



Proposal for  
Special Inspection Services

# Breathitt County Schools Sebastian Elementary Partial Renovation

Jackson, Kentucky

Prepared for  
Breathitt County Schools  
Jackson, Kentucky

November 8, 2019

[csikentucky.com](http://csikentucky.com) | [csiohio.com](http://csiohio.com)

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## Consulting Services Incorporated

Lexington 859.309.6021 | Cincinnati 513.252.2059 | Louisville 502.532.8269  
Geotechnical & Materials Engineering | IBC Special Inspection | Material Testing

November 8, 2019

Breathitt County Schools  
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Tate Hill Jacobs Architects  
346 East Main Street  
Lexington, Kentucky 40507

Attention: Mr. Mark Isabell

Subject: **Proposal for Special Inspections**  
Breathitt County Schools Sebastian Elementary Partial Renovation  
Jackson, Kentucky  
CSI Proposal No. 6440

Dear Mr. Isabell:

Consulting Services Incorporated (CSI) appreciates the opportunity to provide our proposal for Kentucky Building Code (KBC) Special Inspections and materials testing services for the referenced project. This proposal is being provided in response to the request for proposal via email to Mr. Shayne Brashear with CSI. This proposal provides a discussion of project information, our proposed scope of services, and proposed fees.

### COMPANY HISTORY

CSI is an energetic and dynamic consulting firm that provides a broad scope of services to our clients in the geotechnical engineering and construction inspection services fields. Since our inception in 2009, CSI has grown to a multi-disciplined consulting firm with offices in Lexington, Louisville and Cincinnati. We support our clients in accomplishing their business by providing innovative solutions utilizing expertise, up to the minute technology and uncompromising integrity.

Our project portfolio and repeat client growth are testament to the high level of technical expertise, ingenuity, and reliability that we provide. We have successfully completed hundreds of projects in a variety of markets including commercial, energy, industrial, institutional, telecommunications, transportation and utilities. This vast experience along with our unmatched responsiveness has positioned CSI as one of the regions top consulting firms.

As with any organization, the heart of CSI is our employees. We are recognized as a leader in our field because of the expertise of our professional staff and our service-oriented philosophy. Our leaders are bold thinkers with experience level that ranges up to 35 years.

### PROJECT INFORMATION AND APPROACH

- We reviewed the following documents in preparation of our proposal for the requested services:
- *Project Plans, titled Breathitt County Public Schools Sebastian Elementary School Partial Renovation, prepared by Tate Hill Jacobs Architects, dated September 16, 2019.*

We understand the project will include renovations of the existing school of three areas and a new drop-off canopy. The renovations for the will be constructed on a shallow concrete foundation system with a slab-on-grade floor, concrete masonry units (CMU) walls and structural steel framing.

It is our understanding that KBC Special Inspections are required for the construction within the footprint of the buildings. They are intended to comply with Chapter 17 of the KBC. The KBC Special Inspection services are required to be provided for the following work divisions:

- Structural Steel Construction - KBC Citation 1705.2
- Concrete Construction - KBC Citation 1705.3
- Masonry Construction - KBC Citation 1705.4
- Soils Construction - KBC Citation 1705.6

Our staff assigned to the project will be equipped with laptop computers and up to date software. This technology will allow for our staff to deliver paperless reports immediately. We will work closely with the Design Professionals, Contractors and the Building Official to help resolve structural deviations that may delay or even stop you from obtaining your anticipated Certification of Occupancy approval.

- After each site visit is completed, a KBC Special Inspection Report will be generated to document the activities performed. The reports are sent via weekly email in PDF format on Monday following the end of the work week to your project team informing them of the Special Inspection items observed and tested.
- Unresolved discrepancy to your project plans and specifications will be informed to all parties on the day of the inspections as well as noted in our KBC Special Inspection Report and Weekly Progress Reports then sent to your project team.

We strongly suggest that KBC Special Inspections be discussed at a Pre-Construction Special Inspections Meeting so all participants are made aware of the Special Inspection requirements for this project and the unique scheduling needs. We request 48 hours prior to the start of construction and 24 hours notice each time our presence at the job site is required afterward.

Our presence at the job site and our performance of testing services must not be construed as relieving the contractor from his responsibility to comply with the plans and specifications. Our representatives do not have the authority to supervise the work or direct contractor personnel. It is understood that our firm will not be responsible for job or site safety on this project. Job and site safety will be the sole responsibility of the contractor.

#### WHY CSI SHOULD BE SELECTED - VALUE TO INVESTMENT

The community and the project team will be provided with significant value by choosing CSI to perform the services for the construction. CSI understands that you have a significant investment in the project. As such, our services help to insure your investment is being built to the design and specifications which your design professional demands. We do so through:

##### ***Commitment to Client Service***

CSI prides itself on being a viable and responsive member of a team whose primary objective is to build a quality project in a timely and cost effective manner. Our approach to service is based on a clear understanding of our client's needs and the project requirements, adherence to schedule and a desire to find the least cost and most practical solution for you.

##### ***Knowledge and Training***

CSI's Special Inspection and material testing knowledge will help to provide you, the Owner, with a level of confidence that your project will be constructed according to the Kentucky Building Code. The CSI Team maintains a very high percentage of the personnel certified by the International Code Council (ICC) in Special Inspections. As such, there is no second guessing if a person has the knowledge to complete the service you are expecting them to provide.

### **Locally Owned**

Your project helps to increase the local economy. The fees that we receive for providing our services stay right here in Kentucky. They are put back into our firm, employees for training and knowledge that helps to continue the quality and highest level of service our clients expect.

### **KBC SPECIAL INSPECTION SERVICES**

We will provide qualified construction KBC Special Inspection and material testing services in accordance with the project plans and specifications. The following services are expected to be provided for the project:

#### **STRUCTURAL STEEL CONSTRUCTION - KBC CITATION 1705.2**

1. Periodically observe and document the materials used for high-strength bolts, nuts and washers are in accordance with the project documents.
  - a. Observe the material's identification markings conform to ASTM standards as specified in the project documents.
2. Observe the high-strength bolting techniques as per RCSC's Specification for Structural Joints Using ASTM A325 or 490 Bolts.
  - a. Verify that twist-off-type tension control assemblies have been properly tensioned.
3. Observe and document the materials for structural steel used are in accordance with the project documents.
4. Observe and document the materials for weld filler materials used are in accordance with the project documents.
5. Conduct welding observation and testing of structural steel per the following:
  - a. Verify Welders certifications.
  - b. Periodic Special Inspections of single-pass fillet welds smaller than 5/16".
  - c. Periodic Special Inspections of floor and deck welds.

#### **CONCRETE CONSTRUCTION - KBC CITATION 1705.3**

1. Periodically observe the Grade, Placement and Condition of Reinforcing Steel as per ACI 318:3.5, 7.1-7.7.
2. Continuously observe bolts to be installed in concrete prior to and during the placement of concrete.
3. Periodically verify the use of the required design mix as per ACI 318: 4, 5.2-5.4.
4. Continuously verify placement techniques are within requirements of ACI 318 and the project specifications.
5. Periodically sample and test fresh concrete for slump, air content, temperature and produce compression test specimens as per ASTM C172, C31 and ACI 318: 5.9 & 5.10. Perform compressive-strength tests as per ASTM C39.
6. Periodically observe the specified curing temperature and techniques as per ACI 318: 5.11-5.13.

#### **MASONRY CONSTRUCTION - KBC CITATION 1705.4**

1. Level I Special Inspections - From the beginning of construction, we will:
  - a. Periodically observe and document the proportions of site prepared mortar.
  - b. Periodically observe and document the construction of mortar joints.
  - c. Periodically observe and document the location of reinforcement and connectors.
2. Observe and document:
  - a. Size and location of structural elements, periodic.
  - b. Specified size, grade and type of reinforcement, periodic, as per the project documents.

- c. Protection of masonry during cold (<40F) and hot (>90F), periodic, as per project documents and KBC 2104.3, 4.
3. Periodically observe and document the following prior to grouting operations:
  - a. Grout space is clean and free of debris.
  - b. Proportions of site-prepared grout.
4. Continuously observe and document grout placement per the construction documents.
5. Continuously observe the preparation of test samples. Test masonry specimens as per the project documents and KBC 2105.3.

#### SOILS CONSTRUCTION - KBC CITATION 1705.6

1. Observe and test the site soil conditions, fill placement and bearing capacity requirements to determine if these items are in compliance with the recommendations of the approved project documents.
2. Periodically verify excavations are extended to proper depth and have reached proper material.
3. Periodically observe the site preparations as according to project documents.

#### GENERAL

We will assign a project manager to direct the work and be available for consultation for the project. The project manager will also verify the following is performed for the project:

- Report daily inspection and observation activities to the on-site representative.
- Submit weekly reports documenting activities to the Owner, Architect, Structural Engineer and Contractor.
- Submit a final report of inspections documenting required special inspections and correction of discrepancies noted during field inspections.

#### KBC SPECIAL INSPECTIONS COMPENSATION

We have reviewed the aforementioned project documents to aid in development of our cost proposal. Based on the documents reviewed our experience with providing these types of services on similar projects, we have established an **Estimated Fee of \$19,000** to perform the required KBC Special Inspection for the project. The fee is based on performing the aforementioned KBC Special Inspections within the footprint of the buildings. The testing and inspections will be performed in compliance with the requirements outlined in the KBC Chapter 17 and the approved construction plans and specifications.

We have established our fee on the following:

Item	Quantity	Price	Total
Soils Construction	1	\$650.00	\$650.00
Structural Steel Construction	4	\$700.00	\$2,800.00
Concrete Construction	9	\$650.00	\$5,850.00
Masonry Construction	15	\$650.00	\$9,750.00

Events that may result in additional costs can include:

1. Returning to the site for retesting and/or re-observations of services previously found deficient. We agree to perform any retesting as requested by you or the your representative. However YOU will



be liable to CSI for payment of the services, not the subcontractor, as CSI will not be contracted with the subcontractor.

2. Re-evaluating unstable soil conditions resulting from exposure to inclement weather and/or excessive construction traffic.
3. Site and/or other meetings requested by design or construction team to resolve issues related to construction deficiencies, changes in scope or other unforeseen items.
4. Services provided over 10 hours per work day (Monday through Friday), or on Saturdays, Sundays, or Holidays will be at the overtime rate shown in the fee schedule.

We will invoice monthly on a time and materials basis in accordance with the unit rates provided in the fee schedule. In the event additional services are required by you, we will provide the services on a time and materials basis in accordance with the unit rates provided in the fee schedule. For a full day of service (which contains up to ten (10) working hours, round trip mileage, one set of compressive strength cylinders, one half hour of clerical service and review of daily field reports by project manager) you will be charged the "one day" unit rate. Similarly for a half day service visit (which contains up to five (5) working hours, one set of compressive strength cylinders, one half hour of clerical service and review of daily field reports by project manager) you will be charged one



#### AUTHORIZATION

In order to formally authorize our services and make this proposal and the attached Terms and Conditions the agreement between us, please sign the attached Proposal/Work Acceptance Sheet and return a signed copy to us. Any exceptions to this proposal, or any special requirements not covered in the proposal, should be listed on the terms and Condition Sheet.

We appreciate your consideration of CSI for this work and look forward to assisting you on this and future projects. Please call if you have any questions regarding the information contained herein.

Sincerely,

CONSULTING SERVICES INCORPORATED

Scott Gevedon, CWI, MSI  
Project Manager

Shayne Brashear  
Principal

## Fee Schedule

### KBC Special Inspections

Construction Engineering Inspector - Day Rate,.....	\$ 650.00
Construction Engineering Inspector - Half Day Rate,.....	\$ 475.00
Construction Engineering Inspector -Overtime Rate, Hourly, .....	\$ 85.00
Certified NDT Weld Inspector - Day Rate .....	\$ 850.00
Certified Weld/Wood Inspector - Day Rate .....	\$ 700.00
Certified Weld/Wood Framing Inspector - Half Day Rate .....	\$ 550.00
Fab Shop Inspection - Day Rate .....	\$ 850.00

### Engineering Services

Project Engineer, per hour.....	\$ 100.00
Senior Engineer, per hour .....	\$ 125.00
Project Manager, per hour (included in daily rate) .....	\$ 90.00
Clerical, per hour (included in daily rate) .....	\$ 40.00
Project Manger/Engineer, per day (for site meetings/visits - 8 trips estimated) .....	\$ 500.00

### Laboratory Testing Services

Concrete Compressive Sets (Set of 5), each (one set included in daily rate) .....	\$ 85.00
Grout Sample Set (Set of 4), each.....	\$ 85.00
Mortar Cubes (Set of 3), each .....	\$ 50.00
Unit Masonry Prism Set (Set of 6. 3 fully grouted, 3 no grout), each .....	\$ 300.00
Standard Proctor (ASTM D 698), each.....	\$ 145.00
Atterberg Limits (LL, PL, PI) and Natural Moisture content, each .....	\$ 55.00

### Miscellaneous

Travel, per trip (included in the day rate) .....	\$ 00.00
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### Remarks

- Services and fees not listed will be quoted on request.
- A minimum of 24 hours advance notice is requested for scheduling or canceling field services.
- All personnel hourly rates are based on portal-to-portal time.
- Overtime Rates applies to services provided beyond 10 hours per work day (Monday through Friday), or on Saturdays, Sundays, or Holidays. This cost is not included in the noted fee.
- A one time set-up fee of \$ 500.00 is applicable.

## PROPOSAL ACCEPTANCE AGREEMENT

<b>CSI SERVICES:</b>			
Services Description:	KBC Special Inspections		
Project Name:	Breathitt County Schools Sebastian Elementary Partial Renovation SI		
Proposal Number:	6440	Proposal Date:	November 8, 2019
<b>CLIENT - CSI will perform the Services referenced in the Proposal for and charge the Invoice to the account of:</b>			
Client Name:	Breathitt County Schools % Tate Hill Jacobs Architects		
Full Address:	Tate Hill Jacobs Architects 346 East Main Street Lexington, Kentucky 40507		
Company Contact:	Mr. Mark Isbell		
Telephone:	859.252.5994		
E-mail Address:	<a href="mailto:mark@thjarch.com">mark@thjarch.com</a>		

**PROPOSAL ACCEPTANCE & AUTHORIZATION TO PROCEED** Consulting Services Incorporated of Kentucky, (CSI) will perform services set forth in the Proposal referenced above, incorporated herein by reference (the Proposal) (collectively, the "Services") subject to the terms listed on this page and hereof. For purposes herein, the term "Site" shall mean Project Location listed above. Proposals (and costs therein) shall be valid for no more than 90 days. Receipt by CSI of a signed Proposal Acceptance Sheet shall constitute the Client's Authorization to Proceed and agreement and acceptance of the terms hereunder.

### TERMS AND CONDITIONS

#### 1. STANDARD OF CARE

The Services will be performed in accordance with standards customarily observed by a firm rendering the same or similar services in the same geographic region during the same time period. CSI makes no warranties, express or implied, as to the Services performed hereunder except for the preceding sentence's warranty of compliance with generally accepted standards. CSI hereby fully and expressly disclaims any and all other warranties of any nature whatsoever, express or implied. During the Services, CSI will take reasonable precautions to prevent injury or loss to persons or property at the Site and minimize damage to the Site; however, Client understands and agrees that invasive services, including, but not limited to, drilling, boring or sampling, may damage or alter the Site; Site restoration is an out-of-scope service unless otherwise agreed in writing. The Services shall in no way be construed, designed or intended to be relied upon as legal interpretation or advice.

#### 2. RELATIONSHIP OF PARTIES

CSI, its employees, agents, affiliates or subcontractors shall act solely as an independent contractor in performing the Services. CSI shall have no right or authority to act for Client and will not enter into any agreement in the name of or on behalf of Client unless otherwise agreed in writing. Nothing in these Terms & Conditions shall be construed to give any rights or benefits to any party other than Client and CSI. Unless otherwise authorized in writing by CSI, there are no intended third party beneficiaries to these terms and conditions or to any work product or services by

CSI; Client is the sole intended and agreed beneficiary of CSI's services and work product. Client agrees that should CSI elect to grant reliance to a third party lender, the third party must first sign CSI's Reliance and Potential Conflict of Interest agreement.

#### 3. DOCUMENTS & CONFIDENTIALITY

All documents including, but not limited to, drawings, specifications, reports, logs, field notes, lab test data, calculations, and estimates prepared by or for CSI in connection with the Services are instruments of service and shall be the sole property of CSI ("Work Product"); however, Client may request a copy for its exclusive use and Client further agrees that under no circumstances shall any document produced by CSI under this Agreement, be used at any location or for any project not expressly provided for in this Agreement without CSI's prior written permission. Proprietary concepts, systems and ideas developed during the Services shall remain the sole property of CSI. Work Product will not be disclosed by CSI to a third party without prior consent of Client except to the extent required to comply with a rule or regulation, court order, governmental directive, or professional or ethical standard or when such Work Product or portion thereof becomes available to the general public or is received by CSI from others who lawfully possess same. Client authorizes CSI to use and publish Client's name and general description of the Services in CSI's marketing materials. CSI has the right in its sole discretion, to dispose of or retain the documents. If Client requests documents in an electronic format, it agrees that the electronic copy may be inaccurate or



incomplete, and the document retained by CSI remains the document of record.

Reliance upon the Services shall be limited to Client; any unauthorized release of Work Product is prohibited and Client agrees to indemnify, defend and hold CSI harmless from any and all claims or damages associated with the unauthorized release of Work Product to third parties. Notwithstanding the foregoing, any third party reliance expressly authorized by CSI and Client is subject to the limitation of liability and terms and conditions stated herein except as specifically agreed to in writing by the parties.

#### **4. CSI REPRESENTATIONS**

Findings and recommendations resulting from the Services are based upon information derived from CSI's on-site activities and other services performed hereunder; such information is subject to change over time. Certain indicators of hazardous substances, petroleum products or other deleterious constituents may have been latent, inaccessible, unobservable or not present during the Services, and CSI cannot represent that the Site is not affected by constituents or other latent conditions beyond those identified from the Services performed. Subsurface conditions throughout the Site may vary from data revealed from discrete borings, tests, assessments, investigations or other exploratory services; CSI's findings, recommendations and estimates are based solely upon data available to CSI at the time of the Services. CSI will not be responsible for a third party's interpretations or use of the data. CSI will be responsible for supervision and site safety measures for its own employees but shall not be responsible for the supervision or health & safety precautions or plans for any third parties, including subcontractors or other parties present at the Site. Should CSI provide observations or monitoring services at the Site at any time, Client agrees that CSI shall not be responsible for any working conditions or safety at the Site other than for its own staff during said observations or monitoring services. Any monitoring of a third party's or contractor's procedures does not include review of the adequacy of said contractor's safety measures in, on, adjacent to, or near the project.

#### **5. CLIENT REPRESENTATIONS**

Client understands the nature of CSI's presence on the Site and shall ensure that CSI's personnel and subcontractors have safe and reasonable access to the Site for the performance of the Services. Client shall furnish or cause to be furnished to CSI an accurate Site map and all information known or available to Client, including, but not limited to, past and current Site operations, subterranean structures, utilities, and the environmental condition of the Site (such as the identity, location, quantity, nature or characteristics of any hazardous or toxic materials on or near the Site). CSI may rely upon, but shall not be responsible for the accuracy of, any data provided by Client, Client's agent or any third party. Client shall immediately transmit new, updated or revised information as it becomes available during the Services. Client will secure all necessary approvals, permits, licenses and consents necessary to commence and complete the Services unless otherwise agreed in writing, and shall make any and all spill or release notifications that may be required by law.

#### **6. SUBTERRANEAN STRUCTURES, UTILITIES, WETLAND ISSUES**

Client is responsible for accurately providing the locations of all subterranean structures and utilities and potentially jurisdictional areas which may contain wetlands, endangered species habitat or cultural resources. CSI will take reasonable precautions to avoid damage or injury to subterranean structures or utilities and potentially jurisdictional areas identified to us. Client agrees to hold harmless and indemnify CSI for any claims, payments or other liability, including reasonable attorneys fees, for any

damages to subterranean structures, utilities or potentially jurisdictional areas which are not (i) accurately identified by Client or others, (ii) accurately depicted on plans; or (iii) called to the attention of CSI prior to performing the Services, except to the extent that CSI has been contracted to locate sensitive areas on the site not identified or accurately located.

#### **7. INDEMNITIES**

CSI shall indemnify and hold Client harmless from and against any and all lawsuits, claims, liabilities, causes of action, losses, damages, forfeitures, penalties, fines, costs and expenses, including, but not limited to, reasonable attorneys' fees and expenses, to the extent the same arise from (i) a negligent breach by CSI of these terms & conditions; (ii) violation of law by CSI in performing the Services or (iii) negligent errors or omissions of CSI in performing the Services. CSI's total maximum aggregate liability (irrespective of the number of claims or claimants) under this indemnity to client or any third party shall be limited by Client such that CSI's maximum liability to Client or any third party shall in no event exceed the amount set out in the paragraph entitled "risk allocation and liability limitation". Client agrees to release, defend, hold harmless and indemnify CSI from and against all further liability under the above indemnity including any and all lawsuits, claims, liabilities, actions, causes of action, demands, losses, damages, forfeitures, penalties, fines, costs and expenses, including, but not limited to, reasonable attorneys' fees and expenses, by whomever asserted, to the extent that such claim, property damage, injury or death resulted from (i) the negligence or willful misconduct of Client or Client's agent; (ii) violation of law or regulation by Client or Client's agent; (iii) Client or CSI's alleged involvement at the Site as an owner, operator, arranger, generator or transporter of hazardous substances or wastes; or (iv) inaccurate information provided by Client to CSI. Client understands the nature of invasive services which may involve drilling through varied soil and water substrata which may result in inadvertent and unavoidable cross-mingling of said strata and constituents therein; Client agrees to indemnify and hold harmless CSI should this occur to the extent not caused by the negligence of CSI, subject always in every respect to the limitation of liability set out in the paragraph below entitled "risk allocation and liability limitation".

#### **8. RISK ALLOCATION AND LIABILITY LIMITATION**

The parties hereunder are aware and understand the risks and rewards associated with the Services, as well as CSI's fee for these Services. The Client acknowledges that without this limitation of liability CSI would not have performed the services and that both parties had the opportunity to negotiate the terms and conditions of this Agreement. The Client and CSI agree to allocate certain of the risks so that, to the fullest extent permitted by law, CSI's total maximum aggregate (irrespective of the number of claims or claimants) liability to Client and any third parties shall in no event exceed \$50,000 or the amount of CSI's fee, whichever is greater for any and all injuries, damages, claims, losses, or expenses (including reasonable attorneys' fees and expert witness fees) arising out of this agreement from any cause or causes. Such causes include, but are not limited to, CSI's negligence, errors, omissions, strict liability, statutory liability, breach of contract, breach of warranty, negligent misrepresentation, indemnity obligations, or other acts giving rise to liability based upon contract, tort or statute except for the knowingly and intentionally wrongful misconduct of CSI. The limitation and Aggregate shall apply to all work for client by CSI irrespective of whether subsequent agreements contain this or a similar provision. Client agrees to indemnify and hold harmless CSI from and against all liabilities in excess of the monetary limit established above. The parties also agree that Client will not seek damages in excess of the limitations indirectly through suits with

other parties who may join CSI as a third-party defendant. For purposes of this paragraph, the term "parties" means the Client and CSI and their officers, directors, shareholders, employees, agents, affiliates, successors, assigns, and subcontractors. Both Client and CSI agree that they will not be liable to each other, under any circumstances, for special, indirect, consequential, or punitive damages arising out of or related to this Agreement.

#### **9. DISPUTE RESOLUTION COSTS**

In the event that CSI and Client find themselves in adversarial positions, and in the event of litigation, arbitration, or mediation in connection therewith, the non-prevailing party shall reimburse the prevailing party for the prevailing party's documented legal costs in addition to whatever judgment or settlement sums may be due.

#### **10. MONITORING**

This paragraph applies in the event CSI is retained by Client to provide a Site representative for the purpose of monitoring specific portions of construction work or other field activities as set forth in the Proposal. In this case, CSI will report observations and its professional opinions to the Client. No action of CSI or CSI's Site representative shall be construed as altering any contract between Client and third parties. The CSI representative has no right to reject or stop work of any Client agent; such rights are reserved solely for Client. Furthermore, CSI's presence on-site does not in any way guarantee the completion or quality of the performance of the work of any third party. CSI will not be responsible for and will not have control or charge of specific means, methods, techniques, sequences, or procedures of any third party or any agent of the Client.

#### **11. SAMPLING OR TEST LOCATION.**

Unless otherwise stated, the fees in the Proposal do not include costs associated with surveying of the site for the accurate horizontal or vertical locations of tests. Field tests or boring locations described in a report or shown on sketches are based upon information furnished by others or estimates made in the field by our representatives. Such dimensions, depths, or elevations should be considered as approximations only, unless otherwise stated. If the client specifies the test or boring location, we reserve the right to deviate a reasonable distance from the location specified.

#### **12. WASTES; SAMPLES**

This paragraph applies in those instances where Services performed involve wastes or samples. Unless otherwise specified in the Proposal, proper disposition of any contaminated materials generated during the Services (including, but not limited to, waste materials, samples, produced soils or fluids, cuttings, or protective gear or equipment) is out-of-scope and shall require a written amendment by the parties specifying Client's choice of transporter and waste facility. In no event shall CSI be required to sign or certify a manifest, disposal ticket or like document relating to the transport or disposition of hazardous materials or hazardous waste. It is understood and agreed that CSI, in performing the Services, does not act as a generator, transporter, arranger, or disposer of hazardous materials or hazardous waste as defined under any law or regulation. Client and CSI understand and agree that title to all foregoing samples and waste materials remains with Client. Laboratory or field equipment that cannot be decontaminated from hazardous constituents shall become the property and responsibility of Client, and Client shall reimburse CSI for its fair market value unless otherwise agreed in writing. Unless otherwise requested, test specimens or samples will be disposed of immediately upon completion of ordered analytical tests; other investigation-derived wastes will be disposed of within 60 days after submission of a final CSI report documenting

the Services. At Client's written request, CSI will retain preservable test specimens or the residue therefrom at an agreed-to charge, and will use reasonable and common business efforts to retain such test specimens or samples but only for a mutually acceptable and agreed-to storage charge and period of time. Client agrees that CSI is not responsible or liable under any circumstance or in any event to Client or any third party for any loss of test specimens or samples retained in storage, Client waiving all claims in connection therewith and agreeing to indemnify CSI in connection therewith.

#### **13. DELAYS; CHANGED CONDITIONS**

If Services cannot be performed on or before the projected due date because of circumstances beyond the reasonable control of CSI, including, but not limited to, strike, fire, riot, excessive precipitation, act of God, access limitations, health and safety risks, governmental action, third party action or Client action or omission, or criminal acts by non-CSI persons or entities, or acts of war, terrorism, or the public enemy, the Services shall be amended by Client and CSI in accordance with paragraph 19. In the event Site conditions change materially from those observed at the Site or described to CSI at the time of Proposal, CSI and Client shall execute a written change order evidencing equitable adjustments to the Proposal and Project Cost; Client understands that said changed conditions may delay, postpone or suspend the Services until such time as Services and the Project Cost are amended. In the event a timely and equitable change order cannot be negotiated by the parties, CSI, at its discretion, may terminate its Proposal, Services, and agreement with Client.

#### **14. DISCOVERY OF HAZARDOUS MATERIALS**

Client represents that it has made a reasonable effort to evaluate if hazardous materials are on or near the Site, and that Client has informed CSI of Client's findings relative to the possible presence of such materials. Hazardous materials may exist where there is no reason to believe they could or should be present. CSI and Client agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the Proposal or termination of the Services. CSI and Client also agree that the discovery of unanticipated hazardous materials may make it necessary for CSI to take immediate measures to protect health and safety of its personnel. Client agrees to compensate CSI for any equipment decontamination or other costs incident to the discovery of unanticipated hazardous materials. CSI agrees to notify Client when unanticipated or suspected hazardous materials are encountered. Client shall make any and all disclosures required by law to the appropriate governing agencies. Client also agrees to hold CSI harmless for any and all consequences of disclosures made by CSI that are required by governing law or ethical canon. In the event the Site is not owned by the Client, Client shall be responsible for informing the Site owner of the discovery of unanticipated or suspected hazardous materials. Notwithstanding any other provision of the Agreement, Client waives any claim against CSI and, to the maximum extent permitted by law, agrees to defend, indemnify, and hold harmless CSI from any claim, liability, and defense costs for injury or loss arising from CSI's discovery and disclosure or reporting of unanticipated or suspected hazardous materials, including, but not limited to, any project delay costs and any costs associated with possible reduction of the Site's value.

In connection with toxic or hazardous substances or constituents and to the maximum extent permitted by applicable law, for separate and valuable consideration of the promises contained in this environmental indemnity language (which is a valuable and fundamental inducement to CSI to provide services to Client), Client agrees to defend, hold harmless, and indemnify CSI from

and against any and all claims, liabilities, or judgments, except to the extent finally determined as being caused by CSI's negligence or willful misconduct (such exception being always subject to the "Risk Allocation and Liability Limitation" provision set out elsewhere herein), resulting from:

- a) Client's violation of any federal, state, or local statute regulation or ordinance relating to the management or disposal of toxic or hazardous substances or constituents;
- b) Client's undertaking of or arrangements for the handling, removal, treatment, storage, transportation or disposal of toxic or hazardous substances or constituents found or identified at a site;
- c) Toxic or hazardous substances or constituents introduced at the site by Client or third persons before, during, or after the completion of CSI's services;
- d) allegations that CSI is a handler, generator, operator, treater, storer, transporter, or disposer unless expressly retained by Client for such services under the Resource Conservation and Recovery Act of 1976 as amended or any other similar federal, state, or local regulation or law due to CSI's services; or
- e) any third party suit or claim for damages against CSI alleging strict liability, personal injury (including death) or property damage from exposure to or releases of toxic or hazardous substances or constituents at or from the project site before, during, or after completion of CSI's services under this Agreement.

The obligations of this paragraph are in addition to (and not in the place of) any other Client indemnity obligations herein. Nothing herein shall operate to increase the limitation of liability set out elsewhere herein.

#### **15. MONITORING WELLS**

Client will take custody of all monitoring wells and probes installed as part of the services provided by CSI and will take any and all necessary steps for the proper maintenance, repair or closure of such well or probes at Client's expense.

#### **16. TERMINATION**

Client or CSI may terminate a Proposal, the Services or this Agreement upon seven (7) days written notice should the other party fail substantially to perform in accordance with these Terms & Conditions through no fault of the terminating party or if the Client suspends the Services for more than three (3) months. Further, CSI may terminate Services as described in the Proposal Acceptance Sheet hereunder. Client shall compensate CSI for Services performed up to the date of receipt of termination plus any and all reasonable costs incurred in terminating the Services in accordance with CSI's current fee schedule, including, but not limited to, the cost of completing analyses, records, and reports necessary to document project status at the time of termination.

#### **17. ASSIGNMENTS**

Neither these Terms & Conditions nor any interest, claim or obligation hereunder shall be assigned or transferred by Client to any party or parties without the prior consent of CSI. Nothing

herein shall prevent CSI from using CSI's subcontractors to assist in performing the Services.

#### **18. NON-WAIVER; INVALIDITY.**

In the event that a provision herein shall for any reason be held invalid, illegal or unenforceable in any respect, such finding shall not affect the enforceability of any other provision of these Terms & Conditions. Failure or delay in exercising any right, power or remedy under these Terms & Conditions shall not impair any right, power or remedy which any party hereto may have, nor shall any such failure or delay be construed to be a waiver of any such right, power or remedy or an acquiescence in any breach or default hereunder absent an express, written waiver or acquiescence, nor shall any waiver of any breach or default be deemed a waiver of any default or breach subsequently occurring under these Terms & Conditions. These Terms & Conditions may be executed via facsimile or by transmitting originals; any number of executed counterparts will constitute one and the same instrument.

#### **19. APPLICABLE LAW; VENUE; SURVIVAL**

The services, proposal and these terms & Conditions shall be governed by and construed according to the laws of the state corresponding to the location of the soliciting CSI office located in Lexington, Ky (as identified on the Proposal Acceptance Sheet). Venue for any legal action hereunder shall be in the project location. Paragraphs 3, 7 and 8 will survive termination of this Agreement for any cause.

#### **20. PRECEDENCE; AMENDMENTS**

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, purchase order, requisition, notice to proceed, oral communications or other agreement regarding the Services. These Terms & Conditions replace and supersede all prior discussions and agreements between and amongst Client and CSI with respect to the matters contained herein. These Terms & Conditions herein may be amended only by an agreement signed by both CSI and Client.

#### **21. CONTINUING AGREEMENT**

The indemnity obligations and the limitations of liability established under this Agreement will survive the expiration or termination of this Agreement. If CSI provides services to Client that the parties do not confirm through execution of an amendment to this Agreement, the obligations of the parties to indemnify each other and the limitations of liability established under the Agreement apply to such Services as if the parties had executed an amendment.

#### **22. CONFLICTS OF INTEREST**

CSI will advise the Client of any existing or potential conflicts of interest which are discovered during the performance of services under this Agreement. All parties agree that CSI may discontinue its services in accordance with the "Termination" provisions set out elsewhere in this Agreement in the event a material conflict of interest is discovered or becomes evident.

**PAYMENT TERMS:**

CSI will be compensated for performing the Services in accordance with the Proposal referenced above. Invoices will be issued monthly. Client agrees to pay all charges not in dispute within 30 days of receipt of CSI's invoice and recognizes that charges not paid within 30 days are subject to a late payment charge of 1.5 percent (1.5%) (but not to exceed the maximum applicable legal rate) of the balance due for each additional month or fraction thereof that undisputed charges remain unpaid. The Client shall notify CSI within 10 days of receipt of CSI's invoice should the invoice contain charges the Client intends to dispute. Client agrees to pay any and all collection costs on overdue invoices, including reasonable attorneys' fees. Client further agrees that CSI has the right to suspend or terminate the Services in CSI's sole discretion if undisputed charges are not paid within 45 days of receipt of CSI's invoice and agrees to waive any and all claims against CSI and to indemnify, defend and hold CSI harmless from and against any claims arising from CSI's suspension or termination due to Client's failure to provide timely payment. Client agrees that all documents of any nature furnished to Client or Client's agents or designees in connection with the Services, if not paid for, will be returned upon demand and will not be used by Client for any purpose whatsoever.

Company:	<u>Breathitt County Schools</u>	<u>Consulting Services Incorporated</u>
Print Name of Authorized Representative:	<u></u>	<u></u>
Signature of Authorized Representative:	<u></u>	<u></u>
Accepted Date:	<u></u>	<u></u>