

**EAST FALLOWFIELD TOWNSHIP  
CONSULTING SERVICES AGREEMENT**

THIS CONSULTING SERVICES AGREEMENT (the "Agreement") is made this \_\_\_\_\_ day of December, 2008 by and between EAST FALLOWFIELD TOWNSHIP, a second class township organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business at 2264 Strasburg Road, East Fallowfield, Pennsylvania 19320 (hereinafter the "Township") and ADVANCED GEOSERVICES CORP., a Pennsylvania corporation with its principal place of business at 1055 Andrew Drive, Suite A, West Chester, Pennsylvania 19380 (hereinafter the "Consultant").

**Background**

WHEREAS, the Township has requested proposals from experienced professionals for a geotechnical evaluation of the embankment of Mortonville Road along the Brandywine River in East Fallowfield Township; and

WHEREAS, Consultant has submitted a proposal to provide the requested professional services to the Township; and

WHEREAS, Township has reviewed Consultant's proposal and has agreed to retain Consultant to provide the requested services in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, for and in consideration of the mutual promises herein contained, and intending to be legally bound, and it being further understood and agreed that the within Agreement is and shall incorporate and be subject to the laws of the Commonwealth of Pennsylvania, it is agreed and covenanted as follows:

**1. SCOPE OF WORK.** Consultant is authorized to perform services as specifically identified in Consultant's Letter Proposal dated December 9, 2008 attached hereto as Exhibit A and made a part hereof (the "Letter Proposal"). The services described in the Letter Proposal shall be referred to herein as the Project. In the event there is a conflict between the terms of this Agreement and the Letter Proposal, the terms and conditions of this Agreement shall control and prevail.

**2. COMPENSATION AND METHOD OF PAYMENT.** Compensation for all services provided by Consultant is as set forth in the Letter Proposal in the amount not to exceed One Thousand Seven Hundred Dollars (\$1,700.00). This amount shall not be exceeded without the specific written authorization of the Township's Board of Supervisors and the subsequent issuance of an Amendment to this Agreement. The Consultant shall provide the Township with a monthly invoice for the services. At a

minimum, the invoice shall identify the person performing the services, a description of the services performed by each individual, the time spent on each task and any other information reasonably required by the Township. The Township shall pay the invoice within thirty (30) days of receipt.

3. **DURATION.** The duration of this Agreement shall be from the date of authorization, December 30, 2008, until the completion of all services as described in Exhibit A, or until such time as this Agreement is terminated in accordance with Section 6(I) hereof, whichever is earliest.

4. **CONSULTANT'S RESPONSIBILITY.** The responsibilities of the Consultant under this Agreement are as follows:

A. The Consultant shall be responsible for the professional quality, technical accuracy, timely completion, and the coordination of all services furnished by the Consultant under this Agreement. The Consultant shall, without additional compensation, correct or revise any errors, omissions or other deficiencies in the services.

B. The Consultant shall perform such professional services as may be necessary to accomplish the work required to be performed under this Agreement, in accordance with this Agreement and applicable regulatory requirements in effect on the date of execution of this Agreement or the date of performance of a specific task during the term of this Agreement, whichever is later.

C. The Consultant shall render such professional services with the degree of skill and to the level of competency for professional and technical soundness and accuracy presently maintained by other practicing professionals engaged in the similar type of work in the Township's community.

D. The Consultant shall be and remain liable in accordance with applicable law for all damages to the Township caused by the Consultant's negligent performance of any of the services furnished under this Agreement or furnishing services contrary to the terms of this Agreement. The Consultant shall not be responsible for any time delays in the project caused by circumstances beyond the Consultant's control.

5. **INDEMNIFICATION AND INSURANCE.**

A. Consultant, for itself its successors and assigns, hereby agrees to indemnify, defend and hold harmless the Township, and Township's supervisors, employees, attorneys, successors and assigns from and against all losses, liabilities, claims, demands, causes of action, damages, costs, including reasonable attorneys' fees, and expenses of every kind and nature, whether or not covered by insurance, arising out of, resulting from or caused by, in whole or part, any negligent act, error, omission or willful misconduct on part of Consultant, its agents, employees or subcontractors in connection with this Agreement, including but not limited to, those in connection with loss of life, bodily injury, personal injury, damage to property, contamination or adverse

effects on the environment, any liability for fines, fees or penalties for violations of any statutes, ordinances, codes, rules, regulations or standards applicable to the services performed by Consultant, its agents, employees or subcontractors. This obligation to indemnify, defend and hold harmless the Township, and Township's supervisors, employees, attorneys, successors, and assigns, shall survive the termination of this Agreement.

B. Throughout the life of this Agreement, the Consultant shall pay for and maintain in full force and effect with an insurance company(ies) admitted by the Pennsylvania Insurance Commissioner to do business in the Commonwealth of Pennsylvania and rated not less than A in Best Insurance Key rating Guide, the following policies of insurance:

1. Commercial general liability insurance, including property damage liability and personal injury liability of not less than \$250,000 for each occurrence and a \$500,000 minimum aggregate amount.

2. Automobile bodily injury liability insurance of not less than \$150,000 each person; \$300,000 each occurrence.

3. Statutory Workman's Compensation and employer's liability insurance.

4. Professional liability insurance covering damages to Township and others resulting from errors or omissions of Consultant of not less than \$250,000.

C. All policies of insurance required hereunder, other than Workman's Compensation and employer's liability and Professional liability, shall name Township, its supervisors and employees as additional insureds.

D. Certificates of insurance shall state that coverage shall not be cancelled by either party except after thirty (30) days' prior to written notice by U.S. certified mail, return receipt requested, has been given to the Township.

E. Regardless of the minimum insurance requirements herein, the Consultant shall agree to committ the Consultant's full policy limits and these minimum requirements shall not restrict the Consultant's liability or coverage limit obligations.

F. The Consultant shall furnish the Township with certificates of insurances and the requisite endorsements for all required insurance, prior to the Township's execution of the Agreement and the start of work.

G. Upon notification of receipt by the Township of a Notice of Cancellation, major change, modification or reduction in coverage, the Consultant shall immediately, after the effective date of a new or renewal policy, file with the Township a copy of the required new or renewal policy and certificates for such insurance.

H. If at any time during the term of this Agreement, or any extension thereof, the Consultant fails to maintain the required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that may become due to the Consultant shall be withheld until acceptable replacement coverage notice is received by the Township. Any failure to maintain the required insurance shall be sufficient cause for the Township to terminate this Agreement.

I. If the Consultant should subcontract all or any portion of the work to be performed under this Agreement, the Consultant shall cover the subcontractor or subconsultant and require each subcontractor or subconsultant to adhere to all subparagraphs of this Insurance section, written evidence of which shall be provided to the Township prior to commencement of work by the subcontractor or subconsultant. Similarly, any cancellation, lapse, reduction or change of subcontractors or subconsultants insurance shall have the same impact as described above.

## **6. MISCELLANEOUS.**

A. Regardless of where the services of the Consultant and its subcontractors under this Agreement are actually performed, they shall be deemed to be performed in Chester County, Pennsylvania, or at such other locations as may be designated hereafter by the Township.

B. All documents prepared pursuant to this Agreement are considered public documents and no restrictions shall be placed on any such documents, or the use thereof.

C. All work product of the Consultant for this project, including work product created in electronic format, are instruments of service for this project only and shall become the property of the Township whether the project is completed or not. The parties hereto do not intend, nor will any clause of this Agreement be interpreted, to grant to any third party any benefits or rights under this Agreement. Any reuse of Consultant work product for any purpose other than that specifically intended in this Agreement, including providing a copy of any Consultant work product to a third party not specifically identified herein, will be at Township's sole risk and without financial liability or legal expense to Consultant.

D. Neither the Township nor Consultant shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lock-outs, accidents or other events beyond the control of the other or the other's employees and agents.

E. All claims, counterclaims, disputes and other matters in question arising out of or relating to this Agreement shall be brought in the Court of Common Pleas of Chester County, and each parties consents to the exclusive jurisdiction of said court.

F. In the event of any action brought by either party against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the

terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for fees including but not limited to counsel fees, expert witness fees, and other costs and expenses as may be set by the court hearing the dispute.

G. In the event any provision of this Agreement shall be invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties hereto. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of subsequent breach of the same by the other party.

H. This Agreement is to be binding on the heirs, successors, and assigns of the parties hereto and is not to be assigned by either party without first obtaining the written consent of the other.

Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than Township and Consultant.

I. This Agreement may be terminated in whole or in part, in writing by either party subject to the terms, definitions, conditions and remedies as set forth herein.

1. Definitions.

A. Termination: To immediately discontinue rendering services hereunder.

B. Fault: Substantial failure of either party to fulfill its obligations under the Agreement as determined by a court of competent jurisdiction, if requested by the terminated party.

C. Convenience: At will of terminating party without fault of the terminated party, and without justification.

2. Right to Terminate.

A. Fault of Consultant: Township may terminate this Agreement upon failure of Consultant to perform its obligations under the Agreement.

B. Fault of Township: Consultant may terminate this Agreement upon failure of Township to perform its obligations under the Agreement.

C. Convenience of Township: Township may terminate this Agreement at its convenience. Consultant may not terminate the Agreement for its convenience.

3. Remedies Upon Termination: In the event of termination hereunder, the following rights and remedies shall apply:

A. Fault of Consultant: If termination is caused by the fault of the Consultant, then:

(1) Subject to offset for costs incurred by Township to complete the scope of work as set forth in Section 3.A.(3) below, including the costs of reasonable attorneys' fees and engineering fees, Township shall pay Consultant for all services and expenses rendered to the date of termination in accordance with compensation terms in the Agreement.

(2) Township shall not pay anticipated profits or other penalties or damages.

(3) Consultant shall pay Township all reasonable/necessary costs incurred by Township to complete Consultant's scope of work. Such costs may include the cost incurred by the Township of employing another Consultant to complete such work, provided Consultant was given notice of any alleged fault and a reasonable opportunity to cure such alleged fault.

B. Fault of Township: If termination is caused by the fault of the Township, then:

(1) Township shall pay Consultant for all services and expenses rendered by Consultant to date of the termination.

(2) Township shall not pay for anticipated profits or other penalties or damages.

C. Convenience of Township: In the event of termination for convenience by Township, then:

(1) Township shall pay Consultant for services and expenses to date of termination, including the pro rata share of any fixed fee(s) to that date.

(2) Township shall not pay for anticipated profits or other penalties or damages.

4. Termination of Engineer/Consultant for Default Reversed. If, after termination for failure of Consultant to fulfill contractual obligations, it is determined by a court of competent jurisdiction or the Township that the Consultant had not failed to fulfill contractual obligations, the termination shall be

deemed to have been for the convenience of the Township. In such event, adjustment of the sub agreement price payments to the Consultant shall be made as provided in Paragraph 3.C of this clause.

5. Notice Requirements: No termination for fault or convenience shall take place hereunder by either party, unless:

A. An opportunity for consultation is afforded between the parties prior to sending the notice of termination; and

B. A notice of termination is sent to the other party in writing, at least ten (10) calendar days prior to the effective date of termination, by certified mail, return receipt requested. The termination shall be effective upon receipt of the certified mail.

6. Obligations Upon Termination:

A. Upon receipt of a termination action for fault or convenience as set forth above, the Consultant shall:

(1) Promptly discontinue all affected work (unless notice directs otherwise); and

(2) Deliver or otherwise make available to the Township all data, drawings, specifications, reports, estimates, summaries, and such other information and material as may have been accumulated by the Consultant in performing this Agreement whether completed or in process.

B. The Township may take over the work and/or may award another party an Agreement to complete the work hereunder.

J. Consultant shall be prohibited from disclosing any information pertaining to the Project, including, but not limited to the name of the Township and the name of the Project, in Consultant's advertisement and/or public relations materials without the prior written consent of the Township.

K. Applicable Law/Entire Agreement: This Agreement and all questions relating to its validity, interpretation, performance and enforcement, shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, notwithstanding any conflict-of-laws doctrines of such state or any other jurisdiction to the contrary. This Contract contains the entire agreement and understanding between the parties hereto and can only be amended by a writing signed by both Township and Consultant.

L. Notices: Unless specifically provided for herein to the contrary, all notices and communications related to this Contract shall be in writing sent by regular mail postage prepaid to the addresses set forth on the first page hereof.

**[remainder of page intentionally left blank]**

IN WITNESS WHEREOF, the parties have set their hands and seals this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_\_\_\_.

EAST FALLOWFIELD TOWNSHIP

By: \_\_\_\_\_

ATTEST:

\_\_\_\_\_

ADVANCED GEOSERVICES CORP.

By: \_\_\_\_\_

Name: \_\_\_\_\_

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

ATTEST:

\_\_\_\_\_