

February 4, 2021

Ms. Leslie Gahagan
Environmental Manager
City of Foley, Alabama
23030 Wolf Bay Drive
Foley, Alabama 36535

SUBJECT: WOLF CREEK HEADWATERS RESTORATION PHASE 1

Dear Ms. Gahagan:

Please find the following Agreement to provide professional services related to the Wolf Creek Headwaters Restoration Phase I ("The Project").

This Project, this Agreement, and our relationship will be governed by the general conditions which are attached hereto, and by reference, made a part hereof. If the attached scope of work, proposed fee, and general conditions are acceptable, please indicate your acceptance of the proposal, scope of work and method of compensation by signing below and returning one copy for our files.

Thank you for the opportunity to provide these services. If you have any questions or comments or require additional information, please contact us.

Sincerely,



Drew T. Davis, PE, ENV SP
Vice President – East Gulf Region

Enclosure

ACCEPTED:

BY:

Ralph Hellmich

TITLE:

Mayor

CLIENT NAME:

City of Foley

DATE:

2/15/2021

**Federal Employer ID #
(Corporation):**

63-6001263

**SOCIAL SECURITY #
(Individual):**

GENERAL CONDITIONS FOR LETTER AGREEMENT

This Agreement made and entered into this _____ day of _____, 2021 by and between City of Foley, Alabama, hereinafter referred to as the OWNER, and Volkert, Inc., hereinafter referred to as the CONSULTANT;

WHEREAS, the OWNER desires to retain the CONSULTANT to perform certain professional engineering services as outlined in the Scope of Work.

SECTION I – SCOPE OF WORK

CONSULTANT’S Scope of Work hereunder is finite and limited to only those items explicitly stated or enumerated herein or attached hereto. Any work or services desired by OWNER that are not stated herein or attached hereto shall be considered Extra Work and shall entitle CONSULTANT to mutually agreed-upon additional compensation.

CONSULTANT will provide the Engineering and Environmental services for the Wolf Creek Headwaters Restoration Phase I project. The project was included in the Wolf Bay Watershed Management Plan as a priority management measure. Three (3) locations identified within the creek system will be assessed as a part of this project. The restoration effort is estimated to include approximately 7,000 linear feet of stream restoration/stabilization, 36 acres of floodplain and wetland habitat restoration, and a constructed wetland with floodplain enhancement. Phase I of the project consists of project development, engineering plans, design specifications, and environmental permitting.

The Scope of Services will include the following:

GENERAL SERVICES:

- Assist the OWNER with landowner coordination and notification to obtain rights of entry.
- Attend four (4) project plan review meetings with OWNER’s staff.

PRELIMINARY ASSESSMENT:

- Perform desktop review of all available mapping, aerial imagery, topographic maps, hydraulic and hydrologic models and the watershed management plan.
- Perform geomorphic assessment of each of the three (3) site locations and identify potential elements contributing to sedimentation, nutrient loading, or potential water quality impairments.
 - Identify reference reaches and measure reference conditions

- Perform bank erosion hazard index (BEHI) assessments within the project reaches to advise restoration goals.
- Develop a multi-criterion decision analysis matrix of to rank proposed enhancements
- Meet with stakeholders to review the aforementioned items and finalize proposed restoration objectives

DESIGN PHASE:

SURVEY SERVICES:

Survey services will include topographical survey of the project sites as defined during the preliminary assessment phase. At a minimum this scope will cover the topographic survey of the three (3) identified project sites. More specifically survey services will include:

- Topographic field survey of the three (3) project sites including utility locations and location of apparent and available property corners.
- Development of a site survey map and CAD file in Autocad 2013 format or newer

Topographic survey of utilities will include the horizontal location of apparent (valve covers, manhole lids, power poles) and subsurface utilities that have been marked by the owner or utility provider. Sub-surface vertical locations of utility piping will be limited to accessible locations such as manhole or valve covers.

Exhaustive location of property corners is not currently proposed. Deed Research and ROW mapping is not included in this proposal. Should additional rights-of-way or easements be required which require these more detailed property limits additional survey services may be provided under separate scope and proposal upon written request of the client.

GEOTECHNICAL SERVICES- SUB-CONSULTANT, ATC GROUP SERVICES, LLC:

Geotechnical site investigations will be performed at the three (3) project sites to determine the subsurface and groundwater conditions along the project reach and/or limits.

A detailed scope of services will be developed as part of the preliminary assessment phase, but the following investigations are anticipated:

- 20' deep standard penetration test (SPT) borings.
- 6' deep hand auger borings, cased in PVC with piezometers for estimation of groundwater.
- Evaluation, classification of soils and grain size distribution, and summary letter of findings.

- Analysis of creek bank slopes and slope study with recommended maximum side slopes.

ENGINEERING SERVICES: VOLKERT, INC.

Based upon the findings of the preliminary assessment, design plans and specifications will be developed for the preferred option. More specifically design services shall include:

- Supplemental reference reach data collection upstream and downstream of the project to determine stable forms and vegetation communities that may withstand future events.
- Develop design parameters to describe the design morphological conditions based upon existing and reference reach conditions.
- Develop a stream model to describe flow and sediment transport conditions expected during high flow events.
- Complete Design Plans and Specifications for each of the project sites – 30% Plans, 60% Plans, 100% Bid Package.
- Gantt Chart Schedule updates with each submittal – 30%, 60%, 100%.
- Reviews with OWNER's staff including review meetings after project submittals – 30%, 60%, and 100%.
 - In light of potential Covid-19 restrictions, review meetings may be scheduled virtually.
- Hydrologic and hydraulic studies of the project limits of each site using available topographic and soils data, hydrologic models, and FEMA mapping to determine stream flows for 1-year through 100-year recurrence intervals. This study will be used for risk assessment of proposed improvements.
- Prepare cost estimates using previous restoration bid data, preliminary at 30% submittal, final draft at 60% submittal and final at 100% submittal.
- Utility coordination and plan-in- hand walkthrough as required.

Proposed restoration enhancements will be designed to withstand the hydraulic forces expected during a 100-year flood event. The design team will coordinate with the OWNER regarding ongoing hydrologic studies in the watershed and utilize the most current model at the time of design.

ENVIRONMENTAL SERVICES:

- Initial site visit by CONSULTANT. General measurements/dimensions of areas to be enhanced/restored. To be performed concurrently with Engineering field visits.

- Provide pre- and post-photo documentation (GPS referenced to recreate context) of each site.
- Arrange for pre-application meeting with USACE, ADEM and other agencies as necessary.
- Assist with locating a reference reach as necessary.
- Prepare the permit application package. A permit application will be prepared for each individual site.
- Obtain USACE Section 404/ADEM 401 permits/approval -Anticipate Nationwide 27 for Aquatic Habitat Restoration, Enhancement, and Establishment Activities. No permit fees are anticipated.
- Prepare project vegetation plan based upon existing vegetation communities.
- Prepare invasive species removal plan based upon existing vegetation communities.
- Prepare monitoring and adaptive management plan.

DELIVERABLES:

There will be three (3) individual deliverable packages for the project.

1- Geotechnical Submittal-

- Signed and sealed copy of the Geotechnical Summary Report- 1 hard copy, 1 electronic copy.

2- 30% Submittal-

- 30% plans which include preliminary title sheet/ key sheet/ general notes/ stream alignment/ summary of pay items / typical creek sections and details/ summary of quantities/ creek plan and profile/ cross sections/ - 2 hard copies, 1 electronic copy (original format and .pdf).
- Preliminary hydrological study including a summary of flow estimates by recurrence interval- 1 hard copy, 1 electronic copy (original format and .pdf).
- Preliminary Cost Estimate- 1 hard copy, 1 electronic copy (original format and .pdf).

3- 60% Submittal-

- 60% plans which include complete title sheet/ key sheet/ general notes/ stream alignment/ summary of pay items / typical creek sections and details/ summary of quantities/ creek plan and profile/ planting plan/ cross sections/ SWPPP/ - 2 hard copies, 1 electronic copy (original format and .pdf).

- Final hydrological study- 1 hard copy, 1 electronic copy (original format and .pdf).
- Final draft cost estimate- 1 hard copy, 1 electronic copy (original format and .pdf).

4- 100% Submittal-

- Construction plans which include final title sheet/key sheet/general notes/stream alignment/ summary of pay items / typical creek sections and details/summary of quantities/ creek plan and profile /planting plan/invasive species removal plan/cross sections/SWPPP/ - 2 hard copies, 1 electronic copy (original format and .pdf).
- Monitoring and adaptive management plan.
- Final cost estimate- 1 hard copy, 1 electronic copy (original format and .pdf).
- Bid documents using the City's standard bid documents or comparable municipal frontside documents - 2 hard copies, 1 electronic copy (original format and .pdf).

ITEMS TO BE PROVIDED BY THE OWNER:

OWNER will provide the existing hydraulic and hydrologic models performed for previous stream restorations, surveys, calculations and records for upstream and downstream drainage improvements and structures along the project reaches as available.

SCHEDULE:

Work will be scheduled upon receipt of authorization and will continue until complete in order to meet the agreed upon schedule. The schedule for this project is 12 months and is based on the assumption that reasonable access will be provided in a timely manner and the client is able to provide the information listed above.

SECTION II – TERMS OF PAYMENT

- A. Partial payments for all services performed by the CONSULTANT under the terms of the Agreement shall be made no more often than monthly to the CONSULTANT by the OWNER upon receipt of invoices and other evidence of performance as may be deemed necessary by the OWNER. Payments shall be due and payable within thirty (30) days of the date of invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate of one and one-half (1 ½%) per month and OWNER shall reimburse CONSULTANT for any expenses, including legal costs, incurred in collection of outstanding amounts due from OWNER.
- B. The OWNER will pay the CONSULTANT for special services performed by Subconsultants at the actual invoice amount times a factor of 1.10 for assisting and coordinating the Subconsultant's services.
- C. Reimbursable expenses are defined as follows:

Travel and subsistence cost, printing and reproduction, computer services, advertising costs, mail distribution costs, permit fees, application fees or deposits, and all other costs incidental to performing the assignment.

- D. The OWNER as purchaser of the services described herein shall pay any applicable sales tax in the manner and in the amount as required by law.
- E. The total lump sum fee for professional services shall not exceed Four Hundred Eighty-Four Thousand Seven Hundred Ninety-Four Dollars and Twenty-Four Cents (\$484,794.24) unless authorized by OWNER.
- F. Payment shall be made payable to Volkert, Inc. and submitted to the following address:
Dept. #2042, Volkert, Inc., P.O. Box 11407, Birmingham, AL 35246-2042.

SECTION III – MISCELLANEOUS

- A. Extra Work: It is mutually understood and agreed that the OWNER will compensate the CONSULTANT for services resulting from changes in the scope of a project or its design, including but not necessarily limited to, change in size, complexity, project schedules, character of construction, revisions to previously accepted studies, reports, design documents or contract documents and for preparation of documents for separate bids, when such revisions are due to causes beyond the CONSULTANT'S control and when requested or authorized by the OWNER. Compensation for such extra work when authorized by the OWNER shall be mutually agreed upon prior to beginning work.
- B. Ownership and Reuse of Documents: All Project documents including but not necessarily limited to reports, drawings, studies, findings, correspondence, specifications, survey notes, estimates, maps, computations, calculations, computer files, Computer Assisted Design and Drafting (CADD) files (electronic and hard copy), and other data, as well as any and all other documents and other materials prepared, generated, or furnished by or for CONSULTANT and/or its Subconsultant(s) for the Project pursuant to this Agreement (hereinafter referred to in this Section B. as "Documents") are instruments of service with respect to the Project, and CONSULTANT shall retain an ownership and intellectual property interest therein regardless whether the Project is completed. OWNER is hereby granted a royalty-free, non-exclusive, limited-use license therein, and may make and retain copies thereof for information and reference in connection with the use and/or occupancy of the Project by OWNER and others. However, such Documents are not intended for reuse or future use by OWNER or others for any purpose whatsoever or on any other project, and the limited-use license granted hereunder does not apply to any future use. No representation is made that such Documents are or will be suitable for reuse or future use by OWNER or others for any purpose whatsoever or on any other project. Any use of such Documents by OWNER or others on any project other than the project which is the subject of this Agreement is not advised and shall be done without warranty, representation, or liability to any extent whatsoever on the part of

CONSULTANT. OWNER shall defend, indemnify, save and hold harmless CONSULTANT, its officers, directors, employees, agents, successors, and assigns against any and all liability for any and all claims, demands, fines, fees, damages, actions, causes of action, lawsuits, expenses (including attorneys' fees), mediations, and arbitrations arising out of, resulting from, or relating in any way to the OWNER'S use of such Documents.

- C. Exclusivity of Remedies: To the fullest extent permitted by law, the total liability, in the aggregate, of CONSULTANT and CONSULTANT'S officers, directors, employees, agents and independent professional associates and Consultants, and of any of them, to OWNER and anyone claiming by, through or under OWNER, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to CONSULTANT'S services, the project or this Agreement from any cause or causes whatsoever, including but not limited to the negligence, errors, omissions, strict liability or breach of contract by CONSULTANT or CONSULTANT'S officers, directors, employees, agents or independent professional associates or Consultants, or any of them, shall be limited to and shall not exceed the total compensation received by CONSULTANT under this Agreement, but in no event shall exceed the amount of available insurance proceeds
- D. Insurance & Indemnification: CONSULTANT shall procure and maintain the types and amounts of insurance as are set forth below. CONSULTANT shall cause OWNER to be an additional insured on CONSULTANT's policy of commercial general liability and automobile liability insurance. :

<u>TYPE OF COVERAGE</u>	<u>LIMITS</u>
I Worker's Compensation Employer Liability	State – Statutory \$1,000,000 Per Accident \$1,000,000 Disease/Each Accident \$1,000,000 Disease/Policy Limit
II Comprehensive or Commercial General Liability	\$1,000,000 Per Person Bodily Injury \$1,000,000 Per Occurrence Bodily Injury \$1,000,000 Property Damage \$2,000,000 Policy Aggregate
III Automobile Liability	\$1,000,000 Combined Single Limit
IV Professional Liability	\$2,000,000 Each Claim \$2,000,000 Annual Aggregate

Indemnification by CONSULTANT. To the fullest extent permitted by law, and up to the limits of the Exclusivity of Remedies provision contained herein, CONSULTANT shall indemnify OWNER and OWNER's officers, directors and employees for costs, losses, judgments, damages and expenses (including reasonable attorneys' fees) to the extent

caused by the negligent acts, errors and omissions of CONSULTANT in the performance of its professional Services hereunder. In any matters involving allegations of negligent performance of professional Services by CONSULTANT, CONSULTANT's defense duties under this indemnification provision (which are expressly disclaimed) shall include only reimbursement of reasonable defense costs to the extent incurred as a proximate result of CONSULTANT's actual negligent performance.

Indemnification by OWNER. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless CONSULTANT and its officers, directors, members, partners, agents, employees, and subconsultants from and against any and all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court, arbitration, or other dispute resolution costs) arising out of or relating to the Project, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death or to injury to or destruction of tangible property, including the loss of use resulting therefrom, but only to the extent caused by any negligent act, omission, or willful misconduct of OWNER or OWNER officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the OWNER with respect to this Agreement or to the Project.

E. Termination:

1. For cause,

(a) By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

(b) By CONSULTANT:

(1) upon seven days written notice if OWNER demands that CONSULTANT furnish or perform services contrary to CONSULTANT's responsibilities as a licensed professional; or

(2) upon seven days written notice if the CONSULTANT's services for the Project are delayed or suspended for more than 90 days for reasons beyond CONSULTANT's control.

(3) CONSULTANT shall have no liability to OWNER on account of such termination.

(c) Notwithstanding the foregoing, this Agreement will not terminate under Paragraph III.E.1 if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same,

then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience,
 - (a) By OWNER effective upon CONSULTANT's receipt of notice from OWNER.
 3. Effective Date of Termination. The terminating party may set the effective date of termination at a time up to 30 days later than otherwise provided to allow CONSULTANT to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
 4. Payments upon Termination
 - (a) In the event of any termination, CONSULTANT will be entitled to invoice OWNER and to receive full payment for all Services performed or furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.
 - (b) In the event of termination by OWNER for convenience, or by CONSULTANT for cause, CONSULTANT shall be entitled, in addition to invoicing for those items identified in Paragraph III.E.4(a), to invoice OWNER and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with CONSULTANT's subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth herein.
- F. Time of Completion: In accordance with the Standard of Care set out herein, all services under this Agreement will commence upon authorization to proceed from the OWNER.
- G. Successors and Assigns:
1. OWNER and CONSULTANT each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and CONSULTANT (and to the extent permitted by Section III.G.2, the assigns of OWNER and CONSULTANT) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
 2. Neither OWNER nor CONSULTANT shall assign, sublet or transfer any rights under or interest in (including but without limitation, monies that may become due or monies that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically

stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent CONSULTANT from employing such independent professional associates and Consultants as CONSULTANT may deem appropriate to assist in the performance of services hereunder.

3. Nothing under this Agreement shall be construed to give any right or benefits in this Agreement to anyone other than OWNER and CONSULTANT, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and CONSULTANT and not for the benefit of any other party.
- H. Dispute Resolution: If a dispute arises out of or relates to this Agreement or its alleged breach, the OWNER and CONSULTANT shall direct their representatives to endeavor to settle the dispute first through direct discussions. If the dispute cannot be resolved through direct discussions, the OWNER and CONSULTANT shall participate in mediation before recourse to litigation. The OWNER's and CONSULTANT's representatives shall attend all mediation sessions. Engaging in mediation is a condition precedent to litigation. Only after the parties have exhausted direct discussions AND mediation in accordance with the foregoing shall either of them be entitled to initiate litigation. Should either party initiate litigation prior to engaging in direct discussions, good faith mediation, and arbitration, it shall pay all attorneys' fees and expenses and other costs incurred by the other party in responding to said litigation. Any provisions herein to the contrary notwithstanding, OWNER and CONSULTANT hereby agree that any disputes between them will be tried to the Bench and not to a jury, and each of them willfully and voluntarily waives its right to trial by jury for any dispute arising out of this Agreement.
- I. Right of Entry: OWNER shall arrange for safe access to, and make all provisions for, CONSULTANT to enter upon public and private property as may be required for CONSULTANT to perform Services hereunder. CONSULTANT shall take reasonable precautions to minimize damage to the property during the course of its Services. OWNER acknowledges that a certain amount of damage, wear and tear, and depreciation is likely to result from CONSULTANT's operations on the property in furtherance of CONSULTANT's Services under this Agreement. The cost for restoration or remediation of damaged property which may result from CONSULTANT's operations is not included in CONSULTANT's compensation hereunder unless explicitly stated otherwise in this Agreement. If the property is damaged during CONSULTANT's operations and if OWNER desires CONSULTANT to restore or remediate the property to its former condition, CONSULTANT will do so for additional compensation.
- J. Standard of Care: CONSULTANT shall endeavor to perform its services hereunder consistent with the professional skill and care ordinarily exercised by similarly situated professional consultants practicing under similar conditions at the same time in the same

or similar locality. No warranty, express or implied, is made or intended related to the services provided herein, and CONSULTANT guarantees no particular result.

- K. Disclaimer of Third-Party Benefits: OWNER and CONSULTANT expressly disclaim third-party beneficiaries hereunder and no one not a Party to the Agreement shall be entitled to seek enforcement against OWNER and/or CONSULTANT of any provision herein, or to otherwise seek damages from either Party for the alleged breach of any provision contained herein or purported duty or standard created or conferred hereunder. It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof a third-party beneficiary hereunder, or to authorize anyone not a Party to the Agreement to maintain a claim, cause of action, lien or any other damages or any relief of any kind pursuant to the terms and provisions of this Agreement.
- L. Waiver of Consequential Damages: Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither OWNER nor CONSULTANT, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both OWNER and CONSULTANT shall require similar waivers of consequential damages protecting all of the entities and persons named herein in all contracts and subcontracts with others involved in this Project.
- M. Waiver of Subrogation: Owner and CONSULTANT hereby mutually waive all rights of subrogation, as well as all claims and other rights they may have against each other for loss of and/or damage to (a) the Work and any Project therein, (b) all materials, machinery, equipment and other items used in the Project and/or to be incorporated into the Project, while the same are in transit, at Project sites, during erection and otherwise, and (c) all property owned by or in the custody of OWNER and its affiliates, however such loss or damage shall occur, except such rights as they may have to the proceeds of such instance held by the OWNER as trustee. If OWNER is not the sole owner of the Project sites and all property at and adjacent thereto, OWNER shall obtain an undertaking from the other owners thereof sufficient to provide CONSULTANT the same protection from liability for loss or damage as would be afforded to CONSULTANT under this Agreement if OWNER were the sole owner. OWNER shall cause all policies of property insurance relating to the Project to contain a provision or endorsement to the effect that in the event of payment of any loss or damage, the insurers will have no rights of recovery against CONSULTANT or its subconsultants, or any insureds, additional insureds, or loss payees thereunder.

- N. Jurisdiction/Venue: It is expressly agreed and stipulated between the parties that this contract shall be deemed to have been executed in the State of Alabama where the principal office of Volkert, Inc. is located. This Agreement shall be governed by the laws of the State of Alabama and any disputes related to or arising out of this Agreement or its alleged breach shall be brought in the appropriate courts of the State of Alabama, exclusive of its choice of law provisions.