



September 14, 2023

Mr. Justin Baker ATC
Director of Co-Curricular Activities
Pottstown High School
750 N. Washington Street
Pottstown, PA 19464

Professional Services Agreement

Land Planning Services

Pottstown School District
Pottstown High School
Athletic Facility Feasibility Study for New Synthetic
Turf Ballfields and Natural Grass Softball Field
Pottstown Borough, Montgomery County, PA
Professional Services Agreement No.: PAZ01-326A

SENT BY EMAIL ONLY

Dear Mr. Baker:

On behalf of ELA Sport/ELA Group, Inc. (ELA), we are submitting this Professional Services Agreement (PSA).

Project Understanding:

In preparation of this PSA, we have taken the following matters into consideration:

- Pottstown School District (District) is considering synthetic turf renovations to their high school/middle school campus. These consist of the conversion of the softball/multipurpose field to a new baseball turf field with an overlay multi-purpose field. An auxiliary synthetic multi-purpose field adjacent to the tennis courts and installation of a new natural grass softball field. To help determine a Schematic Budget for the work a Feasibility Study must be done to see what schematic design options will look like. Currently the only basemapping that is available are old design plans with no as-built surveys of actual conditions. Also, no information exists on infiltration rates in the fields which is needed to properly assess the likely stormwater attenuation design which has shown in recent years to be a significant cost of athletic projects. As we discussed during our phone call on September 12, 2023, to better establish design criteria, we recommend taking the steps below to obtain the missing information. This data can be used during the permitting process.
 - Topographic Survey - To determine proper grading of the fields as well as the design of improvements a topographic survey must be completed. This will be of a level that can

be used for design, permitting and construction documentation. This also will help better establish the amount of work needed to be done and at what cost.

- Geotechnical Testing - The key to establishing proper stormwater attenuation design requires infiltration testing. This information will dictate size of the underground storage structures.

Based upon the foregoing information, our PSA has been prepared to include two (2) service categories for the work. These service categories include Basic Services and Additional Services. First, Basic Services are those required based on our experience and knowledge of your project. Second, Additional Services are an outline of services specifically excluded, but which can be performed when requested.

The Scope of Basic Services outlined below is based on our team's prior experience with similar projects, past experience with the various review agencies, as well as experience with planning/design and processing of other projects of similar scope and nature.

SCOPE OF BASIC SERVICES:

ELA SPORT and our Subconsultants will provide Basic Services as follows:

Schematic Design Work

1. **Topographic Survey and Project Basemapping:** ELA Sport proposes through our surveying subsidiary, Land Grant Surveyors, to perform topographic surveying and basemapping. The scope of services includes the following:
 - A. Field survey the proposed project area, utilizing the existing topographic survey datum and common control points.
 - B. Provide topographic information at a 1-foot contour interval.
 - C. Confirm location all underground utilities as visible through surface appurtenances, based on District 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.
 - D. Prepare a survey basemap for the project area depicting all field survey information, include north orientation and drawing datum and prepare at a scale appropriate to the project scope. The cost does not include any boundary work. This can be obtained at a later date.
2. **Geotechnical Engineering Services:** We will be using Kleinfelder, Inc. geotechnical consultants, to perform infiltration tests for stormwater design. This work will be as follows:
 - A. Ten (10) test pits be excavated across areas proposed for stormwater management (4

in the area of the auxiliary field and 6 across in the area of the softball/multi-purpose field). Each test pit will extend to a minimum depth of 2 feet below the lowest test elevation to identify limiting zones (i.e. bedrock, groundwater, and/or soil mottling). Samples of the soils will be logged in the field by a qualified representative.

In order to determine the infiltration rate (permeability) of the subgrade soils, two (2) infiltration tests will be completed within each test pit utilizing the “double-ring infiltrometer” method in accordance with the PADEP Best Management Practices Manual (Appendix C – Site Evaluation and Soil Testing). It is assumed infiltration testing will not be completed at depths greater than 8 feet below existing site grades. Samples of the soils will be recovered and logged in the field by a qualified representative.

Please note that the test pits will be backfilled by Kleinfelder but finished compaction and grading will need to be done by others.

- B. A Stormwater Infiltration Summary Report presenting results and recommendations, based on the scope work outlined above will be prepared which will include the following:
- Geologic Site Evaluation (including terrain description, brief geological history, and surface drainage conditions)
 - Description of Subsurface Conditions (including description of exploration and sampling methods, soil identification and classification)
 - Infiltration Test Pit Logs
 - Exploration Plan
 - Consideration of Karst Geology, If Applicable
 - Results of Stormwater Infiltration Analysis

3. **Schematic Design:** ELA will perform the following services:

- A. Meet with the District to discuss the site program/design.
- B. Prepare base drawings utilizing the survey done by our subsidiary.
- C. Using the information provided by our Geotechnical sub-consultant prepare a schematic analysis of possible stormwater infiltration bed designs for each field.
- D. Prepare Schematic Site Layout and Grading Plans for the site including proposed improvements, contours, spot grades and associated items.
- E. Confirm the review/approval requirements of all regulatory agencies, including the Borough Planning Commission, and County Conservation District. Confirmation of what permitting process will be required is normally done through an informal meeting/discussion with the Municipality to determine the most time-efficient approach to obtaining project approvals.
- F. Meet with the District to review the findings of all above items to finalize the Schematic Design. Make revisions as requested by the District and finalize the concept. This concept will be used as basis for the design for the Construction and Permitting Plans.

G. Prepare Opinion of Probable Construction and Project Schematic Budget Cost

Additional Services:

The following services or other unanticipated services may become required. These will be performed when authorized in writing and a fee adjustment has been approved by the Client.

1. Any specific service noted in the above Scope of Basic Services as being considered an Additional Service.
2. Any service that is not specifically listed under Scope of Basic Services above.
3. Work related to off-site improvements, including storm water, utilities, traffic signals or roadway improvements either on Borough or PennDOT roadways.

Compensation:

Professional Services will be provided as outlined in this Agreement in accordance with the ELA Group, Inc. Terms and Conditions for Consulting and Design, a copy of which is attached and included as part of this Professional Services Agreement. Based on our understanding of the work involved and our understanding of the project, we estimate our lump sum fee for the Scope of Basic Services to be as cited in Table 1 below.

All invoices will be rendered every four (4) weeks using our standard hourly rates for the professional staff that performed the work, expenses, reimbursable expenses, and sub consulting fees incurred during the prior billing period. A copy of our current applicable rate schedule is enclosed. The rate schedule may be altered at the end of each calendar year to reflect our cost of doing business in the coming year and shall not exceed ten percent (10%) each calendar year.

If it appears during the completion of the services that the total cost may exceed the proposed fees, we will notify the Client in writing prior to the cost exceeding the fee and indicate the reasons for the increase. No work will be performed beyond the estimate without Client approval. Any approved services performed in addition to those mentioned in the Scope of Basic Services will be billed as an Additional Service and will be delineated as such on the applicable invoice.

Table 1 – Professional Services Compensation – Phase 1

Item	Office	Lump Sum Fee	Comment
1.	Land Grant Surveyors	\$6,600.00	Surveying
2.	Kleinfelder, Inc.	\$8,400.00	Geotechnical Testing
3.	ELA Sport	\$10,000.00	Schematic Design
Total Lump Sum Fee		\$25,000.00	
Estimated Reimbursable Expenses (T&M / NTE)		\$800.00	

Authorization:

In order to authorize the work outlined in this Professional Services Agreement and in accordance with the attached Terms and Conditions, sign the authorization statement below and return one (1) signed copy to our office.

Again, ELA Sport/ELA Group, Inc. is pleased to have the opportunity of submitting this Professional Services Agreement. Should you have any questions, please call me.

Sincerely,
ELA SPORT/ELA GROUP, INC.



Hugh D. Cadzow, RLA
Principal and Senior Project Manager

ELA Sport/ELA Group, Inc. is authorized to proceed with the Scope of Basic Services as outlined in this Professional Services Agreement.

By: _____

Title: _____ Date: _____

Attachments

ELA GROUP, INC.
TERMS AND CONDITIONS
FOR CONSULTING AND DESIGN

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 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

Rev 10.21

for reuse on extensions of the Project or on any other project. Any reuse without written verification or adoption 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, to the extent caused by the CLIENT's negligence, 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.

Rev 10.21

- 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.



**HOURLY BILLING RATE SCHEDULE
FOR 2023 CONSULTING SERVICES**

STAFF TYPE	HOURLY BILLING RATE
ELA GROUP, INC. – ENGINEERS AND LANDSCAPE ARCHITECTS	
President	\$ 180.00
Division Director/Principal/Vice President	\$ 135.00 - \$ 190.00
Senior Project Manager/Engineer	\$ 130.00 - \$ 170.00
Project Manager	\$ 120.00 - \$ 140.00
Project Engineer/Landscape Architect Designer	\$ 75.00 - \$ 135.00
CAD Manager	\$ 120.00
Senior CAD Designer	\$ 100.00 - \$ 120.00
CAD Designer	\$ 80.00 - \$ 100.00
GIS	\$ 140.00
Administration	\$ 60.00 - \$ 85.00
ELA SPORT – ATHLETIC FACILITY PLANNING	
Principal-In-Charge: ELA Sport	\$ 175.00
Senior Project Manager	\$ 170.00 - \$ 180.00
Project Manager	\$ 90.00 - \$ 145.00
Senior Designer	\$ 110.00 - \$ 130.00
Design Technician	\$ 75.00 - \$ 90.00
ELA TECHNOLOGIES – ELECTRONIC DATA MANAGEMENT	
Tech Support	\$ 80.00 - \$ 110.00
Scanning (Document Imaging)	\$ 65.00

REIMBURSABLE EXPENSES

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

- | | |
|------------------------------------|----------------------------------|
| ○ Mileage | ○ Testing Services |
| ○ Travel Expenses, including Meals | ○ Equipment Rental |
| ○ Prints | ○ Traffic Counter Rental |
| ○ Copies | ○ Application/Recording Fees |
| ○ Postage | ○ Permit and/or Other Fees |
| ○ Outside Consultants | ○ 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 17, 2022 through December 15, 2023. 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.