



FLOYD COUNTY BOARD OF EDUCATION
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William Newsome, Jr., Vice-Chair - District 3
Dr. Chandra Varia, Member - District 2
Keith Smallwood, Member - District 4
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Consent Agenda Item (Action Item): Consider/Approve proposal with S&ME for site survey for the Prestonsburg High School Track Improvements.

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

Fiscal/Budgetary Impact: Services provided will be \$13,095.

History/Background:

April 29, 2022

Board approved RossTarrant for the track improvements (Order# 20027).

June 27, 2022

Board approved BG-1 (Order# 20072).

Recommended Action: To approve proposal as presented, pending KDE Approval.

Contact Person(s): Linda Hackworth, 606-874-9569

NA
Principal

Linda Hackworth
Director

Anna W. Shepherd
Superintendent

Date: August 17, 2022

July 12, 2022

TO: Sarah J. Lamere, AIA, LEED AP BD+C

FROM: Emma Moore, EIT
RossTarrant Architects, Inc.

RE: Prestonburg HS Track Improvement
Floyd County, Kentucky
RTA 2233

RTA has received and reviewed the site survey proposals from Endris, ACES, and S&ME. I have prepared the following in summary:

Company	Turn Around Time	Lump Sum Total
Endris	4 Weeks	\$13,850
ACES	N/R	N/R
S&ME	4 Weeks	\$13,095

Endris Engineering

Endris Engineering presented a lump sum fee of \$13,850 for the proposed topographic survey. Fieldwork may begin immediately once a notice to proceed has been sent. Endris will provide the completed work within four (4) weeks after notice to proceed has been sent.

ACES

ACES was non-responsive.

S&ME

S&ME presented a lump sum fee of \$13,095 for the proposed topographic survey. Fieldwork may begin immediately once a notice to proceed has been sent. S&ME will provide the completed work within four (4) weeks after notice to proceed has been sent.

Conclusion

Based on cost and scope of work to be performed, we are recommending **S&ME** be awarded the survey work for the project. If you have any questions, please let me know.

END OF MEMORANDUM

Sincerely,

Emma Moore, EIT

MEMORANDUM
July 13, 2022
Page 2

Enclosures

c: Michael B. Mays, PE
Sarah J. Lamere, AIA, LEED AP BD+C
Michael T. Hughes, AIA, LEED AP
File 2233-1A
ME220712-Survey-summary-2233



July 5, 2022

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

Attention: Ms. Emma Moore, EIT

Reference: **Proposal for Site Topographic Survey**
Prestonsburg High School Track, Floyd County, KY
S&ME Proposal Number 22830170

Dear Ms. Moore:

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 you via email on June 29, 2022 for a Site Topographic Survey of the area outlined in orange on the attached aerial photo. The area designated encompasses approximately 6 acres and includes buildings, parking lots, drives, sidewalks, athletic facilities and utilities.

♦ 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 45 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 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 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 scope does not include any boundary surveying services.

◆ CLIENT RESPONSIBILITIES

We request that the client provide us the following:

- Access to the site;
- Access to record drawings prior to conducting the survey;
- Copies of any previous surveys; and
- Our fee estimate 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.

◆ FEE

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

Topographic Survey	\$ 10,225.00
Private Utility Locator *	\$ 2,869.12

* Includes 5% handling fee.

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 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.**

Proposal for Site Topographic Survey

Prestonsburg High School Track, Floyd County, KY
S&ME Proposal Number 22830170



♦ **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. Leake'.

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

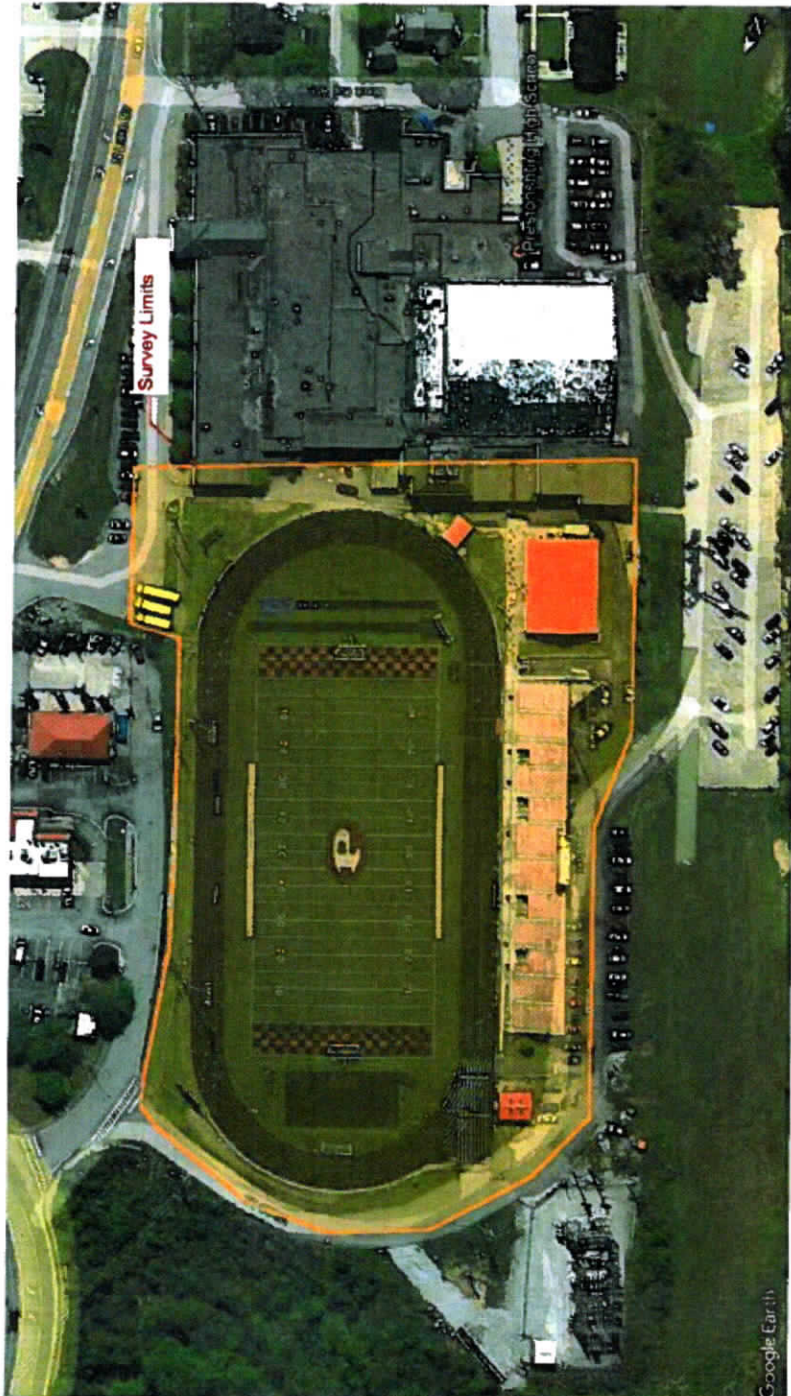
A handwritten signature in blue ink, appearing to read 'Michael Galavotti'.

Michael Galavotti, P.E.
Senior Engineer

Attachments: Aerial Photo
 Man-Hour/Cost Estimate
 The Underground Detective Estimate
 Agreement for Services



Aerial Photo





Man-Hour / Cost Estimate



Man-Hour/Cost Estimate, Proposal # 22830170

Prestonsburg High School, Prestonsburg, KY- Topographic Survey

Activity	Professional Land Surveyor	CADD Drafter	Survey Tech	Man-Hour Totals
Task 1 Deed Research & Plot	na			0
Task 2 Locate Existing Property Monuments	na			0
Task 3 Survey Control & Benchmarks	2			2
Task 4 Existing Structures	8			8
Task 5 Finished Floor Elevations	1			1
Task 6 Existing Walks and Drives	8			8
Task 7 Existing Utilities				
a) Water Lines	2			2
b) Sanitary Sewers	3			3
c) Gas Piping	1			1
d) Storm Sewers	4			4
e) Electric Lines	3			3
d) Communication Lines	1			1
d) Chilled Water Lines	na			0
Task 8 Utility Operators	1			1
Task 9 Site Contours	4			4
Task 10 Landscape Features (trees)	1			1
Task 11 Site Survey Drafting		40		40
Task 12 Flood Certification	1			1
Total Man-Hours	40	40	0	80
Labor Rate*	\$ 150.00	\$ 80.00	\$ 80.00	
Labor Cost	\$ 6,000.00	\$ 3,200.00	\$ -	\$ 9,200.00
* Includes labor, overhead, fringe benefits and profit				
Subtotal				\$ 9,200.00

Direct Expenses

Mileage 2 trips x 250 mi x \$0.75/mi	\$ 375.00		
Per-diem	\$ 650.00		
Total	\$ 1,025.00	Total Direct Expenses	\$ 1,025.00

Lump Sum Fee \$ 10,225.00



The Underground Detective Estimate

Estimate



Estimate Details

Company Address: 9192 Cokeson Ave
Cincinnati, Ohio 45251
United States
Phone: (888) 747-7994

Created Date: 6/30/2022
Quote Number: 00038533

Address Information

Account Name: S&ME - Lexington
Bill To: 2020 Liberty Road Suite 105
Lexington, Kentucky 40505
United States

Account Location: Prestonsburg HS
Job Street: R25 Blackcat Boulevard
Job City: Prestonsburg
Job State: KY
Job Zip Code: 41653

Description: Markout of the designated area 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 wire/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 those 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 can be given UPON REQUEST, but are NOT guaranteed.
-Customer responsible in calling 811 approximately 48 hours before TUD will arrive.

Expiration Date: 7/30/2022

Prepared By: Daniel Geopfinger
Phone: (513) 659-3366
Email: dange@tupinet.com

Subtotal	\$2,732.50
Discount	0.00%
Total Price	\$2,732.50
Grand Total	\$2,732.50

Terms

We appreciate the opportunity! Schedule online at www.TheUndergroundDetective.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 the limitations of technology including water leak detection, the undersigned (Customer) hereby acknowledges and agrees that The Underground Detective of Greater Cincinnati (TUD) shall have no responsibility for Customer's or Customer's designee's excavation of any underground facility, whether marked or unmarked by TUD. Customer further acknowledges and agrees that (1) he or she hereby

**AGREEMENT FOR SERVICES**

Form AS-071

Date: 7/5/2022	Job Number: 22830170
S&ME, Inc. (hereafter Consultant)	Client Name: (hereafter Client)
Address: 2020 Liberty Road Suite 105 City: Lexington State: KY Zip: 40505	Address: City: State: Zip:
Telephone: 859-293-5518 Fax: 859-299-2481	Telephone: Fax:
PROJECT	
Project Name: Prestonsburg High School Track, Site Topographic Survey Project location: (Street Address) 825 Blackcat Blvd. City: Prestonsburg State: KY Zip: 41653	
SERVICES TO BE RENDERED	
Proposal Number: 22830170 dated: 7/5/2022 is incorporated into this Agreement For Services and this Agreement For Services is incorporated into this Proposal.	

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

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

- 1. ACCEPTANCE:** Client hereby accepts this offer by Consultant to provide the Services as contained in Consultant's Proposal and agrees that such Services and any additional Services performed by Consultant shall be governed by this Agreement. If Client directs that Services commence prior to execution of this Agreement, Client agrees that commencement of Services by Consultant is acceptance of the terms of this Agreement. **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, ARE EXPRESSLY REJECTED, AND THE TERMS OF THIS AGREEMENT SHALL GOVERN.** Unless this offer is previously accepted, it will be withdrawn automatically at 5:00 pm EST, thirty (30) days from the date of issue.
- 2. CONTRACT DOCUMENTS:** "Contract Documents" shall mean this Agreement for Services the Proposal identified under "SERVICES TO BE RENDERED," and all mutually executed Change Orders. This Agreement for Services along with the Contract Documents represent the entire understanding and agreement between the parties relating to the Services and supersedes any and all prior negotiations, discussions, and agreements, whether written or oral, between the parties regarding same. Any terms and conditions which Client is obligated to perform or satisfy, whether by law or contract, or proposed in any acknowledgments or acceptance by Client which are in addition to, or different from, this Agreement for Services along with the Contract Documents are hereby expressly rejected and shall not become part of the agreement between the

parties without Consultant's specific written consent. Any acceptance by Client is limited to acceptance of the express terms set forth in this Agreement for Services.

3. **SCOPE OF SERVICES:** Unless otherwise stated in writing, Client assumes sole responsibility for determining whether the quantity and the nature of the services included in Consultant's proposal received by Client are adequate and sufficient for Client's intended purpose. Client shall communicate the provisions of this Agreement for Services to each and every third party to whom Client transmits any part of Consultant's work. Consultant shall have no duty or obligation to any third party except as specifically set forth in Consultant's proposal.

Consultant has provided Client with the Proposal identified under "Services to be Rendered." By signing below, Client agrees that Client or the Client's representative has examined Consultant's proposal, which includes a scope of work to be performed by Consultant, an opinion on the cost to perform Consultant's scope of work, and an opinion on the amount of time required to perform Consultant's scope of work along with any other documents, opinions, or advice prepared or provided by Consultant and Client agrees that Client is fully satisfied with Consultant's Proposal and Client obtained the advice of any other consultant(s) as the Client deems necessary to protect the Client's interests. Client also agrees by signing below it is responsible for requesting additional services not included in Consultant's proposal and if necessary, Client agrees it is responsible (even if delegated to a third party) for notifying and scheduling Consultant so Consultant can perform the Services. Consultant shall not be responsible for damages caused by services not performed due to any failure to request or schedule Consultant's Services. If project conditions change materially from those described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.

Consultant shall not supervise, direct or have control over the Client's work nor have any responsibility for the construction means, methods, techniques, sequences or procedures selected by the Client's contractor and/or agents. These rights and responsibilities are solely those of the contractor or agent in accordance with its' agreement with Client. Only Client has the right to reject or stop work of its contractor or agents. Consultant's presence on site does not in any way guarantee the completion, quality or performance of the work by any other party retained by Client. Consultant does not guarantee the performance of any contractor or agent of Client and shall not be responsible for the such party's failure to perform its' work in accordance with any applicable documents, including but not limited to, the plans and specifications or any applicable laws, codes, rules or regulations.

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 provide a change order proposal including Client's requested changes to the scope of Services for Client's review and approval. Following Client's approval, Client shall provide written acceptance and such Change Order Proposal shall become part of the Contract Documents and shall supersede any prior conflicting terms. If Client does not follow these procedures, but instead directs Consultant to perform changed or additional work without an executed change order, (1) the Services are changed according to Consultant's understanding of Client's direction; and (2) and Consultant will be paid for this work according to the current fee schedule plus fifteen percent (15%).
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. Unless otherwise agreed prior to the start of the Services, Consultant will submit 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.

The following information is required for CONSULTANT to properly submit invoices to the CLIENT. Completion is required before execution of this document.

Purchase Order Number (if not required, note NA): _____
CLIENT Project Number (if not required, note NA): _____
Email Address for Submitting Invoices (if not allowed, note NA): _____
Website for Invoice Submission (if not required, note NA): _____
For Website Invoice Submission, include instructions for sign-up and process document for invoice submission.
Monthly deadline for invoice submission to ensure prompt processing (if none, note NA): _____
Legal Entity Name required on invoice: _____
Address required on invoice: _____
CLIENT Accounts Payable contact name: _____
CLIENT Accounts Payable contact phone number: _____
CLIENT Accounts Payable email address: _____

Additional invoicing instructions: _____

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 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. **NO 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. **INSTRUMENTS OF SERVICE:** In connection with the performance of the Services, Consultant may 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 ("Instruments of Service"). Statements made in Consultant's Instruments of Service are opinions based upon engineering judgment and are not to be construed as representations of fact. 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 has no authority and no 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:** Samples are consumed in testing or disposed of upon completion of tests (unless stated otherwise in the Services).
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 retains 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 (or obtain from the Owner should the Client not be the Owner) 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 Client shall 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) The Client shall furnish, at the Client's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. The Consultant may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof.
 - (f) In order to make informed decisions based on the Instruments of Service, Client's review and study of the Instruments of Service is vital to take full advantage of the consulting process. Client shall review in detail all Instruments of Service, including attachments and references therein, and in the event of questions or concerns, shall contact the project manager. Consultant provides information in the Instruments of Service which assists the Client and/or user in understanding and using the deliverable. The

information includes direction on the extent to which the information can be relied on and applied to Client's decision-making process.

(g) 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.

(h) 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. **To the extent authorized under Kentucky law**, 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.

14. **CERTIFICATIONS:** Client understands and agrees that Consultant's Instruments of Services are limited to an expression of professional opinion based upon the Services performed by the Consultant and does not constitute a warranty or guarantee, either express or implied. In addition, Client agrees that Consultant will not be required to execute any document that would result in certifying, guaranteeing or warranting the existence of conditions whose existence the Consultant cannot reasonably ascertain.

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. **To the extent authorized under Kentucky law**, 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 or changed 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.

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 resume performance of the Services covered by this Agreement as soon as reasonably possible. If the force majeure event adversely affects the scope or schedule, Client agrees to modify the Scope of Services and the estimate of charges, such revision to be in writing and signed by the parties and incorporated into 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:** Consultant shall indemnify Client from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent caused by the negligent acts, errors, or omissions of Consultant in the performance of services under this Agreement.
21. **DISPUTE RESOLUTION:** In the event of a dispute between Consultant and Client with regard to any matter arising out of or related to this Agreement, the Parties will use their best efforts to resolve the dispute amicably using negotiation and mediation within fifteen (15) calendar days. If the dispute cannot be settled amicably, the Parties agree that the dispute shall be resolved by litigation in a court of competent jurisdiction within the State where project is located
22. **ASSIGNMENT:** Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party.
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 without regard to choice of law provisions. 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 Agreement 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, and all remaining provisions shall continue in full force and effect.
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.

27. **NO THIRD PARTY LIABILITY:** Nothing in this Agreement or as a consequence of any of the Services provided gives any rights or benefits to anyone other than Client and Consultant. All duties and responsibilities undertaken pursuant to this Agreement are for the sole and exclusive benefit of Client and Consultant and not for the benefit of any other party. No third party shall have the right to rely on the Instruments of Service without Consultant's prior written consent and the third party's agreement to be bound to the same terms and conditions as the Client.
28. **INDIVIDUAL 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.

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)

Alan W. Leake, PLS

(Print Name / Title)

DATE: _____

DATE: 7/5/2022

PROPOSAL NUMBER: 22830170

Client's FAXED or DIGITAL signature to be treated as original signature

Hackworth, Linda (MAINT)

From: Shaw, Jonathan <jshaw@psbb-law.com>
Sent: Thursday, August 11, 2022 11:41 PM
To: Hackworth, Linda (MAINT)
Subject: "Caution: External Email" RE: "Caution: External Email" Fwd: Prestonburg Track Survey Summary - 2233

External Email Notice

Caution: This message originated from outside the Floyd County School's Organization. Be aware of the sender and any suspicious links.

We need to add "to the extent authorized under Kentucky law" at paragraph 13(h) at beginning of third sentence AND paragraph 15 beginning of second sentence. Otherwise this looks ok to me.

Jonathan C. Shaw J.D., M.B.A.
Attorney

PORTER, BANKS, BALDWIN **SHAW, PLLC**
ATTORNEYS AT LAW

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P.O. Drawer 1767
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Internet: <http://www.psbblaw.com/>

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From: Hackworth, Linda (MAINT) <linda.hackworth@floyd.kyschools.us>
Sent: Thursday, August 11, 2022 1:25 PM
To: Shaw, Jonathan <jshaw@psbb-law.com>
Subject: FW: "Caution: External Email" Fwd: Prestonburg Track Survey Summary - 2233

Can you look over contract and let me know if its ok to present for board approval this month?
Thanks

From: Michael Hughes <mhughes@rosstarrant.com>
Sent: Thursday, August 11, 2022 10:24 AM
To: Hackworth, Linda (MAINT) <linda.hackworth@floyd.kyschools.us>
Subject: "Caution: External Email" Fwd: Prestonburg Track Survey Summary - 2233

External Email Notice

Caution: This message originated from outside the Floyd County School's Organization. Be aware of the sender and any suspicious links.

Linda,

Please add approval of attached Prestonsburg track survey contract to the next board agenda. Let me know if you have questions.

Michael Hughes, AIA, LEED AP

From: Kevin McCalla <kmccalla@rosstarrant.com>

Sent: Thursday, August 11, 2022 9:25:02 AM

To: Michael Hughes <mhughes@rosstarrant.com>

Subject: FW: Prestonburg Track Survey Summary - 2233

Please find attached our letter of recommendation for the Prestonsburg HS surveyor. If acceptable and approved at the next board meeting, the attached proposal will need to be signed and returned to our office.

Thanks,



KEVIN A. MCCALLA PLA ASLA LEED BD+C
senior landscape architect

rosstarrant architects
101 old lafayette avenue lexington, kentucky 40502
p 859.254.4018 x1321 | www.rosstarrant.com | [facebook](https://www.facebook.com/rosstarrant)

From: Emma Moore <emoore@rosstarrant.com>

Sent: Wednesday, July 13, 2022 9:06 AM

To: Sarah Lamere <slamere@rosstarrant.com>

Cc: Michael Hughes <mhughes@rosstarrant.com>; Kevin McCalla <kmccalla@rosstarrant.com>

Subject: RE: Prestonburg Track Survey Summary - 2233

Sarah,

S&ME just offered to lower their turnaround time to four weeks so I am recommending S&ME only.

I have updated the summary and attached only their proposal.

Thanks!



EMMA MOORE, EIT
civil designer

rosstarrant architects
[101 old lafayette avenue lexington, kentucky 40502](#)
p 859 254 4018 | [www.rosstarrant.com](#) | [facebook](#)

From: Emma Moore
Sent: Wednesday, July 13, 2022 9:00 AM
To: Sarah Lamere <slamere@rosstarrant.com>
Cc: Michael Hughes <mhughes@rosstarrant.com>; Kevin McCalla <kmccalla@rosstarrant.com>
Subject: Prestonburg Track Survey Summary - 2233

Sarah,

Please see the attached survey summary. I have recommended either S&ME or Endris and left it to the board to decide if turnaround time is critical.

I have attached both proposals, only the chosen company's proposal needs to be signed. Let me know if you have any questions.

Thanks!



EMMA MOORE, EIT
civil designer

rosstarrant architects
[101 old lafayette avenue lexington, kentucky 40502](#)
p 859 254 4018 | [www.rosstarrant.com](#) | [facebook](#)

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Special Called Meeting
April 29, 2022 5:00 PM
Central Office
Drs. Chandra and Mahendra Media Center
Eastern, KY 41645

Attendance Taken at : 5:00 PM

Present Board Members:

Ms. Linda Gearheart
Mr. William Newsome
Dr. Chandra Varia
Mr. Steve Slone
Mr. Keith Smallwood

Anna Shepherd, Board Secretary was in attendance and Board Attorney was absent.

1. Call to Order - Roll Call

2. Consider/Approve Architect(s) for the Running Tracks at Prestonsburg High School and South Floyd elementary

Order #20027 - Motion Passed: Approval of Architect "Ross Tarrant" for the Running Tracks at Prestonsburg High School and South Floyd elementary passed with a motion by Mr. Keith Smallwood and a second by Mr. Steve Slone.

5 Yeas - 0 Nays

Ms. Linda Gearheart	Yes
Mr. William Newsome	Yes
Dr. Chandra Varia	Yes
Mr. Steve Slone	Yes
Mr. Keith Smallwood	Yes

3. Consider/Approve the reconfiguration of May Valley Elementary

Order #20028 - Motion Passed: Approval of the reconfiguration of May Valley Elementary to a K-8 School, leaving DACE allocation as is this coming year and allowing the current 6th graders to finish out their elementary education at DACE if they so desire passed with a motion by Dr. Chandra Varia and a second by Mr. Steve Slone.

5 Yeas - 0 Nays

Ms. Linda Gearheart	Yes
Mr. William Newsome	Yes
Dr. Chandra Varia	Yes
Mr. Steve Slone	Yes
Mr. Keith Smallwood	Yes

C. Accept Notification of Personnel Matters

Order #20069 - Motion Passed: passed with a motion by Mr. Keith Smallwood and a second by Mr. William Newsome.

5 Yeas - 0 Nays

Ms. Linda Gearheart	Yes
Mr. William Newsome	Yes
Dr. Chandra Varia	Yes
Mr. Steve Slone	Yes
Mr. Keith Smallwood	Yes

1. Actions Taken

2. Requests for Leaves of Absences

D. Receive report from CMTA Energy Solutions on the Guaranteed Energy Savings Project

Order #20070 - Motion Passed: Received report from CMTA Energy Solutions on the Guaranteed Energy Savings Project passed with a motion by Mr. William Newsome and a second by Dr. Chandra Varia.

5 Yeas - 0 Nays

Ms. Linda Gearheart	Yes
Mr. William Newsome	Yes
Dr. Chandra Varia	Yes
Mr. Steve Slone	Yes
Mr. Keith Smallwood	Yes

E. Consider/Approve Standard Form of Agreement between Owner (FCBOE) and RossTarrant for the Prestonsburg High School Track Improvements

Order #20071 - Motion Passed: Approval of Standard Form of Agreement between Owner (FCBOE) and RossTarrant for the Prestonsburg High School Track Improvements passed with a motion by Mr. William Newsome and a second by Dr. Chandra Varia.

5 Yeas - 0 Nays

Ms. Linda Gearheart	Yes
Mr. William Newsome	Yes
Dr. Chandra Varia	Yes
Mr. Steve Slone	Yes
Mr. Keith Smallwood	Yes

F. Consider/Approve BG-1 for the Prestonsburg High School Track Improvements

Order #20072 - Motion Passed: Approval of BG-1 for the Prestonsburg High School Track Improvements passed with a motion by Mr. William Newsome and a second by Dr. Chandra Varia.

5 Yeas - 0 Nays

Ms. Linda Gearheart	Yes
Mr. William Newsome	Yes