



**Office of the City Engineer**  
609 West Navajo Street  
West Lafayette, Indiana 47906  
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October 31, 2011

Board of Public Works & Safety  
City of West Lafayette  
609 W Navajo Street  
West Lafayette, IN 47906

Dear Board Members,

The Engineering Department, on behalf of all city departments, is submitting the attached general service contract with ADA Consultants of Indiana LLC for your approval. This contract will allow the City to call upon ADA Consultants of Indiana to assist with the self evaluation of the city's buildings and facilities necessary to complete our ADA Transition Plan and to be in compliance with the 1990 Americans with Disabilities Act requirements. The task orders written for the evaluation of buildings, programs, or services, will be brought to the Board for approval before work starts.

The compensation for this contract will be negotiated as the task orders are defined at the consultant's hourly rate. This contract has been reviewed by the City Attorney and I recommend it for your approval.

Respectfully,

A handwritten signature in blue ink that reads "D.M. Buck". The signature is written in a cursive, flowing style.

David M. Buck, P.E.  
City Engineer

**AGREEMENT**  
**BETWEEN**  
**BOARD OF PUBLIC WORKS AND SAFETY**  
**WEST LAFAYETTE, INDIANA**  
**AND**  
**ADA CONSULTANTS OF INDIANA LLC**  
**FOR**  
**ON-CALL ADA FACILITY EVALUATIONS AND CONSULTATION SERVICES**

THIS AGREEMENT, entered into by and between the Board of Public Works and Safety, City of West Lafayette, Indiana (hereinafter named OWNER) and ADA Consultants of Indiana LLC (hereinafter named CONSULTANT);

WITNESSETH THAT:

WHEREAS, the OWNER has need for consulting services to address issues with the City's ADA Transition Plan; and

WHEREAS, the CONSULTANT proposes to provide professional services to the OWNER to address issues of ADA compliance evaluation, herein described as the PROJECT; and

WHEREAS, the Project shall consist of individual Task Orders initiated at the request of the OWNER; and

WHEREAS, the CONSULTANT has expressed a willingness to provide the professional services and agrees to furnish these services as described in this Agreement for the above described PROJECT;

NOW THEREFORE, in consideration of the mutual promised herein contained, the parties hereto mutually covenants and agree as follows:

**ARTICLE I**  
**SCOPE OF PROFESSIONAL SERVICES – BASIC SERVICES**

**A. BASIC SERVICES**

1. All Professional Services shall be executed by a separate Task Order which, upon execution, will become part of this Agreement. Each Task Order shall define the scope of work; include proposed fee and anticipated schedule for completing the work defined by the Task Order.

**ARTICLE II  
OWNER'S RESPONSIBILITIES**

The OWNER's responsibilities are contained in Attachment No. 1, Standard Terms and Conditions

**ARTICLE III  
COMPENSATION**

In accordance with the terms and conditions of the Agreement, the CONSULTANT shall provide the Professional Services for which the OWNER shall compensate the CONSULTANT as follows:

- A. Compensation for Basic Services to be provided as described in Article I shall be on the basis of the CONSULTANT's currently Hourly Rate and Reimbursable Expense Schedule, as defined in each individual Task Order.

Hourly Rate Compensation shall be on the basis of the actual man-hours and expenses incurred in performing the Services, at the CONSULTANT's hourly rate and reimbursable expense schedule in effect at the time the Services are performed (the 2011 Hourly Rate and Reimbursable Schedule is included as Attachment No. 2), plus reimbursement for actual out-of-pocket costs incurred in conjunction with providing the Professional Services described herein.

**ARTICLE IV  
SCHEDULE**

The Schedule for completing the Work shall be as defined in each individual Task Order.

**ARTICLE V  
STANDARD TERMS AND CONDITIONS**

The Standard Terms and Conditions of this Agreement are included as Attachment No. 1. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts together shall constitute one and the same agreement. A telecopied or facsimile signature shall be equivalent to and as binding as an original signature.

IN WITNESS WHEREOF, the parties hereto have made and executed this Profession Services Agreement, this \_\_\_\_\_ day of \_\_\_\_\_ 2011.

**CONSULTANT**

**ADA CONSULTANTS OF INDIANA, LLC**

\_\_\_\_\_  
David Meihls, President

Attest: \_\_\_\_\_  
Name, Title/Position

Date: \_\_\_\_\_, 2011

**OWNER**

**BOARD OF PUBLIC WORKS & SAFETY  
CITY OF WEST LAFAYETTE, INDIANA**

\_\_\_\_\_  
John R. Dennis, Mayor

\_\_\_\_\_  
Sana G. Booker, Member

\_\_\_\_\_  
Bradley W. Marley, Member

\_\_\_\_\_  
Jonathan C. Speaker, Member

\_\_\_\_\_  
Elizabeth M. Stull, Member

Attest: \_\_\_\_\_  
Clerk-Treasurer Judith C. Rhodes

**ADDRESS FOR GIVING NOTICE**

David Meihls  
ADA Consultants of Indiana, LLC  
PO Box 248  
Waynetown, IN 47990

**ADDRESS FOR GIVING NOTICE**

City of West Lafayette  
City Engineer's Office  
609 W. Navajo Street  
West Lafayette, IN 47906

Attachments:           No. 1 – Standard Terms and Conditions  
                              No. 2 – 2011 Hourly Rate and Reimbursement Expense Schedule  
                              No. 3 – E-Verify Program / Affidavit Re: Employment

**ATTACHMENT NO. 1**  
**STANDARD TERMS AND CONDITIONS**

**1. Basic Agreement**

A. Consultant shall provide, or cause to be provided, the Basic Services as described in this Agreement and Owner shall pay Consultant for such Services.

**2. Additional Services**

A. If authorized by Owner, or if required because of changes in the Project, consultant shall furnish services in addition to those set forth above.

B. Owner shall pay consultant for such additional services as follows: For additional services of Consultants employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Consultant's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses, if any.

**3. Payment Procedures**

A. *Preparation of Invoices.* Consultant will prepare a monthly invoice in accordance with the Consultant's standard invoicing practices and submit the invoice to Owner.

B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. In no event shall payments be delayed more than 90 days. IN addition, Consultant may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Consultant has been paid in full all amounts due for services, expenses and other related charges.

**4. Termination**

A. This Agreement may be terminated by either party by thirty days written notice in the event of substantial failure to perform in accordance with the terms of this Agreement by the other party through no fault of the terminating party; provided, however the non performing party shall have 14 calendar days from the receipt of the termination notice to cure or to submit a plan for cure acceptable to the other party.

B. Owner may terminate or suspend performance of this Agreement for Owner's convenience upon written notice to Consultant. Consultant shall terminate or suspend performance

of the Services on a schedule acceptable to Owner, and Owner shall pay Consultant for all the Services performed plus termination or suspension expense. Upon restart of suspended Service, an equitable adjustment shall be made to Consultant compensation and the Project schedule.

**5. Owner's Responsibilities**

A. Provide Consultant with all criteria and full information as to Owner's requirements for the Project, including evaluation objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and specify any design and evaluation standard that Owner requires be included in the Drawings, Specifications and/or Reports.

B. Designate in writing a person authorized to act as the Owner's representative. The Owner or his representative shall receive and examine documents submitted by the Consultant, interpret and define the Owner's policies and render decisions and authorizations in writing promptly to prevent unreasonable delay in the progress of the Consultant's services.

C. Furnish to the consultant all available existing information for service and utilities locations, easements right-of-way, encroachments, and zoning and deed restrictions

D. Provide for full and free access for the Consultant to enter upon all property required for the performance of the Consultant's services under this Agreement.

E. Provide legal, accounting and insurance counseling services as necessary for the Project.

F. Furnish above services at the Owner's expense and in such manner that the Consultant may rely upon them in the performance of his services under this Agreement.

G. Give prompt notice to the Consultant whenever the Owner observes or otherwise becomes aware of any defect in the Project or other event, which may substantially affect the Consultant's performance of services under this Agreement.

## 6. Dispute Resolution

A. Owner and consultant agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of Mediation of exercising their rights under law.

B. If Mediation is invoked, the Owner and Consultant agree that they shall first submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by a mutually agreed upon party. If such mediation is unsuccessful in resolving the Dispute, then (a) the parties may mutually agree to a dispute resolution of their choice, or (b) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

C. In the event of any dispute between the parties arising from or related to this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs and attorney fees.

## 7. Successors, Assigns, and Beneficiaries

A. Owner and Consultant each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Consultant (and to the extent permitted by paragraph 8.B the assigns of Owner and Consultant) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) to such other party, in respect of all covenants, agreements, and obligations of this agreement.

B. Neither Owner nor consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

## 8. General Considerations

A. The standard of care for all professional consulting and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of

the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant's services. Consultant and its sub consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. This Agreement is to be governed by the laws of the State of Indiana.

C. All design documents prepared or furnished by Consultant are instruments of service, and Consultant retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

D. To the fullest extent permitted by law, Owner and Consultant agree to indemnify and hold the other (and their respective officers, directors, partners, agents, consultants and employees) harmless, from and against liability for all claims, costs, losses and damages, including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, arising out of or relating to the Project, to the extent such claims, losses, damages or expenses are caused by the indemnifying party's negligent acts, errors or omissions. In the event claims, losses, damages or expenses are caused by the joint or concurrent negligence of the Owner and consultant, they shall be borne by each party in proportion to its negligence.

E. Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents, other events beyond the control of the other or by the other's employees and agents.

F. The Consultant agrees to maintain records of payroll costs, including fringe benefit costs, and actual out-of-pocket costs on a generally recognized accounting basis and shall be available to the Owner during the life of this Agreement at mutually convenient times.

G. The Consultant shall at its own expense maintain in effect during the term of this contract the following insurance with limits as shown or greater. **General Liability** (including automobile) with a combined single limit of \$2,000,000. The Owner shall be named as an Additional Insured and be given a 30 day notice of cancellation, non-renewal

or significant change of coverage. Consultant's insurance shall be written on a "primary" basis and the Owner's insurance program shall be in excess of all of Consultant's available coverage. **Worker's Compensation** at the statutory limit. Workers compensation shall include a Waiver of Subrogation endorsement in favor of Owner, **Professional Liability** for protection against claims arising out of performance of professional service caused by negligent error, omission or act in the amount of \$2,000,000. The Consultant shall provide to Owner Certificates of Insurance indicating the aforesaid coverage. For projects involving construction, Owner agrees to require its construction contractor(s), if any, to include Consultant as an additional insured on its policies relating to the Project.

H. In the event any provisions of this Agreement shall be held to be invalid and non-enforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provisions, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

#### **9. Compliance with IC 22-5-1.7 – E-Verify Program**

A. Consultant must enroll in and verify the work eligibility status of all newly hired employees of the Consultant through the E-Verify program operated by the United States Department of Homeland Security. If the E-Verify program ceases to exist, the Consultant will not be required to verify the work eligibility status of newly hired employees through the E-Verify program.

B. The Consultant shall execute an affidavit affirming that the Consultant does not knowingly employ an unauthorized alien.



