



Kenton County School District | *It's about ALL kids.*

Issue Paper

DATE:

4/23/2024

AGENDA ITEM (ACTION ITEM):

Consider / Approve the contract for geotechnology services with GeoTechnology, LLC, d.b.a. UES (UES) on the New Central Office Building construction project (BG #24-084).

APPLICABLE BOARD POLICY:

01.1 Legal Status of the Board; 04.31 Authority to Encumber and Expend Funds; 702 KAR 4:160

HISTORY/BACKGROUND:

KCSD has historically utilized an independent, third-party service provider for special inspections, construction observation, and materials testing services on construction projects requiring earth work and concrete work. To continue this best practice, the Operations team recommends continuing our partnership with UES. The accompanying contract details UES's hourly and service rates for the various types of services to be performed.

FISCAL/BUDGETARY IMPACT:

Estimated Cost for this service is \$57,000.00 and will be funded through the Central Office Building Construction BG-1 (24-084).

RECOMMENDATION:

Approve the contract for geotechnology services with GeoTechnology, LLC, d.b.a. UES (UES) on the New Central Office Building construction project (BG #24-084).

CONTACT PERSON:

Matt Rigg, Chief Operations Officer

Principal/Administrator



District Administrator



Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda

Principal – Complete, print, sign and send to your Director. Director – if approved, sign and put in the Superintendent's mailbox



Via email: kevin.pfefferman@kenton.kyschools.us

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April 10, 2024

Mr. Kevin Pfefferman
Kenton County Board of Education
1055 Eaton Drive
Ft. Wright, Kentucky 41017

Re: Proposal for Construction Review Services
Kenton County New Board Office
2044 Tuscany View Drive
Covington, Kentucky
UES Proposal No. P045667.01

Dear Mr. Pfefferman:

In response to your request, Geotechnology, LLC, dba UES (UES) is pleased to submit this proposal to provide special inspection, construction observation, and materials testing services for the referenced project.

We appreciate the opportunity to submit this proposal and look forward to hearing from you soon. If you have any questions or comments concerning this proposal, or if we may be of any other service to you, please do not hesitate to contact us.

Respectfully submitted,
GEOTECHNOLOGY, LLC, DBA UES

A handwritten signature in blue ink, appearing to read "Justin C. Casey".

Justin C. Casey
CMT Manager

A handwritten signature in blue ink, appearing to read "Steven J. Neltner".

Steven J. Neltner, PE
CMT Manager

JCC/SJN:alp



FEE SCHEDULE & COST BREAKDOWN

TASK 7300 - SOILS TESTING (BASED ON 20 VISITS)

Professional Personnel

<u>DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
Field Representative III	160	Hour	\$74.00	\$11,840.00
CMT Manager	10	Hour	\$116.00	\$1,160.00

Unit Billing

<u>DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
Moisture Content Soil/Rock ASTM D2216	3	Each	\$12.00	\$36.00
Atterberg Limits, 3-Pt Method ASTM D4318	3	Each	\$155.00	\$465.00
Standard Proctor, Soil ASTM D698	3	Each	\$230.00	\$690.00
Vehicle Charge - Zone 3	20	Trip	\$36.00	\$720.00

Task Subtotal: \$14,911.00

TASK 7400 - STRUCTURAL STEEL (BASED ON 15 VISITS)

Professional Personnel

<u>DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
Field Rep For Structural Steel Review	70	Hour	\$97.00	\$6,790.00
CMT Manager	6	Hour	\$116.00	\$696.00

Unit Billing

<u>DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
Vehicle Charge - Zone 3	15	Trip	\$36.00	\$540.00

Task Subtotal: \$8,026.00

TASK 7105 - BEARING SURFACES / REINFORCED CONCRETE (BASED ON 45 POURS)

Professional Personnel

<u>DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
Senior Field Representative	8	Hour	\$90.00	\$720.00
Field Representative III	205	Hour	\$74.00	\$15,170.00
CMT Manager	22	Hour	\$116.00	\$2,552.00

Unit Billing

<u>DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
Curing Box	45	Day	\$13.00	\$585.00
Concrete Compression, 4 x 8 ASTM C39	295	Each	\$19.00	\$5,605.00
Vehicle Charge - Zone 3	68	Trip	\$36.00	\$2,448.00
Floor Flatness/Levelness Eq. ASTM E1155	1	Day	\$150.00	\$150.00



TASK 7105 - BEARING SURFACES / REINFORCED CONCRETE (BASED ON 45 POURS)

Professional Personnel

<u>DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
Ice for Hot Weather Concrete/Heat Pack for Cold Weather Concrete	40	Each	\$13.00	\$520.00

Task Subtotal: \$27,750.00

TASK 7800 - DRILLED SHAFTS (BASED ON 3 VISITS)

Professional Personnel

<u>DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
Field Representative III	24	Hour	\$74.00	\$1,776.00
CMT Manager	1	Hour	\$116.00	\$116.00

Unit Billing

<u>DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
Vehicle Charge - Zone 3	3	Trip	\$36.00	\$108.00

Task Subtotal: \$2,000.00

TASK 7805 - RAMMED AGGREGATE PIERS (BASED ON 5 VISITS)

Professional Personnel

<u>DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
Field Representative III	40	Hour	\$74.00	\$2,960.00
CMT Manager	3	Hour	\$116.00	\$348.00

Unit Billing

<u>DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
Vehicle Charge - Zone 3	5	Trip	\$36.00	\$180.00

Task Subtotal: \$3,488.00

ESTIMATED TOTAL: \$56,175.00

Note: Based upon our review of the project plans, specifications, and our experience on similar type projects, we have developed this estimate. When provided with a schedule, **we will prepare a more accurate estimate**. This estimate is based on site visits being billed at 4 hour minimums, except for specimen pickups.

Field services performed over 8 hours per day, 2nd or 3rd shifts, and weekends will be charged at an overtime rate of 1.5 times the applicable hourly rate.

Shop and in-plant reviews are assumed not required, for fabricators approved in accordance with IBC Section 1704-2.5.2. We can provide this service, if fabricators do not meet this criteria. When the location of the fabrication shop is determined, we can provide an estimate.



This estimate does not include quality control testing of sidewalk or curb. If requested, we can provide these services.

If Requested:

TASK 7200 - ASPHALT TESTING (BASED ON 6 VISITS)

Professional Personnel

<u>DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
Field Representative III	48	Hour	\$74.00	\$3,552.00
CMT Manager	3	Hour	\$116.00	\$348.00

Unit Billing

<u>DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
Nuclear Gauge	6	Day	\$76.00	\$456.00
Vehicle Charge - Zone 3	6	Trip	\$36.00	\$216.00

Task Subtotal: \$4,572.00

TASK 7900 - MASONRY (BASED ON 2 VISITS)

Professional Personnel

<u>DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
Field Representative III	8	Hour	\$74.00	\$592.00
CMT Manager	2	Hour	\$116.00	\$232.00

Unit Billing

<u>DESCRIPTION</u>	<u>ESTIMATED QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>EXTENSION</u>
3x3x6 Grout Prism ASTM C1019	8	Each	\$26.50	\$212.00
Curing Box	1	Day	\$13.00	\$13.00
Ice for Hot Weather Concrete/Heat Pack for Cold Weather Concrete	1	Each	\$13.00	\$13.00
Vehicle Charge - Zone 3	2	Trip	\$36.00	\$72.00

Task Subtotal: \$1,134.00



TERMS FOR GEOTECHNOLOGY'S SERVICES

1. THE AGREEMENT

- a. This AGREEMENT is made by and between: **Geotechnology, LLC**, hereinafter referred to as **GEOTECHNOLOGY**, and **Kenton County Board of Education**, hereinafter referred to as **CLIENT**.
- b. The AGREEMENT between the parties consists of these TERMS, the attached PROPOSAL identified as Proposal No. **P045667.01**, dated **April 10, 2024**, and any exhibits or attachments noted in the PROPOSAL. In the event of a conflict between the TERMS and the PROPOSAL, the provisions of the TERMS shall govern unless the PROPOSAL specifically indicates that it is to govern. Together, these elements will constitute the entire AGREEMENT superseding any and all prior negotiations, correspondence, or agreements either written or oral. Any changes to this AGREEMENT must be mutually agreed to in writing.
- c. This proposal is valid for 30 days from **April 10, 2024**.
- d. The technical pricing information contained in this PROPOSAL submitted by GEOTECHNOLOGY is to be considered confidential and proprietary and shall not be released or otherwise made available to any third party without the express written consent of GEOTECHNOLOGY.
- e. It is intended by the parties to this AGREEMENT that GEOTECHNOLOGY'S services in connection with the project shall not subject GEOTECHNOLOGY'S individual employees, officers or directors to any personal legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, CLIENT agrees that as the CLIENT'S sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against GEOTECHNOLOGY, a Missouri corporation, and CLIENT expressly waives CLIENT's rights against any of GEOTECHNOLOGY'S employees, officers or directors.

2. STANDARD OF CARE

- a. CLIENT recognizes that conditions may vary from those observed at locations where borings, surveys, observations, or explorations are made, and that site conditions may change with time. Data, interpretations, and recommendations by GEOTECHNOLOGY will be based solely on information available to GEOTECHNOLOGY. GEOTECHNOLOGY is responsible for those data, interpretations, and recommendations, but will not be responsible for other parties' interpretations or use of the information developed.
- b. GEOTECHNOLOGY offers different levels of services to suit the desires and needs of different clients. Although the possibility of error can never be eliminated, more detailed and extensive services yield more information and reduce the probability of error, but at increased cost. CLIENT has reviewed the scope of services and has determined that it does not need or want a greater level of service than that being provided.
- c. The standard of care for all professional engineering and related services performed under this AGREEMENT will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. GEOTECHNOLOGY makes no warranties, express or implied, under this AGREEMENT or otherwise, in connection with any services performed or furnished by GEOTECHNOLOGY.

3. SITE ACCESS AND SITE CONDITIONS

- a. CLIENT will grant or obtain free access to the site for all equipment and personnel necessary for GEOTECHNOLOGY to perform the services set forth in this AGREEMENT. CLIENT will notify any and all possessors of the project site that CLIENT has granted GEOTECHNOLOGY free access to the site. GEOTECHNOLOGY will take reasonable precautions to reduce damage to the site, but it is understood by CLIENT that, in the normal course of the services, some damage may occur and the correction of such damage is not part of this AGREEMENT unless so specified in the PROPOSAL.
- b. Unless indicated otherwise in the PROPOSAL, CLIENT is responsible for accurately delineating the locations of all subterranean structures and utilities. GEOTECHNOLOGY will take reasonable precautions to avoid known subterranean structures, and CLIENT waives any claim against GEOTECHNOLOGY arising from damage done to subterranean structures and utilities not identified or accurately located.

4. CHANGED CONDITIONS

- a. If, during the course of performance of this AGREEMENT, conditions or circumstances are discovered which were not contemplated by GEOTECHNOLOGY at the commencement of this AGREEMENT, GEOTECHNOLOGY shall notify CLIENT in writing of the newly discovered conditions or circumstances, and CLIENT and GEOTECHNOLOGY shall renegotiate, in good faith, the terms and conditions of this AGREEMENT.

5. SAMPLES AND CUTTINGS

- a. GEOTECHNOLOGY will dispose of soil and rock samples ninety (90) days after submittal of the report covering those samples. Further storage or transfer of samples can be made at CLIENT'S expense upon CLIENT'S prior written request.
- b. Cuttings, rinse water, well development and other wastes will be left on site and are CLIENT'S responsibility to dispose unless specifically addressed in the PROPOSAL.
- c. CLIENT shall take custody of all monitoring wells, probe holes and borings installed by GEOTECHNOLOGY and shall take any and all necessary steps for the proper maintenance, repair or closure for such wells, probes, or borings at CLIENT'S expense.

6. OBSERVATION

- a. CLIENT recognizes that unanticipated or changed conditions may be encountered during construction and, principally for this reason, CLIENT shall retain GEOTECHNOLOGY to observe construction when GEOTECHNOLOGY has provided engineering services. CLIENT understands that construction observation is conducted to reduce – not eliminate – the risk of problems arising during construction and that provision of the service does not create a warranty or guarantee of any type. In all cases, contractors shall retain responsibility for the quality and completeness of their work and for adhering to the plans, specifications, and recommendations on which their work is based. Should GEOTECHNOLOGY for any reason not provide construction observation during the implementation of GEOTECHNOLOGY'S plans, specifications, and recommendations, or should CLIENT restrict GEOTECHNOLOGY'S assignment of observation personnel, CLIENT shall, to the fullest extent permitted by law, waive any claim against GEOTECHNOLOGY, and indemnify, defend, and hold GEOTECHNOLOGY and its affiliated companies harmless from any claim or liability for injury or loss arising from field problems allegedly caused by findings, conclusions, recommendations, plans, or specifications developed by GEOTECHNOLOGY.
- b. If GEOTECHNOLOGY 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, then this paragraph applies. For the specified assignment, GEOTECHNOLOGY will report observations and professional opinions to CLIENT. No action of GEOTECHNOLOGY'S site representative can be construed as altering any AGREEMENT between CLIENT and others. GEOTECHNOLOGY will report to CLIENT observed conditions related to services for which GEOTECHNOLOGY has been retained to perform which, in GEOTECHNOLOGY'S professional opinion, do not conform with plans and specifications. GEOTECHNOLOGY has no right to reject or

stop work of any agent of the CLIENT. Such rights are reserved solely for CLIENT. Furthermore, GEOTECHNOLOGY's presence on site does not in any way guarantee the completion or quality of the work of any party retained by CLIENT to provide field or construction-related services.

- c. GEOTECHNOLOGY shall not be required to sign any document, no matter by whom requested, that would result in GEOTECHNOLOGY having to certify, guarantee, or warrant the existence of conditions whose existence GEOTECHNOLOGY cannot ascertain. CLIENT agrees not to make resolution of any dispute with GEOTECHNOLOGY or payment of any amount due to GEOTECHNOLOGY in any way contingent upon GEOTECHNOLOGY signing any such document.
- d. The use of the word "certify" or "certification" by a registered professional engineer in the practice of professional engineering constitutes an expression of professional opinion regarding those facts or findings which are the subject of the certification, and does not constitute a warranty or guarantee, either express or implied. The definition and legal effect of any and all certifications shall be limited as stated herein.
- e. GEOTECHNOLOGY will strive to perform its construction materials testing services under this AGREEMENT in accordance with generally accepted testing procedures unless other procedures are specifically referenced in the text of the Project plans and/or specifications.
- f. GEOTECHNOLOGY will provide materials testing for samples specified by CLIENT or at a frequency specified by CLIENT and/or will collect samples for materials testing or conduct materials testing when contacted by the CLIENT. GEOTECHNOLOGY will provide foundation testing and/or television camera inspections on drilled shafts or piles constructed by and at a frequency specified by CLIENT. Engineering evaluation of the suitability of the number or types of samples is not provided by GEOTECHNOLOGY.
- g. Construction materials tests performed by GEOTECHNOLOGY on site are taken intermittently and indicate the general acceptability of materials on a statistical basis. GEOTECHNOLOGY'S tests and observation of materials are not a guarantee of the quality of other parties' work and do not relieve other parties from the responsibility to perform their work in accordance with applicable plans, specifications and requirements.

7. JOBSITE

- a. Unless specifically set forth in the PROPOSAL, GEOTECHNOLOGY will not be responsible for and will not have control or charge of specific means, methods, techniques, sequences or procedures of construction or other field activities selected by any other person or entity, or safety precautions and programs incident thereto. GEOTECHNOLOGY shall be responsible only for its activities and that of its employees on any site. Neither the professional activities nor the presence of GEOTECHNOLOGY or its employees or its subcontractors on a site shall imply that GEOTECHNOLOGY controls the operations of others, nor shall this be construed to be acceptance by GEOTECHNOLOGY of any responsibility for jobsite safety.
- b. Unless indicated otherwise in the PROPOSAL, GEOTECHNOLOGY'S services under this AGREEMENT are limited to geotechnical engineering, geophysical surveying, drilling, construction materials testing or deep foundation testing and GEOTECHNOLOGY shall have no responsibility to locate, identify, evaluate, treat or otherwise consider or deal with hazardous materials.
- c. CLIENT represents that CLIENT has made a reasonable effort to evaluate if hazardous materials are on or near the project site, and that CLIENT has informed GEOTECHNOLOGY of CLIENT's findings relative to the possible presence of such materials.
- d. Hazardous materials may exist at a site where there is no reason to believe they could or should be present. GEOTECHNOLOGY and CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. GEOTECHNOLOGY and CLIENT also agree that the discovery of unanticipated hazardous materials may make it necessary for GEOTECHNOLOGY to take immediate measures to protect health and safety. CLIENT agrees to compensate GEOTECHNOLOGY for measures taken to protect health and safety and/or any equipment decontamination or other costs incidental to the discovery of unanticipated hazardous materials.
- e. GEOTECHNOLOGY agrees to notify CLIENT when unanticipated hazardous materials or suspected hazardous materials are encountered. CLIENT agrees to make any disclosures required by law to the appropriate governing agencies. CLIENT also agrees to hold GEOTECHNOLOGY and its affiliated companies harmless for any and all consequences of disclosures made by GEOTECHNOLOGY, which are required by governing law. In the event the project site is not owned by CLIENT, CLIENT recognizes that it is CLIENT's responsibility to inform the property owner of the discovery of unanticipated hazardous materials or suspected hazardous materials.
- f. CLIENT will be responsible for ultimate disposal of any samples secured by GEOTECHNOLOGY, which are found to be contaminated.

8. BILLING AND PAYMENT

- a. CLIENT will pay GEOTECHNOLOGY in accordance with the procedures indicated in the PROPOSAL and its attachments. Invoices will be submitted to CLIENT by GEOTECHNOLOGY, and will be due and payable upon presentation. If CLIENT objects to all or any portion of any invoice, CLIENT will so notify GEOTECHNOLOGY in writing within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay when due that portion of the invoice not in dispute. The absence of written notification described above, shall constitute an unqualified acceptance of the invoice amount due and payable, and waiver by CLIENT of all claims with respect thereto.
- b. CLIENT recognizes that late payment of invoices results in extra expenses for GEOTECHNOLOGY. GEOTECHNOLOGY retains the right to assess CLIENT interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date of the invoice. In the event undisputed portions of GEOTECHNOLOGY'S invoices are not paid when due, GEOTECHNOLOGY reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this AGREEMENT until all past due amounts have been paid in full.
- c. If test results that indicate failure of a material to meet the intended specification require retesting of the material after additional work by parties responsible for that material, the cost of retesting will be invoiced to the CLIENT.
- d. GEOTECHNOLOGY may elect to adjust its rates under this AGREEMENT to account for changes in overhead rates and salary adjustments no sooner than one year from the date of this AGREEMENT, and no more often than once per year at the end of each subsequent year.

9. TERMINATION

- a. This AGREEMENT may be terminated by either party seven (7) days after written notice in the event of any breach of any provision of this AGREEMENT or in the event of substantial failure of performance by the other party, or if CLIENT suspends the work for more than three (3) months. Both parties shall have the opportunity to initiate a mutually agreeable remedy for failure of performance within fifteen (15) days after notice of termination. In the event of termination, GEOTECHNOLOGY will be paid for services performed prior to the date of termination plus reasonable termination expenses, including, but not limited to the cost of cleanup, demobilization, completing analyses, records, and reports necessary to document job status at the time of termination.

10. ALLOCATION OF RISK

10.1 LIMITATION OF LIABILITY

- a. GEOTECHNOLOGY and CLIENT have evaluated the risks and rewards associated with this project, including GEOTECHNOLOGY'S fee relative to the risks assumed, and agree to allocate certain of the risks, so, to the fullest extent permitted by law, the total aggregate liability of GEOTECHNOLOGY to CLIENT and third parties granted reliance is limited to the greater of \$50,000 or GEOTECHNOLOGY'S fee, for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of GEOTECHNOLOGY'S services or this agreement regardless of cause or causes. Such causes include, but are not limited to, GEOTECHNOLOGY'S negligence, errors, omissions, strict liability, statutory liability, negligent misrepresentation, breach of contract, breach of warranty, or other acts giving rise to liability based on contract, tort or statute. If CLIENT prefers to have higher limits of liability coverage, GEOTECHNOLOGY agrees, upon receipt of CLIENT'S written request at the time of accepting our PROPOSAL, to increase the limits of liability up to a maximum of \$1,000,000.00 at an additional cost of 5 percent of our total fee or \$1,000.00, whichever is greater.
- b. Neither party shall have any liability to the other party for loss of product, loss of profit, loss of use, or any other indirect, incidental, special or consequential damages incurred by the other party.

10.2 INDEMNIFICATION

- a. Subject to the provisions of the Limitation of Liability described in 10.1a. above, CLIENT and GEOTECHNOLOGY each agree to indemnify and hold harmless the other party and the other party's affiliated companies, officers, directors, partners, employees, and representatives, from and against losses, damages, and judgments, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are legally determined to be caused by a negligent act, error, or omission of the indemnifying party or any of the indemnifying party's officers, directors, members, partners, agents, employees, or subconsultants in the performance of services under this AGREEMENT. If claims, losses, damages, and judgments are legally determined to be caused by the joint or concurrent negligence of CLIENT and GEOTECHNOLOGY, they shall be borne by each party in proportion to its negligence.
- b. CLIENT shall indemnify and hold harmless GEOTECHNOLOGY, its affiliated companies, agents, subcontractors, directors, officers, and employees, from and against any and all claims, suits, liability, damages, injunctive or equitable relief, expenses, including reasonable attorney's fees or other loss arising from damage to subterranean structures or utilities which were not identified or located by CLIENT to GEOTECHNOLOGY in advance of our work or the discovery of unanticipated hazardous materials or suspected hazardous materials, including, but not limited to, any costs created by delay of the project and any costs associated with possible reduction of the property's value.
- c. For the purposes of this AGREEMENT only, and except as provided under Paragraph 10.2a above regarding the negligent performance of GEOTECHNOLOGY, CLIENT shall reimburse GEOTECHNOLOGY for or otherwise indemnify, defend, and save GEOTECHNOLOGY, its affiliated companies, agents, subcontractors, directors, officers and employees harmless from any and all demands, suits, judgment, expenses, attorney's fees, and losses arising out of or in connection with bodily injury (including death) to persons or damage to property which may arise from the presence or origination of hazardous substances, pollutants, or contaminants on CLIENT'S property, irrespective of whether such materials were generated or introduced before or after execution of this AGREEMENT; provided, however, that nothing hereinabove set forth is intended to shift any responsibility for employee claims that the parties may bear under the Worker's Compensation laws of the state in which the work is to be performed.
- d. GEOTECHNOLOGY shall under no circumstances be considered the generator of any hazardous substances, pollutants, or contaminants encountered or handled in the performance of the work. Without contradiction of any assertion by CLIENT or third party liability as described in Paragraph 10.2b above and for the purposes of this AGREEMENT only, it is agreed that any hazardous materials, pollutants, or contaminants generated or encountered in the performance of the work shall be the responsibility of CLIENT.

11. CONTINUING AGREEMENT

- a. The indemnity obligations and limitations of liabilities established throughout this AGREEMENT, regardless of paragraph number, shall survive the assignment, transfer, expiration or termination of this AGREEMENT.

12. PREVAILING WAGE AND UNION MEMBERSHIP

- a. Unless CLIENT specifically informs GEOTECHNOLOGY in writing or it is specifically identified in our PROPOSAL and/or WORK AUTHORIZATION that prevailing wage regulations or union membership are required for the Project and the Scope of Services identifies it as covered, CLIENT will reimburse, defend, indemnify and hold harmless GEOTECHNOLOGY and its affiliated companies from and against any liability resulting from a subsequent determination that prevailing wage regulations or union membership cover the Project, including all additional costs, fines and attorneys' fees.

13. THIRD PARTY RELIANCE UPON REPORTS

- a. All Documents are prepared solely for use by CLIENT (and Owner, if applicable) and shall not be provided to any other person or entity without GEOTECHNOLOGY'S written consent. CLIENT shall defend, indemnify and hold harmless GEOTECHNOLOGY, its affiliated companies, officers, shareholders and employees, from and against any action or proceeding brought by any person or entity claiming to rely upon information or opinions contained in reports or other documents provided to such person or entity, published, disclosed or referred to without GEOTECHNOLOGY'S written consent.

14. NON-SOLICITATION OF EMPLOYEES

- a. CLIENT recognizes that GEOTECHNOLOGY, as a part of the services covered by this AGREEMENT, may provide one or more of its employees to work with members of CLIENT'S project staff or specifically on a CLIENT'S project. For purposes of this AGREEMENT, an employee of GEOTECHNOLOGY may be a permanent or temporary employee assigned to provide services to CLIENT. CLIENT hereby agrees that CLIENT will not hire, either directly or indirectly, or provide inducement to hire an employee of GEOTECHNOLOGY either as an employee of CLIENT or as an employee of a subcontractor or supplier to CLIENT, such suppliers to include providers of contract labor, during the term of this AGREEMENT and for a period of six months after the termination of this AGREEMENT. Any hiring or inducement to hire any GEOTECHNOLOGY employee during the term of this AGREEMENT and for a period of six months after termination of this AGREEMENT will be subject to a fee equal to 25% of the total fee for services generated by that employee during a nominal 12-month period.

15. DISPUTES RESOLUTION

- a. All claims, disputes, and other matters in controversy between GEOTECHNOLOGY and CLIENT arising out of or in any way related to this AGREEMENT will be submitted to mediation as a condition precedent to litigation. Notwithstanding any other provision of the Agreement, unless prohibited by law,

GEOTECHNOLOGY shall have, in addition to any other right or option set forth herein, the right to proceed in creating a lien upon the building or other improvements and upon the real estate on which the building or improvements are situated for the work and labor done and the labor and materials furnished on and to said real estate and to enforce its mechanic's lien pursuant to all rights and remedies available to it under law.

- b. If a dispute at law arises from matters related to the services provided under this AGREEMENT and that dispute requires litigation, then:
- (1) the claim will be brought and tried in St. Louis County, Missouri and CLIENT waives the right to move the action to any other county or judicial jurisdiction, and
 - (2) the prevailing party in any arbitration or litigation between GEOTECHNOLOGY and CLIENT shall be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees, expert witness costs, and other claim related expenses. For purposes of this paragraph, a party prevails if (i) the judgment is equal to or in excess of the Plaintiff's last written demand for settlement, the Plaintiff shall also be entitled to recover its costs, expenses and reasonable attorney's fees from Defendant; (ii) the judgment is equal to or less than the Defendant's last written offer of settlement, the Defendant shall be entitled to recover its costs, expenses and reasonable attorney's fees from the Plaintiff; (iii) the judgment is in between the Plaintiff's last written demand for settlement and the Defendant's last offer of settlement, then neither party shall recover any of its costs, expenses or attorney's fees from the other.

16. GOVERNING LAW AND SURVIVAL

- a. The law of the State of Missouri will govern the validity of these TERMS, their interpretation and performance.
- b. If any of the provisions contained in this AGREEMENT are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired.

17. SUCCESSORS AND ASSIGNS

- a. This AGREEMENT shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Neither party may assign its interests herein (unless assignee assumes in writing assignor's obligations hereunder) without the prior written consent of the other party, which consent will not be unreasonably withheld. No assignment shall operate to relieve the assignor of its obligations under the AGREEMENT.

18. OTHER PROVISIONS

- a. It is agreed that this AGREEMENT is entered into by the parties for the sole benefit of the parties to the AGREEMENT, and that nothing in the AGREEMENT shall be construed to create a right or benefit for any third party.
- b. Neither party shall hold the other responsible for damages or delay in performance caused by weather and other acts of God, strikes, lockouts, accidents, or other events beyond the reasonable control of the other or the other's employees and agents.
- c. The titles used in this AGREEMENT are for general reference only and are not part of the AGREEMENT.

19. FUTURE SERVICES

- a. All future services rendered by GEOTECHNOLOGY at CLIENT'S request for the project described in the PROPOSAL and/or WORK AUTHORIZATION shall be conducted under the terms of this AGREEMENT.

20. SIGNATURES

- a. The parties have read the foregoing, including any attachments thereto, understand completely the terms, and willingly enter into this AGREEMENT that will become effective on the date signed below by CLIENT.

KENTON COUNTY BOARD OF EDUCATION

(Signature)

(Printed Name)

(Position)

(Date)

GEOTECHNOLOGY, LLC

(Signature)

Justin C. Casey

(Printed Name)

CMT Concrete Supervisor

(Position)

April 10, 2024

(Date)