

OWNER/CONSULTANT AGREEMENT

This Agreement made and entered into this ____ day of _____, _____ by and between the Town of Nolensville, hereafter referred to as the OWNER, and Volkert, Inc., hereinafter referred to as the CONSULTANT; WITNESSETH THAT:

WHEREAS, the OWNER desires to retain the CONSULTANT to perform certain professional planning services as outlined in the Scope of Services;

WHEREAS, the CONSULTANT desires to perform said professional services for the Owner;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinafter stipulated to be kept and performed, the parties hereto agree as follows:

ARTICLE I – SCOPE OF SERVICES

SECTION I – GENERAL SERVICES

The CONSULTANT shall perform certain professional and engineering services as requested by the OWNER as follows:

SEE ATTACHMENT A

SECTION II – SPECIAL SERVICES

At the written request of the OWNER, the CONSULTANT shall accomplish such special services as required by the OWNER. When the CONSULTANT is requested to provide special services, such services may be provided by CONSULTANT'S own forces or through subcontracts with other professionals. However, contracts with other professionals for special services must have the written approval of the OWNER before the work is initiated. Special services which may be requested include, but are not necessarily limited to the following:

- A. Land Surveys as necessary to establish property boundaries required for property acquisition purposes or preparation of property maps.
- B. Soils and Materials Investigations including test borings, laboratory and field testing of soils and materials and related reports as required for design and construction quality control purposes.
- C. Engineering Surveys (for design and construction) to include topographic surveys, base line surveys, cross section surveys, aerial photography, etc., as required and approved by the OWNER.

- D. Observation of construction by project representative as approved by the OWNER. When authorized by the OWNER, the duties, responsibilities and limitations of authority shall be included in a supplemental agreement.
- E. Assistance to the OWNER as expert witness in litigation arising from development or construction of project as determined appropriate by OWNER and CONSULTANT.
- F. Accomplishment of special surveys and investigations, and the preparation of special reports and drawings as may be requested or authorized in writing by the OWNER.
- G. Preparation of pre-applications and applications for federal and/or state assistance grants for funding of projects.

ARTICLE II – GENERAL PROVISIONS

SECTION I – RESPONSIBILITIES OF THE OWNER

As a party to this Agreement, the OWNER shall:

- A. Make available for CONSULTANT'S use all record drawings, maps, soil data, etc. that are readily available to the OWNER, and the CONSULTANT shall have the right to rely upon the completeness and accuracy thereof.
- B. Designate a person to act with authority on OWNER'S behalf and respond in a timely manner to submissions by CONSULTANT providing approvals and authorizations as appropriate so that work may continue at a normal pace.
- C. Pay all costs associated with special services authorized by the OWNER, and all costs associated with obtaining bids from contractors.

SECTION II - METHOD OF PAYMENT

The CONSULTANT agrees to provide professional services for all services included in Article I – Scope of Services and the OWNER agrees to pay the CONSULTANT as compensation for its services as specified below, plus reimbursable expenses.

The CONSULTANT will perform the Scope of Services for a lump sum fee amount of \$32,500.

- 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 percent (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. For Projects involving a supplemental agreement, the scope of services and amount of compensation to be paid will be included therein.
- C. 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.
- D. Reimbursable expenses are defined as follows:
 - Travel and subsistence cost, long distance telephone, printing and reproduction, computer services, application fees or deposits, and all other costs incidental to performing the assignment.
- E. 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.
- 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 may make and retain copies thereof for information and reference in connection with the use and/or occupancy of the Project by OWNERS 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. 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. Indemnification: To the fullest extent permitted by law, 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.
- D. Insurance: CONSULTANT shall furnish OWNER with Certificate of Insurance confirming following forms and minimum limits of insurance:

<u>TYPE OF COVERAGE</u>	<u>LIMITS</u>
I. Worker Compensation Employer Liability	State – Statutory \$500,000 per accident \$500,000 disease/each accident \$500,000 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

- E. Termination: In the event of failure by the CONSULTANT to fulfill in timely and proper manner CONSULTANT'S obligations under this contract, or if the CONSULTANT violates any of the covenants, agreements, or stipulations of this

contract, the OWNER shall thereupon have the right to terminate this contract by written notice to the CONSULTANT of such termination, specifying the effective date thereof at least five days before the effective date of such termination and make settlement with CONSULTANT upon an equitable basis for services performed up to the time of termination.

F. Contract Period: All contracts, agreements, provisions and stipulations of this Agreement shall remain in full force for a period of one year from the date of the Agreement, and for such periods as the contract time may be extended by mutual written agreement between the OWNER and the CONSULTANT.

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 paragraph 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 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 under the Construction Industry

Mediation Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise, 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. Should mediation fail to resolve the dispute, the parties shall engage in arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then in effect unless the parties mutually agree otherwise, before recourse to litigation. Arbitration is a condition precedent to litigation. Only after the parties have exhausted direct discussions, mediation, AND arbitration in accordance with the foregoing shall either of them be entitled to initiate 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 furnish right-of-way on the property for CONSULTANT to perform undisturbed the 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 costs in accordance with the fee schedule referenced herein.
- J. Standard of Care: CONSULTANT shall endeavor to perform its services hereunder consistent with the professional skill and care ordinarily exercised under similar conditions by similarly situated professional consultants practicing in the same field 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. Jurisdiction/Venue: This contract shall be governed by the laws of the State of Tennessee.

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

ATTEST:

Town of Nolensville

Title

Title

Federal Employer
ID # (Corporation): _____

ATTEST:

Volkert, Inc.

Title

Title

ATTACHMENT A

Town of Nolensville Comprehensive Plan Scope of Services

Volkert will provide professional planning services to assist the Town of Nolensville in developing their Comprehensive Plan. The planning process will be coordinated by the Town's Project Manager (to be named by the Town Administrator). The study area for the project will be the Town of Nolensville.

Support Services of the Town of Nolensville

The Town of Nolensville will provide administrative and technical support services to assist Volkert in performing this Scope of Services in a timely and cost-efficient manner. The support services to be provided by the Town will include the following types of general services and specific tasks for the planning process:

- ◆ Identify a single individual as the **Town's Project Manager**, who will serve as a primary point of contact and source of day-to-day work program direction for this collaborative planning effort involving both Town and Consultant personnel, resources and capabilities.
- ◆ Identify **key contacts** within Town government and at other agencies and organizations for data collection and coordination purposes, and assist in making requests, obtaining necessary data and maps, arranging meetings as needed, and generally involving and making these entities aware of the Comprehensive Plan process.
- ◆ Ensure that **key Town personnel and other officials** will participate as needed in the planning process and be available upon request, through arrangements made by the Town's Project Manager, to provide information, previous plans/studies and referrals and also offer opinions, insights and suggestions that are necessary for development of the plan. The Town will also be responsible for coordinating contacts with and encouraging the involvement of members of relevant Boards and Commissions during the plan development process.
- ◆ Provide and/or make available for the consultant team's use all **available data, inventories, maps, GIS, aerial photographs, previous reports/plans/studies, and other information** that is available in digital or printed format and is pertinent and necessary for development of the plan. Prompt compilation and delivery of such resource materials to the consultant team is an essential prerequisite for initiation of the planning process and timely progress on various initial study tasks.

Project Management

Task Purpose

The purpose of the Project Management task is to highlight administrative activities to be conducted by the consultant team that will ensure efficient and timely delivery of project results that are of practical use by the Town of Nolensville. Volkert will be responsible for project management objectives through the following activities.

Task Activities

- ◆ **Project Kick-Off Meeting with Town Staff:** Following receipt of written Notice to Proceed from the Town, Volkert will meet with the Town's Project Manager and other appropriate officials and staff to review the overall scope of services and project schedule and discuss data/information needs and potential sources, related plans and studies, key project contacts for the Town and consultants, Town-Consultant coordination items, and other project logistics and issues. It is essential that the Town and its consultant have a common understanding of the anticipated process, including responsibilities, reporting requirements, important objectives and priorities, key milestones, and deliverables.
- ◆ **Detailed Project Schedule:** Based on initial Town-Consultant coordination and discussion at the Project Kick-Off Meeting, Volkert will prepare a Master Project Schedule. The Master Schedule will identify specific dates for submittal of interim and final deliverables, project meetings and citizen involvement opportunities, and other time-sensitive project activities. Adequate time for client review of draft deliverables will also be reflected in the schedule. Based on this scope of services, a Draft Comprehensive Plan would be prepared within six months from project initiation. The timing of final plan consideration and adoption, as well as interim steps in the planning process, will depend upon interactions with and the decision-making speed of the Town of Nolensville and is not under the complete control of the consultant.
- ◆ **Regular Communications:** Volkert's Project Manager will maintain frequent communication and coordination with the Town's Project Manager by phone and e-mail as appropriate.
- ◆ **Progress Reports:** Volkert will submit monthly progress reports to the Town's Project Manager as part of the monthly invoice. Monthly invoices will be e-mailed directly to the Town's Project Manager, with the associated progress report submitted by the Project Manager.

Task Deliverables

- ◆ Master Project Schedule
- ◆ Detailed Data & Information Needs checklist
- ◆ Progress Reports (monthly)
- ◆ Any handouts or other meeting materials

Task 1 – Existing Plan Assessment

Task Purpose

The purpose of this task is to compile and analyze the existing Land Use Policy, Major Thoroughfare Plan, Bicycle/Pedestrian/Greenway Plan, and City Budget or CIP.

Task Activities

- ◆ Volkert will compile and assess all existing plans that were previously completed by the Town to gain an understanding of how the plans were formulated and determine if and/or where updates are needed.
 - It is assumed that no updates will be required for the Major Thoroughfare Plan.
 - It is anticipated that there will be a minor update required for the Land Use Policy that will include an update to the Land Use Policy Map. It is assumed that the GIS data will be provided by the Town and that Volkert will make the changes to the existing GIS files in order to update the map.
 - It is assumed that the Bicycle/Pedestrian/Greenway Plan will require completion from its current status. For this task, it is assumed the draft map (including GIS data) and any other supporting documentation will be provided by Town.

Task Deliverables

- ◆ **Existing Plan Assessment** – this will not result in a written document or deliverable, but will be utilized in the development of the Comprehensive Plan.

Task 2 – Land Use Policy Update

Task Purpose

The purpose of this task is to update the current Land Use Policy in coordination with the other plan elements to ensure the plans are coordinated.

Task Activities

- ◆ Review recent trends in development and demographics. This includes:
 - Assessment of recent residential, commercial, and industrial building and development activity to determine trends in the Nolensville area.
 - Review and assessment of recent changes in demographics utilizing readily available sources for population and/or employment data.
- ◆ Based on the review of recent trends in development and demographics, develop recommended changes to the Town’s Land Use Plan and Land Use Policy Map.

Task Deliverables

- ◆ **Land Use Policy Update** - Volkert will deliver the Land Use Policy element of the overall Comprehensive Plan, including an updated Land Use Policy Map. The Land Use Policy element of the Comprehensive Plan will include appropriate narrative, tables, maps and graphics. The report and any associated map figures or illustrations referenced in the report will be transmitted to the Town electronically for review.

Task 3 – Bicycle/Pedestrian/Greenway Plan Development

Task Purpose

The purpose of this task is to complete the Bicycle/Pedestrian/Greenway Plan update in coordination with the other plan elements to ensure the plans are coordinated.

Task Activities

- ◆ Identify attractors and generators that have high potential for bicycle/pedestrian/greenway related trips.
- ◆ Analyze the attractors and generators to determine the most appropriate method for connecting them to one another.
- ◆ Develop a recommended projects list and accompanying map.
- ◆ Develop planning level opinions of probable cost for all projects.

Task Deliverables

- ◆ **Bicycle/Pedestrian/Greenway Plan** - Volkert will deliver the Bicycle/Pedestrian/Greenway element of the overall Comprehensive Plan. This element of the Comprehensive Plan will include appropriate narrative, tables, maps and graphics. The report and any associated map figures or illustrations referenced in the report will be transmitted to the Town electronically for review.

Task 4 – Implementation Plan

Task Purpose

The purpose of this task is to develop an implementation plan for the overall Comprehensive Plan that will include a prioritization of capital projects for the next five (5) years. The projects will come from the Major Thoroughfare Plan, Bicycle/Pedestrian/Greenway Plan, and recommendations from Town Staff on future public building needs (anticipated needs for police station, administrative space, etc.). The implementation task will also include suggested Zoning and/or Subdivision Regulations modifications needed to achieve the goals of the Land Use Policy.

Task Activities

- ◆ Review all recommended projects from the Major Thoroughfare Plan, Bicycle/Pedestrian/Greenway Plan, and public building needs to determine a priority list of projects for the next five (5) years. This will be based on qualitative factors such as availability of right of way or land, status of any required studies or engineering, anticipated benefit of the project to the citizens of the Town, perceived ease of implementation, etc.
- ◆ Assess the City's anticipated funding for capital projects over the next five (5) years and compare with the anticipated costs of the priority list of projects
- ◆ Revise the initial priority list of projects to reflect the analysis of costs and qualitative factors.
- ◆ Develop a schedule for project implementation over the next five (5) years. This will include a high level basic schedule for conducting required studies or engineering, acquisition of land or right of way (if required), and recommended bid letting.
- ◆ Develop list of suggested Zoning Ordinance and Subdivision Regulations revisions needed to achieve the goals and objectives of the Plan Use Policy.

Task Deliverables

- ◆ **Implementation Plan** - Volkert will deliver the Implementation Plan element of the overall Comprehensive Plan. This element of the Comprehensive Plan will include appropriate narrative, tables, maps and graphics. The report and any associated map figures or illustrations referenced in the report will be transmitted to the Town electronically for review.

Task 5 – Comprehensive Plan

Task Purpose

The purpose of this task is to develop a Comprehensive Plan document. Throughout the development of the individual Plan elements, Volkert will coordinated all planning processes closely to ensure all Plan elements are complementary and consistent with one another. This will allow for the seamless production of the final Comprehensive Plan document.

Task Activities

- ◆ Develop a Comprehensive Plan document that includes summaries of the individual plan elements described in this scope of services. This will include highlights of the planning process, maps, and resulting key action items and proposed projects from the individual plans, as well as the recommended implementation plan.

Task Deliverables

Comprehensive Plan - Volkert will deliver the Comprehensive Plan document that will include appropriate narrative, tables, maps and graphics. The report and any associated map figures or illustrations referenced in the report will be transmitted to the Town electronically for review.

Task 6 – Approval Task

Task Purpose

The purpose of this task is to assist with the Comprehensive Plan document review process to be conducted by the Town of Nolensville Planning Commission.

Task Activities

- ◆ Submit the Comprehensive Plan document for review by the Town of Nolensville Planning Commission.
- ◆ Attend one Town of Nolensville Planning Commission meeting to present the Comprehensive Plan results.
- ◆ Attend one Town of Nolensville Planning Commission meeting for review and consideration for approval.

Task Deliverables

Comprehensive Plan - Volkert will develop a brief (10 to 20 minutes) presentation for use at the Town of Nolensville Planning Commission meeting. At the conclusion of the process, Volkert will provide ten (10) hard copies of the Comprehensive Plan document.