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VOLKERT

February 22, 2023

Mr. Joey Nunnally, P.E.
County Engineer
Baldwin County Highway Department
Post Office Box 220
Silverhill, Alabama 36576

SUBJECT: Kelly Pit Regional Detention Project

Dear Mr. Nunnally:

Please find the following Agreement to provide professional services related to the Kelly Pit Regional Detention ("The Project"). This project includes Baldwin County PINs 66262, 69648 208727, 232260, 69647, 254543, 254542, 254541, 254540, 201730, 51905, 51390, and 59487 (Approximately 175 acres).

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. Davls, PE, ENV SP
Vice President – East Gulf Region

ACCEPTED:

BY:

TITLE:

CLIENT NAME:

DATE:

Federal Employer ID #
(Corporation):

SOCIAL SECURITY #
(Individual):

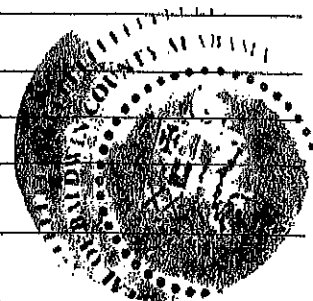
Baldwin County Commission

Commissioner

Chairman

03/21/2023

603-600/408



Delivering the future of infrastructure

GENERAL CONDITIONS FOR LETTER AGREEMENT

This Agreement made and entered into this 21 day of March, 2023 by and between Baldwin County Commission, 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.

TASK 1 – PHASE I ENVIRONMENTAL SITE ASSESSMENT (ESA)

The Phase I ESA is an investigative assessment that attempts to identify and disclose any possible recognized environmental conditions (RECs) within the subject site or adjacent to, that may pose deleterious effects. The Phase I ESA consist of reviews of historical documentation and government records, interviews with property owners and other personnel, site reconnaissance, and reporting.

The Phase I ESA will be performed in accordance with the ASTM 2013 guidance E1527-13 standard. This scope of work is intended to be compliant with the ASTM E1527-13 standard; however, limitations and data gaps may occur. A professional experienced in Phase I Environmental Site Assessment (ESAs) will carry out the general scope of work as follows:

CONSULTANT will review the following databases and/or files to determine prior ownership and usage:

- Fifty-year chain-of-title (if provided by client)
- Environmental liens and activity and use limitations *
- Historic city directories/Fire insurance maps
- State environmental documentation repository websites
- Soil Conservation Survey Maps and available published geologic information
- Current US Geological Survey (USGS) topographic maps
- Available historical aerial photographs
- National Wetland Inventory Maps, if readily available

***If OWNER would like CONSULTANT to conduct the environmental liens and activity and use limitations search, the cost will be \$200.00 per parcel.**

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CONSULTANT will review published regulatory federal records related to potential off-site sources of chemical and petroleum contamination within the standard ASTM E1527-13 search radius of the site, as well as documents related to on-site activities including:

- National Priorities List (NPL) – List of EPA high priority cleanups (Superfund) on properties within a one-mile radius.
- Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) – List of properties subject to investigation by EPA for contamination within the specified search radius.
- Resource Conservation and Recovery Act (RCRA) – List of RCRA within a one-mile radius, list of generators within the specified search radius.
- Emergency Response Notification System (ERNS) – Site property only.

CONSULTANT will review state regulatory records and publications for environmental activities related to the site and potential off-site sources of chemical and petroleum contamination. These may include the following:

- State Lists of Hazardous Waste Sites – List of properties within a one-half mile radius.
- State Leaking UST Lists – List of properties within a one-half mile radius.
- State Registered UST and AST Lists – List of properties within a one-quarter mile radius.

Access retrieval and review of any federal, state or local documents related to the scope of work are limited to the availability of records requested from governmental agencies or commercial sources within the time frame allocated for this effort.

CONSULTANT personnel will conduct site reconnaissance which includes detailed visual observations and photographic documentation of the site to the maximum extent practical, as well as exterior and interior structures observations, if accessible. The site reconnaissance will attempt to identify potential sources of on-site chemical releases, petroleum products, hazardous materials or other potential RECs. These potential sources may include tanks, chemical storage, disposal areas, pits, or vats. CONSULTANT personnel will also visually observe (from curbside only) and categorize the use of the abutting properties as potential off-site sources of chemical and petroleum contamination. No entry will be made onto abutting properties.

Interviews will be conducted of current owners, if available, to determine current practices, including chemical and petroleum product handling, storage, usage, and disposal practices. Former tenants will be contacted, if available, to obtain information regarding historic practices. The OWNER will notify the property owners of CONSULTANT's site visit and obtain permission for CONSULTANT's access.

OWNER Responsibilities for Phase I Environmental Site Assessment (ESA)

CONSULTANT will review past site documents (if provided by the OWNER) to assess the potential for on-site chemical contamination including:

- Previous environmental assessments
- Construction documents, as appropriate
- Hazardous waste manifests and other selected operational documents
- Chain-of-title review
- Completion of the ASTM E1527-13 User Questionnaire

DATA ANALYSIS AND REPORT PREPARATION

A report of the assessment will be prepared upon completion of the work. The final document will be provided to the OWNER electronically. Two (2) bound copies of the Phase I ESA will be presented to the client if requested.

ADDITIONAL SERVICES

If the Phase I ESA determines that Phase II or III services are warranted, these services can be performed under a separate scope of work.

The total lump sum fee to perform the work described for **Task 1 is \$20,000.00.**

TASK 2 – BOUNDARY SURVEY AND PROPERTY LEGAL DESCRIPTION

SUBCONSULTANT (Thompson Engineering) will perform the following Survey Services:

- Boundary Survey of the project site and provide legal descriptions for the Baldwin County PINs listed previously.
 - Subdivision Plat or Subdivision submittal is not included in this scope of work, but can be provided under a separate agreement.

The total lump sum fee to perform the work described for **Task 2 is \$39,917.00**

TASK 3 – TOPOGRAPHIC SURVEY

SUBCONSULTANT (Thompson Engineering) will perform the following Survey Services:

- Topographic Survey of the project Site (approximately 175 acres)
 - Topographic survey will be performed using aerial drone for unobscured areas with terrestrial survey for obscured areas
 - All visible utilities and those marked by others through the One-call system will be located

- Surface data will be one-foot contour data submitted in LandXML format with supported comma delimited PNEZD point files
- CAD files will be provided in Autocad DWG 2018 format.
- Bathymetry data for ponded areas will be provided via CeeScope unmanned survey vehicle. No magnetometer surveys are to be performed and surface areas where debris or obstructions below may be obscured.
- Riverine Survey of Magnolia River (approximately 4000 linear feet)
 - Survey includes river centerline through the project limits and cross-sections on 500' centers.

The total lump sum fee to perform the work described for **Task 3** is **\$71,544.00**

TASK 4 – WETLAND DELINEATION, THREATENED AND ENGANGERED SPECIES SURVEY, PHASE I CULTURAL RESOURCE ASSESSMENT

WETLAND DELINEATION

A wetland delineation will be done in accordance with the U.S. Army Corps of Engineers' 1987 Wetland Delineation Manual and the 2010 Regional Supplement. The scope of work is as follows:

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

The wetland line is subject to change until final verification is received by the U.S. Army Corps of Engineers.

THREATENED AND ENGANGERED SPECIES SURVEY

CONSULTANT will conduct an IPAC search prior to conducting a field habitat assessment to determine what, if any, listed species have the potential to occur on the site. While in the field, CONSULTANT will assess existing habitat and determine if it is suitable and/or listed species are present. A report will be prepared of the findings. No formal coordination with the US Fish and Wildlife service will be conducted.

PHASE I CULTURAL RESOURCES ASSESSMENT (CRA)

The proposed cultural resources assessment will be performed to determine if any prehistoric or historic properties exist within the project boundaries, and if so to document and assess each based on criteria for designation for listing in the National Register of Historic Places (NRHP). All work will be conducted in compliance with Appendix C of 33 CFR 325 and Section 106 of the

National Historic Preservation Act, as amended, and with standards set by the Alabama Historical Commission (AHC). This work will be supervised by an RPA-certified archaeologist who meets or exceeds the Secretary of the Interior's Standards and Guidelines for Archaeology and Historic Preservation.

The field survey will document all cultural resources within the Area of Potential Effect (APE). The specific goals of the survey will be to: 1) describe the distribution of cultural resources within the APE; 2) determine the location and condition of cultural resources, especially regarding potential NRHP eligibility; 3) determine the types of cultural resources present; 4) classify the types of individual cultural resources present; and 5) record the physical extent of specific resources. In areas where shovel testing is not possible, standard archaeological techniques will be implemented, especially visual observation of the ground surface.

The total lump sum fee to perform the work described for **Task 4 is \$50,000.00.**

TASK 5 – GEOTECHNICAL SERVICES

SUBCONSULTANT (Thompson Engineering) will provide design phase services which will include soil borings and geotechnical investigations of the project site. Laboratory Analysis will include grain size distribution and Atterberg limits of site soils and soil recommendations for proposed wetland ponds and liners. *Construction Materials Testing is not included in this proposal, but can be performed under a separate scope and fee.*

The total lump sum fee to perform the work described for **Task 5 is \$50,321.00.**

TASK 6 – HYDROLOGIC AND HYDRAULIC MODELING

SUBCONSULTANT (Hydro Engineering Solutions, a division of Hydro, LLC) will provide design phase services which will include the following:

- **Hydrology:** SUBCONSULTANT will provide peak discharges for site inflow points for the low flow, 25-year, and 100-year recurrence storm events. Hydrology for Magnolia River will be determined using the calibrated GSHHA model for Magnolia River.
- **Hydraulics:** SUBCONSULTANT will provide 2-dimensional FESWMS or equivalent modeling for stream braid sections of the proposed improvements for up to 12 model runs.
- **Flood Optimization:** SUBCONSULTANT will provide flood optimization analysis of the proposed site using CONSULTANT provided Hydrographs.

The total lump sum fee to perform the work described for **Task 6 is \$86,000.00.**

TASK 7 – PRELIMINARY DESIGN PLANS

CONSULTANT will develop a preliminary plan based upon the survey and site constraints identified during site visits and environmental investigations of the site. The preliminary plans will include the following:

- Development of a water budget for the constructed stormwater wetlands using best available data including surface water runoff, infiltration rates, groundwater elevations, pan evaporation rates and evapotranspiration.
- Preliminary sizing of treatment forebays, shallow and deep wetland areas, and locations of stream diversions structures.
- Review and optimization of preliminary pond routing
- Limits of grading (preliminary contour plan)
- Prepare preliminary estimate of cost utilizing recent restoration project bid data
- Development of a 30% site plan showing proposed improvements and including typical details of wetland and stream structures.
 - It is intended that this plan will provide sufficient detail for more detailed modeling and project refinement.

Deliverables will include a summary report of wetland sizing options, and preliminary site plan showing key features and contouring, and a preliminary cost estimate.

The total lump sum fee to perform the work described for **Task 7** is **\$81,500.00**.

TASK 8 – FINAL DESIGN

CONSULTANT will develop final construction plans and specifications for regional detention and constructed stormwater wetlands based upon the approved preliminary design plans. Final Design Services will include:

- 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 through the constructed wetland system based upon existing and reference reach conditions.
- Develop a hydraulic model to describe flow and sediment transport conditions expected during high flow events.
- Complete Plans and Specifications for the constructed wetlands – 60% Plans, 100% Bid Package
- Gantt Chart Schedule updates with each submittal –60%, 100%
- Reviews with County design team including review meetings after project submittals – 60%, and 100%
- Prepare cost estimates using restoration bid data, final draft at 60% submittal and final at 100% submittal.
- Utility coordination and plan-in-hand walkthrough (as required).
 - *It is not anticipated that extensive utilities are present within the project site. In the event utilities which must be relocated or otherwise conflict with the proposed project, a separate scope and fee will be submitted for this work.*
- Prepare Bid Documents as required in accordance with Owner requirements
- Attend pre-bid meetings, as necessary
- Respond to all RFIs and issue any addendums throughout the Bid Process
- Attend Bid Opening Meeting
- Geotechnical Investigations as directed by the design engineer

- Tabulate Bids and provide Engineer's certified tabulation and recommendation to Owner Staff
- Attend Preconstruction Conference with County Staff and the selected Contractor

The total lump sum fee to perform the work described for **Task 8** is **\$158,000.00**

TASK 9 – USACE SECTION 404/ADEM SECTION 401 PERMITTING

CONSULTANT will:

- Prepare the Section 404/Section 401 joint permit application and develop the necessary attachments for the proposed project for submittal to the USACE/ADEM.
- Prepare an Alternatives Analysis.
- Conduct and attend one on-site review with the regulatory agencies.
- Address responses received as a result of the Public Notice.

This service does not mitigation costs. The ADEM Section 401 Water Quality Certification fee will be \$4,235.00 and is included in this fee.

Note: There is no guarantee assumed or implied that the regulatory agencies involved will approve the requested fill.

The total lump sum fee to perform the work described for **Task 9** is **\$39,235.00**.

TASK 10 – CONSTRUCTION STORMWATER PERMITTING

CONSULTANT will:

- Complete the ADEM Notice of Intent (NOI) for the referenced site. CONSULTANT will prepare and submit the NPDES NOI digitally using the Alabama Environmental Permitting and Compliance System. Prior to preparing the NOI, CONSULTANT will contact the OWNER via email to obtain general information needed to complete the NOI.
- Prepare 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.

The ADEM NPDES Construction General Permit fee is \$1,385.00 and is included in this fee.

The total lump sum fee to perform the work described for **Task 10** is **\$4,385.00**.

Construction phase services and post-construction monitoring are not included in this proposal. In the event construction phase services or post-construction monitoring are desired, these services can be provided under a separate scope and fee.

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 fee for professional services shall not exceed **Six Hundred Thousand Nine Hundred Two Dollars and Zero Cents (\$600,902.00)** 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.

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- 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. 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 for any purpose whatsoever on any other project.
- 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. CONSULTANT shall indemnify OWNER and OWNER's commissioners, officers, agents, consultants, directors and employees 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 CONSULTANT or CONSULTANT officers, directors, members, partners, agents, employees, consultants, or others retained by or under contract to the CONSULTANT with respect to this Agreement or to the Project.

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.

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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.

(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 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:

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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. To the extent allowed by Alabama law, 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.

- 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 exclusively in the Circuit Court of Alabama, exclusive of its choice of law provisions.