David Buck and his designees, and Chandler Poole, Director of Development, and his designees.
3. The following Scope of Service is based upon MKSK's understanding of services to be completed. Any additional services that may be required can be identified and additional fees can be authorized accordingly and will be based on MKSK's standard hourly rate (attached).

Article II – Scope of Service:

1. **Planning & Design Services:** The Consultant will provide professional planning, design, development, landscape architecture, mapping, and graphic consultation services for the City. These services to be performed as requested and directed by the Client may include (but are not limited to):

Planning & Landscape Reviews

- Review of submitted landscape plans
- Preparation of staff reports and/or ancillary documents for the use of the boards and commissions in reviewing applications
- Development review and reports as requested for staff, committees, or groups
- Special assignments, particularly in the areas of planning, landscape architecture, and urban design advisory services
- Special assignments for area studies including, but not limited to, staff/advisory meetings and public involvement processes

Meetings

- Meetings with the administration and/or designees
- Meetings with applicants and the administration to review development applications
- Attendance at project and/or Board and Commission meetings as requested

Mapping & Graphics

- Mapping services for the City
- Printing or production of maps and/or graphics

- Upkeep and maintenance of existing mapping database
2. **Special Planning & Design Projects:** On a specific project by project basis, the Consultant will provide professional planning, design, development, landscape architecture, and mapping and graphic consultation services to the City. These projects will be identified by the Client as the need arises and a scope agreed to by both Client and Consultant. Examples of potential special projects could include, but are not limited to, streetscape design, and park planning and programming.

Article III – Fee Proposal:

1. Professional Fees:

- a. MKSK will provide the above services for West Lafayette on an hourly billing rate indicated in the attached MKSK Terms and Conditions, as delineated below:
- b. Planning & Design Services and Special Planning & Design Projects - up to \$50,000. MKSK will not exceed the fee total unless otherwise authorized in writing by the Client.
- c. A scope and fee will be provided by MKSK and agreed to by the Client for each individual project under Planning & Design Services.
- d. A scope and fee will be provided by MKSK and agreed to by the Client for each individual project under Special Planning and Design Projects.
- e. MKSK will invoice only for the time spent on the above services and assignments authorized by the Client.

2. Direct Expenses/Reimbursable Expenses:

- a. Direct expenses will be billed as part of the fee for professional and special services and include actual out-of-pocket expenditures made in the interest of the above services. These are estimated at as a not to exceed amount of \$1,000 and might include:
 1. Requested plotted and printed documents (excluding those for office/in-house use). Such printing services will be invoiced at the rates indicated on the MKSK Terms and Conditions (attached).
 2. Reimbursable expenses such as out-of-office reprographic services (excluding those for office/in-house use), photographs, digital media, postage and handling of documents, courier services, etc. These reimbursable expenses will be invoiced at 1.2 times the actual amount.

- b. Consultant shall be reimbursed for all miles actually driven at the IRS-approved rate in effect at the time. No surcharge or markup is to be applied to such reimbursement. MKSK agrees to provide the City with supporting details, to include: trip date, drive name, destination, purposed of trip, and mileage.
- 3. Additional Services:

Additional services beyond this contract or the scopes of service agreed upon under Article II.1 or Article II.2 (Planning & Design Services and Special Planning & Design Projects) may be considered for additional service. Fees and scopes of service will be determined and approved by the Client at the time of request. Additional services, if requested, will be agreed upon under a separate agreement. If the Scope of Service or the Consultant's services are substantially revised, the estimate of total compensation shall be equitably adjusted per a written agreement. Any fee revisions or substantial scope revisions must be agreed to in writing prior to work commencing.

Article IV – Term of Agreement:

- 1. Duration:

This contract shall be for a term of one year, beginning March 9, 2016 and ending December 31, 2016 unless amended or terminated by either party, with or without cause, at any time upon the giving of at least 90 days prior written notice of its election to terminate to the other party. In the event termination occurs, the Consultant agrees to complete the current assignment(s) and the City agrees to pay the Consultant for service performed in accordance with the terms of this Agreement through the cancellation date.
- 2. Invoices:

Invoices from MKSK to the Client shall include detailed descriptions of work performed during the invoiced time period. This description shall include professional classification, billing rate, hours worked, percentage complete (of total Planning Design Services or of each Special Project), and list of tasks related to the work effort.
- 3. Payment:

Payment due the Consultant and unpaid thirty (30) days from the date the invoice is received by the Client shall bear interest from the date payment is due at the rate of one percent (1%) per month (annual percentage rate of 12.0%) and shall be due the Consultant. The Consultant may discontinue work on the Services if the account is unpaid 30 days from the date the invoice is received by the Client.

Thank you for the opportunity to continue working with the City of West Lafayette.

Sincerely,



Eric M. Lucas
Principal

Attachment: MKSK Terms and Conditions

Accepted by:

Printed name and title

Date

City of West Lafayette Provisions Required in all Contracts

1. Prevailing party – attorney fees

Notwithstanding any term or condition in this Contract to the contrary, in the event litigation is commenced to enforce any term or condition of this Contract, the prevailing party shall be entitled to costs and expenses of litigation including a reasonable attorney fee.

2. Engaging in activities w/Iran

By signing this Contract, MSK2, LLC certifies that it is not engaged in investment activities in the country of Iran as set forth in I.C. 5-22-16.5.

3. E-Verify

MSK2, LLC shall comply with E-Verify Program as follows:

a. Pursuant to IC 22-5-1.7, MSK2, LLC shall enroll in and verify the work eligibility status of all newly hired employees of MSK2, LLC through the E-Verify Program (“Program”). MSK2, LLC is not required to verify the work eligibility status of all newly hired employees through the Program if the Program no longer exists.

b. MSK2, LLC and its subcontractors shall not knowingly employ or contract with an unauthorized alien or retain an employee or contract with a person that MSK2, LLC or its subcontractors subsequently learns is an unauthorized alien. If MSK2, LLC violates this Section 7(b), the [City or City body which is a party to the contract] shall require MSK2, LLC to remedy the violation not later than thirty (30) days after the [City or City body which is a party to the contract] notifies MSK2, LLC. If MSK2, LLC fails to remedy the violation within the thirty (30) day period, the [City or City body which is a party to the contract] shall terminate the contract for breach of contract. If the [City or City body which is a party to the contract] terminates the contract, MSK2, LLC shall, in addition to any other contractual remedies, be liable to the [City or City body which is a party to the contract] for actual damages. There is a rebuttable presumption that MSK2, LLC did not knowingly employ an unauthorized alien if MSK2, LLC verified the work eligibility status of the employee through the Program.

c. If MSK2, LLC employs or contracts with an unauthorized alien but the [City or City body which is a party to the contract] determines that terminating the contract would be detrimental to the public interest or public property, the [City or City body which is a party to the contract] may allow the contract to remain in effect until the [City or City body which is a party to the contract] procures a new contractor.

d. MSK2, LLC shall, prior to performing any work, require each subcontractor to certify to MSK2, LLC that the subcontractor does not knowingly employ or contract with an unauthorized alien and has enrolled in the Program. MSK2, LLC shall maintain on file a certification from each subcontractor throughout the duration of the Project. If MSK2, LLC determines that a subcontractor is in violation of this Section 7(d), MSK2, LLC may terminate its contract with the subcontractor for such violation. Such termination may not be considered a breach of contract by MSK2, LLC or the subcontractor.

e. By its signature below, MSK2, LLC swears or affirms that it i) has enrolled and is participating in the E-Verify program, ii) has provided documentation to the [City or City body which is a party to the contract] that it has enrolled and is participating in the E-Verify program, and iii) does not knowingly employ an unauthorized alien.

4. Non-Discrimination

MSK2, LLC agrees:

(a) That in the hiring of employees for the performance of work under this contract or any subcontract hereunder, no contractor, or subcontractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, religion, color, sex, national origin or ancestry, discriminate against any citizen of the State of Indiana who is qualified and available to perform the work to which the employment relates;

(b) That no contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this contract on account of race, religion, color, sex, national origin or ancestry;

(c) That the [City or City body which is a party to the contract] may deduct from the amount payable to the contractor a penalty of five dollars (\$5.00) for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract;

(d) If there is a second or any subsequent violation of the terms or conditions of this section, then this contract may be cancelled or terminated by [City or City body which is a party to the contract] and all money due or to become due hereunder will be forfeited.

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DIRECT PROJECT EXPENSES Direct project expenses will be billed in addition to the fee for basic services and include actual out-of-pocket expenditures made in the interest of the Project. All direct project expenses will be invoiced at 1.2 times the actual amount. Direct project expenses include, but are not limited to mileage, film and processing, courier and overnight delivery services, travel, hotel, car rental, etc. and may be adjusted annually. All International air travel, if required, will be by business class.

Requested documents to be printed in-house will be invoiced at the following rates: (excluding those for office use)

B/W Copy 8.5" x 11" – Bond	\$ 0.15
B/W Copy 11" x 17" – Bond	\$ 0.30
B/W Copy 18" x 24" – Bond	\$ 1.00
B/W Copy 24" x 36" – Bond	\$ 2.00
B/W Copy 30" x 42" – Bond	\$ 3.00
B/W Copy 36" x 48" – Bond	\$ 4.00
Color Copy 8.5" x 11"	\$ 1.00
Color Copy 11" x 17"	\$ 2.00
Color Plot 18" x 24"	\$ 15.00
Color Plot 24" x 36"	\$ 25.00
Color Plot 30" x 42"	\$ 35.00
Color Plot 36" x 48"	\$ 45.00
Color Pres. Plot 18" x 24"	\$ 25.00
Color Pres. Plot 24" x 36"	\$ 45.00
Color Pres. Plot 30" x 42"	\$ 70.00
Color Pres. Plot 36" x 48"	\$ 85.00

ADDITIONAL SERVICES / STANDARD HOURLY RATES If the Scope of Work or if the Consultant's service is substantially revised, the amount of total compensation shall be equitably be adjusted. Fees for requested additional services shall be computed at our standard hourly rates below or outlined under a separate proposal. Rates may be adjusted annually.

Senior Principal	\$ 190
Principal	\$ 190
Senior Transportation Associate	\$ 190
Senior Associate	\$ 155
Associate	\$ 140
Landscape Architect I	\$ 119
Landscape Architect II	\$ 108
Landscape Architect III	\$ 102
Landscape Architect IV	\$ 65
Urban Planner I	\$ 119
Urban Planner II	\$ 102
Urban Planner III	\$ 92
Urban Planner IV	\$ 65
Graphic Designer I	\$ 115
Graphic Designer II	\$ 100
Graphic Designer III	\$ 92
Graphic Designer IV	\$ 65
Administration	\$ 65

RETAINER The Client shall make an initial payment as defined in the attached proposal as a retainer upon execution of this agreement. This retainer shall be held by the consultant and applied against the final invoice.

PAYMENT DUE Invoices shall be submitted monthly, are due upon presentation and shall be considered past due if not paid within thirty (30) calendar days of the due date. The Consultant has been commissioned by the Client to provide professional services, which are independent of whether the Project for which they are provided is executed or not.

SATISFACTION WITH SERVICES Payment of any invoice by the Client to the Consultant shall be taken to mean that the Client is satisfied with the Consultant's services to the date of payment and is not aware of any deficiencies in those services.

DISPUTED INVOICE If the Client objects to any portion of an invoice, the Client shall so notify the Consultant in writing within ten (10) calendar days of receipt of the invoice. The Client shall identify in writing the specific cause of the disagreement and the amount in dispute and shall pay that portion of the invoice not in dispute in accordance with the other payment terms of this Agreement. Any dispute over invoiced amounts due which cannot be resolved within ten (10) calendar days after presentation of invoice by direct negotiation between the parties shall be resolved within thirty (30) calendar days in accordance with the Dispute Resolution provision of this Agreement. Interest as stated above shall be paid by the Client on all disputed invoice amounts that are subsequently resolved in the Consultant's favor and shall be calculated on the unpaid balance from the due date of the invoice.

INTEREST If payment in full is not received by the consultant within forty-five (45) calendar days of the due date, invoices shall bear interest at one-and-one-half (1.5) percent of the past due amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to unpaid principal.

SUSPENSION OF SERVICES If the Client fails to make payments when due or otherwise is in breach of this agreement, the Consultant may suspend performance of services upon seven (7) days' notice to the Client. The Consultant shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension caused by any breach of this agreement by the Client. Upon payment in full by the Client or cures of the breach to the satisfaction of the Consultant, the Consultant shall resume services under this agreement, and the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for the Consultant to resume performance.

TERMINATION OF SERVICES If the Client fails to make payment to the Consultant in accordance with the payment terms herein, this shall constitute a material breach of this agreement and shall be cause for termination of this agreement by the Consultant.

TERMINATION OF AGREEMENT This agreement may be terminated by either party upon ninety (90) days written notice with or without cause. In the event of termination not initiated by the Consultant, the Consultant shall be compensated for all services performed to the date of termination, together with direct project expenses then due.

MEDIATION In an effort to resolve any conflicts that arise during the design or construction or the project or following the completion of the project, the Client and the Design Professional agree that all disputes between them arising out of or relating to this agreement shall be submitted to non-binding mediation unless the parties mutually agree

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otherwise. The Client and the Consultant further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

APPLICABLE LAW Unless otherwise specified, this agreement shall be governed by the laws of the State of Ohio.

ENTIRE AGREEMENT This agreement represents the entire and integrated Agreement between the Client and the Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both the Client and Consultant.

LIMITATION OF LIABILITY To the fullest extent permitted by law, and not withstanding any other provision of this Agreement, the total liability, in the aggregate, of the Consultant and the Consultant's officer's, directors, partners, employees and any of them, to the Client and anyone claiming by and through the Client, for any and all claims, losses, costs or damages, including attorney's fees and costs and expert witness fees and costs of any nature whatsoever or claims expenses resulting from or in any way related to the Project or the Agreement from any cause or causes shall not exceed the total compensation received by the Consultant under this Agreement, or the total amount of fifty thousand dollars (\$50,000), whichever is less. It is intended that this limitation apply to any and all liability or cause of action however alleged or arising, unless otherwise prohibited by law.

UNAUTHORIZED CHANGES The Consultant, upon delivery of documents is completely absolved and indemnified from any liability that may result from the interpretation or revision of documents for which the Consultant was not responsible.

STANDARD OF CARE In providing services under this Agreement, 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.

OWNERSHIP OF INSTRUMENTS OF SERVICE All reports, drawings, specifications, electronic files, field data, notes and other documents and instruments prepared by the Consultant as instruments of services shall remain the property of the Consultant. The Consultant shall retain all common law, statutory and other reserved rights, including the copyright thereto.

OPINIONS OF PROBABLE CONSTRUCTION COST In providing opinions of probable construction cost, the Client understands that the Consultant has no control over the cost or availability of labor, equipment or materials, or over market conditions or the Contractor's method of pricing, and that the Consultant's opinions of probable construction costs are made on the basis of the Consultant's professional judgment and experience. The Consultant makes no warranty, express or implied, that the bids or negotiated cost of the Work will not vary from the Consultant's opinion of probable construction cost.

INFORMATION PROVIDED BY OTHERS The Client shall furnish, at the Client's expense, all information requirements, reports, data, surveys and instructions required by this Agreement. The Consultant may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof.

DELIVERY OF ELECTRONIC FILES In accepting and utilizing any drawings, reports and data on any form of electronic media generated and furnished by the Consultant, the Client agrees that all such electronic files are instruments of service of the Consultant, who shall be deemed the author, and shall retain all common law, statutory law and other rights, including copyrights.

The Client agrees not to reuse these electronic files, in whole or in part, for any purpose other than for the Project for which they were prepared. The Client agrees not to transfer these electronic files to others without the prior written consent of the Consultant. The Client further agrees to waive all claims against the Consultant resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than the Consultant.

Electronic files furnished by either party shall be subject to an acceptance period of ten (10) days during which the receiving party agrees to perform appropriate acceptance tests. The party furnishing the electronic file shall correct any discrepancies or errors detected and reported within the acceptance period. After the acceptance period, the electronic files shall be deemed to be accepted and neither party shall have any obligation to correct errors or maintain electronic files. The Client is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by the Consultant and electronic files, the signed or sealed hard-copy construction documents shall govern.

In addition, the Client agrees, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, directors, employees and sub-consultants (collectively, Consultant) against all damages, liabilities or costs, including reasonable attorneys' fees and defense costs, arising from any changes made by anyone other than the Consultant or from any reuse of the electronic files without the prior written consent of the Consultant. Under no circumstances shall delivery of electronic files for use by the Client be deemed a sale by the Consultant, and the Consultant makes no warranties, either express or implied, of merchantability and fitness for any particular purpose. In no event shall the Consultant be liable for indirect or consequential damages as a result of the Client's use or reuse of the electronic files.

SEVERABILITY Any term or provision of this Agreement found to be invalid under any applicable statute or rule of law shall be deemed omitted and the remainder of this Agreement shall remain in full force and effect.

SURVIVAL Notwithstanding completion or termination of this Agreement for any reason, all rights, duties and obligations of the parties to this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

ASSIGNMENT Neither party to this Agreement shall transfer, sublet or assign any rights under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party. Subcontracting to sub-consultants normally contemplated by the Consultant shall not be considered an assignment for purposes of this Agreement.

PROPRIETARY INFORMATION The Client agrees that the technical methods, design details, techniques and pricing data contained in any material submitted by the Consultant pertaining to this Project or this Agreement shall be considered confidential and proprietary, and shall not be released or otherwise made available to any third party without the express written consent of the Consultant.

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ADA COMPLIANCE The Americans with Disabilities Act (ADA) provides that it is a violation of the ADA to design and construct a facility that does not meet the accessibility and usability requirements of the ADA unless it can be demonstrated that it is structurally impractical to meet such requirements. The Client understands that the requirements of the ADA will be subject to various and possibly contradictory interpretations. The Consultant, therefore, will use its reasonable professional efforts and judgment to interpret applicable ADA requirements and other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project. The Consultant, however, cannot and does not warrant or guarantee that the Client's Project will comply with all interpretations of ADA requirements and/or requirements of other federal, state and local laws, rules, codes, ordinances and regulations as they apply to the Project.

CORPORATE PROTECTION It is intended by the parties to this Agreement that the Consultant's services in connection with the Project shall not subject the Consultant's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against the Consultant, an Ohio corporation, and not against any of the Consultant's individual employees, officers or directors.

DEFECTS IN SERVICE The Client shall promptly report to the Consultant any defects or suspected defects in the Consultant's services of which the Client becomes aware, so that the Consultant may take measures to minimize the consequences of such a defect. The Client further agrees to impose a similar notification requirement on all contractors in its Client/Contractor contract and shall require all subcontracts at any level to contain a like requirement. Failure by the Client and the Client's contractors or subcontractors to notify the Consultant shall relieve the Consultant of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given when such defects were first discovered.

CONSEQUENTIAL DAMAGES Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor the Consultant, their respective officers, directors, partners, employees, contractors or sub-consultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.

CHANGED CONDITIONS If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to the Consultant are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, the Consultant may call for re-negotiation of appropriate portions of this Agreement. The Consultant shall notify the Client of the changed conditions necessitating re-negotiation, and the Consultant and the Client shall promptly and in good faith enter into re-negotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement, in accordance with the Termination provision hereof.

DEFINITION OF 'HAZARDOUS MATERIALS' As used in this Agreement, the term hazardous materials shall mean any substances, including but not limited to asbestos, toxic or hazardous waste, PCBs, combustible gases and materials, petroleum or radioactive materials (as each of these is defined in applicable federal statutes) or any other substances under any conditions and in such quantities as would pose a substantial danger to persons or property exposed to such substances at or near the Project site.

HAZARDOUS MATERIALS – SUSPENSION OF SERVICES Both parties acknowledge that the Consultant's scope of services does not include any services related to the presence of any hazardous or toxic materials. In the event the Consultant or any other party encounters any hazardous or toxic materials, or should it become known to the Consultant that such materials may be present on or about the job site or any adjacent areas that may affect the performance of the Consultant's services, the Consultant may, at its option and without liability for consequential or any other damages, suspend performance of its services under this Agreement until the Client retains appropriate consultants or contractors to identify and abate or remove the hazardous or toxic materials and warrants that the job site is in full compliance with all applicable laws and regulations.

HAZARDOUS MATERIALS INDEMNITY The Client agrees, notwithstanding any other provision of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless the Consultant, its officers, partners, employees and consultants (collectively, Consultant) from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the detection, presence, handling, removal, abatement, or disposal of any asbestos or hazardous or toxic substances, products or materials that exist on, about or adjacent to the Project site, whether liability arises under breach of contract or warranty, tort, including negligence, strict liability or statutory liability or any other cause of action, except for the sole negligence or willful misconduct of the Consultant.