

**SOUTHERN LEHIGH SCHOOL DISTRICT  
NEW ELEMENTARY SCHOOL  
GEOTECHNICAL INVESTIGATION AND  
PHASE ONE ENVIRONMENTAL INVESTIGATION  
PROFESSIONAL SERVICES AGREEMENT**

This Agreement made this \_\_\_\_\_ day of \_\_\_\_\_ 2014, by and between the Southern Lehigh School District, located at 5775 Main St., Center Valley, PA 18034, hereinafter referred to as the "Owner," and [PROFESSIONAL], hereinafter referred to as the "Geotechnical Professional."

The Owner is proceeding with the construction of a new elementary school located on the site of the existing Hopewell Elementary School (hereinafter, the "Project "), located at 4625 W. Hopewell Road, Center Valley, Lehigh County, Pennsylvania 18034.

The Construction Manager for the Project is the firm of D'Huy Engineering, Inc., One East Broad Street, Suite 310, Bethlehem, PA 18018 (hereinafter, the "Construction Manager"). The Project Architect has not yet been determined (hereinafter, the "Architect").

The Owner and the Geotechnical Professional agree as set forth below:

**Article 1 - Scope of Services**

1.1 The Owner designates the Geotechnical Professional as its consultant to perform the professional services identified in this Agreement ("Services"). The Geotechnical Professional's Services shall include all activities described in the Request for Proposal for Geotechnical Investigation and Phase One Environmental Investigation issued in June 2014 (the "RFP") for the Project, including any services to complete the scope and intent of the Professional Services.

1.2 The Geotechnical Professional accepts the relationship of trust and confidence established between the Geotechnical Professional and the Owner by this Agreement. Geotechnical Professional covenants with the Owner to furnish the Geotechnical Professional's knowledge, skill and professional judgment, consistent with and meeting or exceeding that ordinarily and customarily accepted within the industry, and to cooperate with the Architect, the Construction Manager, other consultants and professionals, and the trade contractors in furthering the interest of the Owner.

1.3 Geotechnical Professional agrees to provide professional services in accordance with the RFP, the Proposal submitted in June 2014 (the "Proposal"), appearing as Attachment A hereto including any addenda or other information provided to the Professional.

1.4 The Geotechnical Professional shall meet and satisfy the requirements set forth in the Specifications in performing the Services. All services that are to be performed by a registered professional engineer licensed to do work in the state of Pennsylvania must be performed by an individual qualified and registered to perform such services in connection with the Project.

1.5 Geotechnical Professional has fully reviewed the RFP and project scope and has performed its own estimates and takeoffs of the extent of the Services that will be required. Owner bears no responsibility for the Geotechnical Professional's fee.

1.6 Geotechnical Professional agrees to provide professional services on a fixed fee basis, as set forth in this Agreement and Attachment A.

1.7 Geotechnical Professional agrees to provide any additional Geotechnical services that are necessary for the Project at prices to be agreed upon by the Owner and the Geotechnical Professional by written amendment to this Agreement. Geotechnical Professional

is not authorized to perform any such additional Geotechnical or laboratory services without the expressed prior written approval of the Owner or its representatives.

1.8 Geotechnical Professional will, at the time that it receives direction to proceed, promptly designate the personnel who will participate in the furnishing of Services under this Agreement. All appointments and replacements made by the Geotechnical Professional of any such individuals are subject to the prior written approval of the Owner and Construction Manager, which approval shall not be withheld unreasonably.

1.9 Communications between the Geotechnical Professional and the Owner shall ordinarily occur through the Construction Manager, or in appropriate circumstances directly with the Owner, or through other consultants and individuals designated by the Construction Manager.

1.10 The terminology “day” shall mean calendar day, unless otherwise specifically designated.

1.11 The phrase, “Term of this Agreement” shall mean the period of time that this Agreement is in effect.

## **Article 2 - Basic and Additional Services Offered**

2.1 Basic Services shall include the following:

2.1.1 Geotechnical Professional shall perform the Services in accordance with this Agreement, including Section 1.4, during the period of time following the selection of the Geotechnical Professional, prior to the execution of this Agreement, during the construction period, and for any additional period required thereafter for project close-out.

2.1.2 Geotechnical Professional agrees to submit all test results, reports, data sheets and other deliverables in accordance with the timelines established in the RFP, Attachment A.

2.1.3 Geotechnical Professional agrees to advise the Construction Manager promptly of instances where the work differs from that in the RFP.

2.2 Additional services may include the following:

2.2.1 Geotechnical Professional agrees to assist with claims avoidance and claims negotiation and resolution incidental to Geotechnical Professional's duties as an Additional Service.

### **Article 3 - Owner's Duties**

3.1 The Owner shall provide all available information regarding the Owner's requirements for the Project, including but not limited to design documents and construction contract documents.

3.2 Geotechnical Professional will be furnished without charge all copies of drawings and specifications reasonably necessary for the execution of the work subject to this Agreement.

3.3 The agreements, plans, specifications and information required by the above paragraphs shall be furnished with reasonable promptness at the Owner's expense and Geotechnical Professional shall be entitled to rely upon the accuracy and completeness thereof. However, should Geotechnical Professional observe, note or discover any errors, omissions, or deficiencies through its activities under this Agreement during the course of the Project,

Geotechnical Professional shall promptly notify the Construction Manager and report the observations to them.

3.4 The Owner shall provide itself or through its construction contractors property insurance for the Project and specifically will furnish adequate coverage for general liability, property and other casualty losses. Nothing herein requires that the Geotechnical Professional be identified as an additional insured under any such policy or policies.

#### **Article 4 - Trade Contracts**

4.1 All construction work on the Project shall be performed by construction contractors under trade contracts that are in compliance with applicable law. The Geotechnical Professional will perform no construction work.

4.2 Trade contracts will be between the Owner and other construction contractors.

#### **Article 5 - Geotechnical Professional's Fee**

5.1 In consideration of the performance of Services under this Agreement, the Owner agrees to pay Geotechnical Professional its fees on the basis of the Proposal for rates which include reimbursable expenses, appearing here as Attachment A.

5.2 Geotechnical Professional agrees that it will impose no additional charges for the services of its employees or consultants, or for out-of-pocket costs or expenses of any kind incurred in connection with Services provided under this Agreement.

5.3 The rates and reimbursable expenses set forth in this Agreement and the Proposal hereto shall remain in effect for the Term of this Agreement.

5.4 Fees for the services of its personnel and payments for laboratory services may be billed by Geotechnical Professional monthly, or with Owner's permission, less frequently. All invoices shall be appropriately and adequately documented.

5.4.1 Invoices for services shall include the scope of services, the dates of the services, and the applicable fee.

5.5 Geotechnical Professional agrees that the total billed for its services, in complete performance of the services to be rendered by the Geotechnical Professional under this agreement, shall not exceed the sum of \_\_\_\_\_ Dollars (\$\_\_\_\_\_.00).

Geotechnical Professional agrees to allocate the time of its personnel and the expenses of their activities so as to assure that the total paid by Owner for the Services described generally in this Agreement is within this amount. It is further agreed that all invoices shall be based on the unit prices and fees listed in the proposal submitted (Attachment A) and the unit prices and fees include all reimbursables.

5.6 The Owner reserves the right to propose to the Geotechnical Professional that it provide Additional Services in connection with the Project. Any addition, change or modification to this Agreement shall be of no force or effect until a written modification is prepared and signed by the Owner and the Geotechnical Professional.

5.7 Additional Services shall be billed in accordance with the Proposal, appearing here as Attachment A, listing the rates for the Geotechnical Professional's personnel and per-unit prices for laboratory services. These rates set forth in Attachment A shall remain in effect for the Term of this Agreement.

5.7.1 All invoices for services shall include a description of the services provided.

5.8 The cost of the premiums for all insurance which the Geotechnical Professional is required to maintain by this Agreement is to be paid by Geotechnical Professional and shall not be included by Geotechnical Professional in its invoices as a cost.

5.9 Losses, expenses or damages, to the extent not compensated by insurance or otherwise, and due to the negligence of the Owner, and fees and costs incurred due to an emergency affecting the safety of persons and property due to the negligence of the Owner shall be included by Geotechnical Professional in its invoices as a reimbursable cost.

### **Article 6 - Insurance and Indemnification**

6.1 (A) Geotechnical Professional shall take out and maintain Commercial General Liability insurance that will protect the Geotechnical Professional and all of its subconsultants and subcontractors from claims for death, injury or property damage which may arise from services and activities performed under this Agreement. Such insurance shall be provided via standard Insurance Services Office occurrence form CG 00 01 01 96 (or its equivalent) issued by insurers authorized to do business in the Commonwealth of Pennsylvania.

The limits of this policy shall be at least:

- (1) \$1,000,000 Each Occurrence
- (2) \$2,000,000 General Aggregate
- (3) \$1,000,000 Personal & Advertising Injury
- (4) \$1,000,000 Products/Completed Operations Aggregate

This insurance to be purchased by Geotechnical Professional shall include the following:

- (1) Premises Operations
- (2) Products and Completed Operations
- (3) Contractual Liability
- (4) Personal Injury Liability
- (5) "Waiver of Transfer Rights of Recovery Against Others" (Insurance Services Office endorsement #CG2404), naming Owner, Architect, Construction Manager and consultants on its schedule.

(6) “Amendment - Aggregate limits of Insurance (Per Project)” (Insurance Services Office endorsement #CG2503) naming “Southern Lehigh School District – New Elementary School” on its schedule.

(7) “Additional Insured - Designated Person or Organization” (Insurance Services Office endorsement #CG2026) naming Owner, Architect, Construction Manager and consultants.

(8) “Additional Insured - Engineers, Architects or Surveyors Not Engaged By the Named Insured” ((Insurance Services Office endorsement #CG2032) naming Construction Manager, Architect and their subconsultants).

6.1 (B) Geotechnical Professional shall maintain commercial Automobile

Liability insurance for owned, hired, and non-owned vehicles with a limit of liability of at least \$1,000,000 per occurrence and \$2,000,000 aggregate.

6.1 (C) Geotechnical Professional shall take out and maintain Workers

Compensation insurance, including employers liability and any other insurance as required by law in the Commonwealth of Pennsylvania. The limits for Employers Liability coverage shall be at least \$300,000 for each category: Bodily Injury Each Accident; Disease Each Person; Disease Policy Limit.

6.1 (D) Geotechnical Professional shall maintain Commercial Umbrella Liability

insurance on an occurrence form that provides excess coverage over its Commercial General Liability (including Products & Completed Operations Liability), Auto Liability, Professional Liability and Employers Liability coverages. The per occurrence limit of protection on this policy shall be at least \$5,000,000. This insurance shall include the following:

(1) No exclusion barring suits between insureds.

(2) Language specifying that this insurance shall follow the underlying Commercial General Liability policy with respect to “Additional Insureds”.

6.1 (E) Geotechnical Professional shall maintain Professional Liability insurance

covering professional services with a limit of liability of at least \$1,000,000. Such insurance shall be written on a per-occurrence basis.



6.1 (F) Except as specified in 7.1(E) all insurance shall be effective from the date of execution of this contract until final payment.

6.1 (G) Insurance companies providing policies or bonds described in this section must have an A.M. Best Co. rating of A- or higher.

6.1 (H) Geotechnical Professional shall provide Owner with Certificates of Insurance evidencing the coverages described in this section. Such certificates shall be provided contemporaneously with the execution of this Agreement and appended hereto as Attachment B, and shall provide an explicit written assurance of at least thirty (30) days written notice to Owner prior to any material changes, cancellation or non-renewal. All notifications by the insurance carrier are to be sent to Todd Bergey, Southern Lehigh School District, 5775 Main St., Center Valley, PA 18034.

6.1 (I) Geotechnical Professional waives any and all rights of recovery against Owner, Architect, Construction Manager and consultants, Southern Lehigh School District, the Commonwealth of Pennsylvania and any of their representatives, officials, consultants, officers, directors, employees and agents.

6.1 (J) There will be no separate or additional payment for insurance expenses, and the cost for insurance described in this document shall be Geotechnical Professional's sole responsibility.

6.2 (A) Geotechnical Professional agrees to indemnify, defend and hold harmless the Owner, Architect, Construction Manager, consultants, Southern Lehigh School District, and the Commonwealth of Pennsylvania, and their officers, officials, representatives, agents and employees from and against all claims, damages, losses and expenses including but not limited to, attorneys' fees arising out of or resulting from the performance of the work under this

Agreement, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or the injury to or destruction of tangible property, including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Geotechnical Professional, anyone employed by the Geotechnical Professional, or any one for whose acts the Geotechnical Professional may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be constructed to negate, abridge or otherwise reduce any other right or obligation of indemnity that would otherwise exist as to any party or person.

6.2 (B) With respect to any claim resulting from injury or loss to an employee of Geotechnical Professional, the Geotechnical Professional agrees to indemnify and hold harmless Construction Manager, Architect and Owner from the entire amount of such claim, including liability for injury or loss caused by the negligent acts or omissions of Construction Manager, Architect and Owner which result in harm to such employee (unless Construction Manager, Architect and Owner were solely negligent) and Geotechnical Professional hereby expressly waives any provision of any applicable workmen's compensation act which would otherwise provide the Geotechnical Professional immunity from such indemnity.

6.3 Geotechnical Professional hereby certifies that it has accepted the provisions of the Workers' Compensation and Occupational Disease Acts, as amended and supplemented, for the officers and employees of Geotechnical Professional and that it has insured its liability thereunder in accordance with the terms of said Acts, as evidenced by the original certificate of insurance it has provided to Owner.

## **Article 7 - Termination**

7.1 If the Owner fails to make payment for more than sixty (60) days following the rendering by Geotechnical Professional of a properly documented and supported invoice for fees due and owing, Geotechnical Professional may, upon thirty (30) days' written notice to the Owner and the Construction Manager, terminate this Agreement and recover from the Owner payment of the fees earned to date.

7.2 Notwithstanding any contrary provision in this Agreement, this Agreement may be terminated for the convenience of the Owner upon seven (7) days written notice to the Geotechnical Professional. If the Owner elects to terminate this Agreement under this Section, Geotechnical Professional shall be entitled to payment for satisfactory services rendered under the Agreement up to the time of termination, based on the unit costs, hourly rates, and services rendered.

7.3 If, through any cause, the Geotechnical Professional shall fail to fulfill on a timely basis and in a proper manner its obligations under this Agreement, the Owner may give Geotechnical Professional three (3) days to correct the deficiency. If Geotechnical Professional fails to correct the deficiency to the satisfaction of the Owner, the Owner may terminate this Agreement by giving written notice to the Geotechnical Professional, setting forth the reasons for and the effective date of such termination.

## **Article 8 - Additional Terms**

8.1 Neither the Owner nor the Geotechnical Professional shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

8.2 This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania where the Project is located.

8.3 This Agreement represents the entire understanding between the Owner and the Geotechnical Professional, and supersedes all prior negotiations, representations, or Agreements, except otherwise provided herein.

8.4 Geotechnical Professional shall fully obey and comply with all laws, ordinances, and regulations which are or shall become applicable to the Project and the Services performed under this Agreement.

8.5 Geotechnical Professional shall maintain and preserve all data, records, and documents pertaining to the Project for a period extending until five (5) years after the date of final payment of fees to Geotechnical Professional and, during that period, shall produce the aforementioned information upon request to the Owner and within a reasonable period of time.

8.6 Geotechnical Professional agrees that it neither has nor will acquire any public or private interest, direct or indirect, which conflicts in any manner with the performance or obligations under this Agreement.

8.7 The Services rendered by the Geotechnical Professional or its agents under this Agreement are not rendered as an employee of the Owner and the amounts paid do not constitute compensation or wages paid to an employee. Geotechnical Professional is not an agent of the Owner, but rather is an independent contractor and the Owner assumes no liability or responsibility for the actions of the Geotechnical Professional under this Agreement.

8.8 All claims, disputes and other matters in question arising out of or relating to this Agreement or any breach thereof shall first be reviewed administratively by the Owner. The Owner, no later than 30 days after a demand for an administrative determination submitted

by the Geotechnical Professional, or on its own initiative, shall designate an individual to serve as claims administrator. The claims administrator may be selected at any time after the execution of this Agreement. Geotechnical Professional and the Owner will attend administrative conferences at the call of the claims administrator. The Owner and the Geotechnical Professional will cooperate fully in the administrative investigation conducted by the claims administrator at the administrative conference and at such other times that the claims administrator shall determine and shall furnish documents and other information reasonably required by the claims administrator. Within 30 days of the completion of the administrative investigation, the claims administrator will render a decision and recommendation to the Owner and Geotechnical Professional. The decision and recommendation will not be binding on either party and will not be admissible in any proceeding. Unless the decision and recommendation is accepted by both the Owner and the Geotechnical Professional, the aggrieved party may submit its claim to Lehigh County Court a court of competent jurisdiction in the Commonwealth of Pennsylvania. During the pendency of the claim, Geotechnical Professional shall continue to carry out its responsibilities under this Agreement and the Owner shall continue to make all undisputed payments due and owing to Geotechnical Professional.

8.9 Pennsylvania Human Relation Act 222:

22.1 Human Relations Act: The provisions of the Pennsylvania Human Relations Act, Act 222 of October 27, 1955 (P.L. 744) (43 P.S. Section 951, et. Seq.) of the Commonwealth of Pennsylvania prohibit discrimination because of race, color, religious creed, ancestry, age, sex, national origin, handicap or disability, by employers, employment agencies, labor organizations, contractors and others. The Geotechnical Professional shall agree to comply with the provisions

of this Act as amended that is made part of this specification. Your attention is directed to the language of the Commonwealth's non-Discrimination Clause in 16 PA Code 49.101.

9.10 Non Discrimination / Sexual Harassment:

- A. In the hiring of any employees for the manufacture of supplies, performance of work, or any other activity required under the Contract or any subcontract, the Professional, subcontractor or any person acting on behalf of the Professional or subcontractor shall not by reason of gender, race, creed, or color discriminate against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.
- B. Neither the Professional nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacturer of supplies, the performance of work or any other activity required under the Contract on account of gender, race, creed or color.
- C. The Professional and any subcontractors shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.
- D. The Professional shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work to which the contract relates.
- E. The Professional and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the

contracting officer and the Department of General Services' Bureau of Contract Administration and Business Development for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the Professional or any subcontractor does not possess documents or records reflecting the necessary information requested, it shall furnish such information on reporting forms supplied by the contracting officer or the Bureau of Contract Administration and Business Development.

F. The Professional shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that such provisions will be binding upon each subcontractor.

G. The Commonwealth may cancel or terminate the Contract, and all money due or to become due under the Contract may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause. In addition, the agency may proceed with debarment or suspension and may place the Professional in the Contractor Responsibility File.

#### 8.11 AMERICANS WITH DISABILITIES ACT

During the term of this CONTRACT, the Professional agrees as follows:

A. Pursuant to federal regulations promulgated under the authority of The Americans with Disabilities ACT, 28 C.F.R. § 35.101 et. Seq., the Professional understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in this CONTRACT or from activities provided for under this CONTRACT. As a condition of accepting and executing this CONTRACT, the Professional agrees to

comply with the General Prohibitions Against Discrimination, 28 C.F.R. § 35.130, and all other regulations promulgated under Title II of The Americans with Disabilities Act which are applicable to all benefits, services, programs, and activities provided by the COMMONWEALTH through contracts

B. The Professional shall be responsible for and agrees to indemnify and hold harmless the COMMONWEALTH from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the COMMONWEALTH as a result of the Professional failure to comply with provisions of paragraph A above.

#### 8.12 HEALTH AND SAFETY

The Professional shall comply with the provisions of the Occupational Safety and Health Administration, Federal Act 91-596 of December 29, 1970, and with any other safety and health regulations for district in which the Work is performed.

#### 8.13 IDENTIFICATION

The Professional shall supply the Owner with state and federal criminal history reports and child abuse clearances for all employees, agents and subcontractors who will be on the Owner's property. The original clearances must be presented to the Owner prior to each employee, agent or subcontractor coming on the Owner's property. All such clearances shall be dated no earlier than one year prior to the date of presentation to the Owner. The Owner shall retain a copy of all such clearances in its file. Notwithstanding any other provision of this Contract, violation of this provision may constitute grounds for immediate termination of the Contract by the Owner. Owner specifically reserves the right to reject any person Owner deems unfit to be permitted on school grounds and in proximity to students. Upon written notice from Owner, Professional shall have all such persons removed from the project. Owner's right to



declare such person unfit shall not be limited to the required exclusion of persons from school property as set forth in Section 1-111 of the Pennsylvania Public School Code and/or Subchapter C2 of the Child Protective Services Law.

The Owner reserves the right to require all personnel to be visually identified by the use of badges. In the event this security measure is implemented, the Owner will issue badges to all authorized employees in conjunction with the Professional and record their issuance with names, addresses, etc. Termination of employment of the employees will require the respective badges to be returned to the Owner for record keeping purposes. All employees must wear the badge on the job site. Employees without badges will not be permitted on the premises

This Agreement executed the day and year first written above.

Attest:

Southern Lehigh School District  
Owner

\_\_\_\_\_

\_\_\_\_\_

Attest:

[Professional]

\_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

**Attachment A**

**Attach Proposal submitted in  
response to the RFP**

**Attachment B**

**Attach insurance certificates in compliance  
with the requirements of Article 7**