



February 19, 2021

Ross Tarrant Architects, Inc.
101 Old Lafayette Avenue
Lexington, Kentucky 40502

Attention: Kevin McCalla, PLA, ASIA, LEED BD+C

Reference: **Proposal for Site Topographic Survey**
Marion County High School Building
Lebanon, Kentucky
S&ME Proposal Number 21-1923

Dear Mr. McCalla:

The Lexington, Kentucky office of S&ME, Inc. (S&ME) appreciates the opportunity to submit this proposal for providing land surveying services for your project. This proposal includes our understanding of the proposed project, a review of the anticipated scope of services, and a cost for providing the anticipated scope of services. Our Agreement for Services (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

We were provided with a Request for Proposal (RFP) from Kevin McCalla of Ross Tarrant Architects, Inc. via email on February 15, 2021 for Site Topographic Survey of the area outlined in yellow on the attached aerial photo. The area consists of a school building, parking areas, grassed areas, walks, streets and utilities. The total survey area requested contains approximately 21 acres.

◆ SCOPE OF SERVICES

S&ME will provide qualified personnel, equipment and vehicles necessary to perform the topographic surveying services you have requested. We will provide the client with one-foot contours based on the North American Vertical Datum of 1988 (NAVD 88) (geoid12b). The Horizontal datum will be Kentucky State Plane Coordinate System, North Zone, Grid North, North American Datum of 1983 (NAD 83). This shall include the items listed in the attached Man-hour/Cost Estimate and includes a separate direct expense for private utility location services to be provided by The Underground Detective (TUD). With the assistance of TUD, S&ME will survey the locatable utilities as marked by TUD. We will require approximately 30 calendar days from the date the proposal is accepted to complete the survey, as the weather permits. Upon the completion of the work, S&ME will compile



Proposal for Site Topographic Survey

Marion County High School CTE Building

Lebanon, Kentucky

S&ME Proposal Number 21-1923

the data and provide the client with a 30" x 42" sheet (PDF) stamped and signed by a registered land surveyor, and a 3D AutoCAD (*.dwg) digital file copy on CD with the information listed herein.

◆ 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:

- Our scope does not include any confined space entries. All manhole and/or utility vault measurements will be made from the surface.
- Our scope does not include any utility exposures.
- Our proposal does not include any boundary surveying services.

◆ CLIENT RESPONSIBILITIES

We request that the client provide us the following:

- A signed copy of our Agreement for Services,
- Access to the site,
- Access to any record drawings, and
- Copies of any previous surveys.

◆ FEE

On the basis of the Scope of Services defined herein, we propose the following **lump sum fees**:

Topographic Survey	\$12,787.50
Private Utility Locator *	\$ 3,283.50

* Includes 10% handling fee.

Our fee assumes 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, additional fees will be required. Any additional work requested either verbally or in writing by the Client shall be billed at the actual hours worked at the rates shown on the attached Man-hour/Cost Estimate.

◆ 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**



Proposal for Site Topographic Survey
Marion County High School CTE Building
Lebanon, Kentucky
S&ME Proposal Number 21-1923

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 blue ink, appearing to read 'A. W. Leake'.

Alan W. Leake, P.L.S.
Project Manager

A handwritten signature in blue ink, appearing to read 'Michael Galavotti'.

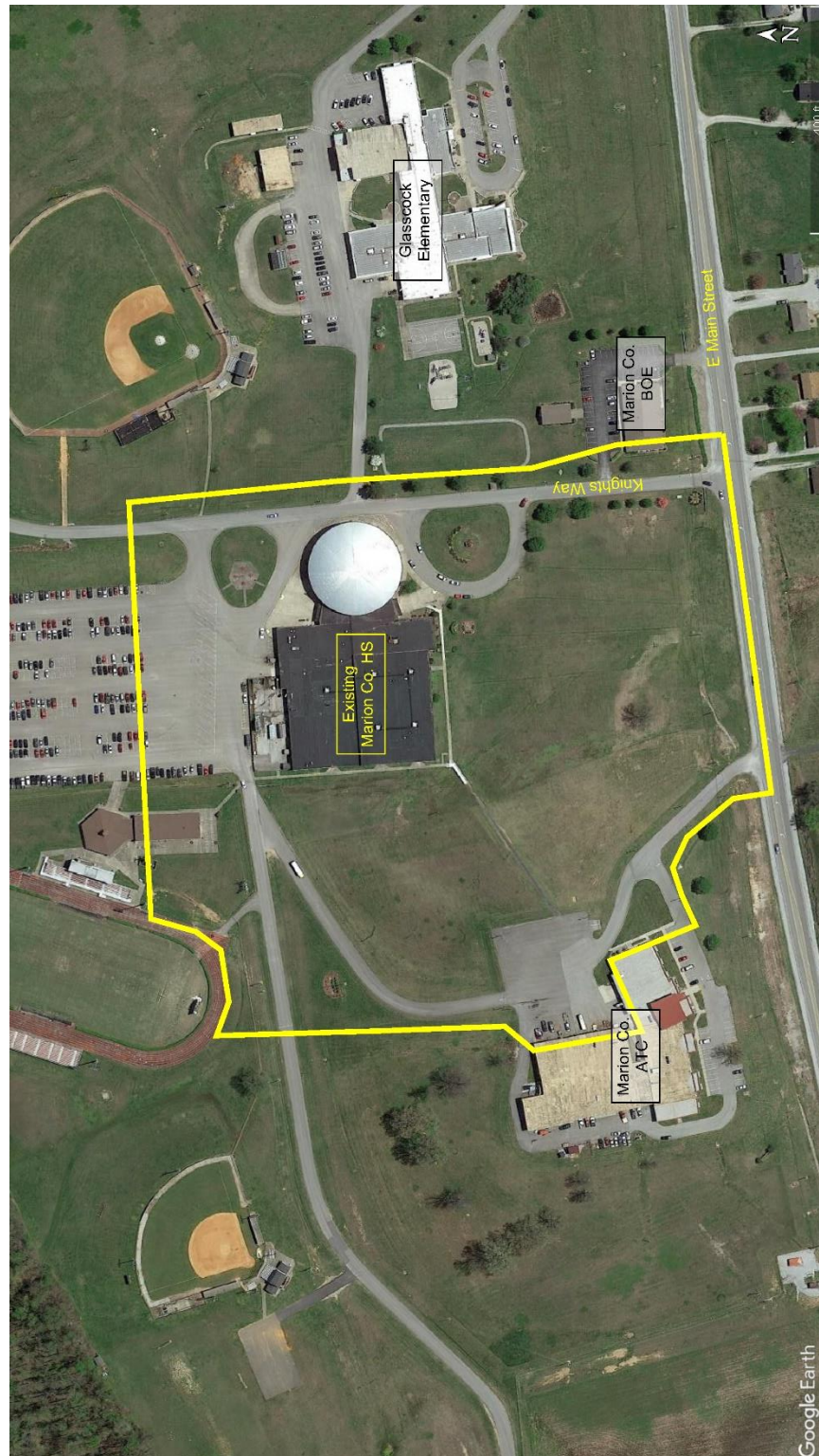
Michael Galavotti, P.E.
Senior Engineer

A handwritten signature in blue ink, appearing to read 'Thomas Davis'.

Tom Davis, P.E.
Senior Reviewer

Attachments: Aerial Photo
 Survey Man-Hour/Cost Estimates
 The Underground Detective Estimate
 Agreement for Services (AS-071)

Aerial Photo





Survey Man-Hour / Cost Estimate



Man-Hour/Cost Estimate

Marion High School Building, Topographic Survey - Lebanon, Kentucky

Activity	Professional Land Surveyor	CADD Drafter	Survey Tech.	Man-Hour Totals
Task 1. Deed Research & Plot	4			4
Task 2. Survey Control	2		2	4
Task 3. Existing Structures	2		2	4
Task 4. Finished Floor Elevations			1	1
Task 5. Existing Walks and Drives	8		8	16
Task 6. Survey Existing Utilities				
a) Water Lines			2	2
b) Sanitary Sewers	3		3	6
c) Gas Piping			2	2
d) Storm Sewers	3		3	6
e) Electric Lines	2		2	4
d) Communication Lines	2		2	4
d) Chilled Water Lines	na			0
Task 7. Utility Operators	0.5			0.5
Task 8. Site Contours	8		8	16
Task 9. Landscape Features (trees)	1		1	2
Task 10. Site Survey Drafting		40		40
Task 11. Flood Certification		1		1
Total Man-Hours	35.5	41	36	112.5
Labor Rate*	\$ 125.00	\$ 125.00	\$ 75.00	
Labor Cost	\$ 4,437.50	\$ 5,125.00	\$ 2,700.00	\$ 12,262.50
<i>* Includes labor, overhead, fringe benefits and profit</i>				
Subtotal				\$ 12,262.50

Direct Expenses

Mileage 5 trips x 140 mi. x \$0.75/mi.	\$	525.00		
Total	\$	525.00	Total Direct Expenses	\$ 525.00

Lump Sum Fee	\$ 12,787.50
---------------------	---------------------



The Underground Detective Estimate

Estimate



Estimate Details

Company Address	9192 Colerain Ave Cincinnati, Ohio 45251 United States	Created Date	2/15/2021
Phone	(888) 747-3799	Quote Number	00000512

Address Information

Account Name	S&ME - Lexington	Account Location	Marion County High School
Bill To	2020 Liberty Road Suite 105 Lexington, Kentucky 40505 United States	Job Street	735 East Main Street
		Job City	Lebanon
		Job State	KY
		Job Zip Code	40033

Description

- Scan as per map provided using ground-penetrating radar (350, 400 or 450MHz antenna), electromagnetic, and/or sonde locating equipment.
- May not be able to locate sewers depending on size and access. Included equipment can locate sewers up to approximately 8"-10". If larger, a tractor camera may be needed which is NOT included in this price.
- If utilities are non-metallic and tracer wires/tape are not installed, all efforts will be made to locate these items with ground-penetrating radar (GPR) and/or locating sondes, but results cannot be guaranteed.
- GPR is limited by high-conductivity materials such as clay, rocky, and salt contaminated soils. It also needs a fairly open and flat area to conduct the survey. How deep and what utilities, UST's, voids, etc you will see depends on these factors. Sandy and dry soils are ideal.
- All utilities located will be indicated on the ground with marking flags and/or paint as per the national color code.
- A non-survey grade, color coded map will be provided.
- Depths are NOT guaranteed, unless verified with vacuum excavation.
- Customer responsible in calling 811 approximately 48 hours before TUD will arrive.

Expiration Date 3/17/2021

Prepared By	Robert Harris	Contact Name	Alan Leake
Email	robh@ugdet.com		

Subtotal	\$2,985.00
Discount	0.00%
Total Price	\$2,985.00
Grand Total	\$2,985.00

Terms

We appreciate the opportunity! Schedule online at www.UndergroundDetective.com

Due to the uncertainty in locating underground utilities, we are unable to give an exact sum of this project. All work to be completed in a substantial workmanlike manner according to specifications submitted, per standard practice. All agreements contingent upon accidents or delays beyond our control. Work may not be done in consecutive days. By signing this proposal the undersigned hereby accepts this proposal and the same is deemed a valid contract. The undersigned further agrees that in the event that the undersigned is deemed in default and this matter is placed with an attorney or collection agency for collection, the undersigned agrees to pay all collection costs, including reasonable attorney and other agency fees.

With the uncertainty in locating underground utility facilities including those which are plastic, non-conductive, or otherwise unable to be located during scanning and/or limitations of technology including water leak detection, the undersigned ("customer") hereby acknowledges and agrees that The Underground Detective of Greater Cincinnati ("UD") shall have no responsibility for Customer's or Customer's designee's excavation of any underground facility, whether marked or unmarked by UD. Customer further acknowledges and agrees that: (1) he or she hereby assumes, without limitation, all risks of loss and liability relating to or arising out of such excavation by Customer or any third party, including, but not limited to any damage to any underground facility, and (b) there have been no affirmations of fact or promise by UD which relate to



AGREEMENT FOR SERVICES

Form AS-071

Date:	
S&ME, Inc. (hereafter Consultant)	Client Name: (hereafter Client)
Address: 2020 Liberty Road City: Lexington State: KY Zip: 40505 Telephone: (859) 293-5518	Address: City: State: Zip:
PROJECT	
Project Name: Project Location (Street Address): City: State: Zip:	
SERVICES TO BE RENDERED	
Proposal Number: dated: 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:

- 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.
- CONTRACT DOCUMENTS:** "Contract Documents" shall mean this Agreement for Services, the Proposal identified under "SERVICES TO BE RENDERED."
- 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.
- ~~within 10 calendar days from receipt of payment from the architect's client~~
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.
- ~~10 days from the date of receipt of payment from the architect's client~~
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)

(Print Name / Title)

DATE: _____

DATE: _____

PROPOSAL NUMBER: _____

Client's DIGITAL signature to be treated as original signature