

Kentucky Department of Education Version of **AIA Document A101™ – 2007**

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum



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Cite this document as "AIA Document A101™– 2007, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum — KDE Version," or "AIA Document A101™–2007 — KDE Version."

Kentucky Department of Education Version of AIA Document A101 – 2007

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

AGREEMENT made as of the Twenty-Sixth day of August
in the year Two-Thousand Twenty-One
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)
Covington Independent Board of Education
25 East 7th Street
Covington, KY 41011

and the Contractor:
(Name, legal status, address and other information)
GeoBuild
4607 Library Road, Suite 220 #459
Bethel Park, PA 15102

for the following Project:
(Name, location and detailed description)
Meinken Baseball Field - Emergency Landslide Repairs
2631 Eastern Avenue, Covington, KY 41014

The Architect:
(Name, legal status, address and other information)
PCA Architecture, PSC
1881 Dixie Highway, Suite 130
Ft. Wright, KY 41011

The Owner and Contractor agree as follows.



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This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Owner direct Purchase Orders, Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date of this Agreement unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by the Owner.

(Insert the date of commencement if it differs from the date of this Agreement or, if applicable, state that the date will be fixed in a notice to proceed.)

If, prior to the commencement of the Work, the Owner requires time to file mortgages and other security interests, the Owner's time requirement shall be as follows:

§ 3.2 The Contract Time shall be measured from the date of commencement.

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§ 3.3 The Contractor shall achieve Substantial Completion of the entire Work not later than () days from the date of commencement, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work. Either list requirements for earlier Substantial Completion here or refer to an exhibit attached to this Agreement.)
 As listed on the attached proposal from GeoBuild.

Portion of Work

Substantial Completion Date

, subject to adjustments of this Contract Time as provided in the Contract Documents.

Liquidated Damages: As actual damages for delay in completion of Work are impossible to determine, the Contractor and his Surety shall be liable for and shall pay to the Owner the sum of zero

(\$ 0.00), not as a penalty, but as fixed, agreed and liquidated damages for each calendar day of delay until the Contract Work is substantially completed as defined in the General Conditions of the Contract for Construction. The Owner shall have the right to deduct liquidated damages from money in hand otherwise due, or to become due, to the Contractor, or to sue and recover compensation for damages for failure to substantially complete the Work within the time stipulated herein. Said liquidated damages shall cease to accrue from the date of Substantial Completion.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be Three-hundred, Ninty-six thousand, Five-hundred and Eight dollars and zero cents. (\$ 396,508.00), subject to additions and deductions as provided in the Contract Documents.

(List the base bid amount, sum of accepted alternates, total construction cost (the sum of base bid amount plus sum of accepted alternates), sum of Owner's direct Purchase Orders. The Contract Sum shall equal the sum of Total Construction Cost, less Owner direct Purchase Orders. Either list this information here or refer to an exhibit attached to this Agreement.)

	Amount
Base Bid	\$ 396,508.00
Sum of Accepted Alternates	\$ 0.00
Total Construction Cost (the sum of base bid amount plus sum of accepted alternates)	\$ 396,508.00
Sum of Owner's direct Purchase Orders	\$ 0.00
Contract Sum (total construction cost less Owner direct Purchase Orders)	\$ 396,508.00

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§ 4.2 The Contract Sum is based upon the following alternates, if any, which are described in the Contract Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the bidding or proposal documents permit the Owner to accept other alternates subsequent to the execution of this Agreement, attach a schedule of such other alternates showing the amount for each and the date when that amount expires. Either list alternates here or refer to an exhibit attached to this Agreement.)

Number	Item Description	Amount
Total of Alternates		

§ 4.3 Unit prices, if any:

(Identify and state the unit price; state quantity limitations, if any, to which the unit price will be applicable. Either list unit prices here or refer to an exhibit attached to this Agreement.)

As listed in the attached proposal.

Item	Units and Limitations	Price per Unit (\$0.00)
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§ 4.4 Allowances included in the Contract Sum, if any:

(Identify allowance and state exclusions, if any, from the allowance price. Either list allowances here or refer to an exhibit attached to this Agreement.)

None

Item	Price
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ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the certified amount to the Contractor not later than the 30th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than sixty (60) days after the Architect receives the Application for Payment.

State law (KRS 371.405) requires the Owner to pay undisputed Applications for Payment within forty-five (45) business days following receipt of the invoices. If the Owner fails to pay the Contractor within forty-five (45) business days following receipt of an undisputed Application for Payment, state law requires the Owner shall pay interest to the Contractor beginning on the forty-sixth business day after receipt of the Application for Payment, computed at the rate required by state law.

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of ten percent (10%). Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 7.3.9 of AIA Document A201™-2007, General Conditions of the Contract for Construction — KDE Version;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of ten percent (10%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in Section 9.5 of AIA Document A201-2007 — KDE Version.

§ 5.1.7 The progress payment amount determined in accordance with Section 5.1.6 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Architect shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.5 of AIA Document A201-2007 — KDE Version requires release of applicable retainage upon Substantial Completion of Work with consent of surety, if any.)

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- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Contractor, any additional amounts payable in accordance with Section 9.10.3 of AIA Document A201–2007 — KDE Version.

§ 5.1.8 Reduction or limitation of retainage, if any, shall be as follows:

When Owner direct Purchase Orders are used, retainage that would otherwise be held on materials and equipment shall transfer to the Contractor, and the material suppliers will be paid the full amount of their invoices. The Owner shall retain ten percent (10%) from each Application for Payment, and an amount equal to ten percent (10%) of approved Purchase Order payments, up to fifty percent (50%) completion of the Work, then provided the Work is on schedule and satisfactory, and upon written request of the Contractor together with consent of surety and the recommendation of the Architect, the Owner shall approve a reduction in Retainage to five percent (5%) of the current Contract Sum plus Purchase Orders. No part of the five percent (5%) retainage shall be paid until after Substantial Completion of the Work, as defined in the General Conditions of the Contract for Construction. After Substantial Completion, if reasons for reduction in retainage are certified in writing by the Architect, a reduction to a lump sum amount less than the five percent (5%) retainage may be approved by the Owner when deemed reasonable. The minimum lump sum retainage shall be twice the estimated cost to correct deficient or incomplete work.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 FINAL PAYMENT

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201–2007 — KDE Version, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 a final Certificate for Payment has been issued by the Architect; and
- .3 the Contractor provides the Owner with affidavits that all payrolls, bills for materials, supplies and equipment, and other indebtedness connected with the Work have been paid or otherwise satisfied, and with Consent of Surety for final payment.

ARTICLE 6 DISPUTE RESOLUTION

§ 6.1 INITIAL DECISION MAKER

The Architect will serve as Initial Decision Maker pursuant to Section 15.2 of AIA Document A201–2007 — KDE Version, unless the parties appoint below another individual, not a party to this Agreement, to serve as Initial Decision Maker.

(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)

§ 6.2 BINDING DISPUTE RESOLUTION

For any Claim subject to, but not resolved by, mediation pursuant to Section 15.3 of AIA Document A201–2007 — KDE Version, the method of binding dispute resolution shall be as follows:

(Check the appropriate box. If the Owner and Contractor do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- ☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2007 — KDE Version
- ☐ Litigation in a court of competent jurisdiction where the Project is located
- ☒ Other: *(Specify)*
Non-binding arbitration followed by litigation in a court of competent jurisdiction where the Project is located.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2007 — KDE Version.

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2007 — KDE Version.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2007 — KDE Version or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at such rate required by state law, or in the absence of law, at the legal rate prevailing at the time and place where the Project is located.
(Insert rate of interest agreed upon, if any.)

§ 8.3 The Owner's representative:
(Name, address and other information)

Mr. Ken Kippenbrock
Covington Independent Board of Education
25 East 7th Street
Covington, KY 41011

§ 8.4 The Contractor's representative:
(Name, address and other information)

Mr. Todd Starkey
Geobuild
4607 Library Road, Suite 220 NO. 459
Bethel Park, PA 15102

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§ 8.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days written notice to the other party.

§ 8.6 Other provisions:

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated in the sections below.

§ 9.1.1 The Agreement is this executed AIA Document A101–2007, Standard Form of Agreement Between Owner and Contractor — KDE Version.

§ 9.1.2 The General Conditions are AIA Document A201–2007, General Conditions of the Contract for Construction — KDE Version.

§ 9.1.3 The Supplementary and other Conditions of the Contract:
(Either list Supplementary and other Conditions of the Contract here or refer to an exhibit attached to this Agreement.)

Document	Title	Date	Pages
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§ 9.1.4 The Specifications:
(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Date	Pages
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§ 9.1.5 The Drawings:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Date
	Topographic Survey by Abercrombie	2021.08.17
	Design Memorandum by Geotechnology	2021.08.20
	Geotech Report by Geotechnology	2021.05.19

§ 9.1.6 The Addenda, if any:

(Either list the Addenda here or refer to an exhibit attached to this Agreement.)

Number	Date	Pages
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Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 9.

§ 9.1.7 Additional documents, if any, forming part of the Contract Documents:

- 1 AIA Document E201™–2007, Digital Data Protocol Exhibit, if completed by the parties, or the following:

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.2 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2007 — KDE Version provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

- ~~A. AIA Document A701 1997, Instructions to Bidders KDE Version~~
- B. Contractor's Form of Proposal
- ~~C. KDE Purchase Order Summary Form~~

ARTICLE 10 INSURANCE AND BONDS

The Contractor shall purchase and maintain insurance and provide bonds as set forth in Article 11 of AIA Document A201–2007 – KDE Version.

(State bonding requirements, if any, and limits of liability for insurance required in Article 11 of AIA Document A201–2007 – KDE Version. Either list insurance and bond information here or refer to an exhibit attached to this Agreement.)

Type of Insurance or Bond

Limit of Liability or Bond Amount (\$0.00)

This Agreement entered into as of the day and year first written above.

OWNER (Signature)

CONTRACTOR (Signature)

(Printed name and title)

(Printed name and title)

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August 25, 2021

Ken Kippenbrock
Covington Independent Board of Education
ken.kippenbrock@covington.kyschools.us

Subject: PROPOSAL FOR MEINKEN PARK SLOPE STABILIZATION - COVINGTON, KENTUCKY

Dear Ken:

GeoBuild, LLC (GeoBuild) is pleased to offer this Proposal for the referenced project. This proposal is exclusively for the Covington Independent Board of Education, herein known as the "Client", to consider. We thank you for the opportunity to provide pricing for this work.

This proposal is based on the following:

1. Design Memorandum by Geotechnology, Inc. (Geotechnology) dated August 20, 2021.
2. Geotechnical Exploration Report (Geotechnical Report) by Geotechnology dated May 19, 2021.
3. Topographic Survey by Abercrombie & Associates, Inc. (Abercrombie) dated August 17, 2021.
4. Site Reconnaissance on August 13, 2021, performed by Todd Starkey and Nick Zadd with GeoBuild, which included drone imaging.
5. Various meetings and scope clarification discussion between Todd Starkey (GeoBuild), Joseph Hauber (Geotechnonology), Ralph Cooper (PCA Architecture), and Ken Kippenbrock and Ken Mastin (Covington Schools), which is detailed in the Scope of Work.

PROJECT DESCRIPTION

A landslide is located behind the outfield fence of the Meinken Park baseball field in Covington, Kentucky. The landslide is generally located just east of the centerfield fence, near the crest of the riverbank of the Licking River.

On site visits in July and August 2021, GeoBuild measured the head scarp to be on the order of 70 feet long, the closest measurement of the scarp to the outfield fence was measured at approximately 8 feet, and the total length of the landslide extents was estimated to be 105 feet. For the purposes of this report, the southernmost extent of the stabilization system will be Station 0+00 and the northernmost extent of the system will be Station 1+05. The Design Memorandum clarified the limits of the stabilization to be 105 linear feet (LF) long and up to 50 LF of slope length for 5,250 square feet (SF) of stabilization system.

SCOPE OF WORK

GeoBuild's scope of work will consist of stabilization system consisting of soil nails with high-tensile strength steel mesh or reinforced shotcrete facing and wire anchors with turf reinforcing mat (TRM) as follows:

Soil Nail Stabilization System

- Approximate Station 0+00 to 0+30. See the attached plan for markups approximating the location the proposed stabilization. The stabilization in this area includes:

- Up to 360 SF of stabilization.
 - Up to 18 hollow bar soil nails, nominal 1.5" OD, which will be up to 20 feet long, and will be connected to the mesh using GeoBrugg P33 Spike Plates.
 - Up to 360 SF of TECCO G65/3 steel wire mesh.
- Approximate Station 0+30 to 0+60. See the attached plan for markups approximating the location the proposed stabilization. The stabilization in this area includes:
 - Up to 360 SF of stabilization.
 - Up to 18 hollow bar soil nails, nominal 1.5" OD, which will be up to 20 feet long.
 - Up to 360 SF of 8" thick reinforced shotcrete facing.
 - Slope restoration up to 3 feet wide over the 30-foot length. The shotcrete facing will be formed with Stayform or plywood and will be backfilled with flowable fill.
- Approximate Station 0+60 to 1+05. See the attached plan for markups approximating the location the proposed stabilization. The stabilization in this area includes:
 - Up to 540 SF of stabilization.
 - Up to 24 hollow bar soil nails, nominal 1.5" OD, which will be up to 20 feet long, and will be connected to the mesh using GeoBrugg P33 Spike Plates.
 - Up to 540 SF of TECCO G65/3 steel wire mesh.
- Testing.
 - One verification test will be performed on a sacrificial soil nail in general accordance with FHWA GEC 7.
 - Up to 3 proof tests will be performed on the production soil nails (5 percent of the total).

Wire Anchors and Turf Reinforcing Mat

- Approximate Station 0+00 to 1+05. See the attached plan for markups approximating the location of the proposed turf reinforcement. This area includes:
 - Up to 3,990 SF of TRM.
 - Up to 375 driven wire anchors up to 9 feet long.
 - Up to 4 pull tests on the anchors, per the manufacturer's recommendations.
 - Grubbing and clearing of the slope will be limited to laborers attached to climbing ropes using hand tools.

PROJECT CONDITIONS

GeoBuild's scope of work includes labor, tools, equipment, and materials to design and install the stabilization system pursuant to the following conditions:

- a. Seasonality - Based upon our understanding of the project schedule, our scope of work will take place in August and September 2021. Our pricing does not include winter work.
- b. If the stabilization heights, lengths, or areas exceed the amounts discussed in the Scope of Work, then the cost per SF may increase.
- c. Provide final design package sealed by a Professional Engineer Registered in the Commonwealth of Kentucky.
- d. This design is based on a [8-inch] nominal shotcrete thickness and [4-inch] nominal borehole diameter. If additional shotcrete or grout is required beyond neat line plus 30%, GeoBuild will charge at the unit rates presented below. This could include excavation sloughing, voids, discontinuities, debris, large rocks, trash fill, and other conditions.
- e. The initial mobilization includes labor, equipment, and material capable of installing the stabilization system. If GeoBuild is required to leave the site and return outside of what was previously stated and planned for, the cost is as shown below. Work shall be available to GeoBuild prior to GeoBuild mobilizing to the site.

MEINKEN PARK SLOPE STABILIZATION - COVINGTON, KENTUCKY

- f. GeoBuild's pricing and scope of work includes up to [3] proof tests. If the Engineer and/or Owner requests additional proof testing, it will be charged at the unit rate.
- g. GeoBuild's pricing and scope of work includes [1] verification test. If the Engineer and/or Owner requests additional verification testing, it will be charged at the unit rate.
- h. Standby time will be charged at the rate shown below for delays beyond GeoBuild's control. Day rate is 10-hours and GeoBuild crews will be allowed access to maintain GeoBuild's equipment during standby events.

WORK HOURS/SCHEDULE

The duration for the soil nail slope stabilization system is estimated to be up to 12 working days, and the duration for the wire anchor and turf reinforcement mat is estimated to be 10 working days. The total project duration is estimated to be 22 working days. All work is based on a work schedule of Monday through Saturday, 10 hours per day as weather and daylight permits.

GeoBuild can mobilize to the site within approximately 1 week from GeoBuild receiving an executed contract, approved submittals, and a written notice to proceed. Depending on material lead times GeoBuild may require additional time. Additional charges will be assessed if GeoBuild is scheduled and required to work additional hours or shifts.

PRICING

GeoBuild proposes to perform the work described herein based on the prices listed below. The prices included herein are based on continuous unobstructed work beginning the day GeoBuild mobilizes to the site. There will be no credit for under runs.

Item	Description	Qty	UM	Unit Price	Total Price
1	Mobilization/Demobilization and Engineering Design Submittal	1	LS	\$45,200	\$45,200
2	Soil Nail Stabilization System as detailed in Scope of Work (up to 1,260 SF total)	1	LS	\$193,110	\$193,110
3	Wire Anchors and Turf Reinforcing Mat as detailed in Scope of Work (up to 3,990 SF total)	3,990	SF	\$37.70	\$150,423
4	Payment and Performance Bond	1	LS	\$7,775	\$7,775
	Standby Time	-	HR	\$1,500	-
Estimated Total:					\$396,508

If additional services are requested by the Contractor, Engineer, or Owner the following additional charges would apply:

Description	UM	Unit Price
Additional Mobilization/Demobilization	EA	\$45,000
Additional Grout	CF	\$45
Additional Shotcrete	CY	\$1,000
Additional Hollow Bar Soil Nails (up to 20 feet long)	EA	\$1,000
Additional Proof Testing	EA	\$1,500
Additional Verification Testing	EA	\$2,500

EXCLUSIONS

The following terms, conditions and exclusions shall apply and are specifically excluded from GeoBuild's scope of work and shall be provided to GeoBuild at no cost to GeoBuild, notwithstanding anything in any document to the contrary:

- a. Permits - All permitting requirements to perform the work including, but not limited to, construction permits; hazardous material handling and disposal permits; storm water management permits and dewatering permits; and fugitive dust or other similar permitting requirements.
- b. Surveying - Any and all surveying including but not limited to layout survey, as-built survey, and wall tolerances as required.
- c. Sanitary Facilities - On-site facilities within reasonable proximity for the use of GeoBuild employees. GeoBuild anticipates that the on-site sanitary facilities will be open for our use Monday thru Saturday.
- d. Site Security - Site security during nights, weekends, and holidays.
- e. Prevailing wages are included in GeoBuild's price.
- f. Buy American/American Material Requirements are not all-encompassing in GeoBuild's price. Reasonable efforts were made to secure domestic materials, as detailed in the Code of Federal Regulations 2 CFR 200.322 Domestic preferences for procurements. Due to the emergency nature of the project, not all materials will be sourced domestically.
- g. Owner shall ensure that all utilities are properly located before GeoBuild mobilizes to the site. Specific location (potholing), removal, and/or relocation of all underground and overhead utilities are not included in GeoBuild's scope of work.
- h. Erosion and Sedimentation - GeoBuild will provide silt fence control for erosion and sedimentation mitigation and will provide containment areas for shotcrete and grout waste. All other work related to best management practices "BMPs" is excluded from GeoBuild's scope of work.
- i. Hazardous Materials - GeoBuild will immediately stop work per state and federal work and safety requirements if hazardous materials are encountered. GeoBuild's downtime or additional mobilization fees due to hazardous materials will be negotiated separately.
- j. Access - All weather working access shall be provided to GeoBuild at all times. Access shall be provided to GeoBuild at all times for concrete trucks, material/equipment deliveries, and on-site area for material/equipment storage. Owner shall obtain any and all right of way, licenses, or easements for GeoBuild to perform its work.
- k. Vibrations - GeoBuild cannot accept any liability for disturbance to existing structures and their inhabitants on or near the site. GeoBuild requires the Contractor and Owner to indemnify GeoBuild against any and all claims for such disturbance and also take precautions as necessary to avoid any such claims. This may include vibration monitoring, excavating trenches around the affected area, etc. It is possible that damage may occur as a result of heave, settlement, utility not correctly marked, or intrusion of grout and/or construction water and GeoBuild cannot accept responsibility/liability for such damage. Contractor and Owner agree to waive any and all liability and damages against GeoBuild in any related to the underground conditions and/or existing facilities described in the preceding sentence.
- l. Any and all work, including but not limited to design work, is excluded unless specifically included herein.

ADDITIONAL TERMS AND CONDITIONS

Notwithstanding anything contained in any document to the contrary, the following additional terms and conditions shall apply, control and govern:

- a. Retainage, if any, is to be released to GeoBuild within [30] days after the completion of GeoBuild's work.
- b. Owner agrees that GeoBuild shall not be responsible for liquidated damages, delay damages, or other time related damages for any work that is outside GeoBuild's control.
- c. Notwithstanding anything contained in any document to the contrary, in the event the project is delayed, disrupted, terminated and/or the project schedule is extended for any reason not caused by the acts or omissions of GeoBuild (or as the proper designation may be for GeoBuild), GeoBuild subcontractor(s), or those for whom GeoBuild, etc. is legally liable, GeoBuild reserves and waives no rights to receive compensation to recover all costs including, but not limited to, price escalations and other damages.
- d. All invoices are due, in their entirety, upon receipt from GeoBuild. All payments received for GeoBuild's work shall be held in trust for the benefit of GeoBuild. Amounts due and unpaid over thirty days shall accrue interest at the rate of 1.5% per month. Contractor and/or Owner shall be liable to GeoBuild for all costs of collecting amounts due and unpaid, including, but not limited to, reasonable attorneys' fees and/or legal fees.
- e. This agreement/Proposal is subject to and governed by law in the state of the project's location under all circumstances and venue for any dispute shall be the state of the project's location notwithstanding any conflict of law or choice of law statutes or regulations of any kind to the contrary.
- f. The partial or complete invalidity of any provision of this Proposal shall not affect the validity or continuing force and effect of any other provision. The failure of either party hereto to insist, in any one or more instances, upon the performance of any of the terms, covenants and conditions of this contract/Proposal, or to exercise any right herein, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right as respects further performance.
- g. Each party has had the opportunity to review and negotiate this Proposal and no party shall be construed to be the drafter of this Proposal for any purpose including, but not limited to, interpretation of this document.
- h. Any work done pursuant to change order or otherwise is subject to the terms and conditions contained herein.
- i. The proposal pricing and scope is offered pursuant to the full and unmodified terms of this proposal. Should the Client and/or Owner not fully accept or modify this proposal, the pricing and/or the scope of work will likely be subject to modification by GeoBuild.
- j. Should Client and/or Owner provide GeoBuild with verbal direction to begin to mobilize, the terms and conditions of this Proposal shall be deemed accepted and apply in full and without limitation.
- k. GeoBuild's defense and indemnity obligations, if any, are limited to claims for damages to property or personal injury caused by the negligent acts or omissions of GeoBuild or for those whom GeoBuild is legally responsible. Contractor and Owner agree to defend and indemnify GeoBuild for claims or damages alleged to have been caused by Contractor's and/or Owner's acts or omissions.
- l. GeoBuild retains all ownership rights in its proprietary and/or patented information and no such rights are transferred in any way.
- m. Increased Costs. If, due to either (a) the introduction of or any change in or in the interpretation of any (i) law or regulation, or (ii) any tariff, tax, duty, toll, excise, levy or charge to be paid on a particular class of imports and/or exports, and/or (b) the compliance with any guideline or requirement from any governmental authority that is introduced or the interpretation of which is changed, in each such case after the date hereof, there is any increase in the cost to GeoBuild of providing the materials, goods and/or services under this Agreement, then Client shall from time to time, upon demand by GeoBuild, immediately pay to GeoBuild additional amounts sufficient to compensate GeoBuild for such increased cost. GeoBuild shall submit to Client a certificate as to the amount of such increased cost and detailing the calculation of such cost, which shall be conclusive and binding for all purposes, absent manifest error.

- n. This offer expires 30 days from the date transmitted.
- o. GeoBuild's opinions and statements regarding this project shall remain confidential and shall not be shared with other parties without the express written consent of GeoBuild. All concepts and procedures outlined in this proposal shall be considered the intellectual property of GeoBuild.
- p. The Parties agree that GeoBuild's August 25, 2021 Proposal is a "Contract Document" and is specifically incorporated into the Contract Documents for the Project. In the event of a conflict or ambiguity between this Proposal and any other Contract Document, the terms of this Proposal shall control and govern.

**THIS COMMUNICATION CONTAINS GEOBUILD CONFIDENTIAL/PROPRIETARY BUSINESS
INFORMATION NOT SUBJECT TO FREEDOM OF INFORMATION ACT (FOIA)**

Sincerely,

GEOBUILD, LLC



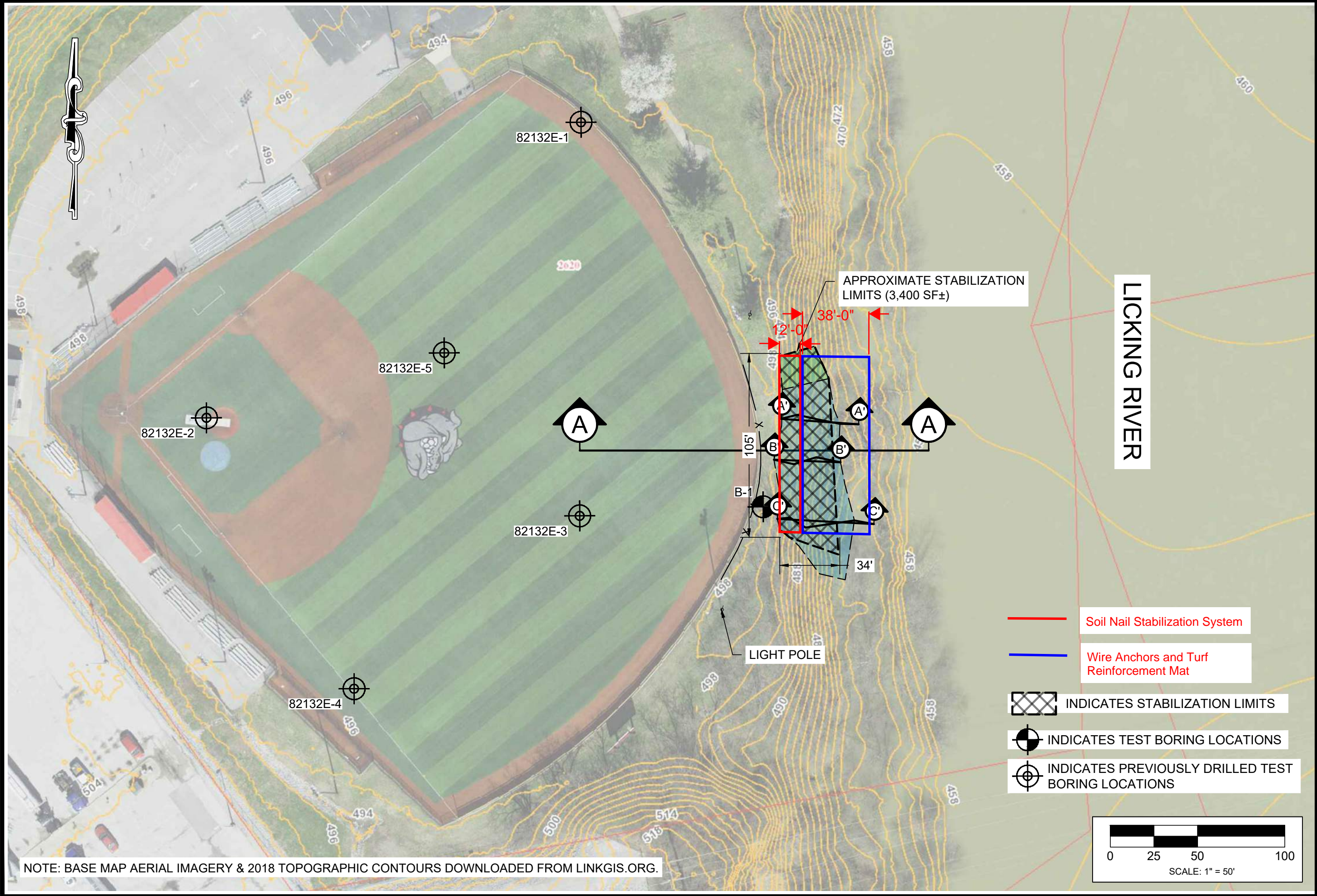
Todd M. Starkey, P.E.
tstarkey@geobuild.com | 720.682.5846

Accepted by: _____
(Signature)

Accepted by: _____
(Printed Name/Title)

Date: _____

ATTACHMENT 1
SCOPE LAYOUT PLAN



NOTE: BASE MAP AERIAL IMAGERY & 2018 TOPOGRAPHIC CONTOURS DOWNLOADED FROM LINKGIS.ORG.