

**SOUTHERN LEHIGH SCHOOL DISTRICT
NEW ELEMENTARY SCHOOL AT WEST HOPEWELL ROAD**

**LEED COMMISSIONING AUTHORITY
and
TESTING-ADJUSTING-BALANCING (TAB)**

PROFESSIONAL SERVICES AGREEMENT

This Agreement made this 10th day of February 2015, by and between the Southern Lehigh School District, located at 5775 Main Street, Center Valley, PA 18034, hereinafter referred to as the "Owner," and Air Balancing Engineers, Inc. hereinafter referred to as the "LEED Commissioning/TAB Professional."

The Owner is proceeding with the construction of a new, approximately 58,000 gross SF, single story elementary school building for approximately 500 students to be constructed on the existing site adjacent to the existing Hopewell Elementary School located at 4625 W. Hopewell Road, Center Valley, PA 18034 (hereinafter, the "Project"). The existing building will be demolished after the new building is constructed.

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 is KCBA Architects (hereinafter, the "Architect").

The Owner and the LEED Commissioning/TAB Professional agree as set forth below:

Article 1 - Scope of Services

1.1 The Owner designates the LEED Commissioning/TAB Professional as its consultant to perform the professional services identified in this Agreement ("Services"). The LEED Commissioning/TAB Professional's Services shall include all activities described in the Request for Proposal for LEED Commissioning Authority and Testing-Adjusting-Balancing issued in December 2014

(the "RFP") for the Project, the proposal and clarifications submitted in response to the RFP, including any services required in accordance with the Project drawings and specifications, and shall continue until the completion of the Project, unless terminated as provided for in Article 8 below.

1.2 The LEED Commissioning/TAB Professional accepts the relationship of trust and confidence established between the LEED Commissioning/TAB Professional and the Owner by this Agreement. LEED Commissioning/TAB Professional covenants with the Owner to furnish the LEED Commissioning/TAB 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, the LEED Design Professional, other consultants and professionals, and the trade contractors in furthering the interest of the Owner.

1.3 LEED Commissioning/TAB Professional agrees to provide professional services in accordance with the RFP, any addenda, and the Proposal submitted in January 2015 (the "Proposal"), appearing as Attachments A and B hereto.

1.4 The LEED Commissioning/TAB Professional shall meet and satisfy the requirements set forth in the RFP and Project Specifications in performing the Services. All services must be performed by an individual qualified and registered to perform such services in connection with the Project, and licensed to do work in the state of Pennsylvania.

1.5 LEED Commissioning/TAB 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 LEED Commissioning/TAB Professional's fee.

1.6 LEED Commissioning/TAB Professional agrees to provide professional services on an hourly rate basis subject to a not-to-exceed maximum, as set forth in this Agreement.

1.7 LEED Commissioning/TAB Professional agrees to provide any additional services that are necessary for the Project at prices to be agreed upon by the Owner and the LEED Commissioning/TAB Professional by written amendment to this Agreement. LEED Commissioning/TAB Professional is not authorized to perform any such additional services without the expressed prior written approval of the Owner.

1.8 LEED Commissioning/TAB 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 LEED Commissioning/TAB 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 LEED Commissioning/TAB 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 LEED Commissioning/TAB Professional shall perform the Services in accordance with this Agreement, during the period of time following the selection of the LEED Commissioning/TAB 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 LEED Commissioning/TAB Professional agrees to submit all test results, reports, and data sheets as required in the RFP, and to provide draft reports for review by Owner.

2.1.3 LEED Commissioning/TAB Professional agrees to advise the Construction Manager promptly of instances where the work differs from that in the project drawings, specifications, RFP and/or that is required in order to properly provide the services.

2.1.4 LEED Commissioning/TAB Professional agrees to attend meetings with Owner, Architect, and CM to review scope of work before, during, and after the work is performed.

2.2 Additional services may include the following:

2.2.1 LEED Commissioning/TAB Professional agrees to assist with claims avoidance and claims negotiation and resolution incidental to LEED Commissioning/TAB 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 LEED Commissioning/TAB Professional will be furnished without charge two (2) 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 LEED Commissioning/TAB Professional shall be entitled to rely upon the accuracy and completeness thereof. However, should LEED Commissioning/TAB Professional observe, note or discover any errors, omissions, or deficiencies through its activities under this Agreement during the course of the Project,

LEED Commissioning/TAB 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 LEED Commissioning/TAB 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 LEED Commissioning/TAB Professional will perform no construction work.

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

Article 5 - LEED Commissioning/TAB Professional's Fee

5.1 In consideration of the performance of Services under this Agreement, the Owner agrees to pay LEED Commissioning/TAB Professional its fees on the basis of the Proposal for hourly rates and reimbursable expenses, appearing here as Attachment B for the following not to exceed costs:

Fundamental Commissioning:	\$29,000.00
Enhanced Commissioning:	\$8,700.00
Testing, Adjusting, Balancing (TAB):	\$24,450.00
Total Not to Exceed Fee:	\$62,150.00*

***The Building Envelope Commissioning and Measurement & Verification alternate scope is not being accepted at this time.**

5.2 LEED Commissioning/TAB 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 LEED Commissioning/TAB 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 name of the individual, his or her classification, the hours expended, the dates of the services, and the applicable rates. Invoices seeking payment of reimbursable expenses shall include itemization and substantiation.

5.4.2 Invoices shall include for each test and other service descriptions of each unit-price service being billed, the number of units provided, and applicable rate.

5.5 LEED Commissioning/TAB Professional agrees that the total billed for its services, in complete performance of the services to be rendered by the LEED Commissioning/TAB Professional under this agreement, shall be in accordance with the amounts submitted for each phase of work or activity as listed on the "Request for Proposal Form" and the Request for Proposal, and in any event shall not exceed the sum of sixty-two thousand one-hundred fifty dollars and zero cents (\$62,150.00). LEED Commissioning/TAB 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 total fee and any unit prices and fees listed in the Proposal submitted (Attachment B) and the unit prices and fees include all reimbursables.

5.6 The Owner reserves the right to propose to the LEED Commissioning/TAB 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 LEED Commissioning/TAB Professional.

5.7 Additional Services shall be billed in accordance with the Proposal, appearing here as Attachment B, listing the rates for the LEED Commissioning/TAB Professional's personnel and per-unit prices for laboratory services. These rates set forth in Attachment B 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 LEED Commissioning/TAB Professional is required to maintain by this Agreement is to be paid by LEED Commissioning/TAB Professional and shall not be included by LEED Commissioning/TAB Professional in its invoices as a cost.

Article 6 - Changes in the Project

6.1 The Owner, without invalidating this Agreement, may order changes in the contracts for construction and the Work on the Project within the general scope of the Owner's building and design development program consisting of: additions, deletions, changes in the site and other revisions, all of which shall remain within the scope of the Basic Services performed under this Agreement. LEED Commissioning/TAB Professional's fees, rates of payment for hourly services and rates of reimbursement for out-of-pocket expenses shall not be affected by any such change in the Work.

Article 7 - Insurance and Indemnification

7.1 (A) LEED Commissioning/TAB Professional shall take out and maintain Commercial General Liability insurance that will protect the LEED Commissioning/TAB 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 LEED Commissioning/TAB 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).

(9) Professional liability insurance with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

7.1 (B) LEED Commissioning/TAB 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.

7.1 (C) LEED Commissioning/TAB Professional shall take out and maintain Workers Compensation insurance, including employer’s liability and any other insurance as required by law in the Commonwealth of Pennsylvania. The limits for Employers Liability coverage shall be at least \$500,000 for each category: Bodily Injury Each Accident; Disease Each Person; Disease Policy Limit.

7.1 (D) LEED Commissioning/TAB 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 \$2,000,000. 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”.

7.1 (E) LEED Commissioning/TAB 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.

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

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

7.1 (H) LEED Commissioning/TAB 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 C, 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 Jeremy G. Melber, Director of Business Services, Southern Lehigh School District, 5775 Main Street, Center Valley, PA 18034.

7.1 (I) LEED Commissioning/TAB Professional waives any and all rights of subrogation against Owner, Architect, Construction manager and consultants, the Commonwealth of Pennsylvania and any of their representatives, officials, consultants, officers, directors, employees and agents.

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

7.2 (A) LEED Commissioning/TAB Professional agrees to indemnify, defend and hold harmless the Owner, Architect, Construction manager, consultants, 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, the negligence or recklessness of

LEED Commissioning/TAB Professional or its employees, and/or LEED Commissioning/TAB Professional's breach of this agreement. 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.

7.2 (B) With respect to any claim resulting from injury or loss to an employee of LEED Commissioning/TAB Professional, the LEED Commissioning/TAB 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 LEED Commissioning/TAB Professional hereby expressly waives any provision of any applicable workmen's compensation act which would otherwise provide the LEED Commissioning/TAB Professional immunity from such indemnity.

7.3 LEED Commissioning/TAB 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 LEED Commissioning/TAB 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 8 - Termination

8.1 If the Owner fails to make payment for more than sixty (60) days following the rendering by LEED Commissioning/TAB Professional of a properly documented and supported invoice for fees due and owing, LEED Commissioning/TAB 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. If the LEED Commissioning/TAB Professional submits one or more

invoices to the Owner which the Owner disputes in good faith after review of said invoices, then the LEED Commissioning/TAB Professional shall not be entitled to terminate this Agreement as a result of the Owner's failure to make payment for more than sixty (60) days upon receipt of the disputed invoice or invoices.

8.2 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 LEED Commissioning/TAB Professional. If the Owner elects to terminate this Agreement under this Section, LEED Commissioning/TAB 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.

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

Article 9 - Additional Terms

9.1 Neither the Owner nor the LEED Commissioning/TAB Professional shall assign his interest in this Agreement without the written consent of the other except as to the assignment of proceeds.

9.2 This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania where the Project is located and the venue of any dispute arising hereunder shall be in the Court of Common Pleas of Lehigh County, Pennsylvania.

9.3 This Agreement represents the entire understanding between the Owner and the LEED Commissioning/TAB Professional, and supersedes all prior negotiations, representations, or Agreements, except otherwise provided herein.

9.4 LEED Commissioning/TAB 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.

9.5 LEED Commissioning/TAB 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 LEED Commissioning/TAB Professional and, during that period, shall produce the aforementioned information upon request to the Owner and within a reasonable period of time.

9.6 LEED Commissioning/TAB 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.

9.7 The Services rendered by the LEED Commissioning/TAB 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. LEED Commissioning/TAB 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 LEED Commissioning/TAB Professional under this Agreement.

9.8 Pennsylvania Human Relation Act 222:
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 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.

9.9 Non Discrimination / Sexual Harassment:

9.9.1 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 LEED Commissioning/TAB Professional, subcontractor or any person acting on behalf of the LEED Commissioning/TAB 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.

9.9.2 Neither the LEED Commissioning/TAB Professional nor any subcontractor nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the manufacture of supplies, the performance of work or any other activity required under the Agreement on account of gender, race, creed or color.

9.9.3 The LEED Commissioning/TAB 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.

9.9.4 The LEED Commissioning/TAB 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 Agreement relates.

9.9.5 The LEED Commissioning/TAB Professional and each subcontractor shall furnish all necessary employment documents and records to and permit access to its books, records, and accounts by the Owner for purposes of investigation to ascertain compliance with the provisions of this Nondiscrimination/Sexual Harassment Clause. If the LEED Commissioning/TAB 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 Owner.

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

9.9.7 The Owner may cancel or terminate the Agreement, and all money due or to become due under the Agreement may be forfeited for a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause.

9.10 Americans with Disabilities Act: During the term of this Agreement, the Professional agrees as follows:

9.10.1 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 Agreement or from activities provided for under this Agreement. As a condition of accepting and executing this Agreement, 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 Owner through contracts.

9.10.2 The Professional shall be responsible for and agrees to indemnify and hold harmless the Owner from all losses, damages, expenses, claims, demands, suits, and actions brought by any party against the Owner as a result of the Professional's failure to comply with provisions of paragraph 9.10.1 above.

9.11 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.

9.12 Identification: The LEED Commissioning/TAB 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 Agreement, violation of this provision may constitute grounds for immediate termination of the Agreement 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.

The Owner reserves the right to require all construction employees 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.

9.13 CONTRACT DOCUMENTS: LEED Commissioning/TAB Professional agrees that the Request for Proposal and Proposal attached hereto as Attachments A and B, respectively, are incorporated herein and form a part of this Agreement as though set both herein at length. In the event of conflicts in the provision of such documents, the conflicts shall be resolved in favor of the document having priority as follows:

- i. This agreement;
- ii. RFP; then
- iii. Proposal.

This Agreement executed the day and year first written above.

Attest:

Southern Lehigh School District
Owner

Attest:

LEED Commissioning/TAB Professional

Title: _____