



April 3, 2023

Derek Durst-Public Facilities Manager
Village of Marvin, North Carolina
10006 Marvin School Rd
Marvin, NC 28173

THIS AGREEMENT IS SUBJECT TO ACRO DEVELOPMENT SERVICES TERMS AND CONDITIONS (ATTACHMENT A) AND ARE INCORPORATED INTO AND MADE A PART OF THIS PROFESSIONAL SERVICES AGREEMENT

Proposal for Professional Services

Project Name: Tullamore Greenway (the “Project”) Project No. 2023-027

Project Description: We understand the overall Project consists of construction staking for the above referenced project per the client’s request.

Derek,

Thank you for the opportunity to submit this proposal for professional services for the above referenced Project. This proposal outlines our understanding of the professional services requested of ACRO Development Services (“ACRO” or “Consultant”) and our proposed fee.

Basic Scope of Services (these are the services to be provided for our proposed fee. Any services that are not included below can be added as an “Additional Service” only by written agreement of Client and Consultant).

Construction Staking Services and Fees

- ACRO will stake the limits of the 30’ Greenway as shown on the subdivision plat, between the areas as shown on the attached.

ACRO proposes to furnish the above-described services on a time and material basis according to our current hourly rates:

Stake Greenway (hourly) \$3,500

Exclusions & Clarifications

As-built services

These additional services can be performed on a time and material basis according to our current hourly rates with your approval.

Tullamore Greenway
April 3, 2023

Reimbursables

The foregoing fixed fees **include** the cost of reimbursable expenses such as, but not necessarily limited to the following: prints, transportation and mileage, special mailing, and deliveries. Expenses for filing fees, permit fees and plan review fees will be paid by the client directly. Sub-consultant fees will be incurred only with your specific approval and will be billed at the actual fee plus 10% for administration thereof.

Payment Terms

Invoices will be sent monthly based on completed progress and reimbursable costs incurred. Payment on invoices will be due 30 days from the date of the invoice. Interest on balances unpaid after 60 days will accrue interest at the rate of 1.5% per month. Additional Services will be performed and billed at the hourly rates set forth herein.

Please sign below to indicate your acceptance of this proposal and the attached Terms & Conditions. This proposal shall terminate after thirty days if not accepted. We will begin work upon receipt of your authorization, and the parties shall work together to create a schedule for completion of the work. We appreciate the opportunity to provide services for your project.

Respectfully Submitted,



Ed Miller, PLS
Director of Survey & Partner

Acceptance and Authorization to Proceed:

Authorized Signature

Title

Company Name

Print Name and Date

Enclosures: Terms and Conditions

Tullamore Greenway
April 3, 2023

Please provide the following information for invoice delivery:

__ Please email all invoices to: _____

__ Please copy: _____

ACRO's preferred method of payment is ACH. You can obtain our ACH banking details by emailing accountsreceivable@acro-ds.com. If you prefer to pay your invoices with a paper check, please include the invoice number and ACRO project number and mail to:

ACRO Development Services, PLLC
PO Box 32216
Charlotte, NC 28232

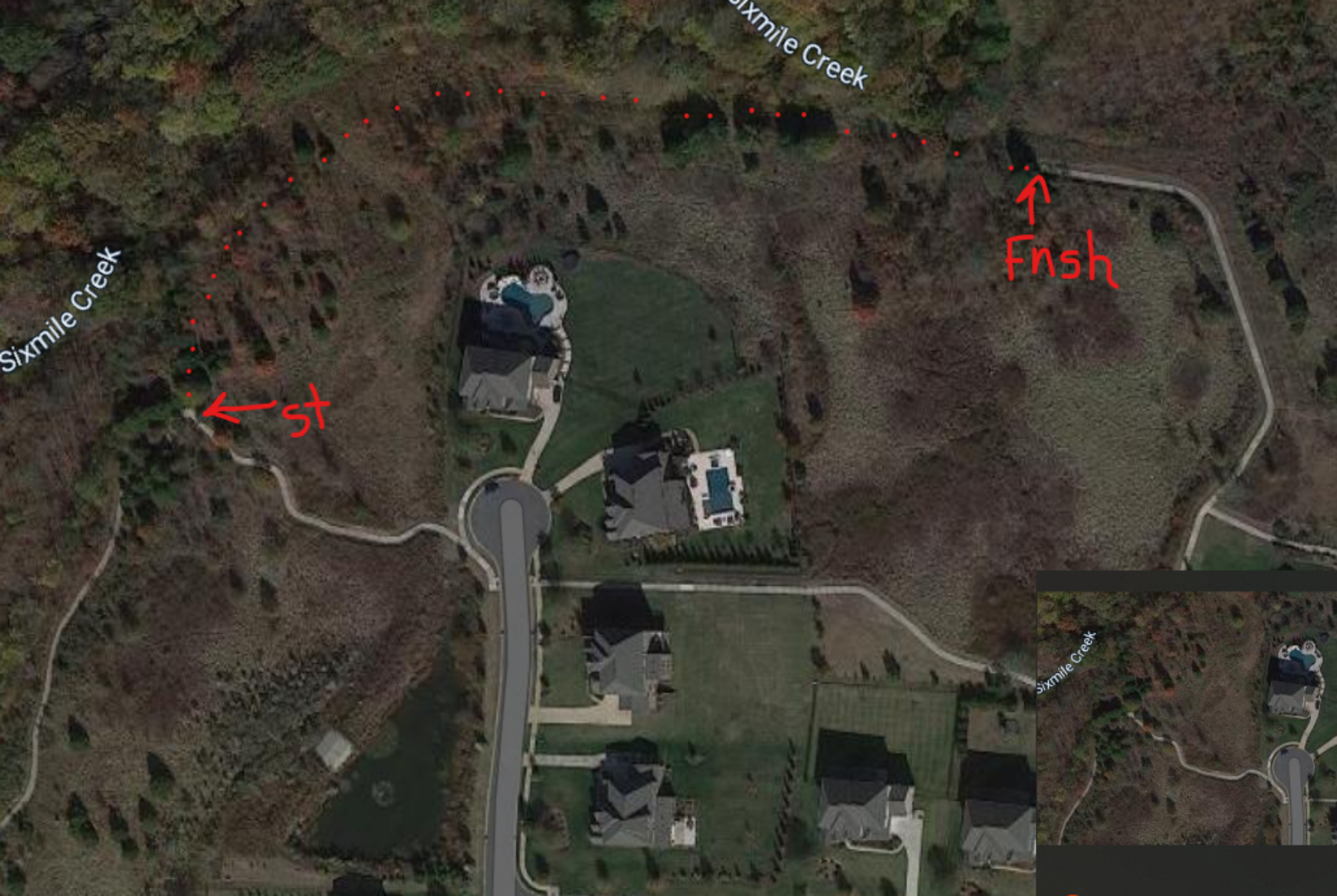
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Sixmile Creek

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ACRO DEVELOPMENT TERMS AND CONDITIONS
Attachment A

1. **STANDARD OF CARE.** Services performed under this Agreement by Acro Development Services, PLLC., ("Consultant") will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the engineering profession currently practicing in the same locality under similar conditions. No other representation, express or implied, and no warranty or guarantee is included or intended in this Agreement or in any instruments of services produced by Consultant including without limitation, any plans, specifications, reports, or opinions.
2. **CLIENT INFORMATION.** Client shall provide all criteria and full information as to its requirements including objectives, and expectations for Client related design and construction standards, prior to commencement of Design Development.
3. **SCOPE OF SERVICES.** Consultant shall be obligated to perform only the services described in the proposal for the agreed upon fee and arrangement as stipulated. Client shall inform Consultant of any special criteria or requirements related to Consultant's services. Any exclusions if stated on the proposal are not to be considered all-inclusive. By signing the proposal for services Client has agreed to scope of services as described.
4. **EXCLUSIONS.** Consultant is not responsible for the following services, which are expressly excluded from its proposal:
 - a. Certification as to the accuracy or sufficiency of any document prepared by others and provided to Consultant by the Client or at the Client's direction.
 - b. Assurance of favorable or timely approval, permitting, and licensing action by governmental agencies as a result of services provided by Consultant.
 - c. Certification as to the correctness of any services and/or recommendations performed by others who provide such information or services directly or indirectly to the Client.
5. **FEES AND COMPENSATION.** Consultant shall invoice Client monthly for work performed under this Agreement. The amount billed shall be based on Consultant's opinion of the portion of the total services actually completed during the billing period relative to the entire scope of services. In the event that the Client requests Consultant to perform services not specifically described in the Agreement, Client agrees to compensate Consultant for such services in accordance with the hourly rate schedule as set forth by the Agreement unless an Amendment has been signed by both parties indicating the basis or rate of such additional compensation. In the event Consultant is obligated to institute collection activity to recover amounts unpaid, Client shall be subject to all costs incurred by Consultant for collection, including reasonable attorney fees.
6. **REIMBURSABLE EXPENSES.** Client shall reimburse Consultant for all expenses necessarily or reasonably incurred in connection with the performance of professional services at cost plus 10%. Reimbursable expenses include, but are not limited to, transportation and subsistence incidental thereto; data processing expenses of outside consultants or services not specified as part of a lump sum item; reproduction and printing costs; delivery; shipping and courier expenses; and other out-of-pocket expenses incidental to Consultant's performance of service.
7. **CHANGED CONDITIONS.** The Client shall not hold Consultant liable for any unforeseen conditions that were not known to Consultant at the time of executing this Agreement, and Consultant's fees and rates shall be equitably adjusted to account for any additional cost as a result of such unforeseen conditions.
8. **FORCE MAJEURE.** Neither party shall be liable for delay or failure in performance if such delay or failure is caused by Force Majeure. Force Majeure shall not excuse Client's obligation to timely pay Consultant for services rendered.
9. **OWNERSHIP OF INSTRUMENTS OF SERVICE.** All reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates, computer data or drawing files, and other documents ("Instruments of Service") prepared by Consultant in connection with the performance of its duties hereunder shall be and remain the property of Consultant. Those Instruments of Service retained by Consultant shall be recognized as the originals. Consultant grants to Client a limited license to use the Instruments of Service solely in connection with the Project. The Instruments of Service are not intended or represented to be suitable for reuse by the Client or others on an extension of the Project or on any other project. Any reuse of Instruments of Service prepared by Consultant without written permission or adaptation by Consultant for the specific purpose intended will be at the Client's sole risk, without liability or legal exposure to Consultant, and Client shall indemnify, defend and hold harmless Consultant from any claims that arise from such unauthorized use. Further, Consultant may, in its sole discretion, and without waiver of any terms herein, charge Client reasonable compensation for such unauthorized use, which Client agrees to promptly pay Consultant.
10. **CONSTRUCTION COSTS.** The parties agree that Consultant has no control over the cost of labor, materials, equipment or services furnished by others, or over any contractor(s)' means or methods of determining prices, or over competitive bidding or market conditions. As such, Consultant cannot and does not guarantee that proposals, quotes, bids or actual total project or construction costs will not vary from opinions of probable costs prepared by Consultant. If, prior to the bidding or negotiating phase, the Client wishes greater assurance as to total costs, Client shall employ an independent cost estimator, at Client's expense, or authorize Consultant to contract for such services, which will be considered Additional Services.
11. **HAZARDOUS MATERIALS.** Nothing in this Agreement shall impose liability on Consultant for claims, lawsuits, expenses, or damages arising from, or in any manner related to, the exposure to, handling of, manufacture or disposal of asbestos, asbestos products, or hazardous waste in any of its various forms, as defined by the Environmental Protection Agency. It is understood and agreed that this Agreement does not contemplate services related to such materials, including use of asbestos or any hazardous waste material. Therefore, Client agrees to hold harmless, defend, and indemnify Consultant from and against all claims, lawsuits, expenses, or damages arising from, or related to, the handling, use, treatment, purchase, sale, discovery, storage or disposal of asbestos, asbestos products, or any hazardous waste materials (or hazardous materials in general) related to the Client's project.
12. **TERMINATION.** This Agreement may be terminated by the Client or Consultant upon seven (7) days' written notice should the other fail to perform its material obligation hereunder through no fault of the terminating party. In the event of termination, the Client shall pay Consultant for all services rendered to the date notice of termination was received, all reimbursable expenses, and termination expenses.
13. **DISPUTE RESOLUTION.** All claims, disputes or controversies arising out of, or in relation to, the interpretation, application or enforcement of this Agreement shall first be submitted to non-binding mediation, pursuant to the North Carolina Rules Governing Mediated Settlement Conferences then in effect, as a condition precedent to binding arbitration. If mediation is unsuccessful, the parties will proceed to arbitration, before a single arbitrator, and the arbitration shall be administered pursuant to North Carolina's Revised Uniform Arbitration Act using the Construction Industry Rules of the American Arbitration Association.

- 14. LIMITATION OF LIABILITY.** To the fullest extent permitted by law, the total liability, in the aggregate, of Consultant and its officers, directors, partners, employees, agents, and subconsultants, to Client, and anyone claiming through or under Client, for any claims, losses, costs, or damages whatsoever arising out of, resulting from or in any way relating to this Agreement, from any cause or causes, including but not limited to tort (including negligence and professional errors and omissions), strict liability, breach of contract, or breach of warranty, shall not exceed the insurance proceeds available under Consultant's insurance policies. If there is no insurance coverage with respect to Owner's Claims, then the total liability, in the aggregate, of Consultant and Consultant's officers, directors, members, partners agents, and employees to Owner and anyone claiming by, through or under Owner shall not exceed \$50,000.
- 15. APPLICABLE LAW.** Unless otherwise specified, this Agreement shall be governed by the laws of the State of North Carolina.
- 16. INDEMNIFICATION.** Each party shall indemnify and hold harmless the other from and against any and all claims, damages, losses and expenses (including attorneys' fees) arising out of the indemnitor's negligence. Client's indemnity obligation shall include, without limitation, Client's failure to maintain the Project during and after Project completion.
- 17. INSURANCE.** Consultant carries Workers' Compensation insurance, Professional Liability insurance, and General Liability insurance and will exchange certificates of insurance upon request. Client shall require its contractors and other consultants to purchase and maintain general liability and other insurance as needed and the general contractor shall be obligated to indemnify Consultant for contractor's negligence and shall include Consultant as an additional insured on its commercial general liability policy.
- 18. NOTIFICATION.** Consultant shall not be responsible for any errors, omission, defect or deficiency in the contract documents ("Error") prepared by any designer or its consultants which in any way impacts the schedule of the project, results in a lack of coordination among the contract documents, delays the completion of the project, or which in any other way causes any damage or loss to the Client, owner, contractors, subcontractors, or other entity involved in the project, unless: (i) Consultant is promptly notified of such error, in any event within 14 days of the date such error was discovered or could reasonably be discovered; and (ii) Consultant is given a reasonable opportunity, at the time of discovery, to address such error, and, if appropriate, take such steps as are necessary to correct and resolve it. Failure to comply with the provisions of this paragraph shall constitute a waiver of any claim for damages, or a right to offset against Consultant by Client, owner, contractors, or others, and shall in no event cause or allow a reduction in the fees otherwise due Consultant for services provided on the project.
- 19. CONSTRUCTION OBSERVATION SERVICES.** If Consultant's construction observation services are included as part of the scope of services in the Agreement, Consultant will provide personnel to observe construction to ascertain that when completed the work being performed, will generally be in accordance with the design work performed by Consultant. However, such activity shall not be deemed to be create a supervisory role or deemed the provision of Consultant's opinion on the suitability of any part of the work performed, nor approval of the means and methods, such being the sole province of the contractor. . Consultant's sole duty shall be to report observed deviations from plans and specification to the client. Consultant's services do not make Consultant a guarantor of any work by contractor or any subcontractors/consultants (collectively and individually herein "Contractor"), and such Contractor(s) will continue to be responsible for the accuracy and adequacy of all construction or other activities performed by them. The Contractor(s) will be solely responsible for the means and methods of construction, supervision of personnel and construction, control of machinery, falsework, scaffolding and/or other temporary construction aids, safety in or about the job site, and compliance with OSHA and other applicable laws and regulations.
- Consultant shall not be liable for the contractor's failure to perform work in accordance with plans and specifications.
- 20. SEVERABILITY.** Should any portion or provision of this Agreement be found to be unenforceable then all other provisions shall remain in full force and effect.
- 21. MUTUAL CONSEQUENTIAL DAMAGES WAIVER.** Client and Consultant mutually waive against the other any consequential or incidental damages incurred by either due to the fault of the other or their employees, consultants, agents, contractors, or subcontractors, regardless of the nature of the fault or whether such liability arises in breach of contract or warranty, tort, statue, or any other cause of action. Consequential damages include, but are not limited to, additional interest or finance charges, loss of use and lost profits.
- 22. NOTICE.** A party that believes the other has materially breached these Terms shall issue a detailed written cure notice identifying its alleged grounds for termination. Both parties shall promptly and in good faith attempt to identify a cure for the alleged breach or present facts showing the absence of such breach. If a cure can be agreed to or the matter otherwise resolved within thirty (30) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur. Either party may waive any right provided by these Terms in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.
- 23. CERTIFICATES.** Consultant shall not be required to execute any certifications or other documents that might in its judgment increase Consultant's risk or affect the availability, applicability, or cost of its insurance.
- 24. INFORMATION FOR THE SOLE USE AND BENEFIT OF THE CLIENT.** All opinions and conclusions of Consultant, whether written or oral, and any plans, specifications or other documents and services provided by Consultant are for the sole use and benefit of Client for the named project and are not to be provided to any other person or entity without the prior written consent of Consultant. No other person may rely on the instruments of service produced by Consultant. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of any third party against either Consultant or Client. There are no intended third-party beneficiaries of this Agreement.
- 25. FORUM SELECTION AND CLAIM COMMENCEMENT.** Any action or legal proceeding to enforce the terms of this Agreement, or arising from or relating to this Agreement, shall be brought only in the County and State in which the Project is located. As to all acts or failures to act by either party to this Agreement, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the relevant date of substantial completion, and as to any acts or failures to act occurring after the relevant date of substantial completion, and not later than the date of Consultant's final invoice.
- 26. DELIVERABLES.** Consultant shall select the methods, software, and format of any deliverables utilized or created during performance of the work, unless otherwise stated in the Agreement or requested by the Client prior to commencement of work. Electronic deliverables shall be compatible with current industry standards and conversion to other formats shall be the responsibility of the recipient.