SE-235
PROFESSIONAL INCIDENTAL SERVICES CONTRACT

AGENCY: SC Office of Resilience

PROJECT NAME: Greenwood Fox Hollow Townhome Buyout

PROJECT NUMBER: D30-N061-SG

A/E NAME: Davis|Floyd

ADDRESS: 1319 Highway 72/221 E
Greenwood, SC 29649

In consideration of the mutual covenants and obligations set forth herein, the Agency and A/E (hereinafter jointly referred to as the "parties") agree to the following:

A. CONTRACT DOCUMENTS

1. Documents forming a part of this contract are, in order of precedence:
   a. This Contract, SE-235.
   b. A/E Proposal describing services to be provided for this project, the associated hourly billing rates for the A/E and the A/E Consultants, and the projected Reimbursable items.
   c. Supplemental Conditions, attached if applicable.
   d. The following other documents:
      Proposal for Professional Survey Services
2. The contract is the entire and integrated agreement between the parties and supersedes prior negotiations, representations, or agreements, whether written or oral.

B. REPRESENTATIVES

1. **Agency's Representatives**

   Agency designates the individual listed below as its Representative, which individual shall have the authority to bind the Agency with respect to all matters regarding the Contract and requiring the Agency's approval or authorization:

   NAME: Eric Fosmire
   TITLE: Chief of Staff and General Counsel
   ADDRESS: 2100 Bull Street, Columbia SC 29201
   TELEPHONE: (803) 822-9580 **FAX:**
   EMAIL: eric.fosmire@scor.sc.gov

   The term "Agency" means the Agency or the Agency's Representative.

2. **A/E's Representatives**

   A/E designates the individual listed below as its A/E's Representative, which individual shall have the authority to bind the A/E with respect to all matters regarding the Contract and requiring the A/E's approval or authorization:

   NAME: Jeffrey Poole
   TITLE: Vice President, Survey
   ADDRESS: 319 Highway 72/221 E, Greenwood SC 29469
   TELEPHONE: 864-229-5211 **FAX:**
   EMAIL: jpoole@davisfloyd.com

   The term "A/E" means the A/E or the A/E's Representative.

3. Neither the Agency nor the A/E shall change their representatives without ten days written notice to the other party.

C. A/E RESPONSIBLITIES

1. The A/E shall provide professional services as set forth in this Contract consistent with the professional skill and care ordinarily provided by A/E's practicing in the same or similar locality region under the same or similar circumstances.
2. The A/E represents that its' team is properly licensed in the jurisdiction where the Project is located to provide the services required.

D. INSURANCE

1. The A/E shall procure and maintain in effect during the term of this Contract the insurance coverages described below, which insurance shall be placed with insurance companies authorized to do business in the State of South Carolina and rated A minus VII or better by the current edition of Best's Key Rating Guide or otherwise approved by Agency.
   a. Professional Liability Insurance with limits of not less than $1,000,000 per claim and in the aggregate. A/E shall maintain this coverage in effect during the term of this Contract and for five (5) years after the date of completion of services provided under this Contract. A/E shall give prompt written notice to Agency of all claims made against this policy during the period in which this policy is required to be maintained.
   b. Worker's Compensation Insurance as required by the State of South Carolina with statutory limits.
   c. Employers' Liability Insurance with limit of no less than $1,000,000 per accident.
   d. Automobile Liability Insurance: Insurance Services Offices (ISO) Form CA 00 01 covering Code 1 (any auto), or if A/E has no owned automobiles, Code 8 (hired) and Code 9 (non-owned), with limits not less than $1,000,000 per accident for bodily injury and property damage.
   e. Commercial General Liability Insurance (CGL): ISO Form CG 00 01 12 07 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury, and advertising injury, with limits no less than $1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to the project or the general aggregate limit shall be twice the required occurrence limit. This Contract shall be considered to be an "insured contract" as defined in the policy.
2. The A/E agrees to require Consultants to comply with the insurance provisions required of A/E pursuant to this Contract unless A/E and Agency mutually agree to modify these requirements for Consultants whose work is of relatively small scope. The A/E agrees that it will contractually obligate its Consultants to advise A/E promptly of any changes or lapses of the requisite insurance coverages and A/E agrees to promptly advise Agency of any such notices A/E receives from its Consultants. The A/E agrees that it will contractually obligate its Consultants to indemnify and hold harmless the Agency to the same extent that the A/E is required to do so as provided in this Contract.
3. The A/E shall provide certificates of insurance to the Agency that evidence compliance with the requirements in this Section.
4. Additional Insured Obligations
   a. To the fullest extent permitted by law, the A/E shall cause the primary and excess or umbrella polices for Commercial General Liability and Automobile Liability to include the Agency, its officers, officials, employees, and volunteers, as additional insureds for claims caused in whole or in part by the A/E's negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Agency's insurance policies and shall apply to both ongoing and completed operations.
   b. Prior to performing services, and thereafter upon replacement of each required policy of insurance, the A/E shall provide to the Agency a written endorsement to the A/E's General Liability Insurance policy that (i) names the Agency, its officers, officials, employees, and volunteers, as additional insureds, and (ii) states that coverage shall not be cancelled, except with notice to the Agency.
   c. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the A/E with reasonable promptness.

E. INDEMNIFICATION

1. Without limitation and notwithstanding any provision in this Contract, the A/E shall indemnify and hold harmless the Indemnitees for and against claims, damages, losses and expenses (including attorneys' fees) asserted by a third party against an Indemnitee arising out of or resulting from negligent acts or omissions of the A/E, a consultant, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself). The A/E shall not be required to indemnify an Indemnitee to the extent the Indemnitee's damages result from the Agency's own negligence.

2. Such obligation shall not be construed to negate, abridge, or reduce any other rights, including any other obligations of indemnity, which would otherwise exist as to a party or person described in this Section. As used in this paragraph, "Indemnitees" means the State (including its instrumentalities, agencies, departments, boards, and political subdivisions), and its officers, agents, and employees.

F. A/E SERVICES

1. The A/E shall be fully responsible for coordinating all services under this Contract regardless of whether performed by its own employees or by consultants hired by A/E to perform a portion of its' services.
2. The A/E shall be responsible to the Agency for the services furnished to the A/E by any Consultant to the same extent as if the A/E had furnished the service itself. A/E also agrees to coordinate and resolve any inconsistencies in its work and the work of its Consultants. All of A/E's contracts with Consultants shall be in writing, signed by both parties, and shall include the following provision: "The Agency is intended to be a third-party beneficiary of this Contract."
3. The A/E shall prepare and distribute conference memoranda, meeting minutes, summaries of telephone conversations, documentation and reports as required by the Agency to maintain a comprehensive record. The State Project Number and Name shall be shown on all documents.
4. Any reference in the Contract Documents to the A/E taking action or rendering a decision with a "reasonable time" or "reasonable promptness" is understood to mean no more than ten (10) days, unless otherwise specified in the Contract Documents or otherwise agreed to by the parties.
5. Work Product Documents
   a. The Work Product to be accomplished and submitted to the Agency shall be as defined in the Contract Documents.
   b. The A/E shall submit to the Agency, and OSE if required, properly completed documents in the number and form requested for review and approval.
   c. The Agency and OSE review and approval of all documents or other matters required herein shall not relieve the A/E of his professional duty of care in the preparation of the Work Product for compliance with the requirements of applicable statutes, regulations, codes, or the Manual.
6. Additional Services
   a. The A/E may provide Additional Services after execution of this Contract without invalidating the Contract. Except for services required due to the fault of the A/E, any Additional Services provided shall entitle the A/E to compensation pursuant to negotiations and an appropriate adjustment in the A/E's schedule.
   b. The A/E shall not proceed to provide Additional Services until the A/E receives the Agency's written authorization.

G. AGENCY'S RESPONSIBILITIES

1. The Agency shall review the Work Product and shall submit its written approval to the A/E, and OSE, if required.
2. The Agency shall provide prompt written notice to the A/E if the Agency becomes aware of any fault or defect, including errors, omissions or inconsistencies in the A/E's Work Product.
3. The Agency shall include the A/E in all communications that relate to or affect the A/E's services or professional responsibilities. Communications by and with the A/E's consultants shall be through the A/E.

H. INSTRUMENTS OF SERVICE

1. The A/E and the A/E's consultants shall be deemed the authors and owners of their respective Instruments of Service, including any Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with a Project is not to be construed as publication in derogation of the reserved rights of the A/E and the A/E's consultants.
2. The A/E grants to the Agency a perpetual, irrevocable, non-exclusive license to use and authorize others to use, at any time and in any manner, the A/E's Instruments of Service. The A/E shall obtain and provide to the Agency licenses from the A/E's consultants that have terms identical to those that obligate the A/E to the Agency as expressed above in this Section.
3. In the event the Agency uses the Instruments of Service without retaining the authors of the Instruments of Service, the Agency releases the A/E and A/E's consultant(s) from all claims and causes of action arising from such uses. The Agency, to the extent permitted by law, further agrees to waive any claims against the A/E and its consultants for all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Agency's use of the Instruments of Service under this Section. The terms of this Section shall not apply if the Agency rightfully terminates this Contract for cause.

I. CLAIMS AND DISPUTE RESOLUTION

1. All disputes, claims, or controversies relating to the Contract shall be resolved exclusively by the appropriate Chief Procurement Officer in accordance with Title 11, Chapter 35, Article 17 of the South Carolina Code of Laws, or in the absence of jurisdiction, only in the Court of Common Pleas for, or a federal court located in, Richland County, State of South Carolina. A/E agrees that any act by the State regarding the Contract is not a waiver of either the State's sovereign immunity or the State's immunity under the Eleventh Amendment of the United States Constitution. As used herein, the phrase "the State" includes the Agency, any governmental entity transacting business with the A/E pursuant to the Contract, and the State Fiscal Accountability Authority.
2. A/E consents that any papers, notices, or process necessary or proper for the initiation or continuation of any disputes, claims, or controversies relating to the Contract; for any court action in connection therewith; or for the entry of judgment on any award made, may be served on A/E by certified mail (return receipt requested) addressed to A/E at the address provided in the Contract or by personal service or by any other manner that is permitted by law, in or outside South Carolina. Notice by certified mail is deemed duly given upon deposit in the United States mail.
3. The A/E and Agency waive claims against each other for listed damages arising out of or relating to this Contract.
   a. For the Agency, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) costs suffered by a third party unable to commence work, (vi) attorney's fees, (vii) any interest, except to the extent allowed by Section K.5, (viii) lost revenue and profit lost use of the property, (ix) costs resulting from lost productivity or efficiency.
   b. For the A/E, listed damages are (i) lost revenue and profit, (ii) losses resulting from injury to business or reputation, (iii) additional or escalated overhead and administration expenses, (iv) additional financing costs, (v) attorney's fees, (vi) any interest, except to the extent allowed by Section K.5, (vii) unamortized equipment costs; and (viii) losses incurred by the A/E's consultants for the types of damages the A/E has waived as against the Agency.
4. Continuation of Work: Pending resolution of a claim or dispute, the A/E shall proceed diligently with the performance of its services under this Contract, and Agency shall continue to make payments in accordance with this Contract for all services rendered by A/E which are not the subject of the claim or dispute.

J. TERMINATION OR SUSPENSION

1. Agency Right of Suspension:
   a. The Agency may, at any time, suspend the Work, in whole or in part, by written notice to the A/E with or without cause for such period of time as determined by the Agency. The A/E shall be compensated for services performed prior to notice of such suspension, except in the event the suspension was due to a default by the A/E.
   b. When the Work, in whole or in part, is resumed, by written notice from the Agency, the remaining amount payable to the A/E may be equitably adjusted to reflect reasonable costs actually incurred by the A/E due to delay or interruption resulting from such suspension.
   c. If the suspension exceeds ninety (90) consecutive days, the A/E's fees for the remaining services and the time schedules shall be equitably adjusted.
2. Agency Right of Termination:
   a. Termination for Cause: If the A/E defaults, persistently fails or neglects to perform the services in accordance with the Contract Documents, or fails to perform a provision of the Contract, the Agency shall provide written notice of such default, failure, or neglect to the A/E. If the A/E fails to cure such default, failure, or neglect within ten (10) days from receipt of the Agency's notice, the Agency may, without prejudice to any other right or remedy the Agency may have, terminate the Contract.
   b. Termination for Convenience: The Agency may, for its convenience, terminate all or any portion of the Work or terminate this Contract by ten (10) days written notice stating the effective date of the termination. Thereafter, the Agency shall pay the A/E for those services actually performed before the date of termination. No payments shall be made for services not actually performed, and no payment shall be made or due for lost profits for portions of the services not actually performed.
3. A/E Right of Termination:
   a. The A/E may terminate the contract if Work is stopped through no fault of the A/E, or other persons performing work either directly or indirectly for the A/E, for a period of time exceeding sixty (60) consecutive calendar days due to a court order or other public authority having jurisdiction; or a declared National emergency which requires the Work to be stopped.
   b. Agency Failure to Make Payment: Subject to the Agency's right to withhold payments pursuant to Section K, if the Agency fails to make payments to the A/E as set forth in Section K and any other applicable provisions of the Contract Documents, the A/E may, upon fourteen (14) days prior written notice to the Agency, terminate the Contract and recover from the Agency payment for all services performed, including reasonable overhead, profit and damages applicable to the services performed through the date thereof.

4. In the event of suspension or termination for convenience, upon request of Agency and payment of all fees pursuant to this Section, A/E shall promptly provide Agency with all documents, in electronic format, completed or in progress on the date of termination. The Agency shall not alter or revise the documents without written approval from the A/E.
5. In the event of termination for cause, the A/E shall promptly provide Agency with all documents, in electronic format, completed or in progress on the date of termination. The Agency shall be responsible for any alteration or revision to the documents.

K. MISCELLANEOUS PROVISIONS

1. Governing Law: The Contract, any dispute, claim, or controversy relating to the Contract, and all the rights and obligations of the parties shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina, except its choice of law rules.
2. This Contract is formed pursuant to and governed by the South Carolina Consolidated Procurement Code and is deemed to incorporate all applicable provisions thereof and the ensuing regulations.
3. Severability: If it is determined that any provision of the Contract violates any law, or is otherwise invalid or unenforceable, such determination shall not impair or otherwise affect the validity, legality, or enforceability of the remaining provision or parts of the provision of the Contract Documents, which shall remain in full force and effect as if the unenforceable provision or part were deleted. In such case the Contract shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.
4. Economic Conflict of Interest: The A/E shall not have or exercise any official responsibility regarding a public contract in which the A/E, or a business with which he is associated, has an economic interest. A person working for the A/E shall not have or exercise any official responsibility regarding a public contract in which the person, an individual with whom he is associated, or his family members have an economic interest. If the A/E is asked by any person to violate, or does violate, either of these restrictions, the A/E shall immediately communicate such information to the procurement officer. The state may rescind, and recover any amount expended as a result of, any action taken, or contract entered in violation of this provision. The terms "business with which he is associated," "economic interest," "family member," "immediate family," "individual with whom he is associated," "official responsibility" and "person" have the meanings provided in S.C. Code Ann. § 8-13-100.
5. Drug-Free Workplace: The A/E must comply with the Drug-Free Workplace Act, S.C. Code Ann. §§ 44-107-10, et seq. The A/E certifies to the Agency that A/E will provide a Drug-Free Workplace, as defined by S.C. Code Ann. §§ 44-107-20(1).
6. False Claims: According to SC Code § 16-13-240, "a person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty" of a crime.
7. Non-Indemnification: It is unlawful for a person charged with disbursements of state funds appropriated by the General Assembly to exceed the amounts and purposes stated in the appropriations per S.C. Code Ann. § 11-9-20. It is unlawful for an authorized public officer to enter into a contract for a purpose in which the sum is in excess of the amount appropriated for that purpose. It is unlawful for an authorized public officer to divert or appropriate the funds arising from any tax levied and collected for any one fiscal year to the payment of an indebtedness contracted or incurred for a previous year per S.C. Code Ann. § 11-1-40.
8. Assignment: The Agency and A/E, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Contract. Neither the Agency nor the A/E shall assign this Contract without the written consent of the other. S.C. Code Ann. Reg. 19-445.20180 provides as follows: "No State contract is transferable, or otherwise assignable, without the written consent of the Chief Procurement Officer, the head of a purchasing agency, or the designee of either; provided, however, that a contractor may assign monies receivable under a contract after due notice from the contractor to the State."
9. Force Majeure: In the event A/E is hindered, delayed or prevented from performing its obligations under this Contract as a result of any fire, flood, landslide, tornado or other act of God, malicious mischief, theft, strike, lockout, other labor problems, shortages of material or labor, or any other cause beyond the reasonable control of A/E, the time for completion of A/E's work shall be extended by the period of resulting delay.
10. Open Trade Representation: By signing this Contract, A/E represents that A/E is not currently engaged in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code § 11-35-5300. During the contract term, including any renewals or extensions, A/E will not engage in the boycott of a person or an entity based in or doing business with a jurisdiction with whom South Carolina can enjoy open trade, as defined in SC Code § 11-35-5300.

L. COMPENSATION

1. Basic Services:

The Agency shall compensate the A/E for the services rendered as described in the Contract Documents in Section A in the amount of:

$ 5,500.00

2. Additional Services:

The Agency shall compensate the A/E for Additional Services rendered as described in the Contract Documents in Section A in the amount of:

$ N/A

3. Reimbursable Expenses:

For Reimbursable Expenses the compensation shall be the actual costs incurred by the A/E and the A/E's consultants. The A/E and the A/E's consultants shall be allowed a reasonable markup not to exceed 10% for administrative cost related to Reimbursable Expenses.

The Agency shall compensate the A/E for Reimbursable Expenses described in the Contract Documents in Section A as a not-to-exceed amount of:

$ N/A

4. Unless authorized in writing by the Agency prior to incurring the expense, no expense for transportation, travel, or subsistence will be reimbursable to the extent the expense exceeds the amount for which a state employee would be reimbursed under the Travel Regulations. Travel Regulations means the State Fiscal Accountability Authority's Regulations for Reimbursement for Travel and Subsistence Expenses, Disbursement Regulations pdf found at [https://cg.sc.gov/guidance-and-forms-state-agencies/travel-forms-and-mileage-rate]. There shall be no charge for time spent in travel.
5. Progress Payments: Payments for services shall be made monthly in proportion to services performed. The Agency shall make payments to the A/E of undisputed amounts due for services performed by the A/E within twenty-one (21) days of receipt of the A/E's invoice. The A/E shall make progress payments to the consultants within seven (7) days of the receipt by the A/E of each payment from the Agency. Payments due to the A/E and unpaid under this Contract shall bear interest only if and to the extent allowed by S.C. Code Ann. §§ 29-6-10 through 29-6-60. Amounts due to the A/E shall bear interest at the rate of one percent a month or a pro rata fraction thereof on the unpaid balance as may be due.
6. The Agency shall not withhold amounts from the A/E's compensation to impose a penalty.

AGENCY:

BY: _____
(Signature of Representative)

PRINT NAME: Eric Fosmire

PRINT TITLE: Chief of Staff & General Counsel

DATE: 21 October 2026

A/E:

BY: _____
(Signature of Representative)

PRINT NAME: Jeffrey W. Poole, PLS, PE

PRINT TITLE: Vice President, Survey

DATE: 10-23-2026

DAVIS & FLOYD

SINCE 1954

October 9, 2026

Nancy Miramonti
South Carolina Office of Resilience
2100 Bull Street
Columbia, SC 29201

Emailed this day: Nancy.Miramonti@scor.sc.gov

RE: Proposal for Professional Surveying Services
Boundary Survey of Fox Hollow in Greenwood, SC
D&F Job No: 000110.00

Dear Ms. Miramonti:

We appreciate the opportunity to offer professional surveying services to support the Fox Hollow project in Greenwood, SC. Davis & Floyd (D|F) proposes to provide a Boundary Survey of the 2.1-acre Parcel for a lump sum fee of **$5,500.** The property may be further defined by Greenwood County GIS as Parcel ID's 6847-974-337 and 6847-973-323 (see attached Property Exhibit).

The Boundary Survey will include research of public records to obtain plats for the subject parcel along with the adjacent parcels. We will also obtain copies of road plans and other information to determine the rights of way for Haltiwanger Road. This information will be used to retrace the existing property lines and to search for the existing property corners. Property corners that are not found will be replaced. We will also survey obvious and apparent utility features that typically have an associated easement such as power poles and sanitary sewer manholes. Some utilities and associated easements may not be obvious and apparent such as water, gas and fiber. The survey will bear the seal of a Professional Land Surveyor and will meet the Minimum Standards for South Carolina and Greenwood County.

The final deliverable will include an approved Boundary Plat in hard copy and electronically in pdf format.

We will begin with receipt of the signed agreement and will have the draft survey available for review within two weeks.

Should you accept the scope of services, terms of compensation, and the attached Terms and Conditions, you may execute a formal agreement by signing and returning a copy of this proposal. Thank you for allowing Davis & Floyd the opportunity to support this project. Please don't hesitate to contact us should you have any questions or concerns.

Yours truly,

DAVIS & FLOYD

Jeffrey Poole, PE, PLS
Vice President, Survey

Enclosures: Property Exhibit
D&F Standard Terms and Conditions

Agreement Acceptance

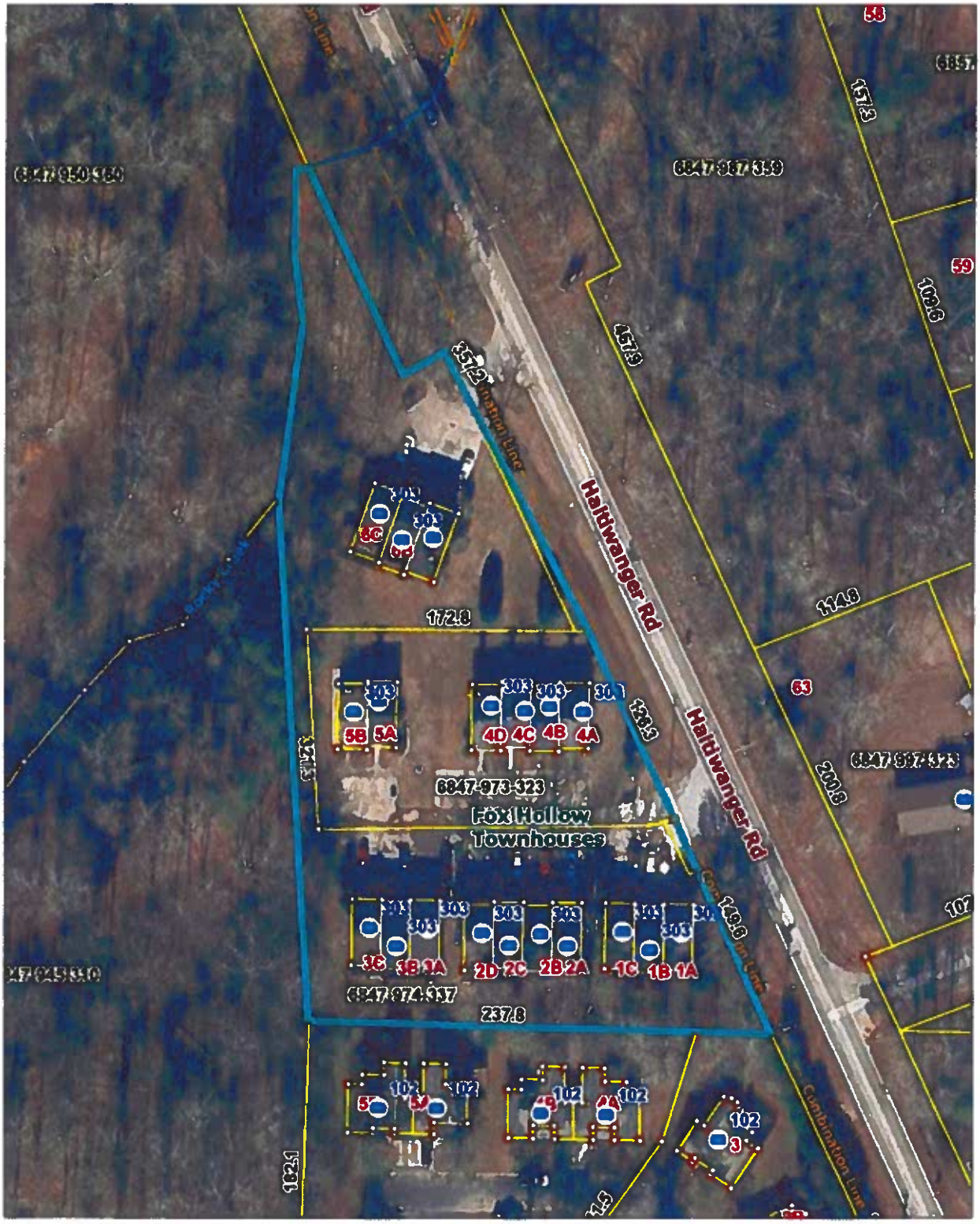
Signature: _____

Printed Name: Eric G. Fosmire

Company: S.C Office of Resilience

Date: 13 October 2026

Greenwood County, SC



Disclaimer: Map and parcel data are believed to be accurate, but accuracy is not guaranteed This is not a legal document and should not be substituted for a title search,appraisal, survey, or for zoning verification.

Map Scale
1 inch = 94 feet
10/9/2026

DAVIS & FLOYD, INC.
STANDARD TERMS AND CONDITIONS

Unless otherwise agreed in a written contract, services provided by Davis & Floyd, Inc. are expressly limited to the terms and conditions stated herein.

1. **QUALITY OF WORK.** All services of Davis & Floyd, Inc., ("D&F"), and its subsidiaries, independent professional associates, consultants and subcontractors will be performed in a reasonable and prudent manner in accordance with generally accepted industry practice. All estimates, recommendations, opinions and decisions of D&F will be on the basis of the information available to D&F's experience, technical qualifications, and professional judgement.

2. **INVOICES AND PAYMENT.** Invoices will be submitted periodically directly to the Client (customarily on a monthly basis) and are due and payable upon receipt. The billing of a third party will not be accepted without a statement, signed by the third party, which acknowledges and accepts payment responsibility. Client will be responsible for any applicable taxes in the manner and amount as required by law.

Expenses properly chargeable for the services which are reimbursable at cost shall include: travel and subsistence expenses of personnel when away from their office on business directly or indirectly connected with the Project; identifiable communication, shipping, printing, and reproduction costs; professional and technical subcontractors; identifiable drafting and stenographic supplies; computer time and software; and expendable materials and supplies purchased specifically for the Project. A fifteen percent (15%) handling and administrative charge will be added to those foregoing items, which are purchased from outside sources. When D&F, subsequent to initiation of services, finds that specialized equipment is needed to perform the services, it will purchase and/or lease, as appropriate, the equipment as a reimbursable expense. Analyses performed in the D&F's or D&F's subconsultant's laboratories will be billed on a unit-cost-per-analysis basis unless specified otherwise in the proposal.

Unpaid balances shall be subject to a late charge at the rate of one and one half percent (1.5%) per month from the date of invoice if the unpaid balance is not paid within 30 days. In addition, D&F may, after giving seven days written notice to Client, suspend services without liability until Client has paid in full all amounts due D&F on account of services rendered and expenses incurred, including late charges on the past due invoices. Payment of invoices is not subject to discounting by Client. Time is of the essence in payment of invoices, and timely payment is a material part of the consideration of the agreement between D&F and the Client. Venue of legal proceedings shall be in the county of the principal place of business of D&F.

3. **CHANGES OR DELAYS.** Unless the accompanying Proposal provides otherwise, the proposed fees constitute the D&F's estimate to perform the services required to complete the Project, as we understand it to be defined. For those projects involving conceptual or process development work, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. D&F will inform the Client of such situations so that negotiation of change in scope and adjustment to the time of performance can be accomplished as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, whether or not changed by any order, an equitable adjustment shall be made and the Agreement modified accordingly.

Costs and schedule commitments shall be subject to renegotiation for unreasonable delays caused by the Client's failure to provide specified facilities or information, for delays caused by unpredictable occurrences or force majeure, such as fires, floods, riots, strikes, unavailability of labor or materials, delays or defaults by suppliers of materials or services, process shutdown, acts of God or of the public enemy, or acts or regulations of any governmental agency. Temporary work stoppage caused by any of the above will result in additional cost (reflecting a change in scope) beyond that outlined in this proposal.

4. **INSURANCE.** As protection for D&F, Workers Compensation Insurance, Comprehensive General Liability Insurance, and Professional Liability Insurance is maintained at D&F's expense. Certificates of such insurance will be provided to Client upon request. D&F agrees to purchase additional insurance if requested by Client (presuming such insurance is reasonably available, from carriers acceptable to D&F) provided the costs for additional insurance are reimbursed by Client.

5. **INDEMNIFICATION AND ALLOCATION OF RISK.** To the fullest extent permitted by law, D&F shall indemnify and hold harmless Client, Client's officers, directors, partners, and employees from and against costs, losses, and damages (including, but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of D&F, D&F's officers, directors, partners, employees, and consultants in the performance of D&F's services under this agreement.

To the fullest extent permitted by law, Client shall indemnify and hold harmless D&F, D&F's officers, directors, partners, and employees from and against costs, losses, and damages (including but not limited to reasonable fees and charges of engineers, architects, attorneys, and other professionals, and reasonable court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of Client or Client's officers, directors, partners, employees, and consultants with respect to this agreement.

Not permitted by State law EAT

To the fullest extent permitted by law, D&F's total liability to Client and anyone claiming by, through, or under Client for any injuries, losses, damages and expenses caused in part by the negligence of D&F and in part by the negligence of Client or any other negligent entity or individual, shall not exceed the percentage share that D&F's negligence bears to the total negligence of Client, D&F, and all other negligent entities and individuals.

6. **LIMITS OF LIABILITY.** It is understood that any and all professional liabilities incurred by D&F throughout the course of rendering professional services on this Project shall be limited to a maximum of the net fee received by D&F, not including reimbursable expenses and subconsultants, for all services rendered on the Project.

7. **LITIGATION.**

All costs associated with compliance to any subpoena for documents, for testimony in a court of law, or for any other purpose relating to work performed by D&F, in connection with work performed for that Client, shall be paid by the Client. Such costs shall include, but not be limited to, hourly charge for persons involved in responding to subpoenas, travel and accommodations, mileage, attorney's preparation of testifier and advice of counsel in connection with response to subpoenas, and other expenses deemed reasonable and associated with said litigation.

8. **ACCESS.** Client shall arrange for safe access to and make all provisions for D&F and D&F's consultants to enter upon public and private property as required for D&F to perform services.

9. **TERMINATION.** Either party may terminate the Agreement, in whole or in part, by giving seven days written notice, if the other party substantially fails to fulfill its obligations under the Agreement through no fault of the terminating party. The final invoice will include all services and expenses associated with the Project up to the effective date of termination. In any event, an equitable adjustment shall be made to provide for termination settlement costs D&F incurs relating to commitments that had become firm before termination and for a reasonable profit for services performed.

10. **CONFIDENTIALITY.** D&F shall maintain as confidential and not disclose to others without Client's prior written consent, all information obtained from Client not otherwise previously known to D&F or in the public domain, as Client expressly designates in writing to be "CONFIDENTIAL." The provisions of this paragraph shall not apply to information in whatever form which (1) is published or comes into the public domain through no fault of D&F, (2) is furnished or obtained from a third party who is under no obligation to keep the information confidential, or (3) is required to be disclosed by law on order of a court, administrative agency or other authority with proper jurisdiction.

Client agrees that D&F may use and publish Client's name and a general description of D&F's services with respect to the Project in describing D&F's experience and qualifications to other Clients or potential Clients.

11. **COST ESTIMATING.** Since D&F has no control over the cost of labor, materials, equipment or services furnished by others, or over methods of determining prices, or over competitive bidding or market conditions, any and all opinions as to costs rendered hereunder, including but not limited to opinions as to the cost of construction and materials, shall be made on the basis of its experience and qualifications and represent its best judgement as an experienced and qualified professional, familiar with the construction industry; but D&F cannot and does not guarantee that proposals, bids or actual costs will not vary from opinions of probable cost prepared by it. If at any time the Client wishes greater assurance as to the amount of any cost, he shall employ an independent cost estimator to make such a determination.

12. **REUSE OF DOCUMENTS.** All documents, including drawings and specifications, prepared or furnished by D&F (and D&F's subsidiaries, independent professional associates, consultants and subcontractors) pursuant to this Agreement are instruments of service in respect of the Project and D&F shall retain copies for information and reference in connection with the Project; however, such documents are not intended or represented to be suitable for reuse by Client or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by D&F for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to D&F or D&F's subsidiaries, independent professional associates, consultants and subcontractors from any and all costs, expenses, fees, losses, claims, demands, liabilities, suits, actions and damages whatsoever arising out of or resulting therefrom. Any such verification or adaptation will entitle D&F to further compensation at rates to be agreed upon by Client and D&F.

13. **USE OF ELECTRONIC MEDIA.** Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by D&F. Files in electronic media format of text, data, graphics, or of other types that are furnished by D&F to Client are only for convenience of Client. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

When transferring documents in electronic media format, D&F makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by D&F at the beginning of the assignment. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 30 days, after which the receiving party shall be deemed to have accepted the data thus transferred. The party delivering the electronic files will correct any errors detected within the 30-day acceptance period. D&F shall not be responsible to maintain documents stored in electronic media format after acceptance by Client.

14. **HANDLING OF SAMPLES.** With regards to samples received by D&F for laboratory analysis, after the analytical results have been reported, samples are routinely retained in our storage facilities for 14 days. Prior arrangements must be made if samples are to be held for longer periods. D&F may charge a monthly fee for long-term storage of samples. Unused portions of samples found or suspected to be hazardous according to state or federal guidelines may be returned to the Client upon completion of the analytical work. These include samples known or suspected to contain hazardous materials as defined by state or federal regulatory agencies. The cost of disposal or returning the samples may be invoiced to the Client. The sample and portions thereof remain the property of the Client at all times.

15. **RETENTION OF LABORATORY REPORTS.** After analytical results have been reported to Client, D&F will normally retain copies of such analytical reports for a period of three years, after which time such reports may be destroyed. D&F makes no guarantee and assumes no responsibilities for retention of such reports. If Client requests additional copies of such analytical reports during the retention period, an additional charge will apply for the preparation and printing of such reports.

16. **CONTROLLING AGREEMENT.** To the extent they are inconsistent or contradictory, express terms of the accompanying Proposal take precedence over these Standard Terms and Conditions. It is understood and agreed that the services performed under the accompanying Proposal or any related Agreement are not subject to any provision of any Uniform Commercial Code. Any terms and conditions set forth in Client's purchase order, requisition, or other notice or authorization to proceed are inapplicable to the service under this proposal or any related Agreement, except when specifically provided for in full on the face of such purchase order, requisition, or notice or authorization and specifically accepted in writing by D&F. D&F's acknowledgement of receipt of any purchase order, requisition, notice or authorization of D&F's performance of work subsequent to receipt thereof does not constitute acceptance of any terms or conditions other than those set forth herein.

17. **PROPRIETARY DATA.** The technical and pricing information contained in the accompanying Proposal or Agreement is to be considered Confidential and Proprietary and is not to be disclosed or otherwise made available to third parties without express written consent of D&F.

18. **GOVERNING LAW.** This Agreement is to be governed by and construed in accordance with the law of the principal place of business of D&F.

19. **CONTRACTS.** All contracts are subject to review and approval by D&F's legal department and must be signed by a corporate officer.