



# SANTA ROSA COUNTY BOARD OF COMMISSIONERS

Santa Rosa Administrative Offices  
6495 Caroline Street, Suite M  
Milton, Florida 32570-4592



JAYER WILLIAMSON, District 1  
ROBERT A. "BOB" COLE, District 2  
W. D. "DON" SALTER, District 3  
ROB WILLIAMSON, District 4  
R. LANE LYNCHARD, District 5

TONY GOMILLION, County Administrator  
ROY V. ANDREWS, County Attorney  
JAYNE BELL, OMB Director

## **MEMORANDUM**

TO: Board of County Commissioners

FROM: Erica Grancagnolo, Grants Manager

THROUGH: Sheila Fitzgerald, Grants and Special Projects Director

DATE: January 15, 2016

RE: Contract with Volkert, Inc. for update to Land Acquisition Study

## **RECOMMENDATION**

Recommend approval to enter into contract with Volkert, Inc. in the amount of \$73,695 for consultant services for the update of the 2003 Land Acquisition Study related to buffering efforts in the areas around NAS Whiting Field, Naval Outlying Fields (NOLFs), and Peter Prince Airport.

## **BACKGROUND**

In July 2015 Santa Rosa County was awarded a grant through the Florida Defense Task Force (FDSTF) to fund the update of the 2003 Land Acquisition Study (LAS), which developed a phased plan to limit encroachment at Naval Air Station Whiting Field (NASWF).

Volkert, Inc. was the sole respondent to the RFQ, and the board approved Volkert, Inc for consultant services for the update of the 2003 Land Acquisition Study at the December 10, 2015 meeting. Volkert, Inc. has extensive experience with aviation land acquisition projects, with an aviation expert and a land use planner on staff.

The budget for this project is \$78,000, with \$41,310 in FDSTF grant funds and \$36,690 local match from REPI reserves. In-kind contributions from staff are \$4,620.

## **GENERAL CONDITIONS FOR LETTER AGREEMENT**

This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016 by and between Santa Rosa 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.

The project will result in a report that will identify the existing environment in the study area, any current conflicts between land uses and air operations, and potential future impacts from air operations. The report will also present strategies to minimize current or future problems, encourage compatible future development, and prevent incompatible future development.

The consultant shall update the April 2003 Land Acquisition Study to reflect changes to the land development code, Air Installation Compatible Use Zone (AICUZ) footprints, rural protection lines, and prior land easement/acquisition activities that have been updated since 2003. The consultant shall also provide a report on progress made as result of the 2003 Study.

The consultant shall update the prioritized property listings around NASWF and six NOLFs located in the county based on proximity to Accident Potential Zones, Military Airport Zones, vulnerability to incompatible development and location of existing and planned infrastructure development. The consultant shall also consider the inclusion of the Airport Zone at Peter Prince as well as certain identified "high-use" airspace areas in the prioritized property listings. This analysis should also include identifying the property owners and pertinent data related to the parcel, establishing a range of values for the properties, and evaluating the property owner's willingness to sell or allow easement.

The consultant shall work with all applicable Santa Rosa County BOCC staff members including Grants, Planning and Development Services, County Attorney, and others as necessary; State of Florida Department of Transportation; as well as representatives from Naval Air Station Whiting Field. Consultant shall be responsible for meeting any reporting deadlines or deliverables in accordance with the FDSTF and Santa Rosa County grant contract.

Project deliverables will be in report format and include the following components:

1. Completion of a phased plan to limit encroachment at NAS Whiting Field, its outlying fields, and Peter Prince Airport through the use of real estate purchases, agricultural conservation easements, and zoning mechanisms. Report should include:
  - a. Comparison of “then” and “now.” Description of progress made since, and as a result of, the 2003 study
  - b. Assessment of existing environment, any current conflicts between land uses and air operations, and potential future impacts from air operations
  - c. An updated prioritized property list
2. Public Involvement/Education
  - a. A final presentation to the Santa Rosa County Commission at a regularly scheduled commission meeting
  - b. In conjunction with Santa Rosa County staff, conduct education/outreach effort to better inform affected property owners about the effort to prevent encroachment

## **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, long distance telephone, printing and reproduction, computer services, 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 Seventy Three Thousand Six Hundred Ninety-Five Dollars and Zero Cents (\$73,695.00) unless authorized by OWNER.
- F. Payment shall be made payable to Volkert, Inc. and submitted to the following address: **Dept. #2042, Volkert, Inc., P.O. Box 11407, Birmingham, AL 35246-2042.**

### **SECTION III – MISCELLANEOUS**

- A. Extra Work: It is mutually understood and agreed that the OWNER will compensate the CONSULTANT for services resulting from changes in the scope of a project or its design, including but not necessarily limited to, change in size, complexity, project schedules, character of construction, revisions to previously accepted studies, reports, design documents or contract documents and for preparation of documents for separate bids, when such revisions are due to causes beyond the CONSULTANT'S control and when requested or authorized by the OWNER. Compensation for such extra work when authorized by the OWNER shall be mutually agreed upon prior to beginning work.
- B. Ownership and Reuse of Documents: All Project documents including but not necessarily limited to reports, drawings, studies, findings, correspondence, specifications, survey notes, estimates, maps, computations, calculations, computer files, Computer Assisted Design and Drafting (CADD) files (electronic and hard copy), and other data, as well as any and all other documents and other materials prepared, generated, or furnished by or for CONSULTANT and/or its Subconsultant(s) for the Project pursuant to this Agreement (hereinafter referred to in this Section B. as "Documents") are instruments of service with respect to the Project, and CONSULTANT shall retain an ownership and intellectual property interest therein regardless whether the Project is completed. OWNER 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. 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.
- D. Insurance & Indemnification: 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's 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

Indemnification: To the fullest extent permitted by law, CONSULTANT shall indemnify OWNER for costs, losses, damages, judgments and expenses (including reasonable attorneys' fees) to the extent caused by the negligent acts, errors and omissions of CONSULTANT and its officers, directors, employees and subconsultants, in their performance of CONSULTANT'S Scope of Services hereunder. Notwithstanding any clause or provision in this Agreement or any other applicable Agreement to the contrary, CONSULTANT'S only obligation with regard to indemnification shall be to indemnify and hold harmless (but not defend) OWNER and its officers, directors and employees from and against

those damages and costs (including reasonable attorneys' fees) that OWNER becomes legally obligated to pay as a result of the death or bodily injury to any person or the destruction or damage to any property, to the extent caused by the negligent acts, errors or omissions of CONSULTANT or anyone for whom CONSULTANT is legally responsible, subject to any exclusivity of remedies contained herein.

- E. Termination: In the event of a material breach hereof, the OWNER shall have the right to terminate CONSULTANT'S 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. Time of Completion: In accordance with the Standard of Care set out herein, all services under this Agreement will commence immediately upon authorization to proceed from the OWNER. Project must be completed prior to August 13, 2016.
- G. Successors and Assigns:
  - 3. 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 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 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. 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 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: 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 contract shall be governed by the laws of the State of Alabama. The Circuit or District Court of the Thirteenth Judicial Circuit of Alabama, Mobile County, Alabama, shall have jurisdiction over any dispute which arises under this contract, and each of the parties shall submit and hereby consents to the jurisdiction of either such court.
- N. E-Verify: CONSULTANT shall utilize the E-Verify system and shall require all of its subcontractors performing work or providing services pursuant to this Agreement utilize the E-Verify system to verify the employment or eligibility of all new employees hired by the subcontractor during the term of the subcontract.