



February 10, 2021

Oak Ridge Land Bank, Inc.  
200 South Tulane Ave  
Oak Ridge, TN 37830

Attention: Mr. Charlie Jernigan  
Chair

Reference: **Proposal for Phase I Environmental Site Assessment**  
Parcel 099L A 007.00  
333 E. Main St.  
Oak Ridge, Anderson County, Tennessee  
S&ME Proposal No. 211544

Dear Mr. Jernigan:

S&ME, Inc. (S&ME) appreciates the opportunity to submit this proposal to perform a Phase I Environmental Site Assessment (ESA) for the above-referenced property. This proposal includes a description of our understanding of the project, proposed Scope of Services, schedule, and associated compensation. Our Agreement for Services (Form AS-071) is attached and incorporated by reference as part of this proposal.

## ◆ Background

Information that we have concerning the subject property was provided in the February 9, 2021 email correspondence between yourself and Ms. Jessica Hussey and Mr. Rick Bruce of S&ME. Based upon this correspondence we understand a Phase I ESA is requested on Parcel 7.00, an approximately 2.59-acre property, located at 333 E. Main St. in Oak Ridge, Tennessee.

Based upon the information provided and referenced in the Tennessee Property Appraiser website ([tnmap.tn.gov/assessment](http://tnmap.tn.gov/assessment)), we understand the subject property is identified as Tax Parcel Number 099L A 007.00 and is currently owned by Oak Ridge City Center LLC. According to your description of the subject property and review of an aerial map provided on the property assessor website, we understand the subject property is currently vacant.

A Site Assessment Boundary Map of the provided site plan for the subject property (Figure 1) is attached.

## ◆ Scope of Services

The most widely utilized standard for performing Phase I ESAs is the standard developed by ASTM International (ASTM) entitled E1527-13, *Standard Practice for Environmental Assessments: Phase I Environmental Site Assessment Process*. An assessment performed in accordance with this standard satisfies requirements for *All Appropriate Inquiries (AAI)* as presented in 40 CFR Part 312, and thus, fulfills one requirement for the User to qualify for certain *Landowner Liability Protections (LLPs)*. We propose to use ASTM E1527-13 for the proposed project.



We understand that the proposed Phase I ESA is being performed to determine the potential for environmental concerns involving the subject property. Accordingly, the purpose of the assessment is to identify *recognized environmental conditions* (as defined by ASTM) in connection with the property.

S&ME's approach to performing a Phase I ESA under the ASTM E1527-13 Standard Practice includes a review of the public record, interviews, a site reconnaissance and preparation of a written report containing findings, opinions and conclusions.

Recent interpretations of the E1527-13 scope indicate that the potential for contaminants in vaporous form to migrate onto the subject property should be considered in conjunction with evaluation of contaminated soil or groundwater. To address this issue, ASTM developed a new "two-tiered" process to evaluate this potential, *E2600-15, Standard Guide for Vapor Encroachment Screening on Property Involved in a Real Estate Transaction*. Tier 1 of the vapor encroachment screening, as outlined in E2600-15, is included in this proposal.

### **Task I – Review of the Public Record**

A review of public records for the site and the immediate vicinity will be conducted to characterize environmental features of the site and to identify past and present land use activities, on or in the vicinity of the site, which may indicate a potential for *recognized environmental conditions*. The review of the public record will include:

1. Review of federal, state and tribal standard environmental record sources as well as selected local records in accordance with the minimum search distances specified in ASTM E1527-13. The search of most records will be performed by a firm specializing in this service subcontracted to S&ME with results presented in a written report that will be appended to S&ME's Phase I ESA report.
2. Examination of one or more of the following historical sources: aerial photographs, fire insurance maps, property tax records, street directories, United States Geologic Survey (USGS) 7.5 minute topographic maps, building department records, and zoning/land use records of the site and vicinity for evidence suggesting past uses that might have involved hazardous substances or petroleum products.

### **Task II – Site Reconnaissance**

A site reconnaissance will be performed to identify visual signs of environmental conditions on or adjoining the site, and to evaluate evidence found in the review of public record that might be indicative of activities resulting in hazardous substances or petroleum products being used or deposited on the site. The site reconnaissance will include the following activities:

1. A visual reconnaissance of the site and adjoining properties will be performed to observe signs of spills, stressed vegetation, buried waste, underground storage tanks (USTs) or above ground storage tanks (ASTs), subsidence, transformers, or unusual soil discoloration which may indicate the possible presence of hazardous substances (per CERCLA) or petroleum products.
2. The periphery of the property will be viewed and a walk-through of accessible areas of the buildings, if present, will be conducted.



3. Areas of the site will be photographed to document the current use(s) of the property as well as significant conditions such as unusually discolored soil, stressed vegetation, or other significant features associated with the property.

### **Task III – Interviews**

Interviews with appropriate local officials will be conducted to consider any local knowledge of hazardous substances or petroleum products on the subject property or on adjacent properties. In addition, current property owner(s), operators and occupants will be interviewed regarding the potential for contamination at the subject property to the extent they have been identified by the client. Interviews with past owners, operators and occupants may be necessary, particularly if the current owner has held title for less than two years, or if past owner interviews are necessary to fill data gaps.

### **Task IV – Written Report**

Upon completion of the public record review, interviews and site reconnaissance, S&ME will prepare a written report documenting findings, opinions and conclusions. The conclusions will be presented in terms of the presence or absence of *recognized environmental conditions* as defined in ASTM Standard Practice E1527-13. Unless otherwise directed, we will produce an electronic copy of the report in PDF format.

### **Task V – Tier 1 Vapor Encroachment Screening**

Should a potential vapor encroachment condition (VEC) be identified at the site S&ME will perform a Tier 1 Vapor Encroachment Screening as outlined in ASTM E2600-15. The purpose of Tier 1 is to conduct a screening using information assembled for the Phase I ESA as well as other physical and chemical data to determine if a VEC exists at the subject property. Accordingly, Tier 1 services would include the following considerations:

1. Establish an area of concern (AOC) up-gradient, down-gradient, and side-gradient of the subject property with respect to possible sources of contaminant vapors.
2. Identify the existing and planned use of the subject property.
3. Identify the type(s) of existing and planned structures on the subject property.
4. Describe the current use of the area surrounding the subject property.
5. Review of federal, state, local and tribal governmental records for the subject property and AOC.
6. Review records of past use of the subject property and surrounding properties within the AOC for potential sources of chemicals that could potentially migrate through the subsurface as vapors.
7. Examine the physical setting including soil types as well as geological, hydrogeological, hydrologic, and topographic information.



8. Evaluate potential natural and man-made preferential pathways that could function as a direct path for vapors.
9. Specialized or commonly known information possessed by the user.

Tier 1 conclusions would indicate whether a VEC exists or can be ruled out. In the event that a VEC cannot be ruled out in the Tier 1 screen, the client may authorize a more refined Tier 2 screening. Tier 2 may include a review of reasonably ascertainable regulatory files or other documents, or invasive data collection such as sampling of soil, soil vapor, and/or groundwater. The cost and schedule to perform Tier 2 services are not included in this proposal.

### ◆ Excluded Services

The Phase I ESA is limited to the range of contaminants identified as hazardous substances by CERCLA, and petroleum products. Compounds that are not defined by CERCLA as a hazardous substance, including emerging contaminants such as polyfluoroalkyl substances (PFAS), are excluded. Similarly, Controlled Substances as defined in the Controlled Substances Act (21 U.S.C. §802) are excluded.

Unless specifically authorized as an addition to the Phase I ESA Scope of Services, the assessment will not address environmental conditions not specifically included in the ASTM E1527-13 standard including, but not limited to sampling of materials (i.e., soil, surface water, groundwater or air) or the assessment of business risk issues such as; asbestos, lead-based paint, mold or moisture intrusion; indoor air quality, including vapor intrusion; high voltage power lines; cultural/historic resources; wetlands, ecological resources, or endangered species. These services can be provided by S&ME under a separate proposal if requested.

### ◆ Limitations

As indicated in ASTM E1527-13, the practice is intended to constitute *all appropriate inquiries* to permit the User to satisfy one requirement to qualify for *Landowner Liability Protections* including the innocent landowner, contiguous property owner or bona fide prospective purchaser limitations on CERCLA liability in an approach that is both commercially prudent and reasonable. As such, the ASTM standard practice seeks to reduce, but not eliminate uncertainty regarding the potential for *recognized environmental conditions* in connection with the property. Further, *appropriate inquiry* does not imply an exhaustive assessment of real property, but instead calls for the environmental professional to identify a balance between competing demands of limited cost and time and the reduction of uncertainty about unknown conditions. A conclusion of “no evidence of recognized environmental conditions” should not be interpreted as a guarantee or warranty that the property is “clean” or free of all contaminants. Environmental conditions may exist on the property that may not be identified through the scope of ASTM E1527-13.

### ◆ Viability of the Phase I ESA

ASTM E1527-13 states that an ESA “meeting or exceeding” this practice and completed less than 180 days prior to the date of acquisition or intended transaction is presumed to be valid if the report is being relied on by the user for whom the assessment was originally prepared. The components of the practice that must be completed within



180 days prior include: interviews, searches for recorded environmental cleanup liens, the regulatory review, site visit and the declaration by the environmental professional responsible for the assessment. If these components were not completed within 180 days, or if the report is to be used by an entity other than the User for whom the assessment was originally prepared, additional information is required to comply with the ASTM E1527-13 practice.

### ◆ Client Responsibilities

The Scope of Services, fee and project schedule presented herein are contingent upon the client fulfilling the following responsibilities:

1. Provide a signed Agreement for Services (attached Form AS-071).
2. Provide the name and contact information for past and present property owner(s), operators and occupants to enable us to conduct the interviews specified in ASTM E1527-13, **to the best of our knowledge.**
3. Provide access to the property including any on-site buildings.
4. Complete and return the attached User Questionnaire as specified in ASTM E1527-13 including a review of recorded land title and judicial records for environmental liens or activity and use limitations.
5. Provide copies of all existing environmental reports or testing results relating to conditions at the subject property that may be available to the client (see attached User-Furnished Information checklist).
6. Identify the addressees of the Phase I ESA report such as a lender, if applicable.

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**APPROVED**  
By jhussey at 2:25 pm, Feb 11, 2021

### ◆ Schedule and Fee

The Scope of Services outlined above will be completed within seven working days of written authorization to proceed. Our schedule and fee are contingent upon your completion of those items listed under User Responsibilities in this proposal. **S&ME is prepared to complete the Phase I ESA services outlined above for the lump sum fee of \$1000.**

Please note that our ability to complete the services involved in the review of the public record within the project schedule often depends on the availability of certain maps and records that we may want to review or personnel whom we would want to interview. If we were to experience difficulties in this regard, we would inform you at the earliest possible time and obtain your concurrence on extending the evaluation time period or terminating that aspect of the evaluation with a discussion of the ramifications of producing the report without the benefit of that information. ASTM E1527-13 states that information is reasonably ascertainable if it can be provided for review within 20 days of the request. If information which we request to review is not made available within a 2-business day period, we would consult with you on whether to extend our scheduled completion date or to complete the project without the benefit of that information (either option will satisfy ASTM Standard Practice E1527-13 requirements).



Any subsequent services or project deliverables, such as report hard copies, requested by you will be invoiced on a time-and-expense basis. This quotation is valid for a period of 90 days.

### ◆ Use of Proposal/Report

This proposal is solely intended for the services as described in the Scope of Services. The Scope of Services may not be modified or amended, unless the changes are first agreed to by the client and S&ME. Use of this proposal and any resulting documents will be limited to the referenced project and client. No other use is authorized by S&ME. This proposal does not provide any claim or warranty for future uses of the property.

Additional written reliance on the Phase I ESA report may be provided under the terms and conditions of the attached Agreement for Services for \$500 per additional user. *The additional fee for Small Business Administration (SBA) reliance or any reliance which requires an increase of the Limit of Liability described in the attached Agreement for Services, AS-071 will be \$1,000.*

### ◆ Authorization

Agreement for Services, Form AS-071, is attached and incorporated as part of this proposal. Please sign the form and return it to S&ME. Upon receipt of the signed agreement, a countersigned copy will be returned to you, and we will proceed with the performance of our services. Any changes or modifications to AS-071 or the proposal are required to be acknowledged by both parties initialing acceptance of this proposal and agreement for services next to the change or modification.

If you elect to accept our proposal by issuing a purchase order, then please specifically reference this proposal number in the purchase order as authorization to proceed with the performance of our services. However, the terms and conditions included in any purchase order shall not apply and are hereby specifically rejected, as our agreement is for services which are not compatible with purchase order agreements.

If this proposal is transmitted to you via email, and if you chose to accept this proposal by email, your reply email acceptance will serve as your representation to S&ME that you have reviewed the proposal and the associated Agreement for Services (AS-071) and hereby accept both as written.



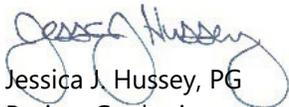
**Phase I Environmental Site Assessment**

333 E. Main St.  
Oak Ridge, Tennessee  
S&ME Proposal No. 211544

S&ME appreciates the opportunity to be of service to you. If you have any questions regarding our proposed scope of services, or if we may be of any further assistance, please call.

Sincerely,

**S&ME, Inc.**



Jessica J. Hussey, PG  
Project Geologist



James R. Bruce, PG  
Senior Reviewer

Attachments: Figure 1  
User Questionnaire  
User-Furnished Information  
Agreement for Services (Form AS-071)



**KEY:**  
 PROPERTY ASSESSMENT BOUNDARY

**IMAGE REFERENCE:**  
 TN PROPERTY APPRAISER WEBSITE:  
[TNMAP.TN.GOV/ASSESSMENT](http://TNMAP.TN.GOV/ASSESSMENT)

**PROPOSED ASSESSMENT BOUNDARY**

PARCEL 099L A 007.00  
 E. MAIN ST 333  
 OAK RIDGE, TENNESSEE

NOT TO SCALE

DATE:  
 02-09-2021  
 PROPOSAL NUMBER  
 211544

FIGURE NO.

1

# PHASE I ENVIRONMENTAL SITE ASSESSMENT

## User Questionnaire

**SITE:** 333 E. Main St., Oak Ridge, TN

**S&ME Proposal No:** 211544

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**In order to qualify for Landowner Liability Protections (LLPs), ASTM E1527-13 specifies that the ESA User must provide the following information, if available, to the Environmental Professional. Failure to provide this information could make the ESA incomplete and the User unable to qualify for LLPs.**

1. Are you aware of any environmental clean-up liens against the property that are filed or recorded under federal, tribal, state or local laws?  
No.
2. Are you aware of any Activity and Use Limitations (AUL's) such as engineering controls, land use restrictions, or institutional controls that are in place at the site and/or have been filed or recorded in a registry under federal, state or local laws?  
No.
3. As the User of this ESA, do you have any specialized knowledge or experience related to the subject property or nearby properties?  
No.
4. Does the purchase price being paid for this property reasonably reflect the fair market value of the property? If not, is the lower purchase price attributable to known or suspected contamination?  
Yes.
5. Are you aware of information about the property that would be helpful in identifying conditions indicative of contaminant releases, such as: a) past use of the property; b) presence of specific chemicals (past or present); c) spills or chemical releases at the property; or d) environmental cleanups that have taken place at the property?  
No.
6. As the User of this Phase I ESA and based on your knowledge and experience of the property, are there any obvious indicators that point to the presence or likely presence of contamination on the property?  
No.

In addition, certain other information should be provided, although not necessarily to qualify for LLPs, including contact information for past and current property owners, operators and occupants; the reason for performing this ESA; and documentation showing the property address, location and boundaries.

  
\_\_\_\_\_  
Signature

2/11/2021 Date

# PHASE I ENVIRONMENTAL SITE ASSESSMENT

## User-Furnished Information

**SITE:** 333 E. Main St., Oak Ridge, TN

**S&ME Proposal No:** 211544

The following is a list of documents and information that could be useful to S&ME, Inc. in preparing your Phase I Environmental Site Assessment (ESA). Please check the appropriate boxes below, sign, and fax or mail this form along with the signed Agreement for Services and completed User Questionnaire. This form will be attached to, and made a part of, your completed Phase I ESA.

Yes	No	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	1. Environmental site assessment reports.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	2. Environmental audit reports.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	3. Environmental permits (i.e. solid waste disposal permits, hazardous waste disposal permits, & wastewater permits, NPDES permits).
<input type="checkbox"/>	<input checked="" type="checkbox"/>	4. Registrations for underground and above-ground storage tanks.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	5. Material safety data sheets (MSDS).
<input type="checkbox"/>	<input checked="" type="checkbox"/>	6. Community right-to-know plan.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	7. Safety plans; preparedness and prevention plans; spill prevention, counter-measure and control plans, etc.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	8. Reports regarding hydrologic conditions on the property or surrounding area.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	9. Reports of any past or current environmental remediation on-site or on adjoining properties.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	10. Notices or other correspondence from any government agency relating to past or existing environmental liens encumbering the property.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	11. Hazardous waste generator notices or reports.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	12. Geotechnical studies.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	13. Report of earthwork or land filling activities on-site.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	14. Information concerning any pending, threatened, or past litigation or administrative proceedings relevant to hazardous substances or petroleum products.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	15. Notices from any governmental entity regarding any possible violation of petroleum environmental laws or possible liability relating to hazardous substances or products.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	16. Disclosure of sumps, pits, drainage systems (i.e. the existence of and location).
<input type="checkbox"/>	<input checked="" type="checkbox"/>	17. Building plans (architectural, utility, structural).
<input type="checkbox"/>	<input checked="" type="checkbox"/>	18. Description of current site operations, including layout drawings or sketches.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	19. Title report/chain-of-title.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	20. Tax assessor records (previous owner and occupants).
<input type="checkbox"/>	<input checked="" type="checkbox"/>	21. Purchase price analysis (if lower than comparables).
<input type="checkbox"/>	<input checked="" type="checkbox"/>	22. Current and historical photographs of the site.
<input type="checkbox"/>	<input checked="" type="checkbox"/>	23. Current and historical topographic maps of the site.

I have reviewed the above list and checked the "Yes" box for those items that would be available to S&ME for review and/or copy.



Signature

2/11/2021

Date



any of Consultant's work, shall constitute acceptance of the terms of Consultant's proposal and this Agreement for Services, regardless of the terms of any subsequently issued document.

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 return to Client a statement (or supplemental proposal) of the change setting forth an adjustment to the Services and fees for the requested changes. Following Client's review, Client shall provide written acceptance. If Client does not follow these procedures, but instead directs, authorizes, or permits Consultant to perform changed or additional work, the Services are changed accordingly and Consultant will be paid for this work according to the fees stated or its current fee schedule. If project conditions change materially from those observed at the site or described to Consultant at the time of proposal, Consultant is entitled to a change order equitably adjusting its Services and fee.
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. Consultant will submit progress 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.
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 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. Statements made in Consultant's reports are opinions based upon engineering judgment and are not to be construed as representations of fact. 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. **DISCLAIMER OF 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. **REPORTS:** In connection with the performance of the Services, Consultant shall 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. All reports and written documents delivered to Client ("Instruments of Service") are instruments reflecting the Services provided by Consultant pursuant to this Agreement and are made available for Client's use subject to the limitations of this Agreement. Instruments of Service provided by Consultant to Client pursuant to this Agreement are provided for the exclusive use of Client, and with Client's permission, Client's contractors, designers and employees for the purpose and the Project described therein and are not to be used or relied upon by third parties or in connection with other projects. Subject to the permitted use of Client, and Client's agents, and employees, 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 specifically disclaims any authority or 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:** Unless otherwise requested, test specimens or samples will be disposed of immediately upon completion of tests and analysis. Upon written request, Consultant will retain samples for an agreed to duration and for a mutually acceptable storage charge. In the event that samples contain or may contain hazardous materials, Consultant shall, after completion of testing and at Client's expense, return such samples to Client or make samples available for disposal by Client's agent. Client recognizes and agrees that Consultant is acting as a bailee and at no time assumes title to said samples.
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 assumes 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 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 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) Our job site activities do not change any agreement between Client and any other party. Only Client has the right to reject or stop work of its contractors or agents. Our presence on site does not in any way guarantee the completion, quality or performance of the work by any other party retained by Client to provide field or construction/remediation services. We are not responsible for, and do not have control or charge of, the specific means, methods, techniques, sequences or procedures of construction or remediation selected by any contractor or agent of Client.

(f) 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.

14. **CERTIFICATIONS**: Client agrees not to require that Consultant execute any certification with regard to work performed, tested or observed under this Agreement unless: 1) Consultant believes that it has performed sufficient work to provide a sufficient basis to issue the certification; 2) Consultant believes that the work performed, tested or observed meets the criteria of the certification; and 3) Consultant has reviewed and approved in writing the exact form of such certification prior to execution of this Agreement. Any certification by Consultant is limited to an expression of professional opinion based upon the Services performed by the Consultant, and does not constitute a warranty or guarantee, either expressed or implied.
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 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. 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.
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 overcome all difficulties arising and to resume as soon as reasonably possible the normal pursuit of the Services covered by 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**: Client agrees to indemnify Consultant, its employees and subcontractors from and against any and all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees), which Consultant, its employees and subcontractors may incur, become responsible for, or pay out as a result of bodily injuries (including death) to any person, damage to any property, or both, to the extent caused by Client's negligence or willful misconduct. Consultant agrees to indemnify Client from and against any and all losses, liabilities, and costs and expenses of every kind (including cost of defense, investigation, settlement, and reasonable attorney's fees) which Client may incur, become responsible for, or pay out as a result of bodily injuries (including death) to any person, damage to any property, or both, to the extent caused by Consultant's negligence or willful misconduct. Client and Consultant shall, in the event of liability arising out of their joint negligence or willful misconduct indemnify each other in proportion to their relative degree of fault. In the event that Client or Client's principal shall bring any suit, cause of action, claim or counterclaim against Consultant, the Client and the party initiating such action shall pay to Consultant the costs and expenses incurred by Consultant to investigate, answer and defend it, including reasonable attorney's and witness fees and court costs to the extent that Consultant shall prevail in such suit.
21. **DISPUTE RESOLUTION**: Consultant may, in Consultant's sole discretion, pursue collection of past due invoices by litigation in a court of competent jurisdiction. Other than Consultant's collection of past due invoices, if a dispute arises out of or relates to this contract, or the breach thereof, the parties will attempt to settle the matter through amicable discussion. If no agreement can be reached, the parties agree to use non-binding mediation before resorting to a judicial forum. The cost of a third party mediator will be shared equally by the parties. In the event of litigation, reasonable costs and attorneys' fees will be awarded to the prevailing party. All questions as to the interpretation or enforceability of this Agreement shall be governed in accordance with the laws of the state where the project is located. In the event of any litigation involving this Agreement or the performance by the parties thereto, such actions shall be brought in a court of competent jurisdiction in the state where the project is located. Notwithstanding the foregoing, Client shall not be entitled to assert a Claim against Consultant based on any theory of professional negligence unless and until Client has obtained the written opinion from a registered, independent, and reputable engineer, architect, or geologist that Consultant has violated the standard of care applicable to Consultant's performance of the Services.
22. **ASSIGNMENT AND SUBCONTRACTS**: Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, except for an assignment of proceeds for financing purposes. Consultant may subcontract for the Services of others without obtaining Client's consent if Consultant deems it necessary or desirable to have others perform Services.
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. 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 subcontract 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.

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.

**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:**

Oak Ridge Land Bank

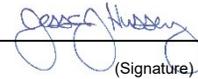
S&ME, Inc.

**BY:**



(Signature)

**BY:**



(Signature)

Chair, Oak Ridge Land Bank

(Print Name / Title)

Jessica Hussey / Associate Project Manager

(Print Name / Title)

**DATE:**

2/11/2021

**DATE:**

February 11, 2021

**PROPOSAL NUMBER: 211544**

**Client's DIGITAL signature to be treated as original signature**