

DEPARTMENT OF FACILITIES

TONY ROTH, DIRECTOR

GEORGE BROCK, MAINTENANCE SUPERVISOR

THOMAS STOKES, CUSTODIAL SUPERVISOR

ANDREA ROCK, ENERGY MANAGER

MEMO

TO: Dr. Jesse Bacon, Superintendent

FROM: Tony Roth, Director of Buildings and Grounds **Tony**

Date: March 7, 2023

RE: Special Inspection Services: Football Stadium Projects

At this time, I am requesting the Board's approval to accept Patriot Engineering and Environmental, Inc. to provide special inspection services for the soil, concrete and steel inspections for the High School Football Stadium Projects at Bullitt Central, North Bullitt and Bullitt East High Schools.

Request for Proposals were issued to four (4) companies and three (3) proposals were provided as listed below:

- Patriot Engineering and Environment, Inc. \$32,340.00 (Estimated Lump Sum Fee)
- Consulting Services, Inc. (CSI) \$57,500.00 (Estimated Lump Sum Fee)
- ECS Southeast, LLP \$84,300.00 (Estimated Lump Sum Fee)
- S&ME Non-Responsive

The post-bid BG-1 included an estimated cost of \$150,000 for special inspections by a third-party agency. Please note, special inspections services are rendered based on actual time expended – fees noted here are an estimate based on the Construction Documents at the time the RFP was issued.

If you have any questions or comments, please do not hesitate to contact me.

Attachments:

- Special Inspections Services Recommendation
- Proposal for Quality Control Testing, CSI Geotech
- Proposal for Construction Materials, ECS Southeast, LLP
- Special Inspections, Materials Testing/Observations, Patriot Engineering

Mood

OUR MISSION IS TO INSPIRE AND EQUIP OUR STUDENTS TO SUCCEED IN LIFE

BULLITT COUNTY PUBLIC SCHOOLS IS AN EQUAL EDUCATION AND EMPLOYMENT INSTITUTION

March 16, 2023



Special Inspections Services Recommendation

TO: Bullitt County Schools
Tony Roth, Director of Facilities
1040 Highway 44 East
Shepherdsville, KY 40165

REFERENCE: Special Inspection Services for:
High School Football Stadiums
Bullitt Central, North Bullitt, Bullitt East High Schools
BG# 23-157 | *ska#* 2022-57

Mr. Roth:

We are recommending **Patriot Engineering and Environmental, Inc.** to provide special inspection services for the soil, concrete and steel inspections for the High School Football Stadium Projects at Bullitt Central, North Bullitt and Bullitt East High Schools. Request for Proposals were issued to four (4) companies and three (3) proposals were provided as listed below:

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If you have any questions or comments, please do not hesitate to contact me.

Sincerely,
Studio Kremer Architects

Cate Noble Ward, AIA | Partner

enclosures –

- (1) Patriot – Special Inspections Proposal – Bullitt High School Football Stadiums
- (2) CSI – Special Inspections Proposal – Bullitt High School Football Stadiums
- (3) ECS Southeast – Special Inspections Proposal – Bullitt High School Football Stadiums

studio **k r e m e r** architects

1231 S Shelby St, Louisville, KY 40203
TEL 502.499.1100 FAX 502.499.1101



CONSULTING SERVICES INCORPORATED

Geotechnical & Materials Engineering | IBC Special Inspection | Material Testing

March 15, 2023

Bullitt County Public Schools
1040 Highway 44 East
Shepherdsville, Kentucky 40165

Attn: Mr. Tony Roth

Subject: **Proposal for Quality Control Testing**
Bullitt County High School Football Stadiums Improvements
Bullitt Central, North Bullitt and Bullitt East High Schools
Shepherdsville, Kentucky
CSI Proposal No. 8392

Dear Mr. Roth:

Consulting Services Incorporated (CSI) appreciates the opportunity to provide our proposal for providing Special Inspection and Quality Control Testing services for the referenced project. This proposal is being provided in response to the request for proposal received via email on March 8, 2023 and provides a discussion of project information, our proposed scope of services, and associated fees.



PROJECT INFORMATION AND APPROACH

Since CSI is the Geotechnical Engineer of Record (GER), we are very familiar with the project details having been part of the design team. Although the building code does not require the GER to perform the Special Inspections, it has been long recognized that having the GER team perform the inspections provides the consistency needed to assure that the recommendations of the geotechnical report are properly interpreted and implemented. Having the GER team perform the inspections also saves time on the construction schedule as the GER team will be in position to identify and evaluate site conditions that may impact the report recommendations.

The project will include construction of three new 3,000 seat "Home" I-Beam Grandstands with prefabricated press boxes and cast-in-place concrete foundations, miscellaneous A-Frame aluminum bleachers, site work that supports the installation of a synthetic turf football field, running track expansions and new running track over an existing geothermal field.

We understand the construction period for this projects is scheduled for 6 months beginning March 3, 2023 with substantial completion by September 1, 2023.

It is our understanding that Special Inspection services are required for the construction of the new addition and they are intended to comply with Chapter 17 of the Kentucky Building Code and section 014110 of the project specifications. The KBC Special Inspection services have been identified to be provided during the following work divisions:

- Structural Steel Construction - KBC Citation 1705.2
- Concrete Construction - KBC Citation 1705.3
- Soil Construction - KBC Citation 1705.6

Our staff assigned to the project will be equipped with laptop computers and up to date software. This technology will allow for our staff to deliver paperless reports immediately.

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



KBC SPECIAL INSPECTION SERVICES

We will provide qualified construction KBC Special Inspection and construction quality assurance testing services in accordance with the project plans and specifications. The following scope of services have been prepared based on our review and understanding of the project documents provided as well as the requirements of KBC for providing Special Inspections.

STRUCTURAL STEEL CONSTRUCTION - KBC CITATION 1705.2

1. Periodically verify certification numbers on bolt, nut and washer containers correspond to the approved construction documents
2. Periodically verify Welders certification, confirm welding procedures and confirm welder identification system utilized
3. Periodically perform visual observation of welds to confirm conformance with D1.1
4. Periodically observe and document the materials used for high-strength bolts, nuts and washers are in accordance with AISC 360
5. Periodically verify bolted connections conform to RCSC specification for structural joints using ASTM A325 or A490 bolts

6. Periodically observe installation of steel frame connections to verify conformance to approved construction documents for completeness and construction
7. Continuously observe each type and size of adhesive anchors

CONCRETE CONSTRUCTION - KBC CITATION 1705.3

1. Periodically observe the Grade, Placement and Condition of Reinforcing Steel as per ACI 318.
2. Periodically observe anchors to be installed in concrete prior to and during the placement of concrete.
3. Periodically verify the use of the required design mix as per ACI 318
4. Periodically verify anchors installed in hardened concrete comply with ACI 318.
5. Periodically verify the use of required design mix.
6. Continuously verify placement techniques are within requirements of ACI 318 and the project specifications.
7. Continuously sample and test fresh concrete for slump, air content, temperature and produce compression test specimens as per ASTM C172, C31 and ACI 318. Perform compressive-strength tests as per ASTM C39.
8. Periodically observe the specified curing temperature and techniques as per ACI 318.
9. Periodically verify erection of precast concrete members.
10. Periodically verify formwork for shape, location and dimensions of the concrete member being formed.

SOILS CONSTRUCTION - KBC CITATION 1705.6

1. Periodically observe and test the site soil conditions, fill placement and load-bearing requirements to determine if these items are in compliance with the recommendations of the approved geotechnical investigation.
2. Periodically verify excavations are extended to the proper depth and have reached proper material to meet the bearing capacity requirements.
3. Periodically observe the site preparations as according to project documents.
4. Periodically verify classification and testing of fill materials.
5. Continuously verify the use of prior materials, densities and lift thickness during placement and compaction of fill materials.

GENERAL

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

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



COMPENSATION

We have reviewed the project documents to aid in development of our proposal. Based on the documents reviewed and our experience with providing these services on similar projects, **we have established a Lump Sum Fee of \$57,500 to perform the required KBC Special Inspections.**

We will invoice monthly based on a percent complete of the required special inspection and testing items through September 1, 2023. Other events that may result in additional costs can include:

1. Returning to the site for retesting and/or re-observations of services previously found deficient. . We agree to perform any retesting as requested by you or your representative. However, you will be liable to CSI for payment of the services, not the contractor, as CSI will not be contracted with the contractor.
2. Subsurface conditions different than those expected or encountered during the geotechnical exploration.
3. Engineering support for evaluating site conditions.
4. Site and/or other meetings requested by design or construction team to resolve issues related to construction deficiencies, changes in scope or other unforeseen items.
5. Services provided beyond 10-hours per workday, on Saturdays, Sundays, or Holidays. These services will be billed as additional services at the overtime rate shown in the fee schedule portion of this proposal.
6. Services provided beyond September 30, 2023.

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



SCHEDULING

We will provide personnel at the request of your designated on-site personnel. We request 48 hours prior to the start of construction and 24 hours notice each time our presence at the job site is required afterward.

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



AUTHORIZATION

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

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

Sincerely,

CONSULTING SERVICES INCORPORATED

A handwritten signature in blue ink, reading 'Shayne Brashear', is written over a light blue circular background. The signature is fluid and cursive.

Shayne Brashear
Principal

Fee Schedule

Construction Observation and Materials Testing Services

Construction Engineering Inspector – Day Rate,	\$ 650.00
Construction Engineering Inspector – Half Day Rate,	\$ 475.00
Construction Engineering Inspector –Overtime Rate, Hourly,	\$ 90.00
Certified NDT Weld Inspector - Day Rate	\$ 850.00
Certified Weld/Framing Inspector - Day Rate	\$ 750.00
Certified Weld/Framing Inspector - Half Day Rate	\$ 500.00
Certified Weld/Framing Inspector –Overtime Rate, Hourly,	\$ 135.00
Certified SFRM Inspector - Day Rate	\$ 750.00
Certified Firestop Inspector - Day Rate	\$ 750.00
Fab Shop Inspection - Day Rate	\$ 950.00

Engineering Services

Project Engineer, per hour	\$ 100.00
Senior Engineer, per hour	\$ 125.00
Project Manager, per hour (included in daily rate)	\$ 90.00
Project Manager/Engineer, per day (for site meetings/visits)	\$ 500.00

Laboratory Testing Services

Concrete Compressive Sets (4"x8" Set of 5), each	\$ 95.00
Grout Sample Set (Set of 4), each	\$ 85.00
Mortar Cubes (Set of 3), each	\$ 50.00
Standard Proctor (ASTM D 698), each	\$ 185.00
Sieve Analysis for Aggregates (ASTM C 136), each	\$ 200.00

Miscellaneous

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

- Services and fees not listed will be quoted on request.
- A minimum of 24 hours advance notice is requested for scheduling or canceling field services.
- Overtime Rates applies to services provided beyond 10 hours per work day (Monday through Friday), or on Saturdays, Sundays, or Holidays. This cost is not included in the noted fee.

PROPOSAL ACCEPTANCE AGREEMENT

CSI SERVICES:			
Services Description:	KBC SPecial Inspections		
Project Name:	Bullitt County High School Football Stadiums Improvements		
Proposal Number:	8392	Proposal Date:	March 15, 2023
CLIENT – CSI will perform the Services referenced in the Proposal for and charge the Invoice to the account of:			
Client Name:	Bullitt County Public Schools		
Full Address:	1040 Highway 44 East Shepherdsville, Kentucky 40165		
Company Contact:	Mr. Tony Roth		
E-mail Address:	tony.roth@bullitt.kyschools.us		

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

TERMS AND CONDITIONS

1. STANDARD OF CARE

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

2. RELATIONSHIP OF PARTIES

CSI, its employees, agents, affiliates or subcontractors shall act solely as an independent contractor in performing the Services. CSI shall have no right or authority to act for Client and will not enter into any agreement in the name of or on behalf of Client unless otherwise agreed in writing. Nothing in these Terms & Conditions shall be construed to give any rights or benefits to any party other than Client and CSI. Unless otherwise authorized in writing by CSI, there are no intended third party beneficiaries to these terms and conditions or to any work product or services by CSI; Client is the sole intended and agreed beneficiary of CSI's services and work product. Client agrees that should CSI elect to grant reliance to a third party lender, the third party must first sign CSI's Reliance and Potential Conflict of Interest agreement.

3. DOCUMENTS & CONFIDENTIALITY

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

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

4. CSI REPRESENTATIONS

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

5. CLIENT REPRESENTATIONS

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

6. SUBTERRANEAN STRUCTURES, UTILITIES, WETLAND ISSUES

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

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

7. INDEMNITIES

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

8. RISK ALLOCATION AND LIABILITY LIMITATION

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

9. DISPUTE RESOLUTION COSTS

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

10. MONITORING

This paragraph applies in the event CSI is retained by Client to provide a Site representative for the purpose of monitoring specific portions of construction work or other field activities as set forth in the Proposal. In this case, CSI will report observations and its professional opinions to the Client. No action of CSI or CSI's Site representative shall be construed as

altering any contract between Client and third parties. The CSI representative has no right to reject or stop work of any Client agent; such rights are reserved solely for Client. Furthermore, CSI's presence on-site does not in any way guarantee the completion or quality of the performance of the work of any third party. CSI will not be responsible for and will not have control or charge of specific means, methods, techniques, sequences, or procedures of any third party or any agent of the Client.

11. SAMPLING OR TEST LOCATION.

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

12. WASTES; SAMPLES

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

13. DELAYS; CHANGED CONDITIONS

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

14. DISCOVERY OF HAZARDOUS MATERIALS

Client represents that it has made a reasonable effort to evaluate if hazardous materials are on or near the Site, and that Client has informed CSI of Client's findings relative to the possible presence of such materials. Hazardous materials may exist where there is no reason to believe they could or should be present. CSI and Client agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the Proposal or termination of the Services. CSI and Client also agree that the discovery of unanticipated hazardous materials may make it necessary for CSI to take immediate measures to protect health and safety of its personnel. Client agrees to compensate CSI for any equipment decontamination or other costs incident to the discovery of unanticipated hazardous materials. CSI agrees to notify Client when unanticipated or suspected hazardous materials are encountered. Client shall make any and all disclosures required by

law to the appropriate governing agencies. Client also agrees to hold CSI harmless for any and all consequences of disclosures made by CSI that are required by governing law or ethical canon. In the event the Site is not owned by the Client, Client shall be responsible for informing the Site owner of the discovery of unanticipated or suspected hazardous materials. Notwithstanding any other provision of the Agreement, Client waives any claim against CSI and, to the maximum extent permitted by law, agrees to defend, indemnify, and hold harmless CSI from any claim, liability, and defense costs for injury or loss arising from CSI's discovery and disclosure or reporting of unanticipated or suspected hazardous materials, including, but not limited to, any project delay costs and any costs associated with possible reduction of the Site's value.

In connection with toxic or hazardous substances or constituents and to the maximum extent permitted by applicable law, for separate and valuable consideration of the promises contained in this environmental indemnity language (which is a valuable and fundamental inducement to CSI to provide services to Client), Client agrees to defend, hold harmless, and indemnify CSI from and against any and all claims, liabilities, or judgments, except to the extent finally determined as being caused by CSI's negligence or willful misconduct (such exception being always subject to the "Risk Allocation and Liability Limitation" provision set out elsewhere herein), resulting from:

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

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

15. MONITORING WELLS

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

16. TERMINATION

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

17. ASSIGNMENTS

Neither these Terms & Conditions nor any interest, claim or obligation hereunder shall be assigned or transferred by Client to any party or parties without the prior consent of CSI. Nothing herein shall prevent CSI from using CSI's subcontractors to assist in performing the Services.

18. NON-WAIVER; INVALIDITY.

In the event that a provision herein shall for any reason be held invalid, illegal or unenforceable in any respect, such finding shall not affect the enforceability of any other provision of these Terms & Conditions. Failure or delay in exercising any right, power or remedy under these Terms & Conditions shall not impair any right, power or remedy which any party hereto may have, nor shall any such failure or delay be construed to be a waiver of any such right, power or remedy or an acquiescence

in any breach or default hereunder absent an express, written waiver or acquiescence, nor shall any waiver of any breach or default be deemed a waiver of any default or breach subsequently occurring under these Terms & Conditions. These Terms & Conditions may be executed via facsimile or by transmitting originals; any number of executed counterparts will constitute one and the same instrument.

19. APPLICABLE LAW; VENUE; SURVIVAL

This agreement shall be governed by the laws of the Commonwealth of Kentucky. Venue for any action arising from this contract shall be in Fayette County, Kentucky. Should any claim or litigation arise between CSI and Contractor in which CSI is deemed by a judge, jury, arbitrator(s) or other adjudicative body to be successful, in whole or in part, Contractor shall reimburse CSI all of CSI's costs associated with defending or pursuing the claim including, but not limited to, all attorneys fees and costs. Paragraphs 3, 7 and 8 will survive termination of this Agreement for any cause.

20. PRECEDENCE; AMENDMENTS

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

21. CONTINUING AGREEMENT

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

22. CONFLICTS OF INTEREST

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

PAYMENT TERMS:

CSI will be compensated for performing the Services in accordance with the Proposal referenced above. Invoices will be issued monthly. Client agrees to pay all charges not in dispute within 30 days of receipt of CSI's invoice and recognizes that charges not paid within 30 days are subject to a late payment charge of 1.5 percent (1.5%) (but not to exceed the maximum applicable legal rate) of the balance due for each additional month or fraction thereof that undisputed charges remain unpaid. The Client shall notify CSI within 10 days of receipt of CSI's invoice should the invoice contain charges the Client intends to dispute. Client agrees to pay any and all collection costs on overdue invoices, including reasonable attorneys' fees.

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



ECS Southeast, LLP

Proposal for Construction Materials Testing and Special Inspections Services

Bullitt County High School Football Stadiums-Grandstand & Press Box

Bullitt Central, North Bullitt and Bullitt East

Shepherdsville, Bullitt County, Kentucky 40047

ECS Proposal Number 61- P3064, P3065, P3066

March 15, 2023





March 15, 2023

Tony Roth, Director of Facilities
Bullitt County Public Schools
1040 Hwy 44 East
Shepherdsville, KY 40165

Reference: Proposal for Construction Materials Testing and Special Inspection Services
Bullitt County High School Football Stadiums
Grandstand & Press Box
Bullitt Central, North Bullitt and Bullitt East High Schools
Bullitt County, Kentucky 40047
ECS Proposal Number 61: P3064

Dear Mr. Roth:

ECS Southeast, LLP (ECS) appreciates this opportunity and is pleased to present this proposal for Construction Materials Testing (CMT) and Special Inspection (SI) Services for the above referenced project. We have formulated a scope of service based on our understanding of the project, our experience performing similar services throughout the region, and our review of the project documents provided to us.

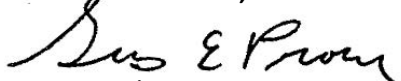
Our 20 years of experience in the area helps us provide efficient, cost-effective CMT, SI, and engineering consulting services. Additionally, our automated Field Reporting and Electronic Distribution (FRED) system provides efficient reporting of our services. Our FRED system is a completely digital and efficient method of information transmittal. Using a hand-held tablet, our Field Technicians write their reports on site and transmit them to our office. The Project Manager/Principal Engineer then reviews the report before it is automatically sent to you via email, within hours of completion. Everyday construction problems in the field can be resolved quickly by the project engineer, thus saving the client time and money.

Our Louisville branch is staffed with professional engineers and EITs, geologists, project managers, special inspectors (including certified welding inspector), and laboratory and field technicians. Additionally, we are fully accredited by AMRL in accordance with ASTM E329 in materials testing and Special Inspections.

We feel certain that ECS can offer high quality service and value to your project. If you have any questions or comments regarding our proposal, please contact us. We look forward to hearing from you.

Respectfully,

ECS SOUTHEAST, LLP


Gus Probus, PE
CMT Department Manager


Liz Blandford Newcomb, PE
Principal Engineer

PROJECT UNDERSTANDING

The proposed construction will consist of three new 3,000 seat “Home” Grandstands with prefabricated press boxes for existing football stadiums at Bullitt Central, North Bullitt and Bullitt East High Schools. The planned construction will be supported by approximately 50 isolated column foundations with the stairs supported by a turndown slab on grade. A second concrete sidewalk will be located between the grandstand support. The grandstand will consist of prefabricated steel structures.

SCOPE OF SERVICES

Based on our review of provided documents dated January 25, 2023, discussions with the project team, and other related projects, we anticipate providing the following construction materials testing services:

Soils:

1. Perform Dynamic Cone Penetrometer testing to verify materials below shallow foundations are adequate to support the design bearing capacity.
2. Verify excavations are extended to proper depth and have reached proper materials
3. Perform testing and observations during placement and compaction of the fill material to verify lift thickness, material type, and compaction efforts comply with the approved report.
4. Observe conditions of excavation subgrades prior to foundation preparation or fill placement, including proofrolling and other testing of subgrades.

Reinforced Concrete (Cast-in-place):

1. Observe placement of reinforcing steel for compliance with the project plans and specifications prior to the placement of concrete.
2. Observe the installation of anchor bolts in concrete prior to and during placement of concrete.
3. Observe the installation of post-installed anchors in hardened concrete.
4. Observe formwork for shape, location, and dimensions of concrete members being formed.
5. Document the use of the required design concrete mix.
6. Perform physical property tests including slump, air content, and concrete temperature at the time fresh concrete is sampled and obtain samples for strength testing.
7. Observe concrete placement for proper application techniques.
8. Observe maintenance of specified curing temperature and techniques.
9. Utilize Contractor provided proper storage and curing facilities for the first 24 hours after casting of cylinder specimens.

Structural Steel:

Structural steel observations and nondestructive testing of structural steel elements shall be in accordance with the quality assurance inspection requirements of AISC 360, including (but not limited to) the following:

1. Structural Steel Welded Connections:

- a. Confirm compliance with Welding Procedure Specifications (WPS).
- b. Perform continuous or periodic inspections as necessary for complete and partial penetration groove welds, multi-pass fillet welds, and single pass fillet welds $\leq 5/16"$.
2. Structural Steel Bolted Connections:
 - a. Observe that identification markings for bolts, nuts, and washer types conform to ASTM standards specified in the approved construction documents.
 - b. Observe bearing type connections.
 - c. Observe snug tight connections for faying surface interaction and bolt tightening.
 - d. Observe pre-tensioned connections for faying surface interaction and pre-tensioning methods (turn of nut, tension controlled, etc.).
 - e. Observe slip-critical connections for faying surface preparation, faying surface interaction and pre-tensioning methods (turn of nut, tension controlled, etc.).
 - f. Observe steel frame joint details for compliance with approved construction drawings in regards to details such as bracing and stiffening, member locations, and application of joint details at each connection.
3. Material Documentation of Structural Steel:
 - a. Confirm identification markings conform to ASTM standards specified in the approved construction documents.
 - b. Observe manufacturer's certified mill test reports.

ESTIMATED FEE

Our estimated fee for providing the scope of services mentioned above will be on the order of **\$84,300.00**, for all three project sites (approximately \$28,000.00 per site), based on our current understanding of the project specifications and schedule. Estimated fees are detailed on the attached spreadsheet. Our estimated fees do not include a contingency for cancelled work, reinspection services, etc. Our fees will be invoiced on a time and materials basis, as scheduled by the project team. If any of the assumed work is not required (i.e. sidewalks, etc.) these services will not be included in the invoicing.

These services are not full time, on-site observations unless otherwise noted herein, are required by project documents, or building code, or shown as such on the attached cost estimate. Any services in addition to those outlined in this proposal will be billed in accordance with the unit rate schedule provided. Additional site visits for specific tasks of retesting failed tests or technician hours more than 8 hours per day have not been included in our fee estimate. It is our understanding that the required services have been included in our unit price list and accounted for in our fee estimate. Should supplemental services be deemed necessary at a later date, they will be invoiced at the rate noted on the fee schedule in effect at that time, unless otherwise agreed upon in advance.

The services described above will be rendered portal-to-portal from our office, with a mileage charge of \$1.00 per mile. Our unit rates are based on a normal 8-hour workday, Monday through Friday. Overtime beyond 40 hours/week, outside of the hours of 7:30 am and 5:30 pm, and on Saturday, Sunday and Holidays will be invoiced at a rate of 1.5 times the normal hourly rate indicated above.

UNDERSTANDING CONSTRUCTION MATERIALS TESTING

Construction Materials Testing (CMT) is performed to help provide the project's contractors, designers, owners, and local code officials some indication of the level of compliance obtained by the installing contractors with the project specification. These services are provided at intervals defined by the project specifications and/or by the applicable building code. Test locations for most materials (i.e., soils, concrete, fireproofing, etc.) are generally based upon a percentage or area as such not all materials incorporated into a construction project are tested or observed.

The greater the testing frequency, the higher the confidence level that the test results are representative of other untested areas, however, no amount of testing can assure 100% compliance. Testing and observations provided by ECS do not relieve the installing contractors from their obligation to install all materials in accordance with the applicable project plans and specifications. ECS makes a reasonable effort to test in accordance with the applicable project requirements and identify areas of materials that may not comply with the project specifications. However, due to the periodic and random nature of our testing, we cannot guarantee that all materials have been installed in accordance with the specifications.

The responsibility to correct or remediate non-complying conditions, even non-complying conditions discovered after testing or during subsequent phases of construction remains solely with the installing contractors.

REPORTING, BILLING, COMMUNICATION, AND CONTRACT CONDITIONS

You will be issued daily field reports and laboratory test reports as part of our service. Because our reporting systems are fully computerized, we are generally able to submit field reports and laboratory results within 48 hours of testing. If deficiencies in procedures or materials are recognized in the field, the general contractor will be verbally notified as soon as possible so that the problem may be resolved prior to the performance of additional work. Deficient laboratory results are reported by e-mail to the client, structural engineer, and general contractor by the Project Engineer. Copies of reports will be forwarded to each party by e-mail as requested by the client, at no extra charge, as part of our service. Upon request, ECS will provide a separate invoice for services provided outside the scope of services for the estimated cost.

All scheduling requests must be made by 3:00 pm the day prior to service so that the proper personnel may be scheduled for the required task. The appropriate contractor or owner representative should contact our scheduler or project manager to provide the appropriate level of staffing to meet the project requirements. Scheduling requests should be coordinated with our in-house scheduler or project manager at least 24 hours in advance of the scheduled work and between the hours of 8:00 am and 5:00 pm on normal working days (i.e., Monday through Friday, not holidays or weekends). Each scheduling request will be assigned a work order number so that the scheduled testing is documented.

Invoices will be issued on a monthly basis and will provide a week-by-week breakdown of billing units, unless modified by request of the client. They are normally processed on or around the 10th of each month and represent costs incurred during the previous month. These invoices will also display a monthly cumulative summary of project costs to date. This monthly summary will serve as a means of monitoring job expenses as they relate to job progress. We request that payment be rendered within 30 days of

receipt of the invoice. ECS reserves the right to assess a finance charge of 1.5% per month on the outstanding balance over 30 days. ECS also reserves the right to withhold final certifications until outstanding balances have been paid in full.

SUMMARY AND ACCEPTANCE

Attached to this letter, and an integral part of our proposal, are our “General Conditions of Service”. These conditions represent the current recommendations of the GeoProfessional Business Association, the Consulting Engineers' Council, and the Geo-Institute of the American Society of Civil Engineers.

Our insurance carrier requires that we receive written authorization prior to initiation of work, and a signed contract prior to the release of any work product. This letter is the agreement for our services. Your acceptance of this proposal may be indicated by signing and returning the enclosed copy to us. We are pleased to have this opportunity to offer our services and look forward to working with you on the project.

ECS SOUTHEAST, LLP
2023 FEE SCHEDULE
CONSTRUCTION MATERIALS TESTING (CMT)

Field Services

1. Engineering Technician	\$ 65.00/hour
2. Senior Engineering Technician	\$ 75.00/hour
3. Specialty Technician (Firestopping, Fireproofing).....	\$105.00/hour
4. Senior Specialty Technician (PT, Deep Foundations, Wood Framing, etc.)	\$110.00/hour
5. Structural Steel/CWI	\$110.00/hour
6. Ultrasonic Tech/Senior CWI	\$130.00/hour

Professional & Administrative Services

1. Principal Level	\$250.00/hour
2. Senior Project Level.....	\$200.00/hour
3. Project Level.....	\$150.00/hour
4. Staff Professional Level	\$130.00/hour
5. Administrative Level.....	\$ 60.00/hour

Laboratory Services/Miscellaneous

1. Compressive strength of concrete cylinders (ASTM C-39)	\$ 18.00/each
2. Compressive strength of grout prisms (ASTM C-1019)	\$ 23.00/each
3. Standard Proctor Moisture Density Relationships (ASTM D-698)	\$250.00/each
4. Atterberg Limits Tests (ASTM D-4318).....	\$120.00/each
5. Sieve Analyses (ASTM D-1140).....	\$120.00/each
6. Natural Moisture Contents (ASTM D-2216)	\$ 15.00/each
7. Equipment Maintenance Fees	
a. General Equipment	\$ 35.00/day
b. Nuclear Gauge.....	\$ 95.00/day
c. Floor Flatness (D-Meter)	\$175.00/day
8. Mileage.....	\$ 1.00/mile
9. Project Setup Fee	\$250.00/each
10. Summary Letter.....	\$500.00/permit

Notes:

- 1) In order to effectively respond to your needs, we request at least 24 hours advance notice for scheduling or canceling field services.
- 2) "On-call" work will be staffed by available qualified personnel. Higher rates will apply if senior personnel are utilized.
- 3) Overtime rates are billed at 1.5X the hourly rates. Overtime rates are charged for services performed before 7:30 AM, after 5:30 PM, over 8 hours per day, Saturdays, Sundays, and Holidays.
- 4) Work canceled after 4:00 PM the day prior to the scheduled work date, and all will-call reservations, will be subject to a minimum charge of one hour. Each authorized field visit will be charged 3 hours minimum time. This minimum charge will apply if work is cancelled after ECS personnel have already been dispatched to the project.
- 5) Technician time (field, senior, specialty, senior specialty, structural steel, etc.) is charged for field services, support services and work preparation including review of specifications, drawings and test lab data; consultation with project manager/engineer; consultation with client representative(s); mobilization; travel time portal to portal; demobilization; and field report preparation.
- 6) Project Manager/Engineer time is charged for authorized consultation; scheduling; weekly review of field and/or laboratory reports; general time to maintain project; and for preparation of summary reports, if requested. Principal Engineer time is charged for authorized consultation; and weekly review of field and/or laboratory reports.
- 7) A 0.5-hour technician time will be billed for lab processing of each set of cast concrete or grout samples.
- 8) A 0.75-hour technician time will be billed for loading/unloading and securing of a nuclear density gauge for each day of use.
- 9) Mileage charges may be adjusted if the federal mileage reimbursement rate increases.
- 10) Listed and unlisted fees will be reviewed on a quarterly basis and may be adjusted to account for the changing economic climate (i.e., inflation, etc.). ECS will notify you if the review changes the rates of the fee schedule.
- 11) Fees for unlisted services will be provided as needed.

**PROPOSAL ACCEPTANCE FORM
ECS SOUTHEAST, LLP**

Project Name: Bullitt County High School Football Stadiums-Grandstands & Press Box

Location: Shepherdsville, Bullitt County, Kentucky

Please complete and return this Proposal Acceptance Form to ECS as shown at the bottom of this form. By signing and returning this form, you are providing us with authorization to proceed, providing us permission to enter the site, and making this proposal the agreement between us. Your signature also indicates that you have read this document and the Terms and Conditions of Service in its entirety, accept these terms, and agree to pay for these services.

CLIENT AND BILLING INFORMATION

Name of Client: _____

Contact Person: _____

Telephone No. _____

E-mail: _____

Responsible for Payment

Approval of Invoice (if different)

Contact Name: _____

Company Name: _____

Address _____

Address _____

City, State, Zip _____

Telephone No.: _____

Fax No: _____

E-mail Address: _____

The reports are normally e-mailed directly to client. If you require copies to others, please provide their names, e-mail addresses and fax numbers below.

Name	e-mail Address	Phone Number	Fax Number
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Special Instructions: _____

Client Signature: x _____

Date: _____

ECS SOUTHEAST, LLP TERMS AND CONDITIONS OF SERVICE

The professional services (the "Services") to be provided by ECS SOUTHEAST, LLP ["ECS"] pursuant to the Proposal shall be provided in accordance with these Terms and Conditions of Service ("Terms"), including any addenda as may be incorporated or referenced in writing shall form the Agreement between ECS and Client.

1.0 INDEPENDENT CONSULTANT STATUS - ECS shall serve as an independent professional consultant to CLIENT for Service on the Project, identified above, and shall have control over, and responsibility for, the means and methods for providing the Services identified in the Proposal, including the retention of Subcontractors and Subconsultants

2.0 SCOPE OF SERVICES - It is understood that the fees, reimbursable expenses and time schedule defined in the Proposal are based on information provided by CLIENT and/or CLIENT'S contractors and consultants. CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, if conditions are discovered that could not be reasonably foreseen, or if CLIENT orders additional services, the scope of services will change, even while the Services are in progress.

3.0 STANDARD OF CARE

3.1 In fulfilling its obligations and responsibilities enumerated in the Proposal, ECS shall be expected to comply with and its performance evaluated in light of the standard of care expected of professionals in the industry performing similar services on projects of like size and complexity at that time in the region (the "Standard of Care"). Nothing contained in the Proposal, the agreed-upon scope of Services, these Terms and Conditions of Service or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guaranty of any nature whatsoever.

3.2 CLIENT understands and agrees that ECS will rely on the facts learned from data gathered during performance of Services as well as those facts provided by the CLIENT. CLIENT acknowledges that such data collection is limited to specific areas that are sampled, bored, tested, observed and/or evaluated. Consequently, CLIENT waives any and all claims based upon erroneous facts provided by the CLIENT, facts subsequently learned or regarding conditions in areas not specifically sampled, bored, tested, observed or evaluated by ECS.

3.3 If a situation arises that causes ECS to believe compliance with CLIENT'S directives would be contrary to sound engineering practices, would violate applicable laws, regulations or codes, or will expose ECS to legal claims or charges, ECS shall so advise CLIENT. If ECS' professional judgment is rejected, ECS shall have the right to terminate its Services in accordance with the provisions of Section 25.0, below.

3.4 If CLIENT decides to disregard ECS' recommendations with respect to complying with applicable Laws or Regulations, ECS shall determine if applicable law requires ECS to notify the appropriate public officials. CLIENT agrees that such determinations are ECS' sole right to make.

4.0 CLIENT DISCLOSURES

4.1 Where the Scope of Services requires ECS to penetrate a Site surface, CLIENT shall furnish and/or shall direct CLIENT'S consultant(s) or agent(s) to furnish ECS information identifying the type and location of utility lines and other man-made objects known, suspected, or assumed to be located beneath or behind the Site's surface. ECS shall be entitled to rely on such information for completeness and accuracy without further investigation, analysis, or evaluation.

4.2 "Hazardous Materials" shall include but not be limited to any substance that poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample, and whether it exists in a solid, liquid, semi-solid or gaseous form. CLIENT shall notify ECS of any known, assumed, or suspected regulated, contaminated, or other similar Hazardous Materials that may exist at the Site prior to ECS mobilizing to the Site.

4.3 If any Hazardous Materials are discovered, or are reasonably suspected by ECS after its Services begin, ECS shall be entitled to amend the scope of Services and adjust its fees to reflect the additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.

5.0 INFORMATION PROVIDED BY OTHERS - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT's agents, contractors, or consultants, including such information that becomes incorporated into ECS documents.

6.0 CONCEALED RISKS - CLIENT acknowledges that special risks are inherent in sampling, testing and/or evaluating concealed conditions that are hidden from view and/or neither readily apparent nor easily accessible, e.g., subsurface conditions, conditions behind a wall, beneath a floor, or above a ceiling. Such circumstances require that certain assumptions be made regarding existing conditions, which may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of a building or component thereof. Accordingly, ECS shall not be responsible for the verification of such conditions unless verification can be made by simple visual observation. Client agrees to bear any and all costs, losses, damages and expenses (including, but not limited to, the cost of ECS' Additional Services) in any way arising from or in connection with the existence or discovery of such concealed or unknown conditions.

7.0 RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES

7.1 CLIENT warrants that it possesses the authority to grant ECS right of entry to the Site for the performance of Services. CLIENT hereby grants ECS and its subcontractors and/or agents, the right to enter from time to time onto the property in order for ECS to perform its Services. CLIENT agrees to indemnify and hold ECS harmless from

any claims arising from allegations that ECS trespassed or lacked authority to access the Site.

7.2 CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by ECS except where ECS' Proposal explicitly states that ECS will obtain such permits, licenses, and/or utility clearances.

7.3 ECS will take reasonable precautions to limit damage to the Site and its improvements during the performance of its Services. CLIENT understands that the use of exploration, boring, sampling, or testing equipment may cause minor, but common, damage to the Site. The correction and restoration of such common damage is CLIENT'S responsibility unless specifically included in ECS' Proposal.

7.4 CLIENT agrees that it will not bring any claims for liability or for injury or loss against ECS arising from (i) procedures associated with the exploration, sampling or testing activities at the Site, (ii) discovery of Hazardous Materials or suspected Hazardous Materials, or (iii) ECS' findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of contamination.

8.0 UNDERGROUND UTILITIES

8.1 ECS shall exercise the Standard of Care in evaluating client-furnished information as well as information readily and customarily available from public utility locating services (the "Underground Utility Information") in its effort to identify underground utilities. The extent of such evaluations shall be at ECS' sole discretion.

8.2 CLIENT recognizes that the Underground Utility Information provided to or obtained by ECS may contain errors or be incomplete. CLIENT understands that ECS may be unable to identify the locations of all subsurface utility lines and man-made features.

8.3 CLIENT waives, releases, and discharges ECS from and against any claim for damage, injury or loss allegedly arising from or related to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS' attention in writing by CLIENT, not correctly shown on the Underground Utility Information and/or not properly marked or located by the utility owners, governmental or quasi-governmental locators, or private utility locating services as a result of ECS' or ECS' subcontractor's request for utility marking services made in accordance with local industry standards.

9.0 SAMPLES

9.1 Soil, rock, water, building materials and/or other samples and sampling by-products obtained from the Site are and remain the property of CLIENT. Unless other arrangements are requested by CLIENT and mutually agreed upon by ECS in writing, ECS will retain samples not consumed in laboratory testing for up to sixty (60) calendar days after the issuance of any document containing data obtained from such samples. Samples consumed by laboratory testing procedures will not be restored.

9.2 Unless CLIENT directs otherwise, and excluding those issues covered in Section 10.0, CLIENT authorizes ECS to dispose of CLIENT'S non-hazardous samples and sampling or testing process by-products in accordance with applicable laws and regulations.

10.0 ENVIRONMENTAL RISKS

10.1 When Hazardous Materials are known, assumed, suspected to exist, or discovered at the Site, ECS will endeavor to protect its employees and address public health, safety, and environmental issues in accordance with the Standard of Care. CLIENT agrees to compensate ECS for such efforts.

10.2 When Hazardous Materials are known, assumed, or suspected to exist, or discovered at the Site, ECS and/or ECS' subcontractors will exercise the Standard of Care in containerizing and labeling such Hazardous Materials in accordance with applicable laws and regulations, and will leave the containers on Site. CLIENT is responsible for the retrieval, removal, transport and disposal of such contaminated samples, and sampling process byproducts in accordance with applicable law and regulation.

10.3 Unless explicitly stated in the Scope of Services, ECS will neither subcontract for nor arrange for the transport, disposal, or treatment of Hazardous Materials. At CLIENT'S written request, ECS may assist CLIENT in identifying appropriate alternatives for transport, off-site treatment, storage, or disposal of such substances, but CLIENT shall be solely responsible for the final selection of methods and firms to provide such services. CLIENT shall sign all manifests for the disposal of substances affected by contaminants and shall otherwise exercise prudence in arranging for lawful disposal.

10.4 In those instances where ECS is expressly retained by CLIENT to assist CLIENT in the disposal of Hazardous Materials, samples, or wastes as part of the Proposal, ECS shall do so only as CLIENT'S agent (notwithstanding any other provision of this AGREEMENT to the contrary). ECS will not assume the role of, nor be considered a generator, storer, transporter, or disposer of Hazardous Materials.

10.5 Subsurface sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or excavation/boring device moves through a contaminated zone and links it to an aquifer, underground stream, pervious soil stratum, or other hydrous body not previously contaminated, or connects an uncontaminated zone with a contaminated zone. Because sampling is an essential element of the Services indicated herein, CLIENT agrees this risk cannot be eliminated. Provided such services were performed in accordance with the Standard of Care, CLIENT waives, releases and discharges ECS from and against any claim for damage, injury, or loss allegedly arising from or related to such cross-contamination.

10.6 CLIENT understands that a Phase I Environmental Site Assessment (ESA) is conducted solely to permit ECS to render a professional opinion about the likelihood of the site having a Recognized Environmental Condition on, in, beneath, or near the Site at the time the Services are conducted. No matter how thorough a Phase I ESA study may be, findings derived from its conduct are highly limited and ECS cannot

know or state for an absolute fact that the Site is unaffected or adversely affected by one or more Recognized Environmental Conditions. CLIENT represents and warrants that it understands the limitations associated with Phase I ESAs.

11.0 OWNERSHIP OF DOCUMENTS

- 11.1** ECS shall be deemed the author and owner (or licensee) of all documents, technical reports, letters, photos, boring logs, field data, field notes, laboratory test data, calculations, designs, plans, specifications, reports, or similar documents and estimates of any kind furnished by it [the "Documents of Service"] and shall retain all common law, statutory and other reserved rights, including copyrights. CLIENT shall have a limited, non-exclusive license to use copies of the Documents of Service provided to it in connection with the Project for which the Documents of Service are provided until the completion of the Project.
- 11.2** ECS' Services are performed and Documents of Service are provided for the CLIENT'S sole use. CLIENT understands and agrees that any use of the Documents of Service by anyone other than the CLIENT, its licensed consultants and its contractors is not permitted. CLIENT further agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its contractors' use of ECS' Documents of Service.
- 11.3** CLIENT agrees to not use ECS' Documents of Service for the Project if the Project is subsequently modified in scope, structure or purpose without ECS' prior written consent. Any reuse without ECS' written consent shall be at CLIENT'S sole risk and without liability to ECS or to ECS' subcontractor(s). CLIENT agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its use of ECS' Documents of Service after any modification in scope, structure or purpose.
- 11.4** CLIENT agrees to not make any modification to the Documents of Service without the prior written authorization of ECS. To the fullest extent permitted by law, CLIENT agrees to indemnify, defend, and hold ECS harmless from any damage, loss, claim, liability or cost (including reasonable attorneys' fees and defense costs) arising out of or in connection with any unauthorized modification of the Documents of Service by CLIENT or any person or entity that acquires or obtains the Documents of Service from or through CLIENT. CLIENT represents and warrants that the Documents of Service shall be used only as submitted by ECS.

12.0 SAFETY

- 12.1** Unless expressly agreed to in writing in its Proposal, CLIENT agrees that ECS shall have no responsibility whatsoever for any aspect of site safety other than for its own employees. Nothing herein shall be construed to relieve CLIENT and/or its contractors, consultants or other parties from their responsibility for site safety. CLIENT also represents and warrants that the General Contractor is solely responsible for Project site safety and that ECS personnel may rely on the safety measures provided by the General Contractor.
- 12.2** In the event ECS assumes in writing limited responsibility for specified safety issues, the acceptance of such responsibilities does not and shall not be deemed an acceptance of responsibility for any other non-specified safety issues, including, but not limited to those relating to excavating, trenching, shoring, drilling, backfilling, blasting, or other construction activities.

13.0 CONSTRUCTION TESTING AND REMEDIATION SERVICES

- 13.1** CLIENT understands that construction testing and observation services are provided in an effort to reduce, but cannot eliminate, the risk of problems arising during or after construction or remediation. CLIENT agrees that the provision of such Services does not create a warranty or guarantee of any type.
- 13.2** Monitoring and/or testing services provided by ECS shall not in any way relieve the CLIENT'S contractor(s) from their responsibilities and obligations for the quality or completeness of construction as well as their obligation to comply with applicable laws, codes, and regulations.
- 13.3** ECS has no responsibility whatsoever for the means, methods, techniques, sequencing or procedures of construction selected, for safety precautions and programs incidental to work or services provided by any contractor or other consultant. ECS does not and shall not have or accept authority to supervise, direct, control, or stop the work of any contractor or consultant or any of their subcontractors or subconsultants.
- 13.4** ECS strongly recommends that CLIENT retain ECS to provide construction monitoring and testing services on a full time basis to lower the risk of defective or incomplete Work being installed by CLIENT'S contractor(s). If CLIENT elects to retain ECS on a part time basis for any aspect of construction monitoring and/or testing, CLIENT accepts the risks that a lower level of construction quality may occur and that defective or incomplete work may result and not be detected by ECS' part time monitoring and testing. Unless the CLIENT can show that the error or omission is contained in ECS' reports, CLIENT waives, releases and discharges ECS from and against any other claims for errors, omissions, damages, injuries, or loss alleged to arise from defective or incomplete work that was monitored or tested by ECS on a part time basis. Except as set forth in the preceding sentence, CLIENT agrees to indemnify and hold ECS harmless from all damages, costs, and attorneys' fees, for any claims alleging errors, omissions, damage, injury or loss allegedly resulting from Work that was monitored or tested by ECS on a part time basis.

14.0 CERTIFICATIONS - CLIENT may request, or governing jurisdictions may require, ECS to provide a "certification" regarding the Services provided by ECS. Any "certification" required of ECS by the CLIENT or jurisdiction(s) having authority over some or all aspects of the Project shall consist of ECS' inferences and professional opinions based on the limited sampling, observations, tests, and/or analyses performed by ECS at discrete locations and times. Such "certifications" shall constitute ECS' professional opinion of a condition's existence, but ECS does not guarantee that such condition exists, nor does it relieve other parties of the responsibilities or obligations such parties have with respect to the possible existence of such a condition. CLIENT agrees it cannot make the resolution of any dispute with ECS or payment of any amount due to ECS contingent upon ECS signing any such "certification."

15.0 BILLINGS AND PAYMENTS

- 15.1** Billings will be based on the unit rates, plus travel costs, and other reimbursable expenses as stated in the Professional Fees section of the Proposal. Any Estimate

of Professional Fees stated in these Terms shall not be considered as a not-to-exceed or lump sum amount unless otherwise explicitly stated. CLIENT understands and agrees that even if ECS agrees to a lump sum or not-to-exceed amount, that amount shall be limited to number of hours, visits, trips, tests, borings, or samples stated in the Proposal.

- 15.2** CLIENT agrees that all Professional Fees and other unit rates shall be adjusted annually to account for inflation based on the most recent 12-month average of the Consumer Price Index (CPI-U) for all items as established by www.bls.gov when the CPI-U exceeds an annual rate of 2.0%.
- 15.3** Should ECS identify a Changed Condition(s), ECS shall notify the CLIENT of the Changed Condition(s). ECS and CLIENT shall promptly and in good faith negotiate an amendment to the Scope of Services, Professional Fees, and time schedule.
- 15.4** CLIENT recognizes that time is of the essence with respect to payment of ECS' invoices, and that timely payment is a material consideration for this agreement. All payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the Professional Fees. Invoices are due and payable upon receipt.
- 15.5** If CLIENT disputes all or part of an invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within fifteen (15) calendar days of the invoice. CLIENT agrees to pay the undisputed amount of such invoice promptly.
- 15.6** ECS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute. All payments will be applied to accrued interest first and then to the unpaid principal amount. Payment of invoices shall not be subject to unilateral discounting or set-offs by CLIENT.
- 15.7** CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies, permits, final adjudication of a lawsuit, CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT'S client, or any other event unrelated to ECS provision of Services. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT. It is agreed that all costs and legal fees including actual attorney's fees, and expenses incurred by ECS in obtaining payment under this Agreement, in perfecting or obtaining a lien, recovery under a bond, collecting any delinquent amounts due, or executing judgments, shall be reimbursed by CLIENT.
- 15.8** Unless CLIENT has provided notice to ECS in accordance with Section 16.0 of these Terms, payment of any invoice by the CLIENT shall mean that the CLIENT is satisfied with ECS' Services and is not aware of any defects in those Services.

16.0 DEFECTS IN SERVICE

- 16.1** CLIENT, its personnel, its consultants, and its contractors shall promptly inform ECS during active work on any project of any actual or suspected defects in the Services so to permit ECS to take such prompt, effective remedial measures that in ECS' opinion will reduce or eliminate the consequences of any such defective Services. The correction of defects attributable to ECS' failure to perform in accordance with the Standard of Care shall be provided at no cost to CLIENT. However, ECS shall not be responsible for the correction of any deficiency attributable to CLIENT- furnished information, the errors, omissions, defective materials, or improper installation of materials by CLIENT's personnel, consultants or contractors, or work not observed by ECS. CLIENT shall compensate ECS for the costs of correcting such defects.
- 16.2** Modifications to reports, documents and plans required as a result of jurisdictional reviews or CLIENT requests shall not be considered to be defects. CLIENT shall compensate ECS for the provision of such Services.

17.0 INSURANCE - ECS represents that it and its subcontractors and subconsultants maintain Workers Compensation insurance, and that ECS is covered by general liability, automobile and professional liability insurance policies in coverage amounts it deems reasonable and adequate. ECS shall furnish certificates of insurance upon request. The CLIENT is responsible for requesting specific inclusions or limits of coverage that are not present in ECS insurance package. The cost of such inclusions or coverage increases, if available, will be at the expense of the CLIENT.

18.0 LIMITATION OF LIABILITY

- 18.1** CLIENT AGREES TO ALLOCATE CERTAIN RISKS ASSOCIATED WITH THE PROJECT BY LIMITING ECS' TOTAL LIABILITY TO CLIENT ARISING FROM ECS' PROFESSIONAL LIABILITY, I.E. PROFESSIONAL ACTS, ERRORS, OR OMISSIONS AND FOR ANY AND ALL CAUSES INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, INJURIES, DAMAGES, CLAIMS, LOSSES, EXPENSES, OR CLAIM EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) RELATING TO PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. THE ALLOCATION IS AS FOLLOWS.
- 18.1.1** If the proposed fees are \$10,000 or less, ECS' total aggregate liability to CLIENT shall not exceed \$20,000, or the total fee received for the services rendered, whichever is greater.
- 18.1.2** If the proposed fees are in excess of \$10,000, ECS' total aggregate liability to CLIENT shall not exceed \$40,000, or the total fee for the services rendered, whichever is greater.
- 18.2** CLIENT agrees that ECS shall not be responsible for any injury, loss or damage of any nature, including bodily injury and property damage, arising directly or indirectly, in whole or in part, from acts or omissions by the CLIENT, its employees, agents, staff, consultants, contractors, or subcontractors to the extent such injury, damage,

or loss is caused by acts or omissions of CLIENT, its employees, agents, staff, consultants, contractors, subcontractors or person/entities for whom CLIENT is legally liable.

- 18.3 CLIENT agrees that ECS' liability for all non-professional liability arising out of this agreement or the services provided as a result of the Proposal be limited to \$500,000.

19.0 **INDEMNIFICATION**

- 19.1 Subject Section 18.0, ECS agrees to hold harmless and indemnify CLIENT from and against damages arising from ECS' negligent performance of its Services, but only to the extent that such damages are found to be caused by ECS' negligent acts, errors or omissions, (specifically excluding any damages caused by any third party or by the CLIENT.)

- 19.2 To the fullest extent permitted by Law, CLIENT agrees to indemnify, and hold ECS harmless from and against any and all liability, claims, damages, demands, fines, penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ["Damages"] caused in whole or in part by the negligent acts, errors, or omissions of the CLIENT or CLIENT'S employees, agents, staff, contractors, subcontractors, consultants, and clients, provided such Damages are attributable to: (a) the bodily injury, personal injury, sickness, disease and/or death of any person; (b) the injury to or loss of value to tangible personal property; or (c) a breach of these Terms. The foregoing indemnification shall not apply to the extent such Damage is found to be caused by the sole negligence, errors, omissions or willful misconduct of ECS.

- 19.3 It is specifically understood and agreed that in no case shall ECS be required to pay an amount of Damages disproportional to ECS' culpability. **IF CLIENT IS A HOMEOWNER, HOMEOWNERS' ASSOCIATION, CONDOMINIUM OWNER, CONDOMINIUM OWNER'S ASSOCIATION, OR SIMILAR RESIDENTIAL OWNER, ECS RECOMMENDS THAT CLIENT RETAIN LEGAL COUNSEL BEFORE ENTERING INTO THIS AGREEMENT TO EXPLAIN CLIENT'S RIGHTS AND OBLIGATIONS HEREUNDER, AND THE LIMITATIONS, AND RESTRICTIONS IMPOSED BY THIS AGREEMENT. CLIENT AGREES THAT FAILURE OF CLIENT TO RETAIN SUCH COUNSEL SHALL BE A KNOWING WAIVER OF LEGAL COUNSEL AND SHALL NOT BE ALLOWED ON GROUNDS OF AVOIDING ANY PROVISION OF THIS AGREEMENT.**

- 19.4 **IF CLIENT IS A RESIDENTIAL BUILDER OR RESIDENTIAL DEVELOPER, CLIENT SHALL INDEMNIFY AND HOLD HARMLESS ECS AGAINST ANY AND ALL CLAIMS OR DEMANDS DUE TO INJURY OR LOSS INITIATED BY ONE OR MORE HOMEOWNERS, UNIT-OWNERS, OR THEIR HOMEOWNER'S ASSOCIATION, COOPERATIVE BOARD, OR SIMILAR GOVERNING ENTITY AGAINST CLIENT WHICH RESULTS IN ECS BEING BROUGHT INTO THE DISPUTE.**

- 19.5 **IN NO EVENT SHALL THE DUTY TO INDEMNIFY AND HOLD ANOTHER PARTY HARMLESS UNDER THIS SECTION 19.0 INCLUDE THE DUTY TO DEFEND.**

20.0 **CONSEQUENTIAL DAMAGES**

- 20.1 CLIENT shall not be liable to ECS and ECS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other or their employees, consultants, agents, contractors or subcontractors, regardless of the nature of the fault or whether such liability arises in breach of contract or warranty, tort, statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.

- 20.2 ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.

21.0 **SOURCES OF RECOVERY**

- 21.1 All claims for damages related to the Services provided under this agreement shall be made against the ECS entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity or any individual officer, director, or employee of ECS, specifically including its professional engineers and geologists.

- 21.2 In the event of any dispute or claim between CLIENT and ECS arising out of in connection with the Project and/or the Services, CLIENT and ECS agree that they will look solely to each other for the satisfaction of any such dispute or claim. Moreover, notwithstanding anything to the contrary contained in any other provision herein, CLIENT and ECS' agree that their respective shareholders, principals, partners, members, agents, directors, officers, employees, and/or owners shall have no liability whatsoever arising out of or in connection with the Project and/or Services provided hereunder. In the event CLIENT brings a claim against an affiliated entity, parent entity, subsidiary entity, or individual officer, director or employee in contravention of this Section 21, CLIENT agrees to hold ECS harmless from and against all damages, costs, awards, or fees (including attorneys' fees) attributable to such act.

- 22.0 **THIRD PARTY CLAIMS EXCLUSION** - CLIENT and ECS agree that the Services are performed solely for the benefit of the CLIENT and are not intended by either CLIENT or ECS to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to the AGREEMENT. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without written consent from both CLIENT and ECS, which shall include, at a minimum, the third-party's agreement to be bound to the same Terms and Conditions contained herein and third-party's agreement that ECS' Scope of Services performed is adequate.

23.0 **DISPUTE RESOLUTION**

- 23.1 In the event any claims, disputes, and other matters in question arising out of or relating to these Terms or breach thereof (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen (15) days of either party's written request for executive negotiation or as otherwise mutually agreed. Should this

meeting fail to result in a mutually agreeable plan for resolution of the Dispute, CLIENT and ECS agree that either party may bring litigation.

- 23.2 CLIENT shall make no claim (whether directly or in the form of a third-party claim) against ECS unless CLIENT shall have first provided ECS with a written certification executed by an independent engineer licensed in the jurisdiction in which the Project is located, reasonably specifying each and every act or omission which the certifier contends constitutes a violation of the Standard of Care. Such certificate shall be a precondition to the institution of any judicial proceeding and shall be provided to ECS thirty (30) days prior to the institution of such judicial proceedings.

- 23.3 Litigation shall be instituted in a court of competent jurisdiction in the county or district in which ECS' office contracting with the CLIENT is located. The parties agree that the law applicable to these Terms and the Services provided pursuant to the Proposal shall be the laws of the Commonwealth of Virginia, but excluding its choice of law rules. Unless otherwise mutually agreed to in writing by both parties, CLIENT waives the right to remove any litigation action to any other jurisdiction. Both parties agree to waive any demand for a trial by jury.

24.0 **CURING A BREACH**

- 24.1 A party that believes the other has materially breached these Terms shall issue a written cure notice identifying its alleged grounds for termination. Both parties shall promptly and in good faith attempt to identify a cure for the alleged breach or present facts showing the absence of such breach. If a cure can be agreed to or the matter otherwise resolved within thirty (30) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.

- 24.2 Either party may waive any right provided by these Terms in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.

25.0 **TERMINATION**

- 25.1 CLIENT or ECS may terminate this agreement for breach or these terms, non-payment, or a failure to cooperate. In the event of termination, the effecting party shall so notify the other party in writing and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.

- 25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate ECS for Services rendered and costs incurred including those Services associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.

26.0 TIME BAR TO LEGAL ACTION - Unless prohibited by law, and notwithstanding any Statute that may provide additional protection, CLIENT and ECS agree that a lawsuit by either party alleging a breach of this agreement, violation of the Standard of Care, non-payment of invoices, or arising out of the Services provided hereunder, must be initiated in a court of competent jurisdiction no more than two (2) years from the time the party knew, or should have known, of the facts and conditions giving rise to its claim, and shall under no circumstances shall such lawsuit be initiated more than three (3) years from the date of substantial completion of ECS' Services.

27.0 ASSIGNMENT - CLIENT and ECS respectively bind themselves, their successors, assigns, heirs, and legal representatives to the other party and the successors, assigns, heirs and legal representatives of such other party with respect to all covenants of these Terms. Neither CLIENT nor ECS shall assign these Terms, any rights thereunder, or any cause of action arising therefrom, in whole or in part, without the written consent of the other. Any purported assignment or transfer, except as permitted above, shall be deemed null, void and invalid, the purported assignee shall acquire no rights as a result of the purported assignment or transfer and the non-assigning party shall not recognize any such purported assignment or transfer.

28.0 SEVERABILITY - Any provision of these Terms later held to violate any law, statute, or regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of the issues covered by the original provision.

29.0 SURVIVAL - All obligations arising prior to the termination of the agreement represented by these Terms and all provisions allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of the agreement.

30.0 **TITLES: ENTIRE AGREEMENT**

- 30.1 The titles used herein are for general reference only and are not part of the Terms and Conditions.

- 30.2 These Terms and Conditions of Service together with the Proposal, including all exhibits, appendixes, and other documents appended to it, constitute the entire agreement between CLIENT and ECS. CLIENT acknowledges that all prior understandings and negotiations are superseded by this agreement.

- 30.3 CLIENT and ECS agree that subsequent modifications to the agreement represented by these shall not be binding unless made in writing and signed by authorized representatives of both parties.

- 30.4 All preprinted terms and conditions on CLIENT'S purchase order, Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by these Terms and Conditions of Service.

- 30.5 CLIENT's execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT'S acceptance of this Proposal and its agreement to be fully bound the foregoing Terms. If CLIENT fails to provide ECS with a signed copy of these Terms or the attached Work Authorization, CLIENT agrees that by authorizing and accepting the services of ECS, it will be fully bound by these Terms as if they had been signed by CLIENT.

ESTIMATED FEE
High School Football Stadiums Bullitt Co. Cost For All Three
ECS Southeast, LLP Proposal # 61-P3064,3065 &3066

CONSTRUCTION MATERIALS TESTING AND SPECIAL INSPECTIONS

	HRS/TRIP	TRIPS	RATE	TOTAL
<u>Concrete</u>^{2,3,4,5}				
Progress Meeting (1 per project site)	3	3	\$150.00	\$1,350.00
Foundations (5 per project site)	5	15	\$75.00	\$5,625.00
Piers (5 per project site)	5	15	\$65.00	\$4,875.00
Slab on Grade (4 per project site)	6	12	\$65.00	\$4,680.00
Sidewalks (4 per project site)	5	12	\$65.00	\$3,900.00
Cylinder Pick-Ups (18 per project site)	4	54	\$65.00	\$14,040.00
<u>Structure</u>⁶				
Progress Meeting (1 per project site)	3	3	\$150.00	\$1,350.00
Steel Beams and Members (2 per project site)	7	6	\$110.00	\$4,620.00
Bleacher Inspection (2 per project site)	7	6	\$110.00	\$4,620.00
SUBTOTAL				\$45,060.00

ENGINEERING & SUPPORT

	HRS/RPT	REPORTS	RATE	TOTAL
Principal Engineer (Senior Field Report Review)	0.25	111	\$250.00	\$6,937.50
Principal Engineer (Senior Lab Report Review)	0.10	330	\$250.00	\$8,250.00
Project Manager (Report Review)	0.25	111	\$150.00	\$4,162.50
Project Manager (Lab Report Review)	0.10	330	\$150.00	\$4,950.00
Project Manager (Management/Consultation - assumes approximately 1 hour per month)	6.00		\$150.00	\$900.00
Administrative Level (Daily Scheduling/Dispatch)	0.25	111	\$60.00	\$1,665.00
SUBTOTAL				\$26,865.00

MISCELLANEOUS SERVICES

	UNITS	RATE	TOTAL
Trip Charges (54 miles @ \$1.00/mile)	111	\$54.00	\$5,994.00
Concrete Cylinders	330	\$18.00	\$5,940.00
Proctor (with Atterburg Limits, and Moisture Content)	0	\$375.00	\$0.00
Proctor (DGA)	0	\$250.00	\$0.00
Nuclear Gauge Rental	0	\$95.00	\$0.00
Equipment Charge (DCP)	15	\$35.00	\$525.00
SUBTOTAL			\$12,459.00
TOTAL			\$84,384.00
10% Contingency			\$8,438.40
TOTAL w/ Contingency			\$92,822.40

NOTES:

- Travel time of 1.25 hour is included in each trip.
- Assumes 1 set of 5 concrete cylinders (1 at 7 days, 3 at 28 days, and 1 hold) every day or every 100 cubic yards, whichever is less.
- Foundation bearing evaluations will be conducted during the same site visit as reinforcing steel and concrete placement.
- Assumes shallow foundations, continuous wall foundations for exterior foundations and isolated column foundations for interior foundations.
- Assumes no additional field visits for undercutting of foundations due to unsuitable conditions.
- Assumes no reinspection visits will be required.
- Assumes that the entrances will be concrete pavement and the remainder of the pavements will be asphalt.
- Outside of the 10% contingency fee no additional time has been included for reinspections, remediation recommendations, cancelled work, etc.
- Time and number of field visits is estimated based on the provided information, our experience with similar projects and the area. These values are intended to be used for estimation purposes only and are not meant to be a not-to-exceed/lump sum value. Our fees will be invoiced on a time and materials basis in accordance with our current fee schedule in place at the time the fees are incurred.
- Our field visits are dependent on the contractor/owner's schedule and their representative contacting ECS in a timely manner (see scheduling notes in attached proposal) to schedule the required/requested observations and testing in accordance with project specifications.



**PATRIOT ENGINEERING
and ENVIRONMENTAL, Inc.**

Engineering Value for Project Success

March 9, 2023

Cate Noble Ward, AIA, LEEP AP
Architect/Partner
Studio Kremer Architects
1231 S. Shelby Street
Louisville, KY 40203
Office: 502-499-1100 x 2583
Email: Cate@studiokremer.com

Re: **Special Inspections, Materials Testing and Observations**
Bullitt Football Stadiums-Central, North, and East
Shepherdsville and Mt. Washington, Bullitt County, Kentucky
Patriot Proposal No.: P23-LOU-0032

Dear Cate:

We are pleased to submit our proposal to provide construction materials testing, special inspections and observations services for the referenced project. We are enclosing our Scope of Services, and Budget Estimate for your review.

Patriot Engineering is dedicated to providing you with quality testing and inspection services. Patriot will perform all testing and inspections in accordance with the applicable AWS, ASTM, ACI, ICC Building Code and local building code requirements.

Based on the projects Patriot has performed in the past that are very similar to this project, but not having a construction schedule to go by only a September 1, 2023 finish date, I am estimating our budget to be \$10,780.00 per school This includes all Certified Welding Inspector time, technician on-site time, drive time and mileage, special inspections, observations, materials testing, all laboratory testing, project manager report review and administrative duties. Our estimated scope of services and pricing are as follows:

- **Soils** - All required ICC/QC special inspection observations and material testing. Including: proof roll observations, any utility backfill monitoring, and proper subgrade preparation. As well as soil classifications and proctors.
- **Foundations** - All required ICC/QC special inspections and material testing. Including: bearing capacity, depth and width verification, rebar verification and concrete testing.

300 PRODUCTION COURT, LOUISVILLE, KENTUCKY 40299

PH. 502-961-5652 • FAX 502-961-9256 • WEB WWW.PATRIOTENG.COM

INDIANA • BLOOMINGTON, EVANSVILLE, FORT WAYNE, INDIANAPOLIS, LAFAYETTE, TERRE HAUTE
KENTUCKY • LOUISVILLE, OHIO • CINCINNATI, DAYTON, TENNESSEE • NASHVILLE



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- **Concrete** - All required ICC/QC observations and material testing. Including: reinforcing steel and formwork observation, mix design verification, sampling of plastic concrete, temperature, slump, air content, unit weight, compressive strength cylinders.
- **Structural Steel** - All required ICC/QC observations. Including: special inspections per AWS, visual weld inspections, fit-up and bolt torque inspections.

We appreciate the opportunity to offer our services to you on this project and look forward to working with you. If you have any questions or need any further information, please feel free to contact me at (502) 961-5646

Respectfully Submitted,

Patriot Engineering and Environmental, Inc.

G. Michael Vaught

G. Michael Vaught
Branch Manager/Principal

300 PRODUCTION COURT, LOUISVILLE, KENTUCKY 40299
PH. 502-961-5652 • FAX 502-961-9256 • WEB WWW.PATRIOTENG.COM

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**PATRIOT ENGINEERING
and ENVIRONMENTAL, Inc.**

Engineering Value for Project Success

March 9, 2023

Client: Studio Kremer Architects
1231 S. Shelby Street
Louisville, KY 40203

Project: Bullitt Co. Football Stadiums

Services

Our scope of services for this project can include but not limited to the inspection of: Soils, concrete, foundations, reinforcing steel, structural steel and all laboratory testing. Other services listed in our fee schedule may be performed on a time and materials basis as requested. All testing and inspection will be performed in accordance with applicable AWS, ACI, ASTM, and ICC Building Code requirements.

All field services can be covered with a senior technician if given **24-hour** notice. In the event less than 24-hour notice is given, Patriot will make every attempt to cover the project with a senior technician but may only have a project manager or senior project engineer available.

Cost of Services

Patriot proposes to provide all technician and laboratory testing on a unit price basis in accordance with the attached fee schedule and terms and conditions. **Prior to construction we would encourage a meeting between the two of us to better define our scope of work for this project and to better define our budget.** This will allow us to track the testing and inspection budget and report the percent budget expended each time we invoice. Typically invoicing is performed once per month.

As a formal authorization to proceed, please fill out and sign the Proposal Acceptance Agreement form included with the proposal, indicating proper billing instructions, and return an executed copy of the proposal for our files. Also, please note the Terms and Conditions included herein which is an integral part of this proposal. Alternatively, this work may be authorized by a written purchase order or a letter instructing us to proceed, which provides for Patriot's General Terms and Conditions

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**PATRIOT ENGINEERING
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Engineering Value for Project Success



Patriot Engineering and Environmental Co., Inc.
Construction Materials Testing and Inspection
Fee Schedule Effective for Duration of Project

Service	Quantity	Unit Price	Unit	Total
Soils Testing Services				
Soils Inspector Level II		\$ 60.00	Hour	\$ -
Soils Inspector Level II - Overtime		\$ 90.00	Hour	\$ -
Nuclear Density Gauge (D2922, D3017)		\$ 90.00	Day	\$ -
Standard Proctor (D698)		\$ 140.00	Each	\$ -
Modified Proctor (D1557)		\$ 165.00	Each	\$ -
Sieve Analysis (D422)		\$ 115.00	Each	\$ -
Atterberg Limits (D4318)		\$ 85.00	Each	\$ -
L.A. Abrasion (C131)		\$ 150.00	Each	\$ -
Soils Testing Subtotal				\$ -
Service	Quantity	Unit Price	Unit	Total
Concrete Testing Services				
Concrete Inspector Level II (ACI Certified)		\$ 60.00	Hour	\$ -
ICC Certified Reinforced Concrete Inspector		\$ 90.00	Hour	\$ -
ICC Certified Prestressed/Post-Tensioned Concrete Inspector		\$ 90.00	Hour	\$ -
On-Site Supervisor		\$ 82.50	Hour	\$ -
Concrete Cylinder Compression Test		\$ 16.00	Each	\$ -
Concrete Cylinder Cast by Others		\$ 25.00	Each	\$ -
Concrete Beams		\$ 45.00	Each	\$ -
Concrete Coring Rig		\$ 250.00	Day	\$ -
Diamond Bit Wear		\$ 8.50	Inch	\$ -
GPR Tests		\$ 750.00	Each	\$ -
Generator Rental		\$ 125.00	Day	\$ -
Floor Flatness/Floor Levelness		\$ 400.00	Each	\$ -
Concrete Testing Subtotal				\$ -
Service	Quantity	Unit Price	Unit	Total
Masonry Testing Services				
Masonry Inspector Level II		\$ 60.00	Hour	\$ -
ICC Certified Structural Masonry Inspector		\$ 90.00	Hour	\$ -
Mortar Cube Compression Test (C109)		\$ 12.00	Each	\$ -
Grout Cube Compression Test (C1019)		\$ 12.00	Each	\$ -
Concrete Block Compression Test (3 sample min.) (C140)		\$ 100.00	Sample	\$ -
Concrete Block Absorption Test (3 sample min.) (C140)		\$ 40.00	Sample	\$ -
Brick Compression Test (5 sample min.) (C87)		\$ 37.50	Sample	\$ -
Brick Absorption Test (5 sample min.) (C87)		\$ 35.00	Sample	\$ -
Masonry Testing Subtotal				\$ -

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Patriot Engineering and Environmental Co., Inc.

Construction Materials Testing and Inspection
Fee Schedule Effective for Duration of Project

Service	Quantity	Unit Price	Unit	Total
Structural Steel Services				
ICC Certified Fireproofing Inspector		\$ 90.00	Hour	\$ -
ICC Certified Structural Steel & Bolting/Welding Inspector		\$ 90.00	Hour	\$ -
Certified Welding Inspector		\$ 110.00	Hour	\$ -
Certified Welding Inspector - Overtime		\$ 140.00	Day	\$ -
Ground support - weekend		\$ 75.00	Hour	\$ -
Fireproofing Density Test (E805)		\$ 55.00	Each	\$ -
Fireproofing Bond Test (E805)		\$ 25.00	Each	\$ -
Structural Steel Subtotal				\$ -
Asphalt Testing Services				
Senior Asphalt Inspector Level II		\$ 80.00	Hour	\$ -
Nuclear Density Gauge		\$ 90.00	Day	\$ -
Extraction/Gradation Test		\$ 125.00	Each	\$ -
Density Test of Cored Specimen		\$ 55.00	Each	\$ -
Asphalt Testing Subtotal				\$ -
Professional Services				
Word Processing(Typing,mailing,faxing,e-mail)		\$ 85.00	Hour	\$ -
Per diem		\$ 250.00	Day	\$ -
Cerified Firestop Inspector		\$ 140.00	Hour	\$ -
Project Manager		\$ 145.00	Hour	\$ -
Senior Project Manager		\$ 200.00	Hour	\$ -
Principal Engineer, P.E.		\$ 210.00	Hour	\$ -
Mileage		\$ 0.95	Mile	\$ -
Professional Services Subtotal				\$ -
Estimated Project Total				\$ -

Minimum inspector charge of 4 hours per trip. (not applied to sample/specimen pickups)

All field services require a 24-hour notice.

Hazard premium applies for climbing structural steel or concrete.

Additional Project Manager fees may apply to field services not scheduled with 24-hour notice.

Rush premiums of 2 times the normal fee may apply to laboratory tests requiring rapid results.

All field services are charged portal to portal.

Overtime rates of 1.5 times the regular rates apply for all time over 8 hours per day, Saturdays, Sundays and Holidays.

Net terms for payment are 30 days.

Fees for other services not listed are available upon request.

Standard hours are between 8:00 AM and 5:00 PM

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CONSTRUCTION MATERIALS TESTING SERVICES TERMS AND CONDITIONS

1. SCOPE OF WORK

PATRIOT Engineering and Environmental Inc. (PATRIOT) shall perform the services defined in the attached proposal at the fees stated in the proposal or the attached fee schedule. Any estimate of time and materials shall not be considered as a fixed price, but only an estimate (unless otherwise specifically stated in this contract). PATRIOT will provide additional services at the listed standard fees. This offer will be valid for ninety (90) days unless otherwise stated. Upon acceptance, this proposal and associated terms and conditions shall become the contract.

2. RIGHT OF ENTRY

Client grants to PATRIOT the right of entry to the project site by its employees, agents, and subcontractors; to perform services, post signage, and represents that it has obtained the needed permits and licenses for the proposed work. If Client does not own the site, Client warrants and represents to PATRIOT that it has the authority and permission of the owner and occupant of the site to grant right of entry to PATRIOT.

3. PAYMENT TERMS

PATRIOT will submit invoices to the Client throughout the project and a final invoice upon completion of services. There shall be no retainage of fees due and payable to PATRIOT. Payment is due within fourteen (14) days of invoice receipt, regardless of whether the client has been reimbursed by any other party. Client agrees to pay interest of one and one-half percent (1½%) per month, or the maximum rate allowed by law, on past due accounts. Any attorney's fees, collection fees or other costs incurred in collecting any delinquent amount shall be paid by Client.

4. STANDARD OF CARE

The services shall be performed in accordance with generally accepted industry principles and practices, consistent with a level of care and skill ordinarily practiced by reputable members of the profession currently providing similar services under similar circumstances. Except as set forth herein, PATRIOT makes no other representation, guarantee, or warranty, express or implied, in fact or by law, whether any merchantability, fitness for any particular purpose or otherwise concerning

any of the services which may be furnished by PATRIOT to Client. Client agrees to give PATRIOT written notice of any breach or default under this section and to give PATRIOT a reasonable opportunity to cure such breach or default, without the payment of additional fees to PATRIOT, as condition precedent to any claim for damages.

5. INSURANCE AND GENERAL LIABILITY

PATRIOT maintains Workers' Compensation and Employers' Liability Insurance in compliance with the laws of the state having jurisdiction over the individual employee. PATRIOT has insurance coverage under general liability, property damage, and professional liability, which PATRIOT deems to be adequate. Certificates for such policies of insurance shall be provided to Client upon request. PATRIOT may provide additional insurance coverage beyond stated limits at the Client's request and expense.

6. RISK ALLOCATION

Due to the very limited benefit PATRIOT will derive from this project compared to that of other parties involved, including the Client, Client agrees to limit PATRIOT'S liability to Client or any other party using or relying on PATRIOT'S work with respect to any acts or omissions including, but not limited to, breach of this contract, breach of warranty, negligence, alleged defects in PATRIOT'S performance, or other legal theory such that the total aggregate liability of PATRIOT to all those named shall not exceed a maximum limit of \$25,000 or PATRIOT'S project fee for the services rendered on this project, whichever is less.

7. TERMINATION

Either party may suspend performance immediately upon becoming aware of a breach of the terms of this contract by the other party and provide notice of its intention to terminate. In the event PATRIOT determines there may be a significant risk that PATRIOT'S fees may not be paid on a timely basis, PATRIOT may suspend performance and/or retain any reports, work products, or other information until Client provides PATRIOT with adequate assurances of payment. The filing of a voluntary or involuntary bankruptcy petition, appointment of a receiver, assignment for the benefit of creditors or other similar act of

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insolvency shall constitute a breach. Termination will become effective seven (7) calendar days after receipt of notice by the breaching party unless the event(s) giving rise to the breach are remedied within the timeframe or the party seeking termination revokes its notice. Either party, without cause, may terminate this contract upon providing ten (10) calendar days written notice to the other party.

8. ASSIGNS

This contract may be amended by written instrument, e-mail confirmation, or written confirmation of a verbal agreement, acknowledged or signed by both parties. Client shall not assign this proposal or any reports or information generated as a result of contracted services pursuant to this proposal without written consent of *PATRIOT*.

9. SAFETY

PATRIOT'S responsibility for safety on site shall be limited to its own personnel, subcontractors, and any individuals who are directly involved with *PATRIOT'S* work on site. This shall not be construed to relieve the Client or any of its contractors from their responsibilities for maintaining a safe jobsite. Neither the professional activities of *PATRIOT*, nor the presence of *PATRIOT'S* employees and its subcontractors shall be construed to imply that *PATRIOT* has any responsibility for any activities on the site, which are performed by personnel other than *PATRIOT'S* employees or subcontractors.

10. CONFLICTS

Should any element of the Terms and Conditions be deemed in conflict with any element of the proposal/contract, unless the proposal/contract clearly voids the conflicting element in the Terms and Conditions, wording of the Terms and Conditions shall govern. Any element of this agreement later held to violate a law or regulation shall be deemed void, but all remaining provisions shall continue in force. The Terms and Conditions set forth herein shall survive the termination of this contract. No action, legal or otherwise, may be brought against *PATRIOT* arising from its performance of services under this contract, whether for breach of contract, tort, or otherwise, unless *PATRIOT* shall have received within two (2) years after completion of services under this contract a written notice specifying the alleged defects in *PATRIOT'S* performance or other breach.

11. CONSEQUENTIAL DAMAGES

In no event shall either party be liable to the other party for any consequential, incidental, or indirect damages including, though not limited to, loss of income, loss of profits, loss or restriction of use of property, or any other business losses regardless as to whether such damages are caused by breach of contract or warranty, negligent acts or omissions, or other wrongful acts.

12. DELAYS IN WORK

PATRIOT will charge the Client at standard fees for stand-by or non-productive time for delays in *PATRIOT'S* work caused by the Client or Client's contractors unless otherwise specifically provided for in the contract.

13. SAMPLING OR TEST LOCATION(S)

Unless otherwise stated, the fees in this proposal do not include costs associated with surveying of the site for accurate horizontal and vertical locations of tests or samples which, when referenced in *PATRIOT'S* report, are based on information furnished by others and/or estimates made by *PATRIOT'S* personnel and are only considered approximations, unless otherwise stated. *PATRIOT* may deviate a reasonable distance from any test or sampling location as specified by the Client. If, in order to complete a given soil boring to its designated depth, relocating the soil sampling location and associated sampling method is necessitated by encountering impenetrable subsurface objects, all work, including the original work performed, will be charged for at the appropriate rates in the fee schedule.

Client recognizes that project site conditions may vary from those encountered at the locations where the borings, surveys, sampling, monitoring, or explorations are made by *PATRIOT* and its subcontractors, and that the data interpretations and recommendations of *PATRIOT'S* and its subcontractors are based solely on the information available to them. *PATRIOT* will only be responsible for data, interpretations, and recommendations based on information obtained from the locations sampled, monitored, and explored by *PATRIOT* and its subcontractors, but shall not be responsible for the interpretations by others of the information obtained and reported.

14. DISPUTE RESOLUTION

Any claim or dispute made against *PATRIOT* for inadequate, negligent, or improper performance of services by *PATRIOT* pursuant to this contract must be resolved by negotiation or mediation. Any party to this contract may demand that any such disputes be resolved by negotiation or mediation, unless the parties mutually agree otherwise. The



Client and *PATRIOT* further agree to include similar dispute resolution provisions in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include similar dispute resolution provisions in all agreements with subcontractors, subconsultants, suppliers or fabricators so retained, thereby providing for negotiation or mediation as the primary method for dispute resolution between the parties to those agreements.

15. FAILURE TO FOLLOW RECOMMENDATIONS

Client will not hold *PATRIOT* or its subcontractors liable for any consequential, incidental, or indirect damages or business losses that may occur based on, or which may result from *PATRIOT*'S or its subcontractors' recommendations that are not followed. Client waives any claim against *PATRIOT* and agrees to defend, indemnify, and hold *PATRIOT* harmless from any claim, liability for injury, or business loss that results from *PATRIOT*'S recommendations that are not followed.

16. FORCE MAJEURE

Neither Client nor *PATRIOT* shall hold the other responsible for damages or delays in performance caused by events beyond the control of the other party and which could not reasonably have been anticipated or prevented, including but not limited to, acts of God, materially different site conditions, wars, riots, rebellions, sabotage, fires, explosions, accidents, floods, strikes or other conceded acts of workers, lockouts, or changes in laws, regulations, or ordinances. The party intending to invoke force majeure shall provide prompt notice to the other party.

17. RIGHT TO STOP OR DIRECT WORK

Since *PATRIOT*'S duties and services are limited to the scope of work proposed and contracted with the Client to perform, *PATRIOT* shall not under any circumstances give a stop-work order or direct work, either for quality, safety or any other reason, unless directed solely to *PATRIOT* personnel or its subcontractors' personnel. Neither shall *PATRIOT* be responsible for the possible consequences of not issuing a stop-work order. *PATRIOT* will only report to Client regarding the quality of the work *PATRIOT* has performed, or been contracted to observe and monitor.

18. FIELD MONITORING AND CONTROL

PATRIOT shall not, except for its own services and for services it subcontracts, specify project site procedures, manage or supervise project

work, implement or be responsible for project site health and safety procedures. *PATRIOT* shall not be responsible for the acts or omissions of other parties on the project site and shall not have control or charge of and not be responsible, without limitation, for project means, methods, techniques, sequences, or procedures. *PATRIOT*'S project services shall not relieve any other parties from their responsibility for performing work in accordance with applicable plans, specifications, safety requirements, laws, and regulations. *PATRIOT*'S proposed and contracted monitoring and testing services are limited to its proposed and contracted scope of work and does not imply or warrant that *PATRIOT* is responsible for observing all activities and personnel at the project site. If *PATRIOT* is not retained to monitor environmental remediation, mitigation, or abatement activities, Client waives any claim against *PATRIOT* and agrees to indemnify, defend, and hold *PATRIOT* harmless for any claim or liability for injury or business loss resulting from remediation, mitigation, or abatement activities.

The words "supervision", "inspection", or "control", if used in connection with *PATRIOT*'s work, are only intended to mean periodic observation or monitoring of the project work as outlined in *PATRIOT*'S proposed and contracted scope of work.

19. RETESTING AND RE-MONITORING

PATRIOT is only obligated to monitor and test in accordance with applicable and agreed upon standards and methods. In the event *PATRIOT*'s monitoring and/or testing discloses deficiencies in the project's work, and which consequently will require corrections, *PATRIOT* will retest or re-monitor the corrected work as required by the plans and specifications or as directed by the Client; however, all such retesting or re-monitoring shall be additional work and shall be paid for by Client at the agreed upon fees in this contract.

20. SITE WORK

PATRIOT will take reasonable precautions to avoid any damage to the project site from the activities of its personnel, subcontractors, or equipment. Any damage caused by *PATRIOT*'S negligence will be restored at *PATRIOT*'S expense; however, unavoidable damage caused in the execution of the project work such as tire rutting, cutting and splicing of fences, removal of potential asbestos containing materials (ACM), drilling through pavements, cutting of brush and trees, coring through pavements, etc., will not be restored unless otherwise stated in the contract.



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21. UTILITIES

In the execution of any subsurface exploration, PATRIOT will take reasonable precautions to avoid damage to subterranean structures or utilities of which PATRIOT has received notification; however, it is the Client's responsibility to mark or furnish the locations of all underground, manmade obstructions or utilities. Client shall indemnify, defend, and hold harmless PATRIOT from and against any claims, losses, or damages incurred or asserted against PATRIOT related to Client's failure to mark, protect, inform, or advise PATRIOT of underground structures or utilities, unless stated in our contracted scope of services.

22. SAMPLES

PATRIOT and its subcontractors will retain any soil, rock, water, or material samples obtained in the performance of its contracted scope of work for a period not to exceed thirty (30) days after submitting PATRIOT'S report or findings. Further storage or transfer of samples and materials obtained from the contracted scope of PATRIOT'S work can be made at the Client's expense upon written request.

23. AQUIFER CONTAMINATION

Client waives any claim against PATRIOT, and agrees to hold harmless, defend, and indemnify PATRIOT from any claim, business loss, or liability for injury as a result of cross-contamination caused by subsurface drilling and/or sampling unless due to PATRIOT'S negligence or willful acts.

24. HAZARDOUS SUBSTANCES

Client agrees to advise PATRIOT, prior to beginning project work, of any hazardous substances on or near the project site known to Client. In the event that test samples obtained during our work contain substances hazardous to health, safety, or the environment, these samples remain the property of Client which also shall pay for all costs connected with decontamination of PATRIOT'S or its subcontractors' equipment. Furthermore, any equipment of PATRIOT'S or its subcontractors' contaminated during PATRIOT's services which cannot be reasonably decontaminated shall become the property and responsibility of Client. Such samples and/or equipment will be delivered to Client. Client agrees to pay transportation costs for samples and equipment, and the fair market value of such contaminated equipment. Client waives any claim against PATRIOT and its subcontractors and agrees to defend, indemnify, and hold harmless PATRIOT from any claims, business loss, or

liability for injury arising from PATRIOT'S failure to detect the presence of hazardous materials, including ACM, through techniques and methods agreed upon in the proposed and contracted scope of work, unless the failure to detect hazardous materials, including ACM, was due to PATRIOT'S failure to properly execute the proposed and contracted scope of work set forth in this contract.

25. ENVIRONMENTAL PROBLEMS

PATRIOT and its subcontractors' duties and responsibilities are limited to the proposed and contracted scope of work. Any sampling, testing, or monitoring of site conditions or materials related to environmental concerns including hazardous waste, soil, ground water, surface water, ACM, or air pollutants are not part of PATRIOT'S responsibilities and duties unless specifically identified in its proposed and contracted scope of work. If it becomes apparent during project site work that undisclosed hazardous materials may be present, project site work will be terminated unless specified in PATRIOT'S proposed and contracted scope of project work. Project site work will resume only after renegotiation of the contracted scope of services and fees to cover appropriate environment, health, and safety precautions. PATRIOT shall have no responsibility for detecting or dealing with environmental concerns, hazardous waste, soil, ground water, surface water, ACM, or air contamination, should they occur at the project site unless specifically outline in PATRIOT'S proposed and contracted scope of work. Client waives any claim against PATRIOT and agrees to defend, indemnify, and hold harmless PATRIOT from any claim, business loss, or liability for injury that results from the discovery of onsite environmental concerns, hazardous materials, soils, ground water, surface water, ACM, or air contamination.

26. ENVIRONMENTAL INDEMNITY

Client agrees to the maximum extent permitted by law to defend, indemnify, and hold harmless PATRIOT and its subcontractors from and against any and all claims and liabilities in connection with toxic or hazardous substances or constituents unless caused by PATRIOT'S negligence or willful acts, resulting from Client's violation of any federal, state or local statute, regulation or ordinance relating to the handling, storage or disposal of toxic or hazardous substances or constituents; Client's undertaking of or arranging for the handling, removal, treatment, storage, transportation or disposal of toxic or hazardous substances or constituents found or identified at

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the site; toxic or hazardous substances or constituents introduced at the site by Client or third persons before or after completion of services herein; allegations that PATRIOT or its subcontractors are the handlers generators, operators, treaters or storers, transporters, or disposers under the Resource Conservation and Recovery Act of 1976, Comprehensive Environmental Response, Compensations and Liability Act, or any other similar federal, state or local regulation or law.

PATRIOT or its subcontractors have no role in generating, treating, storing, or disposing of any hazardous materials which may be present at the project site, and which at no time become the property of PATRIOT or its subcontractors, unless specifically identified in the proposed and contracted scope of work. Client shall evaluate and select proper disposal site for treatment or disposal of its hazardous materials (to include test samples collected to determine the characteristics of the samples), shall select the method of transportation, and shall be solely responsible therefore. Any arrangements for the treatment, storage, transport, or disposal of any hazardous materials that are made at the direction and expense of Client and to be conducted or completed by PATRIOT shall be construed as being made solely and exclusively on Client's behalf for Client's benefit, and Client shall defend, indemnify, and hold harmless PATRIOT from and against any and all claims, damages, business losses, liability of injury, and expenses, including reasonable attorney's fees, which arise out of any release, threatened release, transportation, or disposal of hazardous materials, unless caused by the negligence or willful acts of PATRIOT during the execution of its proposed and contracted scope of work.

27. OWNERSHIP OF DOCUMENTS

Client agrees that all original documents and drawings produced by PATRIOT in accordance with this agreement, except documents, which are required to be filed with public agencies, shall remain the property of PATRIOT. Client agrees to be liable and responsible for the use of unsigned plans, drawings, or other documents not signed by PATRIOT, and waives liability against PATRIOT for their use. Further, client agrees to waive any claim against PATRIOT and to indemnify, defend, and hold harmless PATRIOT from any and all claims arising out of any use, not authorized in writing by PATRIOT, of these documents by third parties not related to this agreement.

28. PUBLIC RESPONSIBILITY

Client shall be responsible for reporting to appropriate governmental and licensing agencies with respect to any legal or regulatory requirements, code violations, or hazardous substances detected on site. If Client disregards PATRIOT'S and its subcontractors' recommendations for reporting or public health and safety, Client waives any claim against PATRIOT and its subcontracts and agrees to defend, indemnify, and hold harmless PATRIOT and its subcontractors from any claim, business loss, liability for injury, or loss arising from disregarding PATRIOT'S or its subcontractors' recommendations of reporting.

29. NON-SOLICITATION

During the term of this Agreement and for (6) six months after any termination of this Agreement, CLIENT will not directly or indirectly solicit, induce, recruit, divert or hire away, encourage, or otherwise endeavor the cause or attempt to cause any employee or consultant of Patriot to terminate their relationship to Patriot.

Revised July 2017

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PROPOSAL ACCEPTANCE AGREEMENT

Project Name: Bullitt County Football Stadiums-North, Central and East
 Project Location: Shepherdsville and Mt. Washington, KY
 Description of Services: Special Inspections, Construction Materials Testing and Observations
 Patriot Proposal: P23-LOU-0032 Patriot Project #:

APPROVAL & PAYMENT OF CHARGES - Invoices will be charged and mailed to the account of:

Firm: Studio Kremer Architects
 Address: 1231 South Shelby Street
 City: Louisville State: KY Zip: 40203
 Attention: Cate Noble Ward
 Telephone: 502-499-1100 x 2583 Cell: Email: Cate@studiokremer.com

PAYMENT TERMS: Per Terms & Conditions. Invoices for completed work will be issued every month for continuous or extended projects unless otherwise agreed.

REFERENCES - *Patriot* retains the right to perform a standard credit review on all new Clients. *Patriot* will proceed with the project immediately after formal credit approval and receipt of the required invoicing information.

Financial (Current bank or other lender)	Supplier (Current account with Client)	Trade (Engineer, Contractor, Other, etc.)
Name: _____	Name: _____	Name: _____
Contact: _____	Contact: _____	Contact: _____
Account No.: _____	Account No.: _____	Account No.: _____
Phone No.: _____	Phone No.: _____	Phone No.: _____

NOTICE: *PATRIOT* reserves the right to withhold all reports until such time we receive a signed Proposal Acceptance Agreement or with other written authorization referencing this AGREEMENT in its entirety. This AGREEMENT together with *PATRIOT'S* Proposal, Unit Fee Schedule, and following Terms & Conditions constitute the entire agreement between the Client and *PATRIOT* and supersedes all prior written or oral understandings:

- ☐ Geotechnical Services Terms and Conditions
- ☐ Geotechnical/Phase 1 Environmental Site Assessments Terms and Conditions
- ☐ Geotechnical/CME Services Terms and Conditions
- ☐ Environmental/ Services Terms and Conditions
- ☐ Phase 1 Environmental Site Assessments Terms and Conditions
- ☒ Construction Materials Testing Services Terms and Conditions

PROPOSAL ACCEPTED BY: _____

TITLE: _____ DATE ACCEPTED: _____