

AGREEMENT FOR CONSULTING SERVICES

Job Name: John Bonfield ES
Pavement Restoration & Maintenance

This Agreement is made this 4th day of May 2020 by and between ELA Group, Inc. (ELA), 743 South Broad Street, Lititz, Pennsylvania 17543 (ELA) and

Warwick School District
301 West Orange Street
Lititz, PA 17543
(Client)

ELA shall perform services in accordance with the terms and conditions of this Agreement and shall be responsible for the means, methods, and procedures used in performing services under this agreement.

General description of Scope of Additional Services and fees and identification of all attachments.

1. Perform field work to evaluate existing ADA ramps and prepare existing CS-4401 Forms.
2. Incorporate into Bidding Documents.
3. Prepare Commercial Building Permit and submit to Lititz Borough/Code Administrators for ADA ramp construction inspections.
4. Assist contractor in design/build of ADA ramps.
5. Perform field work to evaluate constructed ADA ramps and prepare construction CS-4401 Forms for Permit.
6. Closeout of Commercial Building Permit with Lititz Borough/Code Administrators.

ELA proposes to complete the work on an hourly rate basis for the time spent on the project by our employees plus associated reimbursable expenses.

The Estimated Fee for this Project is: \$5,000.00

This AGREEMENT consists of seven (7) pages including the Terms and Conditions and Rate Schedule attached to this AGREEMENT and the attachments identified above constitute the entire AGREEMENT between ELA and CLIENT and supersedes all prior written or oral understandings.

ELA Group, Inc.

CLIENT: Warwick School District



(ELA Signature)

Brian Miller

(Printed Name)

Title: Principal & Project Engineer

Date: 5/4/20

CLIENT: Warwick School District

(Client Signature)

Mr. Nathan Wertsch

(Printed Name)

Title: Chief Financial Officer

Date: _____

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 endeavor to 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.
- 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:** The CLIENT shall indemnify and hold harmless ELA, 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 negligent acts or omissions by the CLIENT, its officers, directors, agents, employees and contractors, or (2) the CLIENT's breach of this agreement. The CLIENT further agrees to indemnify and hold harmless ELA for any and all fees and expenses incurred in enforcing or defending ELA's right under this Agreement or the performance of its duties under this Agreement.

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

- 4.2 LIMITATION OF LIABILITY:** ELA shall not be liable to CLIENT unless CLIENT establishes ELA breached the Agreement by failing to render services in accordance with the applicable professional standard of care. CLIENT hereby waives its right to pursue any other cause of action of any nature whatsoever against ELA including, but not limited to, negligence, strict liability, and breach of warranty. Notwithstanding anything to the contrary, under no circumstances shall ELA be liable to CLIENT for consequential, incidental, special, or punitive damages. To the fullest extent permitted by law, ELA's total liability to CLIENT shall not exceed the greater of the total compensation received by ELA under this Agreement, or the amount of any deductible plus the amount ELA's insurers pay in settlement or satisfaction of CLIENT'S claims under ELA's professional insurance policy, subject to all limits and conditions of such insurance. ELA shall not be obligated to challenge an insurer's determination as to whether or not to provide coverage to ELA in any given situation or as to the amount of coverage it will provide to ELA in any given situation.
- 4.3 INSURANCE:** ELA presently carries professional liability insurance coverage with an annual aggregate limit of liability of \$4,000,000. Certificates of insurance or copies of policies will be provided upon request. Additional coverage may be obtained at the CLIENT's expense. Failure to exercise this option waives any claims of liability beyond such limits.
- 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 every four weeks 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 30 days of the invoice date. If payment in full is not made within 30 days of the invoice date, ELA reserves the right to pursue all remedies, including withdrawing certifications, withholding the submission (to CLIENT or 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 1-1/2% per billing period on any amount outstanding over 30 days.

In the event CLIENT breaches its obligation to pay amounts invoiced by or otherwise due ELA under the Agreement and ELA obtains a judgment for any such amount, interest shall accrue on the total amount of the judgment at the rate of 1 1/2 % per month notwithstanding the fact that such interest rate may exceed the legal rate of post-judgment interest.

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 payments 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 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. Time spent in additional detailing of invoices is considered extra effort on the Project and will be invoiced as additional work. Any increase in ELA's cost resulting from state or federal legislation shall be reimbursed by the CLIENT.

If CLIENT asks ELA to issue invoices or bills to any entity or individual other than CLIENT, such invoicing or billing shall not in any way relieve CLIENT of its liability under the Agreement to pay such invoices or bills or any other obligation and such invoicing or billing shall not in any way interfere with or prejudice ELA's right to pursue CLIENT for the breach of any such obligation.

5.4 CREDIT: The CLIENT shall provide credit references and shall authorize ELA to conduct credit checks at ELA's request. ELA shall not be bound by this Agreement unless and until ELA approves in writing the CLIENT's credit history. The CLIENT's inability to provide credit references and/or a credit history acceptable to ELA constitutes a substantial failure to perform under this Agreement.

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 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 including the day work is terminated.

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 ARBITRATION: Any and all disputes of any nature whatsoever between ELA and CLIENT shall be submitted to binding arbitration at ELA's sole election in accordance with this paragraph. To initiate arbitration under this paragraph, ELA shall send written notice to CLIENT specifying the dispute that will be submitted to arbitration. Any arbitration under this paragraph shall be conducted by a single arbitrator selected using the arbitrator selection process offered by the American Arbitration Association. The arbitrator so selected shall be licensed to practice law in Pennsylvania and shall have substantial experience arbitrating commercial disputes. Any arbitrator selected to resolve a dispute between ELA and CLIENT shall have authority to: (a) decide the dispute in accordance with rules promulgated by the American Arbitration Association that the arbitrator determines are most appropriate based on the facts and circumstances; and (b) allocate the costs of arbitration among the parties as he or she deems appropriate. Each dispute submitted to arbitration under the Agreement shall be subject to the respective statute or statutes of limitations that would otherwise have applied had the dispute been brought in a court of law, all limitations of liability set forth in the Agreement, and Pennsylvania law. A judgment of any court having jurisdiction may be entered upon any arbitration award.

- 7.2 VENUE:** If a dispute between ELA and CLIENT is submitted to arbitration, the arbitration shall be conducted at a location in Lancaster, Pennsylvania selected by the arbitrator. If, however, a dispute between ELA and CLIENT is submitted to the judicial process including, but in no way limited to, a dispute over an arbitrator's jurisdiction, such dispute shall be submitted to the Lancaster County Court of Common Pleas in Lancaster, Pennsylvania.
- 7.3 CONTROLLING LAW:** The Agreement is governed by the laws of the Commonwealth of Pennsylvania.
- 7.4 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.
- 7.5 THIRD PARTY BENEFICIARIES:** Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to any third party.
- 7.6 MODIFICATION:** This Agreement may be amended only by written instrument signed by both parties.
- 7.7 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).



**HOURLY BILLING RATE SCHEDULE
FOR 2020 CONSULTING SERVICES**

STAFF TYPE	HOURLY BILLING RATE
ELA GROUP, INC. – ENGINEERS AND LANDSCAPE ARCHITECTS	
President and President Emeritus	\$155.00 - \$175.00
Division Director/Principal/Vice President	\$165.00 - \$175.00
Senior Project Manager/Engineer	\$110.00 - \$135.00
Project Manager	\$100.00 - \$125.00
Project Engineer	\$ 60.00 - \$ 85.00
Landscape Architect Designer	\$ 60.00 - \$ 85.00
CAD Manager	\$ 95.00 - \$105.00
Senior CAD Designer	\$ 85.00 - \$ 95.00
CAD Designer	\$ 70.00 - \$ 85.00
GIS	\$ 120.00
Administration	\$ 50.00 - \$ 80.00
ELA SPORT – ATHLETIC FACILITY PLANNING	
Principal-In-Charge: ELA Sport	\$ 155.00
Senior Project Manager	\$ 125.00 - \$ 155.00
Senior Designer	\$ 100.00 - \$ 110.00
Design Technician	\$ 60.00 - \$ 75.00
ELA TECHNOLOGIES – ELECTRONIC DATA MANAGEMENT	
Tech Support	\$ 90.00 - \$110.00
Scanning (Document Imaging)	\$ 50.00

REIMBURSABLE EXPENSES

Reimbursable expenses are at cost 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 21, 2019 through December 19, 2020. For projects in progress that extend past the dates of the fee schedule attached to executed contracts, rates will be adjusted on the invoices and may adjust the amount of the project contracted fee.