



FLOYD COUNTY BOARD OF EDUCATION  
Danny Adkins, Superintendent  
106 North Front Avenue  
Prestonsburg, Kentucky 41653  
Telephone (606) 886-2354 Fax (606) 886-4550  
www.floyd.kyschools.us

Sherry Robinson- Chair - District 5  
William Newsome, Jr., Vice-Chair - District 3  
Linda C. Gearheart, Member - District 1  
Dr. Chandra Varia, Member- District 2  
Rhonda Meade, Member - District 4

**Date:** August 7, 2019

**Agenda Item (Action Item):** Consider/Approve Proposal for Engineering Services for the Betsy Layne High School Baseball Field Project by S&ME (BG# 19-222).

**Applicable State or Regulations:** Capital Construction Process 702 KAR 4:160.

**Budget/Financial Issues:** The amount of the proposal is a lump sum of \$22,500.00.

**Background and Rationale:** Proposals were submitted to Poage Engineers and Associates and submitted to the Floyd County Board of Education by Sherman Carter Barnhart. Geotechnical Investigation and Report are due 21 days from receipt of notice to proceed.

**Recommended Action:** To approve S&ME to provide the geotechnical services for the baseball field project.

**Contact Person(s):** Gregory Adams/874-9569

\_\_\_\_\_  
Principal

  
\_\_\_\_\_  
Director

  
\_\_\_\_\_  
Superintendent



July 26, 2019

Floyd County Public Schools  
106 North Front Avenue  
Prestonsburg, Kentucky 41653

Attention: Mr. Danny Adkins - Superintendent

Reference: **Proposal for Engineering Services**  
**Betsy Layne High School Baseball Field**  
Stanville, Kentucky  
S&ME Proposal No. 11-1900256

Dear Mr. Adkins:

S&ME, Inc. (S&ME) appreciates the opportunity to submit this proposal for provided geotechnical engineering services for the planned Betsy Layne High School baseball field, to be constructed in Stanville, Kentucky. This proposal is based on a Request for Proposal (RFP) from Poage Engineers dated July 19, 2019. This proposal provides a brief discussion of our understanding of the project, our proposed scope of work, and our associated fees. Our Agreement for Services, form AS-071, is attached and incorporated as part of this proposal.

This proposal is solely intended for the services described below. Use of this proposal and resulting documents, including the final deliverables, is limited to the above referenced project and client. No other use is authorized by S&ME, Inc.

### ◆ Project Information

This project consists of a new baseball field at the existing Betsy Layne High School. The new baseball field will include a concession stand building, bleachers, dugouts, and light poles. In order to construct the baseball field, an approximately 70 feet tall rock cut will be excavated in the center/right-center field portion of the field. A smaller cut in left field is expected to be in previously placed fill.

### ◆ S&ME Experience

The Betsy Layne campus is located in a highway waste fill. The shale bedrock from SR 80 highway cut was transported to the current school property. S&ME has experience with geotechnical conditions associated with constructing on numerous waste fills including the recently constructed gymnasium for the high school.

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July 26, 2019



## ◆ Scope of Services

### Geotechnical Exploration

#### Field Exploration

We will assign a Licensed Geotechnical Engineer (PE) to perform the work associated with your project. Our work will be directed and supervised by one of our Senior Geotechnical Engineers. S&ME proposes to offer the following scope of geotechnical services for this project:

- ◆ Contact Kentucky811 to mark the locations of existing underground utilities in the proposed exploration areas. We will also need assistance from someone with knowledge of the underground utilities prior to beginning drilling operations. If locations of the private utilities are not known, we recommend private utility lines be located by a utility location service. S&ME can subcontract this work or provide contact information for firms we regularly contract with.
- ◆ Visit the site to observe site surface conditions, locate the borings, and supervise the drilling activities.
- ◆ Mobilize an geologist/engineer, drill crew and track or ATV mounted drilling rig to the site.
- ◆ We propose a total of seven (7) soil test borings for this project, at the following general locations and depths:

Location - Number	Depth
Infield Light Poles – 4	25 ft each
Concession Stand – 1	15 ft
Left Field Light Pole / Soil Cut Area - 1	40 feet or bedrock
Center Field Cut	85 feet (rock core)

- ◆ The borings will include split-barrel soil sampling at 2.5 to 5 foot intervals to the boring termination depths. The sampler will be driven in general accordance with the Standard Penetration Test procedures (ASTM D 1586). Rock coring is planned for the boring in the right-center field cut. Based on the provided preliminary grading plan, we have budgeted for 85 feet of rock coring.
- ◆ During a preliminary site reconnaissance, six (6) of the seven (7) boring locations appear to be accessible to our equipment without requiring clearing. The boring location for the left field light pole appears to be in a wooded area. Currently we plan to offset this boring to an accessible location to avoid the cost and disturbance of clearing and access road construction. If advancing this boring at the precise light pole foundation location is required, clearing and excavation of an access road for our equipment will be required.
- ◆ Backfill the boreholes with soil cuttings and patch borings in existing pavement with cold asphalt patch. Prior to backfilling the borings groundwater level measurements will be made.
- ◆ Prior to drilling, we request the light pole and concession stand borings be staked by the project surveyor.

*One of our Staff Professionals will supervise the drilling operations and log the samples as they are recovered. We do not rely on driller's logs or interpretations. We think your project deserves a more professional approach and*



*attention. This improves the quality of the subsurface information by allowing the engineer to adjust the drilling and sampling program to reflect the actual conditions in the field. The 2013 Kentucky Building code recognizes the importance of a geoprofessional supervising the exploration program as required in Chapter 18 of the KBC.*

### **Laboratory Testing**

Our Geotechnical Engineer will observe the recovered samples and visually classify them in general accordance with the Unified Soil Classification System (USCS) (ASTM D-2488). On the basis of the anticipated conditions, we propose to perform the following laboratory tests:

- ♦ Natural moisture contents
- ♦ Atterberg limits tests
- ♦ Unconfined compressive strength testing of rock cores
- ♦ Slake Durability Index (SDI) testing for rock cut analysis

### **Deliverables**

After the field work and our analyses are complete, we will issue a report describing the exploration and outlining our recommendations. The report will include the following:

- ♦ A review of area and site geologic conditions, surface topographical features and site conditions.
- ♦ A brief review of our test procedures and the results of all laboratory testing conducted.
- ♦ A discussion of surface and subsurface conditions.
- ♦ A review of any identified geotechnical conditions which may affect the design or construction of the project.
- ♦ A discussion of site preparation and foundation/floor slab construction for the concession stand, bleachers, light poles, and dugouts, including recommended foundation types, recommended allowable foundation bearing pressures, frost depth requirements, and site seismic classification.
- ♦ A discussion of site preparation for the proposed baseball field.
- ♦ A recommended rock cut profile for the left-center to center field rock cut.
- ♦ A discussion of site grading for the left field cut.

An electronic copy of our report will be submitted that will include a Vicinity Map, Boring Location Plan, soil test boring logs, results of laboratory testing, and rock cut slope cross section. Hard copies will be available upon request.

### **♦ Fees**

Based on the work scope outlined above, we propose a **lump sum fee of \$22,500** for our services. Our fee DOES NOT include a bulldozer or other equipment for performing clearing or access road construction. Our geotechnical exploration fee DOES NOT include time for coordination meetings. If required, such meetings will be invoiced on an hourly basis.



Our fee estimates assume that S&ME personnel can access the project site during normal business hours (i.e., not nights, weekends, etc.) without any special working conditions being mandated. If this is not possible, or if we are required to drill at other times, additional fees will be required.

Based upon our present drilling schedule, we anticipate mobilizing within 10 to 12 business days of notification to proceed. Note that at least two (2) days are required for the utility location services to mark utilities. We expect the drilling will take four (4) to five (5) days to complete. The geotechnical report will be available three (3) weeks after the field work has been accomplished to account for laboratory testing and analysis. We can normally provide preliminary verbal recommendations soon after the exploration has been completed and reviewed by an S&ME Senior Engineer.

### ◆ Client Responsibilities

- Provide access to the project site for the field activities.
- Location of private utility lines preferably by a utility location service.
- Staking of the boring locations. S&ME will provide a sketch showing the proposed borings prior upon award of the project.
- Provide us with site development plans and drawings including a site topographic survey in AutoCadd format.
- Provide us with any drawings depicting onsite utilities. It will be the Client's responsibility to determine the location of buried utility lines on the site, which are not owned or maintained by a chartered utility company, and to cooperate with our exploration crew to verify that the exploration sites are clear of utilities.

### ◆ Excluded Services

Without attempting to be a complete list of all services or potential services that will be excluded from this proposal and performed by S&ME, the following services are specifically excluded from this proposal:

- Direct measurement of shear wave velocities of the subsurface materials at the site via geophysical methods, such as Multi-Channel Analysis of Surface Wave Velocities (MASW).
- Recommendations for or design of site retaining walls or other below grade structures.
- Surveying services.
- Traffic control services.
- Exploration, laboratory testing and engineering services to address chemically active or corrosive materials or conditions, or the presence of gas.
- Addenda to the geotechnical report to address changes or additions to the proposed project not known to us at the time of this proposal. We can attend meetings which will be invoiced per our noted hourly rates.
- Environmental site assessment.
- Assessment of liquefaction potential of subsurface soils, since liquefiable soils are not expected to be present at this site.
- Providing an analysis of soils to ascertain presence of potentially collapsible, deleterious, chemically active or corrosive materials or conditions, or presence of gas. Provide classification of volume change

**Proposal for Engineering Services**  
**Betsy Layne High School Baseball Field**  
Stanville, Kentucky  
S&ME Proposal No. 11-1900256



potential of the soils within the footprint of the expansion and recommendations for design alternatives, possible including stabilization of existing soils, soil removal and replacement with engineered fill, or other requirements as applicable. If petrochemical staining or odor is observed during exploration, we will contact the Client to discuss the next steps.

If any of the above excluded services are required, please contact us so that we can modify this proposal or prepare a proposal for additional services.

### ◆ Use Of Proposal/Report

This proposal is solely intended for the services as described in the Scope of Services. The Scope of Services may not be modified or amended, unless the changes are first agreed to in writing by the client and S&ME, Inc. Use of this proposal and corresponding final report is limited to above-referenced project and client. No other use is authorized by S&ME, Inc.

### ◆ Limitations

We will contact the local utility locators prior to mobilizing to the site. The utility location services will only mark public utility lines; therefore, we will need assistance in locating private lines or underground structures, and we request that the Client provide us with any drawings depicting on-site utilities. We recommend retaining a private utility locator to mark the utility lines. Our firm cannot be held responsible for damage to utility lines or subsequent loss of service if utility locations are not made known to us or are mislocated by others.

We assume that the Client will obtain right-of-entry into the site for our equipment and personnel. While we will try to limit site disturbance, our fee does not include re-landscaping or otherwise restoring the site to its original condition. Our services will include backfilling the borings with the excavated material, unless otherwise directed. Over time, you should expect some settlement of the backfilled material. Please inform us if your requirements are any different.

We should be informed of any possible contamination on the site prior to drilling to prevent spreading of the contamination. If contaminated soil or groundwater is encountered during drilling, it is possible that the contamination may be spread to other soil zones or aquifers that were not previously contaminated. Because it is impossible to eliminate the risk of encountering existing contamination during drilling and because the geotechnical exploration is an essential aspect of the services that we are providing, our firm is not responsible for any claim which may arise as a result of contamination allegedly caused by the geotechnical exploration.

Our fee includes discussion and interpretation of our findings with other members of the design team, but does not include meetings concerning construction or changes in design. The fee also does not include review of construction documents such as plans and specifications. We would be pleased to provide unit price estimates for these additional services.

**Proposal for Engineering Services**  
**Betsy Layne High School Baseball Field**  
Stanville, Kentucky  
S&ME Proposal No. 11-1900256



### ◆ Authorization

Our Agreement for Services, Form Number AS-071, is attached and is incorporated as a part of this proposal. Please indicate your acceptance of our proposal by signing the form and returning it to our office. We will then proceed with the performance of the services.

If you elect to accept our proposal by issuing a purchase order, then please reference this proposal number and date. Your purchase order will be an acceptance of our Agreement of Services and an authorization to proceed with the performance of our services. The terms and conditions included in any purchase order shall not apply, as our agreement is for services that are not compatible with purchase order agreements. If this proposal is transmitted to you via email, and if you choose to accept this proposal by email, your reply email acceptance will serve as your representation to S&ME that you have reviewed the proposal and the associated Agreement for Services (AS-071) and hereby accept both as written.

### ◆ Closure

S&ME appreciates the opportunity to be of service to you. If you have any questions regarding the outlined scope of services, or if we may be of further assistance, please do not hesitate to contact us.

Sincerely,  
**S&ME, Inc.**

A handwritten signature in dark ink, appearing to read 'A. Fiehler'.

Andrew M. Fiehler, PE  
Project Geotechnical Engineer

A handwritten signature in dark ink, appearing to read 'B. Dusina'.

Benjamin C. Dusina, PE  
Senior Engineer

Attachments: Proposal Form  
Agreement of Services (Form AS-071)

## PROPOSAL FORM

Proposals will be evaluated based on a lump sum fee for the geotechnical exploration. Special project conditions requiring work beyond scope defined above shall be clearly identified by the testing agency and included in proposal.

List proposed fees on this proposal form. Include this proposal form with only the requested fees. Proposals which list fees in any other format may be rejected. This proposal form must be included for a proposal to be considered.

Provide unit prices for all aspects of geotechnical investigation.

Proposals shall be submitted to Poage Engineers and Associates by 5:00 p.m. 5 days after date of this request. The selected firm will be notified within two weeks after the due date.

Geotechnical Investigation and Report are due 21 days from receipt of notice to proceed.

### Fees

Geotechnical Exploration:

Lump Sum

\$2,500

The payment for the services listed above shall not exceed the fees listed on this fee form.

Please provide signatures and dates below to approve and accept this proposal.

Geotechnical Engineer: [Signature]

Date: 12/1/11

Proposal Accepted By: \_\_\_\_\_

Date: \_\_\_\_\_



**AGREEMENT FOR SERVICES**

Form AS-071

<b>Date:</b> July 26, 2019	
<b>S&amp;ME, Inc.</b> (hereafter Consultant)	<b>Client Name:</b> (hereafter Client)
<b>Address:</b> 2020 Liberty Road, Suite 105 <b>City:</b> Lexington <b>State:</b> KY <b>Zip:</b> 40505 <b>Telephone:</b> (859) 293-5518	<b>Address:</b> <b>City:</b> <b>State:</b> <b>Zip:</b> <b>Phone Number:</b>
<b>PROJECT</b>	
<b>Project Name:</b> Besty Layne HS Baseball Field <b>Project Location (Street Address):</b> 554 Bobcat Blvd <b>City:</b> Stanville <b>State:</b> KY <b>Zip:</b>	
<b>SERVICES TO BE RENDERED</b>	
<b>Proposal Number:</b> 11-1900256 <b>dated:</b> July 26, 2019      is incorporated into this Agreement for Services. This Agreement for Services is incorporated into the above Proposal.	

Client desires to contract with Consultant for the Services to be Rendered ("Services") on Client's Project, as contained in Consultant's Proposal. The Proposal and Client's Project are referenced immediately above.

THEREFORE, in consideration of the Mutual Covenants and Promises included herein, Client and Consultant agree as follows:

- 1. ACCEPTANCE:** Client hereby accepts this offer by Consultant to provide the Services as contained in Consultant's Proposal and agrees that such Services and any additional Services performed by Consultant shall be governed by this Agreement. If Client directs that Services commence prior to execution of this Agreement, Client agrees that commencement of Services by Consultant is in reliance on Client having accepted the terms of this Agreement and acknowledgment that Client will execute this Agreement, forthwith. **CLIENT MAY ACCEPT THIS AGREEMENT FOR SERVICES THROUGH THE USE OF CLIENT'S PURCHASE ORDER, HOWEVER ALL PREPRINTED TERMS AND CONDITIONS ON CLIENT'S PURCHASE ORDER ARE INAPPLICABLE AND THE TERMS OF THIS AGREEMENT SHALL GOVERN.** Unless this offer is previously accepted, it will be withdrawn automatically at 5:00 pm EST, ninety (90) days from the date of issue.
- 2. CONTRACT DOCUMENTS:** "Contract Documents" shall mean this Agreement for Services, the Proposal identified under "SERVICES TO BE RENDERED."
- 3. SCOPE OF SERVICES:** Unless otherwise stated in writing, Client assumes sole responsibility for determining whether the quantity and the nature of the services included in Consultant's proposal received by Client are adequate and sufficient for Client's intended purpose. Client shall communicate the provisions of this Agreement for Services to each and every third party to whom Client transmits any part of Consultant's work. Consultant shall have no duty or obligation to any third party greater than that set forth in Consultant's proposal, Client's acceptance thereof and this Agreement for Services. The ordering of work from Consultant, or the reliance on

any of Consultant's work, shall constitute acceptance of the terms of Consultant's proposal and this Agreement for Services, regardless of the terms of any subsequently issued document.

4. **CHANGE ORDERS**: Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.
5. **PAYMENT**: Client will pay Consultant for Services and expenses in accordance with the Contract Documents. If prices for Services are not specified in the Contract Documents, Consultant's current fee schedule in effect for the type of services performed shall control. Consultant will submit progress invoices to Client monthly and a final invoice upon completion of Services. Payment is due upon receipt of the invoice unless otherwise agreed to in writing prior to the submittal of the invoice. Invoices are past due 30 calendar days after the date of the invoice. Past due amounts are subject to a late fee of one and one-half percent per month (18 percent per annum) or the highest amount allowed by applicable law on the outstanding balance, whichever is less. Attorney's fees and other costs incurred in collecting past due amounts shall be paid by Client. The Client's obligation to pay under this Agreement is in no way dependent upon the Client's ability to obtain financing, payment from third parties, approval of governmental or regulatory agencies, or Client's successful completion of the Project. In addition, CONSULTANT reserves the right to suspend the performance of all services in any case where invoices remain unpaid more than sixty (60) days from the invoice date.
6. **STANDARD OF CARE**: Consultant and its agents, employees and subcontractors shall endeavor to perform the Services for Client with that degree of care and skill ordinarily exercised, under similar circumstances, by consultants practicing in the same discipline at the same time and location. In the event any portion of the Services fails to substantially comply with this standard of care obligation and Consultant is promptly notified in writing prior to one year after completion of such portion of the Services, Consultant will re-perform such portion of the Services, or if re-performance is impractical, Consultant will refund the amount of compensation paid to Consultant for such portion of the Services. CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
7. **LIMITATION OF LIABILITY**: Client agrees that Consultant's services will not subject Consultant's individual employees, officers or directors to any personal liability, and that notwithstanding any other provision of this agreement, Client agrees that its sole and exclusive remedy shall be to direct or assert any claim, demand, or suit only against Consultant. Statements made in Consultant's reports are opinions based upon engineering judgment and are not to be construed as representations of fact. Client and Consultant have evaluated the risks and rewards associated with this project, including Consultant's fee relative to the risks assumed, and agree to allocate certain of the associated risks. To the fullest extent permitted by law, Consultant's aggregate liability to Client, including that of Consultant's officers, directors, employees and agents, is limited to \$100,000, hereinafter referred to as LIMITATION OF LIABILITY. This LIMITATION OF LIABILITY applies to all lawsuits, claims or actions, whether identified as arising in tort, INCLUDING NEGLIGENCE (WHETHER SOLE OR CONCURRENT), PROFESSIONAL ERROR OR OMISSIONS, BREACH OF WARRANTY (EXPRESS OR IMPLIED), NEGLIGENT MISREPRESENTATION, AND STRICT LIABILITY, contract, or other legal theory, including without limitation, Consultant's indemnity obligations to Client related to the Services provided in this Agreement and any continuation or extension of Consultant's Services.

By entering into this Agreement, Client acknowledges that this LIMITATION OF LIABILITY provision has been reviewed, understood and is a material part of this Agreement, and that Client has had an opportunity to seek legal advice regarding this provision.

8. **DISCLAIMER OF CONSEQUENTIAL DAMAGES:** In no event shall Consultant or Client be liable to the other for any special, indirect, incidental or consequential loss or damages, including, but not limited to, lost profits, damages for delay, or loss of use arising from or related to Services provided by Consultant.
9. **REPORTS:** In connection with the performance of the Services, Consultant shall deliver to Client reports, drawings, specifications, computer files, field data, notes, and other documents and instruments prepared by the Consultant reflecting Services provided and the results of such Services. All reports and written documents delivered to Client ("Instruments of Service") are instruments reflecting the Services provided by Consultant pursuant to this Agreement and are made available for Client's use subject to the limitations of this Agreement. Instruments of Service provided by Consultant to Client pursuant to this Agreement are provided for the exclusive use of Client, and with Client's permission, Client's contractors, designers and employees for the purpose and the Project described therein and are not to be used or relied upon by third parties or in connection with other projects. Subject to the permitted use of Client, and Client's agents, and employees, all Instruments of Service, other written documents, all original data gathered by Consultant and work papers produced by Consultant in the performance of or intrinsic to the Services included in the Services are, and shall remain, the sole and exclusive property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.
10. **SAFETY:** Consultant is solely responsible for the safety and health of Consultant's employees. Consultant shall take necessary precautions for the safety of its employees. Consultant specifically disclaims any authority or responsibility for general job safety and for the safety of persons who are not employed by Consultant. Should Client, or third parties, be conducting activities on the Site, then each shall have responsibility for their own safety and compliance with applicable safety requirements.
11. **SAMPLES:** Unless otherwise requested, test specimens or samples will be disposed of immediately upon completion of tests and analysis. Upon written request, Consultant will retain samples for an agreed to duration and for a mutually acceptable storage charge. In the event that samples contain or may contain hazardous materials, Consultant shall, after completion of testing and at Client's expense, return such samples to Client or make samples available for disposal by Client's agent. Client recognizes and agrees that Consultant is acting as a bailee and at no time assumes title to said samples.
12. **HAZARDOUS MATERIALS:** Nothing contained within this agreement shall be construed or interpreted as requiring Consultant to assume the status of an owner, operator, generator, storer, transporter, treater or disposal facility as those terms appear within RCRA or within any Federal or State statute or regulation governing the generation, transportation, treatment, storage and disposal of pollutants. Client assumes full responsibility for compliance with the provisions of RCRA and any other Federal or State statute or regulation governing the handling, treatment, storage and disposal of pollutants.
13. **CLIENT OBLIGATIONS:**
- (a) Client warrants that all information provided to Consultant regarding the Project and Project location are complete and accurate to the best of Client's knowledge.
  - (b) Client agrees to furnish Consultant, its agents, employees, and subcontractors a right-of-entry and any authorizations needed for Consultant to enter onto the project site to perform the Services included in this Agreement.
  - (c) Client recognizes that the performance of the Services included in this Agreement may cause alteration or damage to the Site. Client acknowledges that some site disturbance is inherent in the work for which Consultant will not be responsible. Should Client not be owner of the property, then Client agrees to notify the owner of the aforementioned possibility of unavoidable alteration and damage and arrange for the repair of any alteration and damage.
  - (d) Client agrees to disclose the identity of all utilities serving the Project Site, the presence and accurate location of hidden or obscured man-made objects known to Client that may be in Consultant's work area and the nature and location of any known or suspected hazardous materials that may exist on the property.

(e) Our job site activities do not change any agreement between Client and any other party. Only Client has the right to reject or stop work of its contractors or agents. Our presence on site does not in any way guarantee the completion, quality or performance of the work by any other party retained by Client to provide field or construction/remediation services. We are not responsible for, and do not have control or charge of, the specific means, methods, techniques, sequences or procedures of construction or remediation selected by any contractor or agent of Client.

(f) Provide prompt written notice to CONSULTANT if CLIENT becomes aware of any fault or problem in the PROJECT, including any errors or omissions in CONSULTANT'S work.

14. **CERTIFICATIONS:** Client agrees not to require that Consultant execute any certification with regard to work performed, tested or observed under this Agreement unless: 1) Consultant believes that it has performed sufficient work to provide a sufficient basis to issue the certification; 2) Consultant believes that the work performed, tested or observed meets the criteria of the certification; and 3) Consultant has reviewed and approved in writing the exact form of such certification prior to execution of this Agreement. Any certification by Consultant is limited to an expression of professional opinion based upon the Services performed by the Consultant, and does not constitute a warranty or guarantee, either expressed or implied.
15. **FAILURE TO FOLLOW RECOMMENDATIONS:** The Client agrees that it would be unfair to hold the Consultant liable for problems that may occur if the Consultant's recommendations are not followed. Accordingly, the Client waives any claim against the Consultant, and agrees to indemnify, and hold harmless the Consultant from any claim or liability for injury or loss that results from failure to implement the Consultant's recommendations or from implementation of the Consultant's recommendations in a manner that is not in strict accordance with them.
16. **TERMINATION:**  
For Convenience - Upon written notice, Client or Consultant may terminate the performance of any further Services included in this Agreement if the terminating party determines termination is in the terminating party's interest. Upon receipt of a termination notice by either party, Consultant shall stop work on all Services included in this Agreement and deliver any Instruments of Service complete at that time to Client and Client shall pay Consultant within thirty (30) days for all Services performed up to the dispatch or receipt of the termination notice. Upon Termination for Convenience, Consultant and Client shall have no further rights or remedies other than those included in this paragraph.  
  
For Cause -In the event of material breach of this Agreement, the party not breaching the Agreement may terminate it upon five (5) business days written notice delivered or mailed to the other party, which notice must identify the material breach. The Agreement may not be terminated for cause if the breaching party cures the breach within five (5) business days of receipt of the written notice. Upon Termination for Cause, Consultant shall stop work on all Services included in this Agreement and deliver any instruments of service complete at that time to Client and Client shall pay Consultant within thirty (30) days for all Services performed up to the termination. Upon Termination for Cause, Consultant and Client shall have no further rights or remedies other than those included in this paragraph.
17. **UNFORESEEN CONDITIONS OR OCCURRENCES:** If, during the performance of Services, any unforeseen hazardous substance, material, element or constituent or other unforeseen conditions or occurrences are encountered which, in Consultant's judgment, significantly affects or may affect the Services, the risk involved in providing the Services, or the recommended Scope of Services, Consultant will promptly notify Client. Subsequent to that notification, Consultant may: (a) If practicable, in Consultant's judgment and with approval of Client, complete the original Scope of Services in accordance with the procedures originally intended in the Proposal; (b) Agree with Client to modify the Scope of Services and the estimate of charges to include the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the parties and incorporated into this Agreement; or (c) Terminate the Services effective on the date of notification pursuant to the terms of TERMINATION FOR CONVENIENCE. Client is responsible for reporting any releases of hazardous substances to appropriate government agencies as required by law. Client acknowledges that Consultant also may have reporting obligations under controlling law and regulations. Client waives any claim against Consultant and will indemnify and hold Consultant harmless from any claim, injury or loss arising from the discovery of unforeseen hazardous substances.
18. **FORCE MAJEURE:** Consultant shall not be deemed to be in default of this Agreement to the extent that any delay or failure in the performance of the Scope of Work results from any causes beyond its reasonable control.

For this purpose, such acts or events shall include, but are not limited to, storms, floods, unusually severe weather, epidemics, civil disturbances, war, riot, strikes, lockouts or other industrial disturbances, and the inability within reasonable diligence to supply personnel, equipment, information or material to the Project. In the event that such acts or events occur, it is agreed that Consultant shall attempt to overcome all difficulties arising and to resume as soon as reasonably possible the normal pursuit of the Services covered by this Agreement.

19. **INSURANCE:** Consultant shall maintain at its own expense, during the term of this Agreement, the following insurance: (1) Workers' Compensation providing statutory coverages required by the state where services are provided, (2) Employer's Liability with limits of \$1,000,000 each accident, (3) Commercial General Liability with limits of \$1,000,000 each occurrence / \$2,000,000 aggregate, (4) Commercial Automobile with limits of \$1,000,000 each accident, (5) Umbrella Excess Liability with limits of \$5,000,000 each occurrence and (6) Professional Liability with limits of \$5,000,000 each claim.
20. **INDEMNITY:** Client agrees to indemnify Consultant, its employees and subcontractors from and against any and all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees), which Consultant, its employees and subcontractors may incur, become responsible for, or pay out as a result of bodily injuries (including death) to any person, damage to any property, or both, to the extent caused by Client's negligence or willful misconduct. Consultant agrees to indemnify Client from and against any and all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees) which Client may incur, become responsible for, or pay out as a result of bodily injuries (including death) to any person, damage to any property, or both, to the extent caused by Consultant's negligence or willful misconduct. Client and Consultant shall, in the event of liability arising out of their joint negligence or willful misconduct indemnify each other in proportion to their relative degree of fault. In the event that Client or Client's principal shall bring any suit, cause of action, claim or counterclaim against Consultant, the Client and the party initiating such action shall pay to Consultant the costs and expenses incurred by Consultant to investigate, answer and defend it, including reasonable attorney's and witness fees and court costs to the extent that Consultant shall prevail in such suit.
21. **DISPUTE RESOLUTION:** Consultant may, in Consultant's sole discretion, pursue collection of past due invoices by litigation in a court of competent jurisdiction. Other than Consultant's collection of past due invoices, if a dispute arises out of or relates to this contract, or the breach thereof, the parties will attempt to settle the matter through amicable discussion. If no agreement can be reached, the parties agree to use non-binding mediation before resorting to a judicial forum. The cost of a third party mediator will be shared equally by the parties. In the event of litigation, reasonable costs and attorneys' fees will be awarded to the prevailing party. All questions as to the interpretation or enforceability of this Agreement shall be governed in accordance with the laws of the state where the project is located. In the event of any litigation involving this Agreement or the performance by the parties thereto, such actions shall be brought in a court of competent jurisdiction in the state where the project is located. Notwithstanding the foregoing, Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services.
22. **ASSIGNMENT AND SUBCONTRACTS:** Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. Consultant may subcontract for the Services of others without obtaining Client's consent if Consultant deems it necessary or desirable to have others perform Services.
23. **NO WAIVER:** No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether like or different in character.
24. **MISCELLANEOUS:** The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the state where project is located. This Agreement represents the entire understanding and agreement between the parties hereto relating to the Services and supersedes any and all prior negotiations, discussions, and Agreements, whether written or oral, between the parties regarding same. No amendment or modification to this Agreement or any waiver of any provisions hereof shall be effective unless in writing, signed by both Parties. If any part of this subcontract is found to be unenforceable, then the parties' intent is to have such part rewritten to attain as close as possible the original intent of the unenforceable provision.

25. **TIME BAR:** Notwithstanding any applicable state statute of repose or statute of limitation, the Parties agree that all legal actions by either party against the other concerning this Agreement or the work performed in relation to this Agreement, will become barred two (2) years from the time the party knew or should have known of the claim, or two (2) years after completion of Consultant's services, whichever occurs earlier.
26. **NO DISCRIMINATION:** To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a) and the posting requirement under 29 CFR Part 471, appendix A to subpart A. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

**CONSULTANT HEREBY ADVISES CLIENT THAT ITS PERFORMANCE OF THIS AGREEMENT IS EXPRESSLY CONDITIONED ON CLIENT'S ASSENT TO THE TERMS AND CONDITIONS DETAILED HEREIN.**

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative.

CLIENT: \_\_\_\_\_

S&ME, Inc.

BY: \_\_\_\_\_

(Signature)

BY: \_\_\_\_\_

(Signature)

\_\_\_\_\_  
(Print Name / Title)

Craig S. Lee

(Print Name / Title)

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

July 26, 2019

PROPOSAL NUMBER: 11-1900256

Client's DIGITAL signature to be treated as original signature