

RESOLUTION 22-17

**A RESOLUTION TO AUTHORIZE REAL ESTATE SERVICES FOR THE
COMMUNITY SERVICES ANNEX**

WHEREAS, the City of Spring Hill needs to relocate the Public Works Building to construct an expansion of the Wastewater Treatment Plant, and;

WHEREAS, the Development Services department needs to be relocated from Northfield due to their leases expiring in approximately 15 months, and;

WHEREAS, the City of Spring Hill has selected Volkert to provide Real Estate Services to assist with locating and acquiring a location for a new Community Services Annex building, and;

WHEREAS, Volkert has provided a proposal to assist with locating and acquiring a location for a new Community Services Annex building for a fee of \$82,550.00, and;

WHEREAS, funding for this project shall be initially expensed from fund balance in the Adequate Facilities Tax fund, with the option to reimburse with American Rescue Plan Funds upon spending plan review by the State of Tennessee, and;

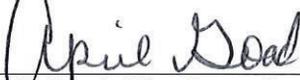
NOW THEREFORE BE IT RESOLVED, the Board of Mayor and Aldermen of the City of Spring Hill, Tennessee authorize the Mayor to sign the attached proposal Real Estate Services for the Community Services Annex from Volkert for \$82,550.00.

Passed and adopted by the Spring Hill Board of Mayor and Aldermen this 7th day of February, 2022.



Jim Hagaman, Mayor

ATTEST:



April Goad, City Recorder

LEGAL FORM APPROVED:



Patrick Carter, City Attorney



302 Innovation Drive, Suite 100
Franklin, Tennessee 37067
615.656.1845
www.volkert.com

January 27, 2022

Daniel E. Allen
Assistant City Administrator - Utilities
City of Spring Hill
199 Town Center Parkway | PO Box 789
Spring Hill, TN 37174

**Re: Community Services Annex Building Site Location
Right-of-Way Acquisition Scope of Services**

Dear Dan:

Volkert, Inc. appreciates the opportunity to submit this scope of work and fee estimate for the Right-of-Way Acquisition and Relocation of four properties for the purpose of relocating the Community Services Annex Building in Spring Hill, Tennessee.

Right-of-Way Acquisition Scope of Services

We will provide the manpower and management to help perform the right-of-way (ROW) acquisition services for four residential properties for the purpose of relocating the Community Services Annex Building. This will include coordination with the City and TDOT (if necessary), negotiations, and file management. All acquisition services will conform with the Uniform Act and TDOT Guidelines for ROW acquisition. The following acquisition services will be provided for four tracts:

Titles and Closings

- We are pleased to utilize Brenda Lehman for the title reports and deed recordings and closings.

Appraisals

- We are proud to partner with Randy Button & Associates, and his well-established appraisal firm for the appraisals.
- Appraisals will include a Market Data Brochure.

Review Appraisals and Form 2's

- We will employ Boozer & Company, P.C. for review appraisals and LPA Form 2's.
- Volkert will submit one cohesive package for each tract including appraisal, review appraisal, and Form 2 for review and to get all LPA Form 2's approved/executed.

Negotiations

- Upon receipt of Title Reports, Volkert will send the Notice of Proposed Acquisition (Form 4) to property owners. We will send via trackable shipping and will follow up with any that are not marked as delivered.
- Volkert will follow all current (at the time of the project) COVID and CDC guidelines when meeting and negotiating with property owners. We will meet with property owners no more than three (3) times and make contact via trackable shipping and phone/email as needed. Volkert will perform due diligence to contact each property owner. Should all resources be exhausted, the City will assist in finding contact info for unfound property owners.
- Volkert will use standard TDOT forms, with City titles as appropriate, for all letters, forms, and negotiations with property owners.

Relocation Scope of Services

We understand all tracts on this project will include residential relocations. We will provide the manpower and management to help perform the relocations services for this project. This will include coordination with the City and TDOT, negotiations, and file management. All acquisition services will conform with the Uniform Act and TDOT Guidelines for ROW acquisition. The following acquisition services will be provided for nine businesses:

- We will prepare an Acquisition Stage Relocation Plan (ASRP) at the onset of the project.
- Our experienced relocation specialists will use standard forms and procedures for moving bids, salvage values, relocation assistance, movement payments, etc.
- Volkert will follow all current (at the time of the project) COVID and CDC guidelines when meeting and working with tenants. We will find comps and obtain approval as soon as possible due to lack of available housing and the housing market. Inspections and interviews will be conducted either in person or by live video conference. If any deviation from the TDOT guidelines due to COVID is required, we will submit all documents and approvals.

Project and File Management

- Volkert will maintain frequent communication and coordination with the City's Project Manager, appraisers, attorneys, and other team members by phone and email as appropriate.
- If necessary, Volkert will coordinate with a TDOT ROW Agent for their review and to obtain approval of the "Four Step" process to ensure all procedures are acceptable and conform with the Uniform Act.
- Volkert will submit monthly progress reports to the City's Project Manager. These updates will include a link to a shareable interactive tool for progress on each tract.
- Volkert will maintain electronic and hard copy files of all necessary and proper files, according to the Uniform Act. Upon completion of the project, these files will be given to the City for their use/verification purposes.

Schedule

- Volkert understands the time sensitivity of this project. From the Notice to Proceed for ROW Acquisition, we will do our best to complete the ROW Acquisition phase with 15 months.
 - Negotiations & Relocations – this typically requires 12 months; however, relocations can be complicated, so we recommend allowing 15 months in the project schedule for negotiations. Negotiations on the first tract appraisals can begin while additional appraisals are being completed.
- During negotiations, we will update the City on any foreseen problems or complications that may lead to settlement or condemnation.

Project Fee

The fee to manage the ROW acquisition services for the Community Services Site will be \$82,550. This is a not-to-exceed lump sum fee and will be invoiced on a monthly basis as work is completed. Volkert's monthly invoice will include all subcontractor's fees as one invoice. The breakdown is as follows:

- Brenda Lehman's title fee will be \$6,000 (\$1,500 per tract), which includes the initial Title Search, and/or any Title Updates, copies, and electronic & overnight delivery fees.
- Randy Button & Associates, Inc.'s appraisal fee for all four tracts will be \$18,000 (\$4,500 per tract).

- Boozer & Company, P.C.'s fee for review appraisals and Form 2's for all four tracts will be \$11,200 (\$2,800 per tract).
- Volkert's fee to conduct ROW negotiations and acquisitions and manage the ROW acquisition services will be \$19,000 (\$4,750 per tract).
- Volkert's fee for the Acquisition Stage Relocation Plan will be \$3,500.
- Volkert's fee to conduct relocation services will be \$24,000.
- Brenda Lehman's closing services fee is \$850 (assuming there will only be one final closing), which includes disbursement of Funds, document preparation, Recording fees, e-filing fees, courier/overnight shipping & handling fees, and notary fees.

If unforeseen changes require the on-going negotiations process to be restarted or revised significantly, Volkert will immediately notify the City of the change. Any subsequent changes to the appraisals, reviews, or Form 2's or additional negotiations due to changes by the City and/or site identification plan that require restart of negotiations will be additional scope and fee.

Assumptions

- Due to the small number of tracts, a public meeting is not anticipated to be necessary.
- All tracts will be total takes and no remnants remaining.

Volkert, Inc. appreciates the opportunity to submit this scope of services. If you have any questions, please feel free to contact me. We look forward to working with you on this very important and exciting project for the City of Spring Hill.

Sincerely,



Dyan C. Damron, PE, PTP
Traffic Engineering & Planning Manager
Volkert, Inc.



Justin Eckel, PE
Vice President
Volkert, Inc.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first written above.

OWNER: City of Spring Hill

CONSULTANT: Volkert, Inc.

BY: 

BY: 

TITLE: Mayor

TITLE: Senior Vice President



302 Innovation Drive, Suite 100
Franklin, Tennessee 37067
615.656.1845
www.volkert.com

GENERAL CONDITIONS FOR LETTER AGREEMENT

This Agreement made and entered into this 14th day of February, 2022 by and between the City of Spring Hill, 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.

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 \$82,550 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: This Agreement shall be governed by the laws of the State of Tennessee 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 Tennessee exclusive of its choice of law provisions.