

EAST STROUDSBURG AREA SCHOOL DISTRICT
BOARD OF EDUCATION
REGULAR MEETING
April 14, 2014

Carl T. Secor Administration Center - Board Room
7:00 P.M.

ADDENDUM C

XXI. FISCAL ITEMS

(The following item(s) are to be deleted from the consensus motion at Board Member(s) request.)

V. ELA Sport

RECOMMENDATION: Motion to enter into a contract with ELA Sport, a Division of the ELA GROUP, INC. (ELA), for the provision of surveying/basemapping, athletic facility design and planning, construction drawing/documentation preparation and permitting/approval services related to the construction of North High School Stadium improvements at the existing North High School Campus at a lump sum fee of \$91,700.00 plus expenses for basic services. The contract shall be substantially in the form as presented at this meeting, subject to such modifications and revisions as shall be recommended by the Solicitor and Administration.

(See pages 2-17)



East Stroudsburg Area School District
North High School Stadium Improvements
Athletic Facility Consulting and Design Services
PAZ03-14614
April 11, 2014

AGREEMENT FOR DESIGN AND CONSULTING SERVICES

This Agreement is made this 11th day of April 2014 by and between ELA Sport, a Division of the ELA GROUP, INC. (ELA), 743 South Broad Street, Lititz, Pennsylvania 17543 and:

(CLIENT)

East Stroudsburg Area School District
50 Vine Street
East Stroudsburg, PA 18301

Attention: Mr. Jeffrey Bader, Business Manager

(570) 424-8500 (p)

(OWNER AND PROJECT)

ELA SPORT shall perform services in accordance with the Terms and Conditions for Consulting and Design as included with this Agreement and shall be responsible for the means, methods and procedures used in performing services under this Agreement for the Project.

Owner: East Stroudsburg Area School District
50 Vine Street
East Stroudsburg, PA 18301

Project: North High School Stadium Improvements
Athletic Facility Consulting and Design Services

(BASIC SERVICES FEE)

All professional services will be completed for a lump sum total fee. All expenses, as included in the attached Rate Schedule for Consulting Services, will be invoiced at cost plus ten (10) percent and shall be compensated in addition to the lump sum fee stipulated below. ELA SPORT proposes to complete the Scope of Basic Services as described on the following page(s) for the following lump sum fee:

Lump Sum Fee: Ninety-One Thousand Seven Hundred Dollars (\$91,700.00)

All invoices will be rendered every four weeks on a percentage of the total fee based upon the professional services completed during the billing period, work in progress, project progress to-date, and reimbursable expenses incurred during the prior month billing period. Fees for all subconsultant services identified in the Scope of Basic Services and as retained by ELA Sport in the performance of the services are considered as part of the stipulated lump sum fee and shall be invoiced at the time of receipt. Fees for services performed beyond the Scope of Basic Services will not be invoiced unless the Client has approved the work as an Extra Service.

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When authorized, Extra Services shall be provided as outlined in an Extra Services Agreement, which shall be considered part of this Agreement and provided in writing prior to performing any work beyond the Scope of Basic Services. Extra Services may be provided on a fixed fee basis, or hourly rate basis, depending on the type and nature of the services required. Services provided on an hourly rate basis will be provided in accordance with our standard rates for professional services. A copy of the 2014 Rate Schedule for Consulting Services for ELA SPORT/ELA GROUP, INC. is attached.

(PROJECT UNDERSTANDING)

The Scope of Basic services has been prepared based upon our experience with athletic facility projects similar in scope and nature, experience with land development planning and related engineering design requirements, discussions with Client representatives, and review of existing project site, the Scope of Improvements as identified below, and the following:

1. The project includes the construction of a new synthetic turf field and track, as well as accessory improvements including but not limited to walkways and fencing as outlined in a Schematic Design Cost Opinion completed by ELA Sport September 20, 2013.
2. It is our understanding that there are not any bleacher improvements and javelin runway improvements proposed by the Client at this time.
3. The Client will provide ELA with a copy of the approved Land Development Plan for the existing High School for use in the design of the proposed facilities.
4. The project will be required to go through the Pike County Conservation District for approval of an NPDES General Permit. All proposed earth disturbances of more than 1 acre of total site area in Pennsylvania requires preparation of an Erosion and Sediment Control Plan. This is in accordance with PA Department of Environmental Protection (PADEP) Chapter 102 requirements and the National Pollutant Discharge Elimination System Permit (NPDES) Phase II act. The new synthetic turf field will be required to meet this standard. All documents and application must be filed with the County Conservation District for review and approval.
5. All permit fees and reproduction costs will be the responsibility of the Client and/or the School District.
6. It is assumed that the Township will not require a sealed survey of the property boundary for the School District property. If that is required by the Township it will be considered to be an Additional Service.

(SCOPE OF BASIC SERVICES)

ELA SPORT will provide surveying/basemapping services, athletic facility design and planning, construction drawing/document preparation, and permitting/approval services related to construction of the North High School Stadium Improvements at the existing North High School Campus. The Scope of Basic Services has been prepared based upon our prior experience with projects similar in scope and nature and in consideration of the specific Project Understanding as outlined in the Agreement. The following Scope of Basic Services is recommended and specifically includes:

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- A. Topographic Surveying and Project Basemapping
- B. Site Soils Testing and Geotechnical Engineering
- C. Land Development/Storm Water Management Plan
- D. NPDES Permitting and Erosion and Sediment Control Planning
- E. Final Design and Construction Document Preparation
- F. Bid/Proposal Phase Services
- G. Construction Phase Services

(DETAILED DESCRIPTION OF BASIC SERVICES)

- A. Topographic Survey and Project Basemapping: A topographic survey and basemap is necessary to appropriately design the field improvements, associated drainage systems, accessory site improvements, and to accurately depict the required scope of construction to facilitate procurement of complete and responsible construction documents. A topographic survey and basemap is also required by the Township as part of the Land Development/Storm Water Management Plan preparation as well as other agency permitting processes, including the County Conservation District as part of erosion and sediment control planning/NPDES Permitting.

The scope of surveying and basemapping services includes the area associated with the construction of the North High School Stadium Improvements and the surrounding area as required by the Township to meet the standards of their Ordinance.

ELA Sport proposes to retain Land Grant Surveyors (a subsidiary of the ELA Group, Inc.) to complete the topographic survey and basemap. The scope of services related to Site Topographic Surveying and Basemapping includes the following:

1. Field survey the proposed project area, utilizing the existing topographic survey datum and common control points.
2. Provide topographic information at a 1-foot contour interval and provide grade elevations (spot elevations) along the edges of all walkways, paved areas, curbs, stairs, and other features.
3. Field locate all existing site improvements including fence lines, gates, walkways/paving, landscaping, athletic field improvements, score boards, and similar site appurtenances.
4. Locate all underground utilities as visible through surface appurtenances, based on Owner records, and PA One-Call information, including top of grate elevations, invert elevations, pipe size and material, drainage structures/type, and other relevant data for the utility being located. Site utilities include all storm water/storm sewers, water services, sanitary sewer services, electric, CATV, gas, and other utility services as may be present within, or adjacent to, the project site.
5. Prepare a survey basemap for the project area depicting all field survey information, include north orientation and drawing datum (USGS), and prepare at a scale appropriate to the project scope.
6. Prepare an overall survey basemap for the project area.

7. Boundary surveying is specifically excluded from the Scope of Basic Services. Boundary survey information as required for the Storm Water Management Plan (if required) shall be provided by the School District from prior surveys performed at the campus.

B. Site Soils Testing and Geotechnical Engineering: In order to provide proper “vertical” drainage through the synthetic turf system and design the facilities necessary to meet prevailing storm water regulatory requirements related to volume control and water quality management, soils infiltration testing is required. In addition, soil testing and material evaluation is recommended to determine the physical characteristics of the underlying soil at the subgrade elevation. Confirmation of the critical soil characteristics will identify required preparation and construction techniques and limit the possibility for subgrade correction or stabilization procedures during the construction phase. Unsuitable soil conditions at the field subgrade elevation can add unanticipated construction costs and costly delays in completion of the athletic field and track.

Geotechnical testing does not include services related to sinkhole evaluation, existing subgrade stability/compaction, or other soils engineering and evaluation services. These services can be provided at an additional cost if found to be required or desired by the School District.

ELA Sport will engage the services of a Geotechnical Engineering firm to perform the following services related to Site Soils Testing and Geotechnical Engineering:

1. Perform testing to determine the soil profile within the playing field area, including depth of topsoil, and associated infiltration rate of the existing soils below the playing surface. The services include field testing of up to six (6) infiltration pits, report preparation, and recommendations related to infiltration and related engineering drainage design. The School District shall perform restoration of the test pit locations following testing.
2. Perform core sampling at six (6) locations to the anticipated subgrade elevation plus two (2) feet and provide laboratory testing of the samples to determine the engineering soil characteristics and construction requirements for the synthetic turf field subgrade. The services include testing and test result reporting, core sample log, soils description, and written soils engineering evaluation and recommendations.
3. Field survey/locate the infiltration test pits and boring locations as identified above. The scope of services, and related fee, has been prepared based upon all site surveying to locate the boring locations and all borings to occur with only one (1) site visit or mobilization respectively.

C. Land Development/Storm Water Management Plan: Based upon our experience with athletic facility projects similar in scope and nature, experience with land development planning and related engineering design requirements, ELA will prepare Land Development Plans and/or Storm Water Management Plans for their review and approval prior to the issuance of any permit for construction, or commencement of any development or earth disturbance activities. Storm Water Management Planning will utilize methods of calculation and design specified in the Township Ordinance, as well as requirements of the County Conservation District and PADEP related to water quality management.

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ELA Sport will provide the following services related to the Land Development/Storm Water Management Plan Application:

1. Attend a meeting with the Township Staff to review the scope of the project and respond to questions from the Planning staff and/or Township Engineer and determine the planning requirements with regard to permitting.
2. Attend a meeting with the County Conservation District to review and confirm erosion and sediment control design and NPDES permitting requirements. Where the Conservation District is familiar with synthetic turf installations, confirm the planning and permitting requirements through other communication with the Conservation District representative(s).
3. Prepare the Land Development/Storm Water Management Plan Application submission package to include construction drawings, reports and supplemental data as follows:
 - a. Construction Drawings:
 - Cover Sheet (Including Township Certificates and Standard Notes);
 - Existing Conditions/Demolition Plan;
 - Athletic Stadium Improvement/Site Layout Plan;
 - Athletic Stadium Grading and Drainage Plan;
 - Subgrade and Athletic Field Underdrain Plan;
 - Erosion and Sediment Control Plans (See Item D);
 - Synthetic Turf Field Cross-Sections and Turf/Aggregate Base Specifications;
 - Synthetic Track Layout Plan;
 - Synthetic Track Striping Plan;
 - Synthetic Track Specifications
 - Athletic Field Construction Details;
 - Storm water and Site Improvements Details;
 - b. Reports and Supplementary Data:
 - Environmental Impact Statement (if required);
 - Geotechnical Engineering Report;
 - Storm Water Management Report and Calculations;
 - Storm Water Management Plan Application;
 - Cover Letter and Project Narrative;
 - Erosion and Sediment Control Report (See Item D);
4. Meet with the School District to review the Land Development/Storm Water Management Plan Application submission package, the complete scope of the improvements, and anticipated plan processing and approval schedule.
5. Attend Township Staff meetings, if required, to present the Application and supporting documents and respond to review comments.

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6. Revise the plans and supporting documentation where required to address Township Staff and Engineer technical review comments. When necessary, attend meetings with the Township Staff to discuss the review comments and resolve planning issues. Resubmit the revised plans and supplemental documents to the Township for continuation of the review process.
 7. Prepare Engineer's Cost Estimate for public improvements to be secured by Improvement Guarantee, if required, of Township Land Development/Storm Water Management Plan approval. The Township may require the Applicant to post Financial Security to cover the costs of a portion of the "public" improvements at the site, which normally will be in the form of a Letter of Credit. Legal Agreements that may be required by the Township shall be provided by the School District's legal counsel.
 8. Determine storm water runoff for the post-development site conditions using the appropriate methodology for the delineated watershed including all required design storm events in order to comply with the Township Ordinance or as directed by the Township Engineer.
 9. Design and provide supporting calculations for all storm water collection, conveyance, and attenuation facilities proposed for the synthetic turf improvements. The facilities will be designed to meet the post construction storm water attenuation and conveyance requirements as stipulated in the Township Ordinance or as required by the Township Engineer.
 10. Design any modifications to the existing infiltration system and storm water detention facility as may be required to meet the storage volume and rate of runoff requirements determined by the storm water calculations.
 11. Prepare a Storm Water Management Report including narrative, summary, calculations, and pre-development/post-development drainage area maps.
 12. Prepare Storm Water Management Plan depicting all storm water management improvements, storm sewer profiles, inlets, swales, and other details required for construction of the proposed storm water collection and conveyance facilities.
 13. Prepare construction details and construction notes for all storm water management collection, conveyance, and attenuation facilities proposed as part of the Storm Water Management Plan.
- D. NPDES Permitting and Erosion and Sediment Control Planning: Pursuant to both local Ordinance Requirements and the Pennsylvania Clean Streams Law, a plan to control erosion and sedimentation during construction must be prepared in accordance with the Pennsylvania Department of Environmental Protection (PADEP) Chapter 102 Requirements. In addition, the project is also subject to water quality discharge control in accordance with mandated NPDES (Phase II) regulations due to the area of disturbance and point storm water discharge. Both the Erosion and Sediment Control Plan and the NPDES Permit will require review and approval by the County Conservation District.

ELA Sport will provide the following services related to Erosion and Sediment Control Planning and NPDES Permitting:

1. Pre-Application Meeting: Included as Part of Item C.

2. Complete the public governing agency notifications as required by Pennsylvania Act 14.
 3. Prepare the Erosion and Sediment Control Plan for the project site in accordance with PADEP Chapter 102 regulations and the PADEP *Erosion and Sediment Pollution Control Manual*.
 4. Prepare the project narrative and supporting calculations, drainage area maps, standard worksheets, details, and other information as required to support the Erosion and Sediment Control Plan.
 5. Post Construction Storm Water Management Plans (PCSM) are required as part of the NPDES Phase II compliance package. The County Conservation District is a delegated agency of PADEP to administer the review and approval of the PCSM on behalf of PADEP. However, the Conservation District, at their discretion, may forward the PCSM plans to PADEP for formal review and technical evaluation.
 6. Design the storm water and water quality Best Management Practices (BMPs). The design will be performed in accordance with local and state requirements. Infiltration of storm water is typically required for NPDES Phase II compliance for sites proposing greater than one acre of disturbance and is included in the scope of services.
 7. Prepare the County Conservation District Application, NPDES Application, and submit with the required number of plans, reports, and supporting documentation for technical review. It is anticipated that the submission will be concurrent, or near concurrent, with the Land Development/Storm Water Management Plan submission.
 8. During the review process, revise the plans, calculations, and supporting documentation when required to address technical review comments. If required, attend one meeting with the Conservation District to review the plan review comments and discuss possible resolutions.
 9. Coordinate with the Conservation District and the School District during the review process to assist in facilitating and expediting the plan and NPDES Permit approval.
- E. Final Design and Construction Document Preparation: Upon completion, or concurrent with, the Land Development/Storm Water Management Plan Review, construction drawings and specifications (and/or construction notes) will be developed to solicit construction proposals, guide construction, and define quality expectations for the project.

ELA Sport will perform the following services related to Final Design and preparation of Construction Documents:

1. Design and provide high quality construction documentation for the athletic field, all field improvements, field underdrain, surface drainage, accessory improvements, and depict on the Construction Drawings to include the following:
 - a. Storm Water Management Plan ("Construction Drawings") Plans as included in Item C and supplemental to include:

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- Synthetic Turf Field and Track Layout and Marking Plan;
 - Project Construction Notes and Specifications.
2. Prepare technical specifications to govern the materials and quality requirements for the construction work, including, but not limited to, demolition/site preparation, grading, subgrade preparation, concrete construction, synthetic turf base construction, underdrain systems, synthetic turf system, goal post and footings, athletic accessories, storm drainage, and erosion and sediment control. The specifications may be included on the Drawings as notes or as part of the construction details.
- Division 1 and technical specifications will be prepared by the Client. The bidding documents will be prepared based upon standard documents provided by the Client or those used by ELA Sport.
3. Where required, designate on the plans, or prepare additional plans/details, for Bid Alternates as required to provide flexibility to the School District in award of the Construction Contract.
4. Attend coordination and design review meetings with the School District and others comprising the "project team" during development of the documents to review and confirm the proposed improvements, project budget, and discuss/resolve any planning and design issues.
- F. Bid/Proposal Phase Services: Following completion of the Construction Drawings and Documents and receipt of various project approvals (or concurrent depending on scheduling requirements) ELA Sport will assist the Client in obtaining competitive bids or proposals from an approved purchasing agency for the State of Pennsylvania for the North High School Stadium Improvements leading to execution of a Construction Contract/Agreement with the successful bidder/agency. The scope of services is based on services related to public bidding/purchasing, in accordance with the Pennsylvania Municipalities Code, the Commonwealth of Pennsylvania, and Federal requirements.
- ELA Sport will provide the following services for Bid/Proposal Phase Services:
1. During the Bid/Proposal Phase, the following services will be provided:
- a. Attend and review project at a pre-bid meeting.
 - b. Respond to Contractor Request for Information (RFI) as requested by the Client in standard CSI format and incorporate as Addenda items when required.
 - c. Review project bids and provide written recommendation regarding award if required by the Client.
 - d. Attend a meeting with the Client to review the bids and recommendation for award.
 - e. Where required, attend a meeting or communicate through other means with the apparent low bidder to review the bid and verify that all components of the project are included.
- G. Construction Phase Services: Following award of the project to the successful Contractor assist the Client in administration of the construction phase for the project though providing the following

services:

1. Review product submittals, shop drawings, field marking and seaming plans, and other submittals required by the Contract Documents.
2. Attend initial preconstruction meeting and construction coordination meetings, as requested by the Client.
3. Perform construction observation and provide construction reports outlining job progress and issues requiring resolution or action. Construction observation will be provided at maximum intervals of two (2) weeks and at critical milestones in the construction schedule, including:
4. Review contractor requests for payment and provide recommendation to the Client regarding progress payments.
5. Respond to Contractor Requests for Information (RFI) where required for clarification of the Work during the construction phase.
6. Perform inspection to determine Substantial Completion, review As-Built Survey as provided by the Contractor and prepare punch-list for non-conforming work.
7. Upon completion of punch list items, perform final inspection, and make recommendation for final payment.

(CLIENT PROVIDED INFORMATION)

As noted throughout the Agreement, the Scope of Basic Services has been prepared with the understanding that the School District will be responsible to supply the following information and items to ELA Sport as necessary to complete the scope of professional services.

1. Filing, application, review, escrow, and other fees necessary for various agency review applications and submissions, including zoning hearing and application fees.
2. Legal representation and review of applications and contract documents if desired by the School District.
3. Previous Land Development and Stormwater Management Plans and Report for the previously approved High School Construction.

Should the above documents and items not be available, delays may occur in plan preparation, plan submittals and processing, various project approvals, and Extra Services incurred resulting from preparation of the required information by ELA Sport.

(EXTRA SERVICES)

The following Professional Services are specifically excluded from the Scope of the Agreement. If Extra Services are found to be required during execution of the Basic Services they shall be compensated in addition to the Basic Services Fee and provided in accordance with the Terms and

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Conditions of this Agreement.

1. Planning or services related to zoning or building permit relief of any kind;
2. Environment impact assessments, including soil remediation or similar services;
3. Historical studies, evaluations, or other services related to historic or cultural resources;
4. Traffic Impact Studies, Roadway Planning/Design, PennDOT Permitting, site access, or parking improvements;
5. Design, calculations, and permitting for off-site storm water management improvements beyond those related to the attenuation of storm water for the proposed stadium improvements;
6. Construction phase geotechnical testing services shall be required for material, soil compaction and evaluation, and other field quality control testing as may be required by the project specifications.

(SCHEDULE)

Upon receiving authorization to proceed, ELA Sport would be in the position to formalize agreements with subcontractors within one (1) week and, depending on weather conditions, have the appropriate Surveying completed within three (3) weeks. When those items have been completed ELA Sport would anticipate being able to complete Schematic Design Plans for review by the Client and School District within a four (4) to six (6) week time frame. ELA Sport is available to begin working on the project immediately and looks forward to having the opportunity to provide Athletic Facility Consulting and Design Services to East Stroudsburg Area School District.

(AUTHORIZATION)

This AGREEMENT consists of all pages including the Terms and Conditions, Rate Schedule for Consulting Services and any attachments as identified above and constitutes the entire AGREEMENT between ELA SPORT and CLIENT. This AGREEMENT supersedes all prior written or oral understandings.

ELA SPORT/ELA GROUP, INC.

CLIENT

BY: 
Charles R. Haley, Jr., PE

BY: _____

TITLE: Project Director, ELA SPORT

TITLE: _____

DATE: April 11, 2014

DATE: _____



**HOURLY BILLING RATE SCHEDULE
FOR 2014 CONSULTING SERVICES**

STAFF TYPE	HOURLY BILLING RATE
ELA GROUP, INC. – ENGINEERS AND LANDSCAPE ARCHITECTS	
President	\$165.00
Principal-In-Charge	\$135.00 - \$155.00
Department Director/Principal	\$105.00 - \$130.00
Senior Project Manager/Engineer/Landscape Architect	\$ 90.00 - \$145.00
Project Manager	\$ 90.00 - \$105.00
Project Engineer	\$ 75.00 - \$130.00
Designer	\$ 65.00 - \$ 80.00
Transportation Technician	\$ 50.00 - \$ 75.00
CADD Manager	\$ 85.00 - \$100.00
Senior CADD Designer	\$ 75.00 - \$ 85.00
CADD Designer/Graphic Coordinator	\$ 60.00 - \$ 70.00
CADD Technician	\$ 55.00 - \$ 60.00
GIS Analyst	\$90.00
Administration	\$ 50.00 - \$ 60.00
ELA SPORT – ATHLETIC FACILITY PLANNING	
Principal-In-Charge: ELA Sport	\$135.00
Project Manager	\$ 90.00 - \$140.00
Senior Designer	\$ 85.00 - \$100.00

REIMBURSABLE EXPENSES

Reimbursable expenses are at cost plus 10%, including, but not limited to, the following:

- | | |
|-------------------------------------|------------------------------------|
| 1. Mileage | 9. Testing Services |
| 2. Travel Expenses, including Meals | 10. Outside Consultants |
| 3. Blueprints | 11. Equipment Rental |
| 4. Mylar Copies | 12. Traffic Counter Rental |
| 5. Xerox Copies | 13. Application Fees |
| 6. Postage | 14. Recording/Notary Fees |
| 7. Film Processing/Photographs | 15. Permit or Other Fees |
| 8. Laboratory Work | 16. Other Project Related Expenses |

ELA Group, Inc./ELA Sport adjusts the fee schedule annually to reflect the cost of doing business for the coming year. This fee schedule is effective December 28, 2013 through December 26, 2014.

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East Stroudsburg Area School District
North High School Stadium Improvements
Athletic Facility Consulting and Design Services
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April 11, 2014
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**ELA SPORT/ELA GROUP, INC.
TERMS AND CONDITIONS
FOR CONSULTING, DESIGN AND CONSTRUCTION PHASE**

1. GENERAL PROVISIONS

1.1 CONTRACT DOCUMENTS: The Terms and Conditions set forth herein are incorporated by reference in the Proposal for the performance of services described as the "Project" in the Proposal.

1.2 AGREEMENT: The Agreement between ELA Group, Inc. ("ELA") and the CLIENT ("the Agreement") consists solely of these Terms and Conditions and the Proposal to which they are attached. In the event that ELA and the CLIENT have not executed the Agreement, the CLIENT's authorization to ELA to proceed with the performance of the services set forth in the Proposal shall constitute acceptance of these Terms and Conditions.

Specific terms set forth in the Proposal shall take precedence over these Terms and Conditions to the extent they are inconsistent or contradictory.

1.3 STANDARD OF CARE: ELA shall perform the services under this Agreement with the care and skill ordinarily used by members of ELA's profession practicing under similar conditions at the same time and in the same locality.

Estimates of cost, approvals, recommendations, opinions and decisions by ELA are made on the basis of ELA's experience, qualifications and professional judgment. ELA makes no other warranty or guarantee, express or implied.

1.4 TIMING OF PROPOSAL: ELA agrees that the Agreement shall remain open and may be accepted by the CLIENT for thirty (30) days from the date of the Agreement. Acceptance of the Agreement after the end of the 30-day period shall be valid only if ELA elects, in writing, to reaffirm the Agreement and waives its right to reevaluate and resubmit the Agreement.

1.5 SUBCONSULTANTS: ELA has the right to employ or retain such independent consultants, associates and subcontractors as it may deem appropriate to assist it in the performance of the services required.

1.6 OTHER WORK: If the CLIENT requests ELA to provide engineering services on other projects before a written agreement is consummated for the other project, the terms and conditions of this Agreement shall apply thereto.

2. CLIENT COOPERATION

2.1 INFORMATION: The CLIENT shall cooperate with ELA at all times to enable ELA to complete the Project. The CLIENT shall provide ELA with all information pertinent to the project reasonably requested by ELA to enable it to complete the Project.

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A Division of ELA Group, Inc.
Lititz and State College, PA

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2.2 ACCESS: CLIENT shall provide access to the site of the Project at all reasonable times to enable ELA to complete the Project at no cost to ELA.

2.3 HAZARDOUS SUBSTANCES: The CLIENT represents and warrants to ELA that it has and will comply with all obligations imposed by applicable law upon the generation, storage or disposal of hazardous substances and/or waste and that it will promptly notify ELA of any notices concerning such matters. The CLIENT agrees to hold harmless, indemnify and defend ELA from and against any and all damages and liabilities and expenses arising out of or in any way connected with the presence, discharge, exposure, release, or escape of hazardous substances, or wastes of any kind, to the extent permitted by law.

2.4 SAFETY RESPONSIBILITY: ELA is not responsible for any safety precautions or programs of the CLIENT or any contractors working on the Project except for ELA's own employees.

3. USE OF ELA'S DOCUMENTS

3.1 USE OF DOCUMENTS: All documents, including drawings and specifications, prepared by ELA pursuant to this Agreement, are instruments of ELA's service for use solely with respect to this Project. They are not intended or represented to be suitable for reuse on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ELA for the specific purpose intended is at the CLIENT's sole risk and will not impose liability upon ELA.

3.2 COPYRIGHT: ELA shall be deemed the author of the documents prepared for this Project and shall retain all common law, statutory and other reserved rights, including the copyright. Notwithstanding the foregoing, upon Client's payment in full of all invoices rendered by ELA, plans and surveys prepared for this Project shall be the property of Client, but shall be used by Client solely in connection with this Project. If plans are used for completion of or for additions to this Project by others without ELA's involvement: (1) any seal of ELA's architects or engineers shall be removed from the plans or a statement placed on such documents that ELA is not involved; and (2) Client shall engage another engineer or architect as applicable to review the plans and take full responsibility for suitability for use. The ownership rights of Client shall not under any circumstances preclude ELA's use of designs or components of the documents for other purposes or projects.

4. LIMITATION OF LIABILITY/INDEMNIFICATION

4.1 INDEMNIFICATION: Each party shall indemnify and hold harmless the other party, its officers, directors, shareholders, or agents, employees, consultants and subcontractors from and against any and all liabilities, damages, or expenses in connection with (1) any personal injury or property damage arising out of any acts or omissions by the other party, its officers, directors, agents, employees and contractors, or (2) a breach of this agreement. Each party further agrees to indemnify and hold harmless the other party for any and all fees and expenses incurred in enforcing or defending its rights under this Paragraph or the performance of its duties under this Paragraph.

Each party may settle any claim for which it has a right of indemnification against the other party without the other party's consent. Each party shall not be required to prove its liability or the reasonableness of the settlement to obtain indemnification from the other party.

4.2 LIMITATION OF LIABILITY: ELA shall not be liable for the results of services performed with professional care and skill. To the fullest extent permitted by law, ELA's total liability to CLIENT for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to the Project or this Agreement from any cause or causes including, but not limited to, ELA's negligence, errors, omissions, strict liability, intentional acts, breach of contract or breach of warranty, shall not exceed the greater of the total compensation received by ELA under this Agreement, or the amount of any deductible plus

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the amount ELA's insurers are required to pay in settlement or satisfaction of CLIENT's claims under ELA's professional insurance policy, subject to all limits and conditions of such insurance.

4.3 INSURANCE: ELA presently carries professional liability insurance coverage with an annual limit of liability of \$2,000,000 and ELA will maintain such insurance during the term of this Agreement. Certificates of insurance or copies of policies will be provided upon request. Additional coverage may be obtained at the CLIENT's expense.

4.4 CLIENT/MANUFACTURER SUPPLIED DESIGNS: In the event that the Project requires the furnishing and supplying of design services for such products as pre-manufactured buildings, tanks, special structures and systems, etc, the CLIENT shall not hold ELA responsible for any design which is furnished by others.

5. PAYMENT/INVOICES

5.1 PAYMENTS: ELA will submit invoices to the CLIENT monthly as the work proceeds. Payment is due and payable in full on receipt of an invoice by the CLIENT without retainage, and is not contingent upon receipt of funds from third parties.

The CLIENT recognizes that prompt payment of invoices is an essential aspect of overall consideration for this Agreement. The CLIENT agrees to pay all charges not in dispute within 45 days of the invoice date. If payment in full of undisputed charges is not made within 45 days of the invoice date, ELA reserves the right to pursue all remedies, including withdrawing certifications, withholding the submission (to Client or any third party municipality or agency) and/or recording of plans or other documents, stopping work on seven (7) days' prior written notice, and retaining all documents without recourse. The CLIENT agrees to pay a service charge of 1/2% per month on any undisputed amount outstanding over 45 days. The CLIENT may withhold payment of invoices if ELA is in breach of its duties under the agreement.

The CLIENT further agrees to reimburse ELA for all expenses ELA incurs in the collection process or to enforce payment under this Agreement, including, but not limited to, court costs, arbitrators' and attorneys' fees and other claim related expenses.

Timely payment of invoices is a condition of this Agreement. Failure to make payments in full within the time limits stated above will be considered substantial noncompliance with the terms of this Agreement and cause for termination of the Agreement if ELA so chooses.

5.2 DISPUTED CHARGES: Any charges the CLIENT disputes must be brought to ELA's attention within 10 business days of receipt of the invoice. The CLIENT and ELA shall work together in good faith to resolve any disputed charges. If the CLIENT and ELA are unable to resolve their differences within 30 days, ELA shall have the right to suspend or terminate service. ELA has the right to suspend service if undisputed charges are not paid within 45 days of the invoice date.

5.3 INVOICES: All invoicing will be substantiated by ELA cost record sheets and work order system, all of which shall be made available to CLIENT upon request and during regular working hours for inspection and audit. Any increase in ELA's cost resulting from state or federal legislation shall be reimbursed by the CLIENT.

6. TERMINATION

6.1 TERMINATION: This Agreement may be terminated by either party upon seven (7) days' written notice should the other party substantially fail to perform in accordance with the terms of this Agreement through no part of the party initiating the termination. The CLIENT may also terminate this Agreement at its convenience. The CLIENT agrees to be liable and pay ELA for all labor done, work performed, materials furnished, and all expenses incurred for all work and additional work up to and

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including the day work is terminated, subject to setoff for any damages incurred by CLIENT due to ELA's failure of performance hereunder.

6.2 DEFAULT: In addition to its other remedies, ELA reserves the right to withhold submission (to the CLIENT or any third party municipality or agency) of any plans or other documents and withhold performance of any other term of this Agreement upon default by the CLIENT of any of the CLIENT's obligations under this Agreement.

7. MISCELLANEOUS PROVISIONS

7.1 CONTROLLING LAW: The Agreement is governed by the laws of the Commonwealth of Pennsylvania.

7.2 ASSIGNS: To the extent permitted by law, this Agreement cannot be assigned or transferred by either party without the prior written consent of both parties.

7.3 THIRD PARTY BENEFICIARIES: Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to any third party.

7.4 MODIFICATION: This Agreement may be amended only by written instrument signed by both parties.

7.5 ENTIRE AGREEMENT: These Terms and Conditions, any drawings, plans, plats, and/or exhibits attached hereto, and the Proposal to which these items are attached, set forth the entire understanding and agreement between the parties with respect to the Project and shall be binding upon and inure (except as otherwise provided herein) to the benefit of the parties and their respective successors and assigns. This Agreement supersedes all prior documents, agreements, and understandings between the parties with respect to the Project.

8. CONSTRUCTION PHASE SERVICES

8.1 GENERAL: If the proposal to which these Terms and Conditions are attached specifically includes Construction Phase services, the following provisions shall apply to those services, in addition to the provisions set forth in Articles 1-7 above.

8.2 VISITS TO THE SITE: In connection with observation of the work of Contractor(s) while it is progress, ELA shall visit the site at intervals ELA deems appropriate for the various stages of the Project in order to observe the progress and quality of the Contractor(s) work. Such visits and observations by ELA are not intended to be exhaustive or to extend to every aspect of the work in progress; instead, the visits and observations are intended to enable ELA to determine if, in ELA's professional judgment, the work is proceeding in accordance with the Agreement. ELA will keep the CLIENT informed of how work is progressing.

8.3 RESIDENT PROJECT REPRESENTATIVE: If recommended by ELA and approved by the CLIENT, ELA shall provide the services of a Resident Project Representative to provide day-to-day observation of the work. The Resident Project Representative (and any assistants) shall be ELA's agent or employee and under ELA's supervision. The specific duties and responsibilities of the Resident Project Representative shall be set forth in detail in Exhibit A, "Duties and Responsibilities of Resident Project Representative."

8.4 PURPOSE: The purpose of ELA's visits to the site and/or representation by a Resident Project Representative will be to enable ELA to better carry out the duties and responsibilities assigned to and undertaken by ELA during the Construction Phase, and, in addition, to provide the CLIENT with a greater degree of confidence that the Contractor(s)'s work will be performed in

accordance with the Agreement. However, ELA shall not, during such visits or observation, supervise, direct or have control over Contractor(s)' work, nor shall ELA have the authority over or responsibility for the means, methods, techniques, or procedures of construction selected by Contractor(s), for safety precautions or programs used by Contractor(s), or for Contractor(s)' failure to comply with the laws, rules, regulations, codes or orders applicable to Contractor(s)' work. ELA therefore cannot and does not guarantee the quality or performance of the Contractor(s)' work, or assume responsibility for any acts or omissions of the Contractor(s) in the performance of the work.

8.5 DEFECTIVE WORK: During its visits to the site and based on its observation of the work, ELA may disapprove or reject Contractor(s)' work while it is in progress if ELA believes the work will not produce a finished product consistent with the Agreement or that it will damage the integrity of the design concept of the Project.

8.6 INTERPRETATION OF DOCUMENTS: ELA shall issue necessary interpretations and clarifications of Project documents. ELA shall prepare work change directives and change orders as required.

8.7 SHOP DRAWINGS: ELA shall review and take appropriate action with respect to shop drawings, samples, and other data which Contractor(s) are required to submit, but only for conformance with the design concept of the Project and compliance with the Agreement.

8.8 SUBSTITUTES: ELA shall evaluate and determine the acceptability of substitute materials or equipment of Contractor(s).

8.9 INSPECTIONS AND TESTS: ELA shall be authorized to require special inspection or testing of the work, to enable ELA to determine generally that the work complies with the requirements of, and the results certified demonstrate compliance with, the Agreement.

8.10 APPLICATION FOR PAYMENT TO CONTRACTOR(S): Upon review of Contractor(s)' applications for payment, ELA shall determine the amount owing to Contractor(s) based on ELA's on-site observation of the Project (and on information provided by the Resident Project Representative, where applicable). ELA shall then recommend in writing payment of that amount to Contractor(s). This recommendation shall constitute representation to the CLIENT that based on its observation of the Project, the work has progressed to the point indicated, and that to the best of ELA's knowledge, information and belief at that time, the quality of the work is consistent with the Agreement. By recommending payment, ELA does not represent that it has made exhaustive, detailed or continuous reviews of the Project. Such recommendation does not impose on ELA responsibility to ascertain how or in what manner any Contractor has used the moneys paid or to determine that title to any work, materials, or equipment has passed to the CLIENT free and clear of any lien, claims, security interests or encumbrances. Such recommendation also does not mean that there may not be other matters at issue between the CLIENT and Contractor(s) that might affect the amount to be paid.

8.11 CONTRACTOR(S)' DOCUMENTS: ELA shall receive and review all documents to be assembled by Contractor(s) under the Agreement. Such review will only be to determine that their content complies with the requirements of the Agreement. ELA shall transmit these documents to the CLIENT with written comments, where appropriate.

8.12 FINAL PAYMENT: ELA shall conduct an inspection to determine if the work is substantially complete. ELA shall also conduct a final inspection to determine if the completed work is acceptable. If upon final inspection the work is acceptable, ELA may recommend final payment to Contractor(s), and may give written notice to the CLIENT that the work is acceptable (subject to any conditions expressed therein).