

Every Child Every Day

SUPERINTENDENT
TONYA HORNE-WILLIAMS

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MEMBER - DISTRICT 5
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VICE-CHAIR - DISTRICT 1
LINDA GEARHEART

MEMBER - DISTRICT 4
KEITH SMALLWOOD

Consent Agenda Item (Action Item): Consider/Approve awarding S&ME be awarded the geotechnical investigation work for the turn replacement at Betsy Layne High School football field and baseball/softball field at Floyd Central High School.

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

Fiscal/Budgetary Impact: The initial BG-1 cost is \$895,000, to be paid from the SFCC Bond Sale.

History/Background: The current athletic turf at Betsy Layne Elementary High School has reached the end of its useful life and requires replacement to ensure safe and functional playing surfaces for our students and community users. The estimated project cost exceeds thresholds that require professional design and oversight services by a licensed architect/engineer. By doing this projects at the same time and as a package deal will decrease the cost and the time completion.

Recommended Action: It is recommended that the Board of Education approve the award of S&ME be awarded the geotechnical investigation work for the turn replacement at Betsy Layne High School football field and baseball/softball field at Floyd Central High School.

Contact Person(s):

Kevin O'Quinn, Director of Facilities

606-874-9569

Director

Superintendent

Date: January 16, 2026

The Floyd County Board of Education does not discriminate on the basis of race, color, national origin, age, religion, marital status, sex, or disability in employment, educational programs, or activities as set forth in Title IX & VI, and in Section 504.

442 KY ROUTE 550, EASTERN KY, 41622
TEL: 606.886.2354 FAX: 606.886.4550

MEMORANDUM

January 15, 2026

TO: Michael Hughes, AIA, LEED AP

FROM: Kevin McCalla, PLA, ASLA
RossTarrant Architects | a MOREgroup brand

RE: Floyd County Athletics – Geotechnical Investigation

RTA has sent geotechnical requests for proposals to S&ME, Terracon, and UES. RTA has received and reviewed the geotechnical exploration proposals in summary:

Company	Turnaround Time	Total
Terracon	6 weeks	\$17,800
UES	6-7 weeks	\$11,100
S&ME	6 weeks	\$10,600

Terracon

Terracon presented a lump sum fee of \$17,800.00 for the project including private utility locating services. Geotechnical reports will be made available 6 weeks after notice to proceed.

UES

UES presented a lump sum fee of \$11,100.00 for the project including private utility locating services. Geotechnical reports will be made available 6-7 weeks after notice to proceed.

S&ME

S&ME presented a lump sum fee of \$10,600 for the project including an optional \$2,000 line item for two visits during construction. This service was not offered by either Terracon or UES. Geotechnical reports will be made available 6 weeks after notice to proceed.

Conclusion

Based on the cost, personnel proposed, and the scope of work to be performed, we are recommending that S&ME be awarded the Geotechnical Exploration work for the project. If you have any questions, please let us know.

END OF MEMORANDUM

/km

Enclosures

c: Michael Hughes, Michael Mays, Sarah Lamere - RTA
260115-Geotech-Summary-Floyd Co. Athletics



January 14, 2026

Floyd County Board of Education
c/o Ross Tarrant Architects
442 KY Route 550
Eastern, Kentucky 41622

Attention: Ms. Tonya Williams, Superintendent

Reference: **Proposal for Geotechnical Exploration
Floyd County Schools Athletic Fields**
Eastern, Kentucky
S&ME Proposal No. 26830003

Dear Ms. Williams:

S&ME, Inc. (S&ME) appreciates the opportunity to submit this proposal for a geotechnical exploration for the planned Floyds County Athletic Fields project in Eastern, Kentucky. This proposal describes our understanding of the project, discusses the intended scope of our services, outlines the project schedule, and presents the associated compensation for our services. Our Agreement for Services, Form AS-071, is attached and is incorporated as part of the proposal.

◆ Project Information

The project is located at Floyd Central High School at 651 KY Route 680, Eastern, Kentucky. Project information was provided in a Request for Proposal (RFP) from Ross Tarrant Architects to William J Young, P.E., of S&ME Inc., on January 7, 2026. The RFP included a requested scope of work and boring location plans showing the location of nine (9) proposed borings.

Proposed improvements requiring geotechnical services for the Floyd County Schools Athletic Fields project include conversion of the existing clay baseball and softball fields to synthetic turf infields.

The exploration sites are located in or near active, existing fields. Our proposal includes plywood/mats to reduce the impact of the drill rig tracks on the existing fields.

Details such as structural/equipment loading information and settlement criteria for the proposed improvements were not available at the time of this proposal. We require that this information be provided prior to completing our evaluation.

While grading plans were not available for our review at the time of this proposal, we anticipate that minimal grading (less than two feet of cut/fill) will be required to reach design grade. Grading plans should be provided to S&ME for our review once available, so we may modify our scope of work, where appropriate.



◆ Scope of Services

Field Exploration

We will assign a Licensed Geotechnical Engineer (P.E.) in the state of Kentucky to perform the work associated with your project. Our work will be directed and supervised by one of our Senior Geotechnical Engineers. S&ME proposes the following scope of geotechnical services for this project:

Geotechnical Field Services

- ◆ Prior to mobilizing to both sites, S&ME will initiate a KY811 "one-call" utility locate prior to drilling. At the request of the design team or client, S&ME can facilitate the services of a private utility locator to mark private utility lines prior to S&ME mobilizing onsite to perform drilling services. This service can be performed for an additional fee, upon request.
- ◆ S&ME will perform a site walkthrough to review access for field exploration and identify (through visual observation) any geotechnical hazards that may be visually apparent at the time of our field services.
- ◆ As requested in the RFP, S&ME proposes to perform a total of nine (9) borings: five (5) borings as part of the field exploration for the baseball field and four (4) borings as part of the field exploration for the softball field. Eight of the nine borings will be extended to 15 or auger refusal, whichever occurs first. One (1) boring will be extended to auger refusal. Our budget assumes auger refusal will be encountered at 25 feet or less prior to termination of the boring.
- ◆ Exploration of the refusal materials by coring rock is not included in our scope of work.

Standard penetration tests (SPT) will be attempted in the sample borings in general accordance with ASTM D-1586 at 2-½ foot intervals in the upper 10 feet and at 5-foot intervals thereafter until boring termination. We will attempt to recover relatively undisturbed (Shelby) tube samples in general accordance with ASTM D-1587, where appropriate. Fieldwork will be supervised by the Geotechnical Engineer or their representative.

Once field work is complete, the locations will be measured using handheld GPS equipment with sub-meter horizontal accuracy, and the borings will be backfilled with auger cuttings and a prefabricated hole plug. Borings located in grassed areas will be topped with bentonite. Borings performed in existing pavement (if applicable) will be patched with cold asphalt patch or non-shrink grout.

Per the RFP, S&ME has budgeted for the following:

- ◆ One review of the project specifications related to the geotechnical report
- ◆ One meeting with the architect to review the project documents prior to bidding.
- ◆ Two site visits by the Professional Engineer during construction of the project in order to evaluate and make recommendations for found conditions have been included.



Laboratory Testing

Upon completion of our field explorations, our geotechnical engineer will observe the recovered samples and visually classify them according to the visual-manual method in general accordance with the Unified Soil Classification System (ASTM D-2488).

Based on the anticipated conditions, the following laboratory tests may be performed (where appropriate) on select samples in general accordance with ASTM laboratory procedures:

- ◆ Natural Moisture Content (ASTM D2216)
- ◆ Atterberg Limits testing (ASTM D4318)
- ◆ Unconfined Compressive Strength tests (ASTM D2166)
- ◆ One Dimensional Swell (ASTM D4546)

Engineering Evaluation and Report

After the fieldwork, laboratory testing and our analyses are complete, we will issue one written report that includes both sites describing the exploration and outlining our engineering recommendations. The report will address the following items:

- ◆ Descriptions of the site, the field work, and general subsurface conditions; A geologic literature review, including discussion on relevant geo-hazards, such as landslides, Karst activity, etc.,
- ◆ An assessment of the potential for liquefaction or loss of shear strength for the site soils under the design earthquake applied shear stresses, if appropriate for encountered conditions.
- ◆ Recommended site preparation, including depth of undercut if applicable,
- ◆ Earthwork recommendations, including fill material and placement recommendations, and addressing shrink and swell concerns with soils
- ◆ Anticipation and management of the impact of groundwater on construction activity,
- ◆ A recommended Site Seismic Classification in general accordance with the 2018 Kentucky Building Code current edition based on the standard penetration test resistance N-value method for each site.
- ◆ An Appendix including logs of the borings, laboratory test results, and any other pertinent information and data.
- ◆ A large format 30"x42" boring log to be included in the drawing set.

◆ **Client Responsibilities**

We request that the client provide us with the following:

- ◆ Signed authorization of our services.
- ◆ Authorization to access the site.
- ◆ A digital copy of the site plan showing the locations of the proposed site grading and proposed construction with respect to existing site features, when available.
- ◆ Construction materials, structural loads and settlement criteria for the new improvements.



◆ Excluded Services

Without attempting to compile a complete list of all services or potential services that will be excluded from this proposal, the following services are specifically excluded from this proposal:

- ◆ Land Surveying Services.
- ◆ Geophysical services.
- ◆ Shear strengths of existing and proposed fill soils in areas where embankments will be constructed.
- ◆ Pavement recommendations, since pavements are not expected as part of proposed improvements
- ◆ Expansion Index Testing (ASTM D4829)
- ◆ Foundation recommendations, since foundations are not expected as part of proposed improvements
- ◆ Seismic Site Classification per the 2018 Kentucky Building Code based on SPT correlations;
- ◆ Evaluation of overall stability of rock and soil cuts fills and natural slopes.
- ◆ Clearing/assistance to access boring locations (i.e. – bulldozer rental or similar).
- ◆ Addenda to the geotechnical report to address changes or additions to the proposed project not known to us at the time of this proposal.
- ◆ Liquefaction analysis services (not anticipated based on anticipated site conditions)
- ◆ Environmental site assessment, including the assessment of site environmental conditions and testing for the presence of contaminants in the soil, rock, surface water, or groundwater at the site.
- ◆ Construction phase services, including the monitoring of construction or testing of construction materials.

If any of the above excluded services are required, please contact us so that we may modify this proposal or prepare a proposal for additional services under separate cover.

◆ Compensation

We propose to provide the scope of services described herein for the following **lump sum fees**:

Service	Lump Sum Fee
Geotechnical Exploration	\$8,400
Specification Review	\$600
Document Review with Architect	\$600
Two Site Visits	\$2,000
Total	\$11,600



Additional/optional services that are not part of the base fee listed above are provided below for your consideration and can be performed upon initialing for authorization:

Additional Service	Lump Sum Fee	Initial for Authorization
Private Utility Locate Service	\$1,000	

S&ME will invoice monthly on a percent-complete-of-lump sum basis for each phase through workscope completion. If subsurface conditions are encountered that require a modification to the work scope, you will be notified. Our fee assumes that S&ME personnel can access the project site during normal business hours (i.e., not nights, weekends, etc.) without any special working conditions being mandated. If this is not possible, or if we are required to drill outside of normal business hours, additional fees will be required. This proposal assumes the boring locations are accessible to a truck mounted drill rig.

◆ **Schedule**

Based on our current schedule, we anticipate that we can begin the fieldwork within about 10 to 15 working days of receiving authorization to proceed. We expect the fieldwork to take one (1) working day to complete. The report will be issued approximately three (3) weeks after completion of field work due to laboratory testing requirements. Typically, we can provide preliminary recommendations within a day or two of completion of the exploration, once reviewed by a Senior Engineer.

Factors beyond S&ME’s control that could delay our work include boring accessibility and weather. We will keep you informed during the various phases of the work, provide progress updates, and preliminary recommendations as the work commences.

◆ **Limitations**

Utility clearance prior to mobilizing to the site is the client’s responsibility. As required by law, we will contact 811 prior to the performance of our fieldwork. However, the utility location services will only mark public utility lines; therefore, we will need assistance in locating private lines or underground structures. S&ME can assist with facilitating private utility locate services, upon request. We also request that the Client provide us with drawings depicting on-site utilities. Our firm cannot be held responsible for damage to utility lines or subsequent loss of service if utility locations are not made known to us or are mis-located by others.

We assume that the Client will obtain right-of-entry into the site for our drilling equipment and personnel. Also, moving the drilling equipment around the site and drilling the borings will leave some areas disturbed. While we will try to limit site disturbance, our fee does not include restoring the site to its original condition. Site disturbance, if any, will be the minimum needed to access test boring locations. Reasonable efforts will be made to clean up around each test location. Our services will include plugging the borehole with a borehole closure device and backfilling to the surface with auger cuttings unless otherwise directed. Over time, you should expect some settlement of the backfilled material. Please inform us if your requirements are different.



**Proposal for Geotechnical Exploration
Floyd County Schools Athletic Fields**

Eastern, Kentucky
S&ME Proposal No. 26830003

We should be informed of possible contamination on the site prior to drilling to prevent spreading of the contamination. If contaminated soil or groundwater is encountered during drilling, it is possible that the contamination may be spread to other soil zones or aquifers that were not previously contaminated. Because it is impossible to eliminate the risk of encountering existing contamination during drilling and because the geotechnical exploration is an essential aspect of the services that we are providing, our firm is not responsible for claims which may arise as a result of contamination allegedly caused by the geotechnical exploration.

◆ **Use of Proposal/Report**

This proposal is solely intended for the services described in the Scope of Services. The Scope of Services may not be modified or amended, unless the changes are first agreed to in writing by the client and S&ME, Inc. Use of this proposal and resulting documents, including the final report is limited to the above referenced project and client. No other use is authorized by S&ME, Inc.

◆ **Authorization**

Our Agreement for Services, Form Number AS-071, is attached and is incorporated as a part of this proposal. Please indicate your acceptance of our proposal by signing the form and returning it to our office. We will then proceed with the performance of the services.

◆ **Closing**

We appreciate the opportunity to be of service to you. We look forward to helping you through project completion. If you have any questions, please call.

Sincerely,
S&ME, Inc.

Handwritten signature of Samuel G. Guy in blue ink.

Samuel G. Guy, PE
Senior Geotechnical Engineer

Handwritten signature of John C. Lessley in blue ink.

John C. Lessley, PE
Vice President + Technical Principal

Attachment: Proposed Boring Layout Plan
S&ME Agreement for Services (AS-071)



**Proposal for Geotechnical Exploration
Floyd County Schools Athletic Fields**
Eastern, Kentucky
S&ME Proposal No. 26830003

Attachments

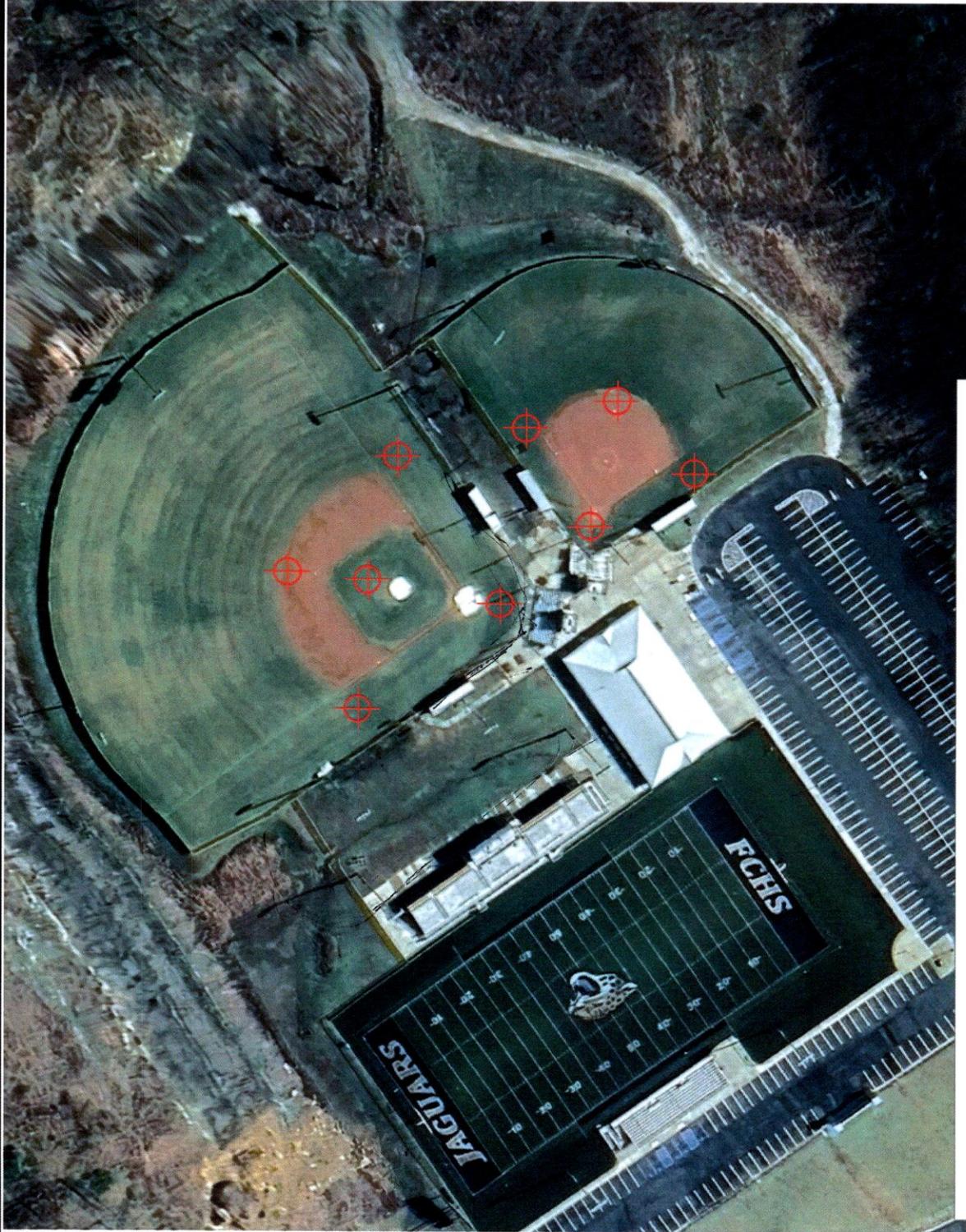


FIGURE NO.

1

SCALE:

NOT TO SCALE

DATE:

1/14/2026

PROJECT NUMBER

26830003

BORING LOCATION PLAN

Floyd County Athletic Fields
Eastern, Floyd County, Kentucky





AGREEMENT FOR SERVICES

Form AS-071

Date: 1/14/2026	Job Number: 26830003
S&ME, Inc. (hereafter Consultant)	Client Name: Floyd County Board of Education (hereafter Client)
Address: 2020 Liberty Road Suite 105 City: Lexington State: KY Zip: 40505	Address: 442 KY Route 550 City: Eastern State: KY Zip: 41622
Telephone: 859-293-5518 Fax: 859-299-2481	Telephone: 606-886-2354 Fax:
PROJECT	
Project Name: Floyd County Schools Athletic Fields	
Project location: (Street Address) 651 KY Route 680	
City: Eastern State: Kentucky Zip: 41622	
SERVICES TO BE RENDERED	
Proposal Number: 25830183 dated: 11/20/2025 is incorporated into this Agreement For Services and this Agreement For Services is incorporated into this Proposal.	

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

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

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

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

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

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

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

4. **CHANGE ORDERS:** Client may request changes to the scope of Services by altering or adding to the Services to be performed. If Client so requests, Consultant will provide a change order proposal including Client's requested changes to the scope of Services for Client's review and approval. Following Client's approval, Client shall provide written acceptance and such Change Order Proposal shall become part of the Contract Documents and shall supersede any prior conflicting terms. If Client does not follow these procedures, but instead directs Consultant to perform changed or additional work without an executed change order, (1) the Services are changed according to Consultant's understanding of Client's direction; and (2) and Consultant will be paid for this work according to the current fee schedule plus fifteen percent (15%).
5. **PAYMENT:** Client will pay Consultant for Services and expenses in accordance with the Contract Documents. If prices for Services are not specified in the Contract Documents, Consultant's current fee schedule in effect for the type of services performed shall control. Unless otherwise agreed prior to the start of the Services, Consultant will submit invoices to Client monthly and a final invoice upon completion of Services. Payment is due upon receipt of the invoice unless otherwise agreed to in writing prior to the submittal of the invoice. Invoices are past due 30 calendar days after the date of the invoice. Past due amounts are subject to a late fee of one and one-half percent per month (18 percent per annum) or the highest amount allowed by applicable law on the outstanding balance, whichever is less. Attorney's fees and other costs incurred in collecting past due amounts shall be paid by Client. The Client's obligation to pay under this Agreement is in no way dependent upon the Client's ability to obtain financing, payment from third parties, approval of governmental or regulatory agencies, or Client's successful completion of the Project. In addition,

CONSULTANT reserves the right to suspend the performance of all services in any case where invoices remain unpaid more than sixty (60) days from the invoice date.

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

Purchase Order Number (if not required, note NA): _____
CLIENT Project Number (if not required, note NA): _____
Email Address for Submitting Invoices (if not allowed, note NA): _____
Website for Invoice Submission (if not required, note NA): _____
For Website Invoice Submission, include instructions for sign-up and process document for invoice submission.
Monthly deadline for invoice submission to ensure prompt processing (if none, note NA): _____

Legal Entity Name required on invoice: _____
Address required on invoice: _____
CLIENT Accounts Payable contact name: _____
CLIENT Accounts Payable contact phone number: _____
CLIENT Accounts Payable email address: _____

Additional invoicing instructions: _____

6. **STANDARD OF CARE:** Consultant and its agents, employees and subcontractors shall endeavor to perform the Services for Client with that degree of care and skill ordinarily exercised, under similar circumstances, by consultants practicing in the same discipline at the same time and location. In the event any portion of the Services fails to substantially comply with this standard of care obligation and Consultant is promptly notified in writing prior to one year after completion of such portion of the Services, Consultant will re-perform such portion of the Services, or if re-performance is impractical, Consultant will refund the amount of compensation paid to Consultant for such portion of the Services. **CONSULTANT MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, RELATING TO CONSULTANT'S SERVICES AND CONSULTANT DISCLAIMS ANY IMPLIED WARRANTIES OR WARRANTIES IMPOSED BY LAW, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

7. **LIMITATION OF LIABILITY:** ~~Client and Consultant have evaluated the risks and rewards associated with this project, including Consultant's fee relative to the risks assumed, and agree to allocate certain of the associated risks. To the fullest extent permitted by law, Consultant's aggregate liability to Client, including that of Consultant's officers, directors, employees and agents, is limited to \$100,000, hereinafter referred to as LIMITATION OF LIABILITY. This LIMITATION OF LIABILITY applies to all lawsuits, claims or actions, whether identified as arising in tort, INCLUDING NEGLIGENCE (WHETHER SOLE OR CONCURRENT), PROFESSIONAL ERROR OR OMISSIONS, BREACH OF WARRANTY (EXPRESS OR IMPLIED), NEGLIGENT MISREPRESENTATION, AND STRICT LIABILITY, contract, or other legal theory, including without limitation, Consultant's indemnity obligations to Client related to the Services provided in this Agreement and any continuation or extension of Consultant's Services.~~

By entering into this Agreement, Client acknowledges that this LIMITATION OF LIABILITY provision has been reviewed, understood and is a material part of this Agreement, and that Client has had an opportunity to seek legal advice regarding this provision.

8. **NO CONSEQUENTIAL DAMAGES:** In no event shall Consultant or Client be liable to the other for any special, indirect, incidental or consequential loss or damages, including, but not limited to, lost profits, damages for delay, or loss of use arising from or related to Services provided by Consultant.

9. **INSTRUMENTS OF SERVICE:** In connection with the performance of the Services, Consultant may deliver to Client reports, drawings, specifications, computer files, field data, notes, and other documents and instruments prepared by the Consultant reflecting Services provided and the results of such Services ("Instruments of Service"). Statements made in Consultant's Instruments of Service are opinions based upon engineering judgment and are not to be construed as representations of fact. All Instruments of Service, other written documents, all original data gathered by Consultant and work papers produced by Consultant in the performance of or intrinsic to the Services included in the Services are, and shall remain, the sole and exclusive property of Consultant. Files shall be maintained in general accordance with Consultant's document retention policies and practices.
10. **SAFETY:** Consultant is solely responsible for the safety and health of Consultant's employees. Consultant shall take necessary precautions for the safety of its employees. Consultant has no authority and no responsibility for general job safety and for the safety of persons who are not employed by Consultant. Should Client, or third parties, be conducting activities on the Site, then each shall have responsibility for their own safety and compliance with applicable safety requirements.
11. **SAMPLES:** Samples are consumed in testing or disposed of upon completion of tests (unless stated otherwise in the Services).
12. **HAZARDOUS MATERIALS:** Nothing contained within this agreement shall be construed or interpreted as requiring Consultant to assume the status of an owner, operator, generator, storer, transporter, treater or disposal facility as those terms appear within RCRA or within any Federal or State statute or regulation governing the generation, transportation, treatment, storage and disposal of pollutants. Client retains full responsibility for compliance with the provisions of RCRA and any other Federal or State statute or regulation governing the handling, treatment, storage and disposal of pollutants.
13. **CLIENT OBLIGATIONS:**
- (a) Client warrants that all information provided to Consultant regarding the Project and Project location are complete and accurate to the best of Client's knowledge.
- (b) Client agrees to furnish (or obtain from the Owner should the Client not be the Owner) Consultant, its agents, employees, and subcontractors a right-of-entry and any authorizations needed for Consultant to enter onto the project site to perform the Services included in this Agreement.
- (c) Client recognizes that the performance of the Services included in this Agreement may cause alteration or damage to the Site. Client acknowledges that some site disturbance is inherent in the work for which Consultant will not be responsible. Should Client not be owner of the property, then Client agrees to notify the owner of the aforementioned possibility of unavoidable alteration and damage and Client shall arrange for the repair of any alteration and damage.
- (d) Client agrees to disclose the identity of all utilities serving the Project Site, the presence and accurate location of hidden or obscured man-made objects known to Client that may be in Consultant's work area and the nature and location of any known or suspected hazardous materials that may exist on the property.
- (e) The Client shall furnish, at the Client's expense, all information, requirements, reports, data, surveys and instructions required by this Agreement. The Consultant may use such information, requirements, reports, data, surveys and instructions in performing its services and is entitled to rely upon the accuracy and completeness thereof.
- (f) In order to make informed decisions based on the Instruments of Service, Client's review and study of the Instruments of Service is vital to take full advantage of the consulting process. Client shall review in detail all Instruments of Service, including attachments and references therein, and in the event of questions or concerns, shall contact the project manager. Consultant provides information in the Instruments of Service which assists the Client and/or user in understanding and using the deliverable. The

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

(g) Provide prompt written notice to CONSULTANT if CLIENT becomes aware of any fault or problem in the PROJECT, including any errors or omissions in CONSULTANT'S work.

(h) Client is responsible for reporting any releases of hazardous substances to appropriate government agencies as required by law. Client acknowledges that Consultant also may have reporting obligations under controlling law and regulations. Client waives any claim against Consultant and will indemnify and hold Consultant harmless from any claim, injury or loss arising from the discovery of unforeseen hazardous substances.

14. **CERTIFICATIONS**: Client understands and agrees that Consultant's Instruments of Services are limited to an expression of professional opinion based upon the Services performed by the Consultant and does not constitute a warranty or guarantee, either express or implied. In addition, Client agrees that Consultant will not be required to execute any document that would result in certifying, guaranteeing or warranting the existence of conditions whose existence the Consultant cannot reasonably ascertain.
15. **FAILURE TO FOLLOW RECOMMENDATIONS**: The Client agrees that it would be unfair to hold the Consultant liable for problems that may occur if the Consultant's recommendations are not followed. Accordingly, the Client waives any claim against the Consultant, and agrees to indemnify, and hold harmless the Consultant from any claim or liability for injury or loss that results from failure to implement the Consultant's recommendations or from implementation of the Consultant's recommendations in a manner that is not in strict accordance with them.
16. **TERMINATION**:
For Convenience - Upon written notice, Client or Consultant may terminate the performance of any further Services included in this Agreement if the terminating party determines termination is in the terminating party's interest. Upon receipt of a termination notice by either party, Consultant shall stop work on all Services included in this Agreement and deliver any Instruments of Service complete at that time to Client and Client shall pay Consultant within thirty (30) days for all Services performed up to the dispatch or receipt of the termination notice. Upon Termination for Convenience, Consultant and Client shall have no further rights or remedies other than those included in this paragraph.
- For Cause - In the event of material breach of this Agreement, the party not breaching the Agreement may terminate it upon five (5) business days written notice delivered or mailed to the other party, which notice must identify the material breach. The Agreement may not be terminated for cause if the breaching party cures the breach within five (5) business days of receipt of the written notice. Upon Termination for Cause, Consultant shall stop work on all Services included in this Agreement and deliver any instruments of service complete at that time to Client and Client shall pay Consultant within thirty (30) days for all Services performed up to the termination. Upon Termination for Cause, Consultant and Client shall have no further rights or remedies other than those included in this paragraph.
17. **UNFORESEEN CONDITIONS OR OCCURRENCES**: If, during the performance of Services, any unforeseen hazardous substance, material, element or constituent or other unforeseen or changed conditions or occurrences are encountered which, in Consultant's judgment, significantly affects or may affect the Services, the risk involved in providing the Services, or the recommended Scope of Services, Consultant will promptly notify Client. Subsequent to that notification, Consultant may: (a) If practicable, in Consultant's judgment and with approval of Client, complete the original Scope of Services in accordance with the procedures originally intended in the Proposal; (b) Agree with Client to modify the Scope of Services and the estimate of charges to include the previously unforeseen conditions or occurrences, such revision to be in writing and signed by the parties and incorporated into this Agreement; or (c) Terminate the Services effective on the date of notification pursuant to the terms of TERMINATION FOR CONVENIENCE.
18. **FORCE MAJEURE**: Consultant shall not be deemed to be in default of this Agreement to the extent that any delay or failure in the performance of the Scope of Work results from any causes beyond its reasonable

control. For this purpose, such acts or events shall include, but are not limited to, storms, floods, unusually severe weather, epidemics, civil disturbances, war, riot, strikes, lockouts or other industrial disturbances, and the inability within reasonable diligence to supply personnel, equipment, information or material to the Project. In the event that such acts or events occur, it is agreed that Consultant shall attempt to resume performance of the Services covered by this Agreement as soon as reasonably possible. If the force majeure event adversely affects the scope or schedule, Client agrees to modify the Scope of Services and the estimate of charges, such revision to be in writing and signed by the parties and incorporated into this Agreement.

19. **INSURANCE:** Consultant shall maintain at its own expense, during the term of this Agreement, the following insurance: (1) Workers' Compensation providing statutory coverages required by the state where services are provided, (2) Employer's Liability with limits of \$1,000,000 each accident, (3) Commercial General Liability with limits of \$1,000,000 each occurrence / \$2,000,000 aggregate, (4) Commercial Automobile with limits of \$1,000,000 each accident, (5) Umbrella Excess Liability with limits of \$5,000,000 each occurrence and (6) Professional Liability with limits of \$5,000,000 each claim.
20. **INDEMNITY:** Consultant shall indemnify Client from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent caused by the negligent acts, errors, or omissions of Consultant in the performance of services under this Agreement.
21. **DISPUTE RESOLUTION:** In the event of a dispute between Consultant and Client with regard to any matter arising out of or related to this Agreement, the Parties will use their best efforts to resolve the dispute amicably using negotiation and mediation within fifteen (15) calendar days. If the dispute cannot be settled amicably, the Parties agree that the dispute shall be resolved by litigation in a court of competent jurisdiction within the State where project is located
22. **ASSIGNMENT:** Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party.
23. **NO WAIVER:** No waiver by either party of any default by the other party in the performance of any provision of this Agreement shall operate as or be construed as a waiver of any future default, whether like or different in character.
24. **MISCELLANEOUS:** The validity, interpretation, and performance of this Agreement shall be governed by and construed in accordance with the laws of the state where project is located without regard to choice of law provisions. This Agreement represents the entire understanding and agreement between the parties hereto relating to the Services and supersedes any and all prior negotiations, discussions, and Agreements, whether written or oral, between the parties regarding same. No amendment or modification to this Agreement or any waiver of any provisions hereof shall be effective unless in writing, signed by both Parties. If any part of this Agreement is found to be unenforceable, then the parties' intent is to have such part rewritten to attain as close as possible the original intent of the unenforceable provision, and all remaining provisions shall continue in full force and effect.
25. **TIME BAR:** Notwithstanding any applicable state statute of repose or statute of limitation, the Parties agree that all legal actions by either party against the other concerning this Agreement or the work performed in relation to this Agreement, will become barred two (2) years from the time the party knew or should have known of the claim, or two (2) years after completion of Consultant's Services, whichever occurs earlier.
26. **NO DISCRIMINATION:** To the extent applicable, this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a) and the posting requirement under 29 CFR Part 471, appendix A to subpart A. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.

27. **NO THIRD PARTY LIABILITY:** Nothing in this Agreement or as a consequence of any of the Services provided gives any rights or benefits to anyone other than Client and Consultant. All duties and responsibilities undertaken pursuant to this Agreement are for the sole and exclusive benefit of Client and Consultant and not for the benefit of any other party. No third party shall have the right to rely on the Instruments of Service without Consultant's prior written consent and the third party's agreement to be bound to the same terms and conditions as the Client.
28. **INDIVIDUAL LIABILITY:** Client agrees that Consultant's services will not subject Consultant's individual employees, officers or directors to any personal liability, and that notwithstanding any other provision of this agreement, Client agrees that its sole and exclusive remedy shall be to direct or assert any claim, demand, or suit only against Consultant.

CONSULTANT HEREBY ADVISES CLIENT THAT ITS PERFORMANCE OF THIS AGREEMENT IS EXPRESSLY CONDITIONED ON CLIENT'S ASSENT TO THE TERMS AND CONDITIONS DETAILED HEREIN.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representative.	
CLIENT: _____	S&ME, Inc.
BY: _____ (Signature)	BY: _____ (Signature)
_____ (Print Name / Title)	William J. Young / Principal Engineer (Print Name / Title)
DATE: _____	DATE: _____
PROPOSAL NUMBER: <u>25830183</u>	