

November 27, 2023

Chad Christian, P.E.
City Engineer - City of Foley
Post Office Box 1750
Foley, Alabama 36536

SUBJECT: Mills Community Pedestrian Improvements

Dear Mr. Christian:

Please find the following Agreement to provide professional services related to Mills Community pedestrian improvements ("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

ACCEPTED:

BY:

TITLE:

CLIENT NAME:

DATE:

Federal Employer ID #

(Corporation):

SOCIAL SECURITY #

(Individual):

GENERAL CONDITIONS FOR LETTER AGREEMENT

This Agreement made and entered into this _____ day of _____, 2023 by and between City of Foley, 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.

The scope of services includes providing survey, design, environmental permitting, and construction inspection services for a 5-foot wide concrete sidewalk along Airport Rd, Dailey Ln, Little Rock Rd, Mills Rd, and County Rd 65 within the project limits. More specifically the work will include:

FIELD SURVEYS (SMITH CLARK AND ASSOCIATES)

Develop field surveys along the proposed project corridor to include the following:

- Cross Sections, Topographic, Utility, survey along CR 65 from Dailey Ln to Little Rock Rd, Little Rock Rd, Dailey Ln, Mills Rd from Little Rock Rd to 1400’ south of Dailey Ln, Airport Rd from CR65 to 1600’ east of CR65.
 - Survey will be from right-of-way to right-of-way plus 30’ feet on either side. Survey at intersections of CR65 will extend 150 beyond centerline of Little Rock Rd/Airport Rd and Dailey Ln.
 - 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 by calling 811. Sub-surface vertical locations of utility piping will be limited to accessible locations such as manholes or valve covers.
 - The survey will not be performed outside the limits noted above. Additional detailed field surveys may be performed under separate scope and proposal upon written request of the client.
 - Deed Research or ROW mapping is not included in this proposal. Should additional rights-of-way or easements be required, Additional survey services may be provided under separate scope and proposal upon written request of the client.

ENVIRONMENTAL

WETLAND DELINEATION AND JURISDICTIONAL DETERMINATION

The wetland delineation will be done in accordance with the US Army Corps of Engineers' 1987 Wetland Delineation Manual and the Gulf Coastal Plain Regional Supplement. The scope of work is as follows:

- Review soil survey information.
- Review available aerial photography.
- Determine if hydric soil indicators are present.
- Determine if hydrophytic vegetation is present.
- Determine if hydrology is present.
- Flag wetland areas.
- Complete Corps of Engineers Wetland Data Forms
- Locate wetlands using a handheld GPS unit.
- Request that the Corps of Engineers verify the wetland jurisdictional determination.

The wetland delineation is not valid until final approval has been provided by the U.S. Army Corps of Engineers. **The wetland line is subject to change until final verification is received by the U.S. Army Corps of Engineers.**

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER PERMIT APPLICATION

- Complete the Notice of Registration (NOI) for the referenced site. Volkert will contact the client to obtain general information through a telephone interview. Once complete, the NOI will be submitted to the client for review, signature, and submittal to ADEM with the appropriate fee.
- Develop a Construction Best Management Practices Plan (CBMPP) which outlines appropriate soil and sediment erosion control practices, along with other measures, to reduce the likelihood of pollution resulting from stormwater run-off. This CBMPP will be prepared by a qualified professional. Volkert will perform a site visit and take into consideration erosion control measures currently in-place at the site when developing the CBMPP.

Client Responsibilities for the NPDES NOI

To complete this project in a timely and efficient manner, Volkert requests the following:

- Authorization to proceed. Authorization can be given by signing and returning this proposal.

- Information necessary to complete the NOI, as requested during the telephone interview.

Environmental – Lump Sum Fee: \$7,883*

***ADEM NOI Fee of \$1,385 is included in the lump sum fee.**

ENGINEERING – ROADWAY PLANS

PEDESTRIAN IMPROVEMENTS DESIGN

The engineer hereby agrees to provide professional engineering design services for the project as follows:

- Perform a site visit with the survey noting restrictions, site distance, and general characteristics of the site.
- Develop preliminary set of construction plans.
- Coordinate with the City and Utility Providers to review the preliminary design plans.
- Meet with the City to review the preliminary construction plans.
- Identify any issues needed to be addressed for final design and coordination.
- Further develop plans into final construction plans including Title Sheet, quantity sheets, typical sections, general notes, plan sheets at 1" = 20', paving layout, signing, and striping plans, drainage sections, erosion control plans, traffic control plans, and cross sections.
- Develop quantities and cost estimates.
- Develop Contract documents and specifications for letting.
- Submit plans and contract documents to the City for final review and letting by the City.
- Assist the City with project letting.

Engineering – Roadway Plans Lump Sum Fee: \$89,938

Construction Observation and Inspection:

The engineer hereby agrees to provide professional services during construction of the project as follows:

1. Review contractor submittals.
2. Attend/conduct a pre-construction meeting.
3. Review laboratory, mill, and shop test to assist in monitoring the quality of construction.
4. Consult, answer questions, and assist in resolving construction issues during construction.
5. Provide services of Resident Project Representative (RPR) for onsite inspection and engineering during construction for up to 6 hours per working day.
6. Review monthly and final estimates for payment to contractors.
7. Make final inspection of the construction upon completion.

Construction Observation and Inspection – Hourly Estimated Fee*: \$95,000.00

Estimated Budget for Materials Testing: \$5,000.00

***Hourly fees are based upon pre-design assumptions and are subject to change. Should the total construction period exceed 120 working days, additional time will be billed at the hourly rates until project completion.**

Summary of Fees

Please see attached man power and fee proposal for a detailed breakdown of the proposed man hours and fee rates. Below is a summary of the fees for the scope of work defined above.

Lump Sum

Field Surveys	\$27,090.00	Lump Sum
Engineering Design	\$89,938.00	Lump Sum
Environmental Permitting	\$ 7,883.00	Lump Sum
Total Lump Sum Fees	<u>\$124,911.00</u>	

Hourly and Rate fees

Construction Observation and Inspection	\$95,000.00	Hourly Rate
Construction Materials Testing	\$5,000.00	Fixed Rate
Total hourly and rate fees	<u>\$100,000.00</u>	

Grand Total Fees: \$224,911.00

SCHEDULE- Work will be scheduled upon receipt of authorization and will continue until complete.

FEE- Fees will be billed monthly as work progresses on either a percent complete or on an hourly/rate basis as noted above.

It is expressly agreed upon and stipulated between the parties that this contract shall be deemed to have been made in the State of Alabama where the principal office of Volkert, Inc. is located. This contract shall be governed by the laws of the State of Alabama. The Circuit or District Court of Mobile, Alabama shall have jurisdiction over any dispute which arises under this contract, and each of the parties shall submit and hereby consents to the jurisdiction of either such court.

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

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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 fee for professional services shall not exceed Two Hundred Twenty-Four Thousand, Nine Hundred Eleven Dollars and Zero Cents (\$224,911.00) 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

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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.

2023 Billing Rates

POSITION	DAILY LABOR RATE	BILLING RATE W/O DIRECTS	BILLING RATE W/ DIRECTS
Principal	\$779	\$293	\$322
Supervisor	\$660	\$248	\$273
Project Manager	\$580	\$218	\$240
Staff 2 Engineer	\$479	\$180	\$198
Staff 1 Engineer	\$319	\$120	\$132
Environmental	\$472	\$177	\$195
Senior Designer	\$354	\$133	\$147
Designer	\$297	\$112	\$123
Technician	\$324	\$122	\$134
Drafter	\$232	\$87	\$96
Bridge Inspector 2	\$406	\$153	\$168
Bridge Inspector 1	\$356	\$134	\$147
Administrative Assistant	\$266	\$100	\$110
2-Man Survey Crew	\$376	\$142	\$156
3-Man Survey Crew	\$601	\$226	\$249
4-Man Survey Crew	\$680	\$256	\$282
CEI Project Manager	\$308	\$116	\$127
CEI Senior Inspector	\$241	\$91	\$100
CEI Level 2 Inspector	\$200	\$75	\$83
CEI Level 1 Inspector	\$158	\$59	\$65