Council meeting of
December 18, 2007

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Human Resources - Approval of a Contract for ADA (Americans with Disabilities Act) Consulting Services

Expenditure: Not-to-exceed $75,000

RECOMMENDATION

Recommendation of the Human Resources Director that the City Council approve a one-year contract, starting January 1, 2008, with National Access Consultants ADA Consulting Services in an amount not-to-exceed $75,000.

Funding

Funding is available in the Facilities, Equipment, Automation, Project (FEAP656) Access Compliance Surveys of City Facilities (ADA).

BACKGROUND/ANALYSIS

The Americans with Disabilities Act became law in 1990. Thereafter, the City completed a Facilities Compliance Survey approximately fifteen years ago. Since then, a number of City facilities have been added or modified, and because the last survey was conducted many years ago, a new survey is needed in order to provide a roadmap for future ADA compliance.

The services to be provided by National Access Consulting will include:

- A survey of City buildings and parks and report of findings
- A transition plan
- Assist with the development of a transition team
- Ongoing consulting to the team

In addition, the consultant can appear at public and council meetings to assist the City in presenting its draft transition plan, and is available to provide litigation consulting if needed.

An informal bid process took place with National Access Consultants providing the only bid. Their initial bid was a not-to exceed amount of $80,077 and the City negotiated a not-to-exceed price of $75,000.

National Access Consultants has significant experience in the field of ADA consulting. In addition, National Access previously completed an assessment of one large City of Torrance Facility and provided a high quality assessment.

Respectfully Submitted,

Elaine M. Winer
Human Resources Director

By: _____
Randall Sellers
Risk Manager

CONCUR:

_____
Elaine M. Winer
Human Resources Director

_____
LeRoy J. Jackson
City Manager

ATTACHMENT: Contract Services Agreement

CONSULTING SERVICES AGREEMENT

This CONSULTING SERVICES AGREEMENT ("Agreement") is made and entered into as of January 1, 2008 (the "Effective Date"), by and between the CITY OF TORRANCE, a municipal corporation ("CITY"), and National Access Consultants, LLC ("CONSULTANT").

RECITALS:

A. CITY wishes to retain the services of an experienced and qualified CONSULTANT to provide ADA facilities assessments and related consulting.

B. CONSULTANT represents that it is qualified to perform those services.

AGREEMENT:

1. SERVICES TO BE PERFORMED BY CONSULTANT

CONSULTANT will provide the services listed in the Scope of Services attached as Exhibit A. CONSULTANT warrants that all work and services set forth in the Scope of Services will be performed in a competent, professional and satisfactory manner.

2. TERM

Unless earlier terminated in accordance with Paragraph 4 below, this Agreement will continue in full force and effect from the Effective Date through June 30, 2009.

3. COMPENSATION

A. CONSULTANT's Fee.

For services rendered pursuant to this Agreement, CONSULTANT will be paid in accordance with the Compensation Schedule attached as Exhibit B, provided, however, that in no event will the total amount of money paid the CONSULTANT, for services initially contemplated by this Agreement, exceed the sum of $75,000 ("Agreement Sum"), unless otherwise first approved in writing by CITY.

B. Schedule of Payment.

Provided that the CONSULTANT is not in default under the terms of this Agreement, upon presentation of an invoice, CONSULTANT will be paid monthly the fees described in Paragraph 3.A. above, according to the Compensation Schedule. Payment will be due within 30 days after the date of the monthly invoice.

4. TERMINATION OF AGREEMENT

A. Termination by CITY for Convenience.

1. CITY may, at any time, terminate the Agreement for CITY's convenience and without cause.

2. Upon receipt of written notice from CITY of such termination for CITY's convenience, CONSULTANT will:

   a. cease operations as directed by CITY in the notice;
   b. take actions necessary, or that CITY may direct, for the protection and preservation of the work; and
   c. except for work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

3. In case of such termination for CITY's convenience, CONSULTANT will be entitled to receive payment for work executed; and costs incurred by reason of such termination, along with reasonable overhead and profit on the work not executed.

B. Termination for Cause.

1. If either party fails to perform any term, covenant or condition in this Agreement and that failure continues for 15 calendar days after the nondefaulting party gives the defaulting party written notice of the failure to perform, this Agreement may be terminated for cause; provided, however, that if during the notice period the defaulting party has promptly commenced and continues diligent efforts to remedy the default, the defaulting party will have such additional time as is reasonably necessary to remedy the default.

2. In the event this Agreement is terminated for cause by the default of the CONSULTANT, the CITY may, at the expense of the CONSULTANT and its surety, complete this Agreement or cause it to be completed. Any check or bond delivered to the CITY in connection with this Agreement, and the money payable thereon, will be forfeited to and remain the property of the CITY. All moneys due the CONSULTANT under the terms of this Agreement will be retained by the CITY, but the retention will not release the CONSULTANT and its surety from liability for the default. Under these circumstances, however, the CONSULTANT and its surety will be credited with the amount of money retained, toward any amount by which the cost of completion exceeds the Agreement Sum and any amount authorized for extra services.

3. Termination for cause will not affect or terminate any of the rights of the CITY as against the CONSULTANT or its surety then existing, or which may thereafter accrue because of the default; this provision is in addition to all other rights and remedies available to the CITY under law.

C. Termination for Breach of Law.

In the event the CONSULTANT or any of its officers, directors, shareholders,

employees, agents, subsidiaries or affiliates is convicted (i) of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of a contract or subcontract; (ii) under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a public consultant or contractor; (iii) under state or federal antitrust statutes arising out of the submission of bids or proposals; or (iv) of violation of Paragraph 19 of this Agreement; or for any other cause the CITY determines to be so serious and compelling as to affect CONSULTANT's responsibility as a public consultant or contractor, including but not limited to, debarment by another governmental agency, then the CITY reserves the unilateral right to terminate this Agreement or to impose such other sanctions (which may include financial sanctions, temporary suspensions or any other condition deemed appropriate short of termination) as it deems proper. The CITY will not take action until CONSULTANT has been given notice and an opportunity to present evidence in mitigation.

5. FORCE MAJEURE

If any party fails to perform its obligations because of strikes, lockouts, labor disputes, embargoes, acts of God, inability to obtain labor or materials or reasonable substitutes for labor or materials, governmental restrictions, governmental regulations, governmental control, judicial orders, enemy or hostile governmental action, civil commotion, fire or other casualty, or other causes beyond the reasonable control of the party obligated to perform, then that party's performance shall be excused for a period equal to the period of such cause for failure to perform.

6. RETENTION OF FUNDS

CONSULTANT authorizes CITY to deduct from any amount payable to CONSULTANT (whether or not arising out of this Agreement) any amounts the payment of which may be in dispute or that are necessary to compensate CITY for any losses, costs, liabilities, or damages suffered by CITY, and all amounts for which CITY may be liable to third parties, by reason of CONSULTANT's negligent acts or omissions or willful misconduct in performing or failing to perform CONSULTANT's obligations under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by CONSULTANT, or any indebtedness exists that appears to be the basis for a claim of lien, CITY may withhold from any payment due, without liability for interest because of the withholding, an amount sufficient to cover the claim. The failure of CITY to exercise the right to deduct or to withhold will not, however, affect the obligations of CONSULTANT to insure, indemnify, and protect CITY as elsewhere provided in this Agreement.

7. CITY REPRESENTATIVE

Randall Sellers is designated as the "City Representative," authorized to act in its behalf with respect to the work and services specified in this Agreement and to make all decisions in connection with this Agreement. Whenever approval, directions, or other actions are required by CITY under this Agreement, those actions will be taken by the City Representative, unless otherwise stated. The City Manager has the right to designate another City Representative at any time, by providing notice to CONSULTANT.

8. CONSULTANT REPRESENTATIVE(S)

The following principal(s) of CONSULTANT are designated as being the principal(s) and representative(s) of CONSULTANT authorized to act in its behalf with respect to the work specified in this Agreement and make all decisions in connection with this Agreement:

Anthony E. Goldsmith, Principal
Cheryl Beranger, Administrator

9. INDEPENDENT CONTRACTOR

The CONSULTANT is, and at all times will remain as to CITY, a wholly independent contractor. Neither CITY nor any of its agents will have control over the conduct of the CONSULTANT or any of the CONSULTANT's employees, except as otherwise set forth in this Agreement. The CONSULTANT may not, at any time or in any manner, represent that it or any of its agents or employees are in any manner agents or employees of CITY.

10. BUSINESS LICENSE

The CONSULTANT must obtain a City business license prior to the start of work under this Agreement, unless CONSULTANT is qualified for an exemption.

11. OTHER LICENSES AND PERMITS

CONSULTANT warrants that it has all professional, contracting and other permits and licenses required to undertake the work contemplated by this Agreement.

12. FAMILIARITY WITH WORK

By executing this Agreement, CONSULTANT warrants that CONSULTANT (a) has thoroughly investigated and considered the scope of services to be performed, (b) has carefully considered how the services should be performed, and (c) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, CONSULTANT warrants that CONSULTANT has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services set forth in this Agreement. Should CONSULTANT discover any latent or unknown conditions that will materially affect the performance of the services set forth in this Agreement, CONSULTANT must immediately inform CITY of that fact and may not proceed except at CONSULTANT's risk until written instructions are received from CITY.

13. CARE OF WORK

CONSULTANT must adopt reasonable methods during the term of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and other components to prevent losses or damages, and will be responsible for all damages, to persons or property, until acceptance of the work by CITY, except those losses or damages as may be caused by CITY's own negligence.

14. CONSULTANT'S ACCOUNTING RECORDS; OTHER PROJECT RECORDS

Records of the CONSULTANT's time pertaining to the project, and records of accounts between CITY and the CONSULTANT, will be kept on a generally recognized accounting basis. CONSULTANT will also maintain all other records, including without limitation specifications, drawings, progress reports and the like, relating to the project. All records will be available to CITY during normal working hours. CONSULTANT will maintain these records for three years after final payment.

15. INDEMNIFICATION

CONSULTANT will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, its officers, agents and employees from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of CONSULTANT, its officers, employees, agents, subcontractors or vendors. It is further agreed, CONSULTANT's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of CITY, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of CITY, its officers, employees or agents. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between CONSULTANT and CITY, as to whether liability arises from the sole negligence of the CITY or its officers, employees, agents, subcontractors or vendors, CONSULTANT will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as solely negligent. CONSULTANT will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

16. NON-LIABILITY OF CITY OFFICERS AND EMPLOYEES

No officer or employee of CITY will be personally liable to CONSULTANT, in the event of any default or breach by the CITY or for any amount that may become due to CONSULTANT.

17. INSURANCE

A. CONSULTANT must maintain at its sole expense the following insurance, which will be full coverage not subject to self insurance provisions:

1. Automobile Liability, including owned, non-owned and hired vehicles, with at least the following limits of liability:

   a. Primary Bodily Injury with limits of at least $500,000 per person, $1,000,000 per occurrence; and

   b. Primary Property Damage of at least $250,000 per occurrence; or

   c. Combined single limits of $1,000,000 per occurrence.

2. General Liability including coverage for premises, products and completed operations, independent contractors/vendors, personal injury and contractual obligations with combined single limits of coverage of at least $1,000,000 per occurrence.

3. Professional liability insurance with limits of at least $1,000,000 per occurrence.

4. Workers' Compensation with limits as required by the State of California and Employers Liability with limits of at least $1,000,000.

B. The insurance provided by CONSULTANT will be primary and non-contributory

C. CITY, the City Council and each member thereof, members of boards and commissions, every officer, agent, official, employee and volunteer must be named as additional insured under the automobile and general liability policies.

D. CONSULTANT must provide certificates of insurance and/or endorsements to the City Clerk of the City of Torrance before the commencement of work.

E. Each insurance policy required by this Paragraph must contain a provision that no termination, cancellation or change of coverage can be made without thirty days notice to CITY.

18. SUFFICIENCY OF INSURERS AND SURETIES

Insurance or bonds required by this Agreement will be satisfactory only if issued by companies admitted to do business in California, rated "B+" or better in the most recent edition of Best's Key Rating Guide, and only if they are of a financial category Class VII or better, unless these requirements are waived by the Risk Manager of CITY ("Risk Manager") due to unique circumstances. In the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to CITY, the CONSULTANT agrees that the minimum limits of any insurance policies or performance bonds required by this Agreement may be changed

accordingly upon receipt of written notice from the Risk Manager; provided that CONSULTANT will have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of CITY within 10 days of receipt of notice from the Risk Manager.

19. CONFLICT OF INTEREST

A. No officer or employee of the CITY may have any financial interest, direct or indirect, in this Agreement, nor may any officer or employee participate in any decision relating to the Agreement that effects the officer or employee's financial interest or the financial interest of any corporation, partnership or association in which the officer or employee is, directly or indirectly interested, in violation of any law, rule or regulation.

B. No person may offer, give, or agree to give any officer or employee or former officer or employee, nor may any officer or employee solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation or any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any way pertaining to any program requirement, contract or subcontract, or to any solicitation or proposal.

20. NOTICE

A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:

1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.

2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.

3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.

4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.

5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

6. Addresses for purpose of giving notice are as follows:

CONSULTANT:	National Access Consultants, LLC 80 Wood, Suite 302 Camarillo, California 93010 Fax: (805) 497-6335
CITY:	City Clerk City of Torrance 3031 Torrance Boulevard Torrance, CA 90509-2970 Fax: (310) 618-2931

B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.

C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

21. PROHIBITION AGAINST ASSIGNMENT AND SUBCONTRACTING

This Agreement and all exhibits are binding on the heirs, successors, and assigns of the parties. The Agreement may not be assigned or subcontracted by either CITY or CONSULTANT without the prior written consent of the other.

22. INTEGRATION; AMENDMENT

This Agreement represents the entire understanding of CITY and CONSULTANT as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this Agreement. The Agreement may not be modified or altered except in writing signed by both parties.

23. INTERPRETATION

The terms of this Agreement should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction that might otherwise apply.

24. SEVERABILITY

If any part of this Agreement is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the Agreement will remain in full force and effect.

25. TIME OF ESSENCE

Time is of the essence in the performance of this Agreement.

26. GOVERNING LAW; JURISDICTION

This Agreement will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the Agreement will be in Los Angeles County, California.

27. COMPLIANCE WITH STATUTES AND REGULATIONS

CONSULTANT will be knowledgeable of and will comply with all applicable federal, state, county and city statutes, rules, regulations, ordinances and orders.

28. WAIVER OF BREACH

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this Agreement.

29. ATTORNEY'S FEES

Except as provided for in Paragraph 15, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

30. EXHIBITS

All exhibits identified in this Agreement are incorporated into the Agreement by this reference.

31. CONSULTANT'S AUTHORITY TO EXECUTE

The person(s) executing this Agreement on behalf of the CONSULTANT warrant that (i) the CONSULTANT is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the CONSULTANT; (iii) by so executing this Agreement, the CONSULTANT is formally bound to the provisions of this Agreement;

and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which the CONSULTANT is bound.

CITY OF TORRANCE
a Municipal Corporation

_____
Frank Scotto, Mayor

ATTEST:

_____
Sue Herbers
City Clerk

APPROVED AS TO FORM:
JOHN L. FELLOWS III
City Attorney

By:_____

National Access Consultants, LLC
Limited Liability Corporation

By:_____
Anthony E. Goldsmith
Principal

Attachments:	Exhibit A	Scope of Services
	Exhibit B	Compensation Schedule

Revised: 1/30/01

ATTACHMENT A

NATIONAL ACCESS CONSULTANTS, LLC

80 Wood Road, Suite 302
Camarillo, California 93010
Phone: (805) 497-6116
Facsimile (805) 497-6335

E-mail: info@adaguru.com • www.adaguru.com

"AMERICA'S FOREMOST DISABLED ACCESS COMPLIANCE EXPERTS"

October 15, 2007

City of Torrance
Risk Management
3231 Torrance Boulevard
Torrance, California 90503-5013
Attention: Mr. Randall Sellers

Re: City of Torrance ADA Project/Scope of Work.

Dear Mr. Sellers,

Enclosed is our Proposal for providing access compliance evaluation surveys and consulting services to the City of Torrance (the "City") in connection with compliance under Title II of the Americans with Disabilities Act of 1990 (the "ADA").

We believe the talent and experience to successfully assist the City in gaining a greater degree of disabled access compliance can be found within our firm. National Access Consultants can field a team with the requisite expertise to assist the City at various levels in assessing the degree to which its facilities, programs, services and activities are accessible to and usable by persons with disabilities.

Our firm has enjoyed long and productive relationships with many entities subject to the requirements of Title II of the ADA. Our clients in this regard have included counties and municipalities, as well as redevelopment agencies, school and college districts and publicly funded and operated hospitals.

Section II of the Proposal addresses the survey of the relevant facilities. Section III addresses consulting services connected with the creation of Transition Plan documents. The fee schedule for the subject work is set forth in Appendix "A" to the Proposal. Section IV of the Proposal addresses our ability to provide additional consulting services, including the provision of litigation consulting and expert witness services.

We have previously provided a "mock-up" of a survey report and associated transition plan for a library as Appendix "B." We have attached a "mock up" a survey report and associated transition plan for a special use park as Appendix "C."

Our ability to serve your needs is partly the result of the multi-disciplinary approach that NAC brings to our projects. The combination of our experience, multi-disciplinary approach and contacts allows us to create solutions where many others simply point to problems.

We look forward to working with you and your City.

Sincerely,

NATIONAL ACCESS CONSULTANTS, LLC

Anthony E. Goldsmith,
Principal

I. HISTORY AND MISSION / RESUMES OF KEY PERSONNEL:

PROJECT MISSION STATEMENT: "To perform Compliance Evaluation Surveys of the City's selected facilities and provide any other requested services to assist the City in developing a Transition Plan and achieving compliance with the ADA in the most efficient and cost effective manner."

Firm History:

National Access Consultants, LLC is a California limited liability company formed in 1997. Its founders each brought special talents and experience to the firm. NAC's founding members saw the need is to bring a strong, nation wide, multi-disciplinary approach to the disabled access consultation industry. The depth and breadth of knowledge and experience brought to the table by NAC professionals is unprecedented and unequaled. The complex interplay of state and federal disabled access regulations exposes our clients to considerable risk and liability. NAC's mission is to eliminate or ameliorate that risk and help our clients serve the public.

Insights into Compliance

The resumes of our team's professionals and the substantial private and public clients who put their faith in our firm illustrate our general capabilities and expertise. However, beyond their experience in assisting clients, NAC professionals are industry leaders in issues regarding regulatory compliance. We thought it would be a good idea to introduce you to the members of our firm who will be working with you on your project.

Principal in Charge for Your Project:

NAC founding principal, Anthony Goldsmith will be the principal in charge for your project. Mr. Goldsmith brings his consulting talents and expertise to the interpretation and effects of codes and regulations effecting public entities. Mr. Goldsmith has advised some of the largest counties in California, as well as State agencies on revisions to and development of their transition plans.

Mr. Goldsmith maintains excellent relationships with state and federal attorneys and agencies responsible for the interpretation of disabled access laws. Our firm's clients frequently utilize our unique contacts with governmental officials.

Key Associates and Affiliates for Your Project:

In addition to a regular staff of administrative, clerical and technical assistants, NAC has several key associates and affiliates who have been tasked with working on the City's project of NAC is your selected contractor. In this regard,

we would like to introduce you to the key personnel who we would task on your project

ALAN WINKLER
Mr. Winkler is the firm's Managing Senior Associate and is the head of NAC's survey and audit department. Prior to joining our firm, Mr. Winkler was a disabled access review officer for a substantial Southern California municipality. Since coming aboard with NAC, Mr. Winkler has helped make NAC's survey and audit systems the envy of our industry. **If NAC is selected to undertake the project, Mr. Winkler will act as senior survey team leader.**

JOSHUA SHEA
Josh Shea is NAC's IT professional. Mr. Shea will be assisting in the creation and maintenance of the City's data on NAC's secured website. **Mr. Shea will be available to answer any questions the City may have in connection with accessing or altering their data.**

II. THE NAC COMPLIANCE EVALUATION SURVEY.

Our Fee Schedule set forth on Appendix "A" sets forth the costs and expenses in connection with the conduct of a site evaluation of the City's selected facilities.

NAC has developed a system that allows a survey team to go into the field and efficiently collect all relevant data necessary to produce a Compliance Evaluation Survey ("CES"). Like most disabled access surveys, the NAC CES identifies areas that are not in compliance with current construction standards. Unlike most surveys, it also lists areas that are in compliance with current standards. The CES identifies compliance with both federal and state standards. All conditions are detailed with digital photography and the entire report is assembled on NAC's database.

NAC's report format is more informative and easier to use than reports produced by the majority of the competition. We ask you to contact NAC clients, such as the County of Orange and ask them about their experience with the NAC CES.

In the field, the NAC CES data is entered into printed forms and thereafter integrated into a report along with the requisite digital photography.

BUILDING AND PARK SURVEYS

NAC shall conduct a CES of designated building and park facilities. This portion of the CES shall, unless otherwise excepted herein, compare the Designated Features (as that term is defined, below) found in the portions of each Facility that are open to the general public with: (i) the currently enforceable New Construction requirements of the Americans with Disabilities Act Accessibility Guidelines (the "ADAAG") and (ii) the currently enforceable New Construction

provisions of the California Building Code that exclusively, solely and unambiguously address disabled access issues (the "CBC/DA").

The CES shall include the evaluation of Designated Features in those portions of any Facility that are used by the general public. The scope of the CES shall not include any portion of any facility that is utilized exclusively or nearly exclusively by the employees, vendors or contractors of the City.

NAC shall examine those features that are specifically and unambiguously required to be accessible pursuant to the ADAAG and CBC/DA ("Designated Features"). NAC shall not be responsible for conducting any testing of any telephone, fire alarm or any other alarm system, any assistive listening system or any other electronic device of any nature whatsoever. We shall not be responsible for analyzing any issues connected with illumination, air quality or tactile signage (other than tactile signs for permanently designated rooms and spaces.) Except as otherwise agreed, NAC shall not be responsible for examining any feature or facility outside the boundary of a facility, including, without limitation, any feature in any public right-of-way.

FORMAT OF CES REPORTS

NAC shall memorialize the findings of the Surveys for the buildings and parks in standardized reports ("Report(s)"). There shall be a separate Report for each surveyed building and park. As noted above, each Report shall compare the area, feature or item surveyed and evaluated by NAC with the applicable provisions of the ADAAG (or proposed ADAAG) and the CBC/DA (if applicable). The Report shall designate those areas that both do and do not reflect comparison with the above standards as to each surveyed and evaluated area, feature or item. If appropriate, NAC shall include a color digital photograph of each area, feature or items evaluated in the Report.

In the event that any specific area, feature or item (or portion thereof) does not reflect the relevant requirements of ADAAG and/or CBC/DA, the surveyor (whether a NAC employee or City employee) shall make a general "recommendation." Each recommendation comes from a standard list of possible recommendations for features similar to the feature being evaluated. The recommendation is derived from a basic visual examination of each subject feature and represents only one possible physical solution to bring the subject feature into comparative compliance with ADAAG and CBC/DA New Construction standards (or proposed ADAAG standards, as applicable).

Each Report that includes recommendations shall be accompanied by a Cost Report that shall assign budget estimates suggested by the surveyor to each suggested recommendation contained in the Report. The budget estimates are presented to help the City to determine "order of magnitude" costs and are not to be considered to be construction cost estimates.

NAC shall deliver a CD copy of each Report to the City in pdf. format.

III. TRANSITION PLANS.

As we have noted above, we believe that the best way to help the City turn report data into a useful and useable plan of action is through the development of a Transition Plan. The scope of work set forth in the attached fee proposal includes consulting services involved in the process of developing a Transition Plan.

In connection with the Transition Plan process, we can effectively consult with the City in order to help them avoid discriminatory practices and policies. Our team understands that the effects of the ADA do not stop at the built environment.

Our understanding of the interplay of codes will unquestionably assist us in providing cost effective compliance for the City. For instance, as to the ADA, the regulations found under Section 35.151 of 28 CFR Part 35 (governing new construction and alteration) are vastly different from the program access requirements (including the Transition Plan issues) found under Section 35.150. Section 35.150 is aimed at making programs, not all existing buildings, accessible to persons with disabilities. Though this may seem like an obvious distinction, our firm has had to assist entities in litigation where previous consultants failed to grasp the concept of program access. The most common and glaring failure in this regard involves using an architectural survey as a transition plan. Section 35.150 states that, as to existing facilities, structural modifications are not necessary when a programmatic solution can be found to an access issue. We believe that a transition plan is best seen as a "distillate" of the facility survey and an overall advice and consideration of the specific ability of each agency and department to provide disabled people with access to its programs, services and activities.

In several instances, real world familiarity with infrequently used regulations creates a safe harbor for entities attempting to comply with Title II and other disabled access laws. For instance, Title II actually allows a covered entity to exempt itself from immediately making a program, service or activity fully accessible if the entity makes a good faith determination that the steps required to achieve full accessibility would be an undue burden. The law requires specific and exacting documentation of such a decision. We have represented many entities attempting to assert their right to temporarily avoid a serious financial burden through resort to the "undue burden" exemption. Some of these attempts achieve compliance (albeit at a later date) while other attempts have been deemed insufficient.

Following the completion of the Survey process described above, NAC shall assist the City in the formulation of a Draft Transition Plan. We suggest that the City form a “Transition Team” that includes staff from the office of the City Engineer and/or Public Works, as well as legal and/or risk management personnel and the ADA Coordinator. NAC and members of the City’s Transition

Team shall meet for a 1-day "kick off" meeting at City's main offices. The purpose of this meeting will be to review the overall Transition Plan process and set a schedule for the review of Report documents and the creation of a Draft Transition Plan.

Selected members of the Transition Team and NAC shall hold a series of telephonic conferences where the Reports for each building and park are reviewed on a Facility by Facility basis. The conferences shall include participation by a member of the Transition Team who has "decision making authority" and a member of City's staff who is familiar with the exterior and interior of each of the buildings and facilities being reviewed in each phone conference. From the above-noted telephonic conferences, NAC shall prepare a Draft Transition Plan for each Building and Park.

A copy of the Draft Transition Plan for each building and park facility shall be forwarded to the City on a CD in pdf format. Note that each Transition Plan item refers back to the item number in the relevant CES so that the City can easily reference the photo and full data regarding the feature in question.

Following delivery of the Draft Transition Plan, the City shall arrange for review and comment upon the Draft Transition Plan by City staff, the general public and any other interested persons. NAC shall be available for two (2) days of meetings to assist the City in presenting its Draft Transition Plan to the City Counsel, the general public and/or other interested persons.

Following the review of the Draft Transition Plan by Staff, the City Council and the general public and interested persons, the City shall inform NAC, in writing, of the changes that the City desires to make to the Draft Transition Plan. NAC shall modify the Draft Transition Plan to meet the City's needs. Thereafter, NAC shall forward a copy of the Final Transition Plan to the City.

IV. ADDITIONAL CONSULTING / LITIGATION CONSULTING.

NAC's history and the resumes of our Members and staff clearly indicate that we have the background to assist the City in all of its disabled access needs. For instance we can review the City's standard plans and help the City review its policies regarding permits, contracting and other matters in order to achieve compliance with the ADA. We can also provide litigation consulting or consulting with respect to access to the non-physical components of programs, services and activities.

We look forward to hearing from you in the near future.

NATIONAL ACCESS CONSULTANTS, LLC
Anthony Goldsmith, Member

ATTACHMENT B

FEE SCHEDULE

COMPLIANCE EVALUATION SURVEY AND REPORT CREATION
$60,077

TRANSITION PLAN CONSULTING AND CREATION OF DRAFT PLAN
$15,000

MEETINGS AND HEARINGS
$5,000

HOURLY RATES
Additional services, should they be requested, shall be billed at the Consultant's regular hourly rates.

PARTNER RATES
(per Partner)

Initial Document or Plan Review	$225.00 per hour
Research/Investigation and Consulting:	$225.00 per hour
Mediation:	$300.00 per hour
Deposition:	$300.00 per hour, (4 hours minimum)
Court Appearance or Arbitration:	$400.00 per hour, (4 hours minimum)

ASSOCIATE AND ADMINISTRATIVE RATES

Plan Review (Associate):	$185.00 per hour
Senior Associate:	$185.00 per hour
Associate:	$135.00 per hour
Paralegal Assistant	$ 95.00 per hour
Clerical/Administrative:	$ 58.00 per hour
Technical Assistant:	$ 82.00 per hour
Computer Consulting	$180.00 per hour

In addition to the above noted fees, Client shall reimburse Consultant for all reasonable costs (including, without limitation, printing, photocopying, parking, travel expenses, supplies, overnight delivery charges, messenger service and printing) in an amount equal to said costs. All travel time shall be billed, portal to portal, at Consultant's regular hourly rates. Consultant's hourly rates shall be billed in ¼ hour increments. In the event that Consultant's partners or staff utilize their automobiles in connection with the provision of Services, mileage shall be charged at a rate of $0.485 per mile. If provision of the Services includes travel in a radius greater than one-hundred (100) miles from Consultant's Thousand Oaks, CA office, Client shall be charged a per diem of $45.00 for each of Consultant's partners or staff engaged in said travel. Printing, including the printing of any reports of Consultant's findings, shall be billed at $0.25 per page.

Fees for depositions shall be paid, in advance, based upon the anticipated length of the deposition. Balances due, if any, shall be paid during the next standard billing cycle.

Fees for two (2) days' time shall be paid in advance for trials or arbitrations.

Unless otherwise agreed in writing, all fees and costs shall be due and payable within thirty (30) days of the date upon which they are invoiced to Client. Any sums not paid when due and payable accrue interest at the maximum legal rate of interest until paid in full.