FARRAGUT BOARD OF MAYOR AND ALDERMEN
AGENDA
November 12, 2015

WORKSHOP
5:45 PM
Discussion of Farragut Business Alliance Contract

6:15 PM
Discussion of McFee Park Splash Pad

BMA MEETING
7:00 PM

I. **Silent Prayer, Pledge of Allegiance, Roll Call**

II. **Approval of Agenda**

III. **Mayor's Report**

IV. **Citizens Forum**

V. **Approval of Minutes**
   A. October 22, 2015

VI. **Business Items**
   A. Approval of Proposal from Cannon & Cannon, Inc. for Engineering Services for Traffic Signal Improvement Project.

   B. Approval of Proposal from Kimley-Horn/Cannon & Cannon, Inc. for Engineering Services for Feasibility Study of Possible North-South Connector between Parkside Drive and Outlet Drive.

   C. Approval of TDOT Contract Amendment to Include Local Cost Share for Decorative Lighting on Concord Road Project – Turkey Creek Road to Northshore

   D. Approval of TDOT Contract for Improvements to Intersection at Kingston Pike and Watt Road

   E. Approval of Contract with BerryDunn for Professional Information Technology (IT) Strategic Planning Services

VII. Ordinances

A. Public Hearing and Second Reading

1. Ordinance 15-17, an Ordinance to Amend the text of the Farragut Municipal Code, pursuant to authority granted by Section 13-4-310, Tennessee Code Annotated by adding Title 14, Chapter 7., Farragut Vested Property Rights Ordinance
2. Ordinance 15-18, an Ordinance to Amend the text of the Farragut Zoning Ordinance, Ordinance 86-16, as amended, pursuant to authority granted by section 13-4-201, Tennessee Code Annotated, by amending Chapter 4., Section XXIII., Site Plan Regulations, Subsection B., Validity, to clarify the procedure for approval of plans as it relates to the Vested Property Rights Ordinance.

B. First Reading

1. Ordinance 15-19, an ordinance to rezone a portion of Parcel 78.01, Tax Map 142, located at 200 Boring Road, from R-2 to R-1 (Ryan Lynch, Applicant)

VIII. Town Administrator's Report

IX. Town Attorney's Report

It is the policy of the Town of Farragut not to discriminate on the basis of race, color, national origin, age, sex, or disability pursuant to Title VI of the Civil Rights Act of 1964, Public Law 93-112 and 101-336 in its hiring, employment practices and programs. To request accommodations due to disabilities, please call 865-966-7057 in advance of the meeting.

FARRAGUT BOARD OF MAYOR AND ALDERMEN
MINUTES
October 22, 2015

BMA MEETING
7:00 PM

I. Silent Prayer, Pledge of Allegiance, Roll Call

II. Approval of Agenda

III. Mayor's Report

IV. Citizens Forum

V. Approval of Minutes

A. October 8, 2015

VI. Business Items

A. Approval of the Hot to Trot 5K/10K and Fun Run
B. Approval of the Race 13.1 Half-Marathon, 10K and 5K
C. Approval of Professional Service Agreement for Engineering Services for Mayor Bob Leonard Park Field #1
D. Approval of Lease Agreement with Knox County Clerk

VII. Ordinances

A. First Reading

1. Ordinance 15-17, an Ordinance to Amend the text of the Farragut Municipal Code, pursuant to authority granted by Section 13-4-310, Tennessee Code Annotated by adding Title 14, Chapter 7., Farragut Vested Property Rights Ordinance
2. Ordinance 15-18, an Ordinance to Amend the text of the Farragut Zoning Ordinance, Ordinance 86-16, as amended, pursuant to authority granted by section 13-4-201, Tennessee Code Annotated, by amending Chapter 4., Section XXIII., Site Plan Regulations, Subsection B., Validity, to clarify the procedure for approval of plans as it relates to the Vested Property Rights Ordinance.

VIII. Town Administrator's Report

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The Farragut Board of Mayor and Aldermen met in a regular session on Thursday, October 8, 2015 at 7:00 p.m. Members present were Mayor McGill, Aldermen Honken, Markli and Pinchok; Alderman LaMarche was absent.

Approval of Agenda

Motion was made to approve the agenda as presented. Moved by Alderman Honken, seconded by Alderman Pinchok; voting yes, Mayor McGill, Aldermen Honken, Markli and Pinchok; no nays; Alderman LaMarche was absent; motion passed.

Approval of Minutes

Motion was made to approve the minutes of October 8, 2015 as presented. Moved by Alderman Pinchok, seconded by Alderman Honken; voting yes, Mayor McGill, Aldermen Honken, Markli and Pinchok; no nays; Alderman LaMarche was absent; motion passed.

Business Items

Approval of the Hot to Trot 5K/10K and Fun Run

Motion was made to approve the Hot to Trot road closures on Parkside Drive on November 26, 2015 from 6:00 to 10:00 AM. Moved by Alderman Honken, seconded by Alderman Pinchok; voting yes, Mayor McGill, Aldermen Honken, Markli and Pinchok; no nays; Alderman LaMarche was absent; motion passed.

Approval of the Race 13.1 Half-Marathon, 10K and 5K

Motion was made to approve the Race 13.1 on May 1, 2016 with the stipulation that Race 13.1 work closely with the affected property owners and submit the certificate of liability. Moved by Alderman Honken, seconded by Alderman Pinchok; voting yes, Mayor McGill, Aldermen Honken, Markli and Pinchok; no nays; Alderman LaMarche was absent; motion passed.

Approval of Professional Service Agreement for Engineering Services for Mayor Bob Leonard Park Field #1

Motion was made to approve the Professional Service Agreement for Engineering Services for Mayor Bob Leonard Park Field #1 with Urban Engineering Inc., in the amount of $23,275 for civil engineering and surveying services. Moved by Alderman Honken, seconded by Alderman Pinchok; voting yes, Mayor McGill, Aldermen Honken and Pinchok; Alderman Markli voted no; Alderman LaMarche was absent; motion passed.

Approval of Lease Agreement with Knox County Clerk

Motion was made to approve the lease agreement with the Knox County Clerk's office space in the Farragut Town Hall. Moved by Alderman Honken, seconded by Alderman Markli; voting yes, Mayor McGill, Aldermen Honken, Markli and Pinchok; no nays; Alderman LaMarche was absent; motion passed.

Ordinances

First Reading
Ordinance 15-17, an Ordinance to Amend the text of the Farragut Municipal Code, pursuant to authority granted by Section 13-4-310, Tennessee Code Annotated by adding Title 14, Chapter 7., Farragut Vested Property Rights Ordinance

Motion was made to approve Ordinance 15-17 on first reading. Moved by Alderman Markli, seconded by Alderman Pinchok; voting yes, Mayor McGill, Aldermen Honken, Markli and Pinchok; no nays; Alderman LaMarche was absent; motion passed.

Ordinance 15-18, an Ordinance to Amend the text of the Farragut Zoning Ordinance, Ordinance 86-16, as amended, pursuant to authority granted by section 13-4-201, Tennessee Code Annotated, by amending Chapter 4., Section XXIII., Site Plan Regulations, Subsection B., Validity, to clarify the procedure for approval of plans as it relates to the Vested Property Rights Ordinance.

Motion was made to approve Ordinance 15-18 on first reading. Moved by Alderman Honken, seconded by Alderman Pinchok; voting yes, Mayor McGill, Aldermen Honken, Markli and Pinchok; no nays; Alderman LaMarche was absent; motion passed.

Town Administrator's Report

David Smoak announced that the employee picnic would be October 23 at McFee Park and Freaky Friday would be Friday, October 30.

Alderman Honken announced that he would be resigning from the Board of Mayor and Aldermen effective December 31, 2015.

Meeting adjourned at 7:35 PM

____
Ralph McGill, Mayor

____
Allison Myers, Town Recorder

AGENDA NUMBER VI. A. MEETING DATE November 12, 2015

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: Darryl W. Smith, PE

SUBJECT: Approval of Proposal from Cannon & Cannon, Inc. for Engineering Services for Traffic Signal Improvement Project

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INTRODUCTION: The purpose of this agenda item is to consider approval of a proposal from Cannon & Cannon, Inc. for traffic engineering services to optimize timing of Farragut's traffic signals.

BACKGROUND: Early last year, the Town applied for Congestion Mitigation Air Quality (CMAQ) funding for updating our signal timing at all traffic signals within the Town. We later received notice that the CMAQ funding ($258,000) had been approved. The Board approved a TDOT contract in June that details our responsibilities in development of the project, and we have completed the RFQ process to select a consultant.

The project includes traffic counts and re-timing of all of our 26 traffic signals, along with various hardware improvements intended to better coordinate traffic movements within the Town. Once completed, the Town will be reimbursed 100% of the estimated $258,000 cost.

Attached is a proposal from Cannon & Cannon, Inc. for development of this project. Cannon & Cannon anticipates completion of work within 12 months, with a total fee of $165,000. Please note that the remainder of the $258,000 CMAQ grant will be applied to hardware upgrades.

FINANCIAL SECTION:

Project: CMAQ Signal Optimization

Project Budget	Requested Amount	Contracted Amount	Remaining Amount
$258,000	$165,000	$0	$93,000

Approved By: A Myers

RECOMMENDATION BY: Darryl Smith, Town Engineer, for approval.

PROPOSED MOTION: Approval of Proposal from Cannon & Cannon, Inc., with total fee of $165,000.

BOARD ACTION:

MOTION BY:________________ **SECONDED BY:**________________

VOTE/TOTAL	MCGILL	LAMARCHE	HONKEN	MARKLI	PINCHOK
YES					
NO					
ABSTAIN					

TOWN OF FARRAGUT

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made by and between **Town of Farragut** ("Client") and **Cannon & Cannon Inc.** ("Contractor") for professional services for the assignment described as follows:

Project: Town of Farragut Traffic Signal Improvement Project

Location: Citywide

Description of Project: The design of traffic signal upgrades and the retiming of 26 traffic signals within the Town of Farragut, including traffic counts and before/after evaluations

1. **Professional Services**. Contractor agrees to perform the following Basic Services under this Agreement:

See **Attachment A** to this Agreement for a description of Basic Services.

2. **Compensation**. Client shall compensate Contractor for the Basic Services as follows: A lump sum fee of $165,000, including reimbursable expenses. In addition, Client shall pay Contractor for additional services that may be requested by the Client beyond the Basic Services in accordance with the hourly rate schedule attached as **Attachment B** to this Agreement.

3. **Schedule**. Contractor shall begin work upon notification of approval of this Agreement by the Board of Mayor and Aldermen and shall complete the work by submitting the final deliverables on or before December 31, 2016. The schedule for the various meetings and presentations as outlined in the Basic Services shall be agreed upon by the Client and Contractor before beginning work.

4. **Invoicing and Payments**. Invoices or payment requests shall be submitted to the Client no more than monthly and shall include such information, documentation or data as the Town Administrator may require including, but not limited to, the amount and breakdown of the payment requested, the period covered by the request, and the work performed during the period covered by the payment request. After review, the Town Administrator will indicate his approval of the payment request, or shall explain to Contractor, in writing, his reasons for not approving any portion or all of the request, and authorize payment of the amount approved. In the event the Town Administrator does not approve any portion of a payment request, and has communicated the reasons to Contractor, Contractor will then take the necessary action to satisfy the reasons for non-approval and resubmit the payment request. Client shall endeavor to remit payment of payment requests or portions thereof which are approved by the Town Administrator within thirty (30) days of receipt by Client. From time to time approval of a payment request may require action by the Board of Mayor and Aldermen which meets on the second and fourth Thursday of most months.

5. **Time**. Contractor will perform its services in a timely manner commensurate with the exercise of due professional care which it acknowledges can be done consistent with the schedule provided for in Paragraph 3. Time for performance shall be extended as necessary for delays or suspensions due to circumstances beyond Contractor's control. If such delay or suspension extends more than six (6) months (cumulatively), Contractor's compensation shall be equitably adjusted; provided, however, such adjustment and amendment to this Agreement must be approved by the Board of Mayor and Aldermen before Client is bound.

6. **Suspension of Services**. If Client fails to pay any invoice when due or otherwise is in material breach of this Agreement, Contractor may, at its sole discretion, suspend performance of services upon five (5) days' written notice to Client. Contractor shall have no liability to Client and Client agrees to make no claim for any delay or damage as a result of such suspension, unless (i) the Town Administrator has refused to approve payment, (ii) his reasons are justified pursuant to this Agreement, and (iii) Contractor has failed to satisfy the reasons as required by Paragraph 4 hereof. Upon cure of the cause of a justified suspension, Contractor shall resume services within a reasonable time, and there shall be equitable adjustments of the project schedule and fees to reflect the effects of such suspension, if such adjustments are deemed reasonable and appropriate by the parties.

7. **Standard of Care**. Notwithstanding any other provision of this Agreement or any other document describing the services produced by Client, Contractor shall perform its services in accordance with the standard of professional care ordinarily exercised under similar circumstances by reputable members of its profession in the same locality at the time the services are provided. Beyond the foregoing and unless otherwise provided herein or in other documents produced, generated or provided by Contractor, no warranty, expressed or implied, is made or intended by Contractor. The parties further agree that Contractor is not a fiduciary of Client.

8. **Termination**. The obligation to provide further services under this Agreement may be terminated with or without cause by either party upon ten (10) days' written notice to the other party. On termination by either Client or Contractor, Client shall pay Contractor all amounts due for any services performed to the date of termination (plus all reimbursable expenses incurred) as Contractor's sole and exclusive remedy, subject to any setoffs to which the Client is entitled as a result of Contractor's failure to perform as required by this Agreement.

9. **Reuse of Documents**. All documents, including drawings, specifications, and reports, prepared by Contractor pursuant to this Agreement are instruments of professional service and shall become the property of the Client. They are not intended or represented to be suitable for reuse by Client or others for additions or modifications of the Project or on any other project. Any reuse without written consent, verification or adaption by Contractor for the specific purposes intended shall be at Client's sole risk and without liability or legal exposure to Contractor. Any such verification and adaption will entitle Contractor to further compensation at rates to be agreed upon by Client and Contractor.

10. **Access to the Site/Jobsite Safety**. Unless otherwise stated, Contractor will have access to the site for activities necessary for the performance of its services. Client agrees that Contractor shall have no responsibility for the means, methods, sequences, procedures, techniques, and scheduling of construction, as these decisions are solely the responsibility of the

contractors. Contractor further shall have no authority or duty to supervise the construction workforce and shall not be responsible for jobsite safety or for any losses or injuries that occur at the Project site.

11. **Insurance**. Prior to any access to the Project site, Contractor shall deliver to Client a certificate of insurance evidencing general liability coverage with a limit of not less than $1,000,000 each occurrence for bodily injury, personal injury and property damage. If such insurance contains a general aggregate limit, it shall apply separately to the work/location of the Project in this Agreement or be no less than $2,000,000. In addition, Contractor shall endeavor to secure and maintain insurance in such amounts as it deems necessary to protect itself from claims of professional negligence arising from the performance of services under this Agreement. Such insurance shall:

a. Contain or be endorsed to contain a provision that includes Client, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work performed by or on behalf of the Contractor. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.

b. For any claims related to this Project, the Contractor's insurance coverage shall be primary insurance as respects the Client, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering the Client, its officials, officers, employees, and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

12. **Risk Allocation**. In recognition of the relative risks, rewards, and benefits of the Project to both Client and Contractor, to the fullest extent permitted by law, the parties agree to allocate the risks such that Contractor's total liability to Client for any and all injuries, claims, losses, expenses, damages, and/or claim expenses arising out of Contractor's services under this Agreement from any cause or causes shall not exceed the amount of Contractor's fee, or One Hundred Thousand Dollars ($100,000), or the amount of insurance coverage Contractor has, or is required to have, covering the risk or claim that is the basis for the injury, claim, loss, expense or damages, recovery for which is sought, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

13. **Dispute Resolution**. It is agreed that all claims, disputes, or other matters in question arising out of or related to this Agreement shall be submitted to nonbinding mediation before any legal proceedings is commenced. The parties shall equally bear the fees and expenses charged by the mediator.

14. **Opinions of Construction Cost**. Any opinion of probable construction cost prepared by Contractor represents the judgment of one or more Contractor design professionals and is supplied for general guidance of Client. Since Contractor has no control over the construction marketplace and does not use the same pricing methods used by contractors, Contractor does not guarantee the accuracy of such opinions.

15. **Indemnification**.

a. The Contractor shall defend, indemnify and hold harmless the Client, its officers, employees and agents from any and all liabilities which may arise or be claimed against the Client, its officers, employees and agents or any third party for any and all lawsuits, claims, demands, losses or damages alleged to have arisen from an act or omission of the Contractors, its employers, agents or contractors in performance of this Agreement or from the Contractor's failure to perform this Agreement using ordinary care and skill, except where such injury, damage, or loss was caused by the sole negligence of the Client, its agents or employees.

b. The Contractor shall save, indemnify and hold the Client harmless from the cost of the defense of any claim, demand, suit or cause of action made or brought against the Client alleging liability referenced above, including, but not limited to, costs, fees, attorney fees, and other expenses of any kind whatsoever arising in connection with the defense of the Client; and the Contractor shall assume and take over the defense of the Client in any such claim, demand, suit, or cause of action upon written notice and demand for same by the Client. The Contractor will have the right to defend the Client with notice and demand for same by the Client. The Contractor will have the right to defend the Client with counsel of its choice that is satisfactory to the Client and the Client will provide reasonable cooperation in the defense as the Contractor may request. The Contractor will not consent to the entry of any judgment or enter into any settlement with respect to an indemnified claim without the prior written consent of the Client, such consent not to be unreasonably withheld or delayed. The Client shall have the right to participate in the defense against the indemnified claims with counsel of its choice at its own expense.

c. The Contractor shall save, indemnify and hold Client harmless and pay judgments that shall be rendered in any such actions, suits, claims or demands against Client alleging liability referenced above.

d. The indemnification and hold harmless provisions of this Agreement shall survive termination of the Agreement.

16. **Miscellaneous**.

a. The Contractor will not assign or transfer any interest in this Agreement without obtaining the prior written approval of the Client.

b. The Contractor will not enter into a subcontract for any of the services performed under this Agreement without obtaining the prior written approval of the Client.

c. The contract between the parties consists of this Agreement, its attachments, any written request for services issued by Client and any response thereto made by Contractor, including any addenda thereto. To the extent there is a conflict between the terms of any of the documents that constitute the contract between the parties, the terms that are most specific to the matter in dispute shall govern over the more general. In the event the conflicting terms cannot be characterized as specific vs. general, then the terms that provide the greater benefit to the Client and/or impose the greater obligation on the Contractor shall control.

d. This Agreement may be modified only by a written amendment or addendum that has been executed and approved by the appropriate officials shown on the signature page of this Agreement.

e. If any provision of this Agreement is determined to be unenforceable or invalid, such determination will not affect the validity of the other provisions contained in this Agreement. Failure to enforce any provision of this Agreement does not affect the rights of the parties to enforce such provision in another circumstance, nor does it affect the rights of the parties to enforce any other provision of this Agreement at any time.

f. In the event legal action is necessary to enforce the terms of the contract between the parties, the prevailing party shall be entitled to recovery of its attorney's fees, court costs, and other expenses of the legal action.

g. In the performance of this contract, Contractor will comply with all applicable laws, ordinances, rules, regulations and orders of local, state and federal governments, including, but not limited to, the President's Executive Order No. 11246 and 11375, which prohibit discrimination in employment regarding race, color, religion, sex or national origin, Title VI of the Civil Rights Act of 1964, Copeland Anti-Kick Back Act, the Contact Work Hours and Safety Standards Act, Section 402 of the Vietnam Veterans Adjustment Act of 1974, Section 503 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, all of which are herein incorporated by reference.

h. This Agreement will be governed and construed in accordance with the laws of the state of Tennessee.

CLIENT:	**CONTRACTOR:**
Town of Farragut	
By:__________	By: Alan L. Childers
Printed Name:__________	Printed Name: Alan L. Childers
Title:__________	Title: Vice President
Date:__________	Date: 10/30/2015

October 30, 2015

Mr. Darryl W. Smith, P.E.
Town Engineer
Town of Farragut
11408 Municipal Center Drive
Farragut, Tennessee 37934

RE: Scope of Services and Fee Proposal
Town of Farragut Traffic Signal Improvement Project

Dear Mr. Smith:

Cannon & Cannon, Inc. (CCI) is pleased to submit this Scope and Fee Proposal for professional engineering services associated with the above referenced traffic signal improvement project. This effort will include traffic signal upgrades and the retiming of the 26 traffic signals within the Town of Farragut.

The services to be provided by CCI will include all tasks associated with this project; TDOT Local Programs Coordination, Preliminary Engineering (Environmental Clearance), Design Engineering (Signal System Hardware Upgrades & Signal Timing Optimization) and Construction Engineering and Inspection (CEI). Please see the attached Scope of Services for a detailed breakdown of the tasks associated with the project.

Based on our understanding of this project, the proposed budget for the services as outlined in the Scope of Services is $165,000. We will invoice this amount on a lump sum basis, with monthly invoices to be issued in accordance with monthly estimates of the percent completion of the total project. A breakdown of budget per project task is outlined as follows, with a more detailed breakdown shown on the attached spreadsheet:

Task 1: Project Management	$ 17,200
Task 2: Environmental Clearance	$ 7,860
Task 3: Data Collection	$ 30,700
Task 4: Evaluate Existing Conditions	$ 15,440
Task 5: Timing Plan Development	$ 30,300
Task 6: Hardware Upgrade Design	$ 13,640
Task 7: Field Implementation	$ 11,120
Task 8: Project Documentation	$ 7,400
Task 9: CEI Services	$ 14,480
Project Expenses (includes traffic count subconsultant)	$ 16,860
TOTAL PROJECT BUDGET	$ 165,000

Regarding the project schedule, we will initiate TDOT Local Programs coordination upon full execution of this agreement. Subsequent activities will be expedited to the extent possible allowing for Local Programs coordination and authorizations. It is hoped that this project can be completed within a twelve month time frame. Reference is also made to the Terms and Conditions specified in the Town of Farragut Professional Services Agreement, to which this document is attached, which will be applicable to this project.

TEL 865.670.8555
WWW.CANNON-CANNON.COM

KNOXVILLE OFFICE
8550 Kingston Pike
Knoxville, TN 37919
FAX 865.670.8866

NASHVILLE OFFICE
104 East Park Drive, Suite 220
Brentwood, TN 37027
TEL 615.373.8005 FAX 615.373.5005

We look forward to working with the Town of Farragut on this project. Please do not hesitate to contact me with any questions or concerns regarding this proposal.

Sincerely,

Alan L. Childers, P.E.
Vice President

Attachments: Scope of Services
Design Labor Cost Estimate and Fee Proposal
Schedule of Standard Charges – Hourly Rate Basis

PROJECT OVERVIEW

This project will include traffic signal upgrades and the retiming of the 26 traffic signals in the Town of Farragut. The following is a listing of the traffic signals included in this effort:

Campbell Station Road

1. Snyder Road / Outlet Drive
2. I-40 / 75 Westbound Ramp
3. I-40 / 75 Eastbound Ramp (new)
4. Parkside Drive / Grigsby Chapel Road
5. Old Colony Parkway
6. Herron Road
7. Kingston Pike (S.R. 1)
8. Municipal Center Drive
9. Brooklawn Street
10. Concord Road (SR 332)

Concord Road (SR 332)

11. Turkey Creek Road
12. Shopping Center Driveway (Old Kroger)

Kingston Pike (SR 1)

13. Concord Road / West End Avenue
14. Lendon Welsh Way
15. Brooklawn Street
16. Federal Boulevard
17. Peterson Road
18. Smith Road
19. Virtue Road (proposed)
20. Old Stage Road
21. Everett Road
22. Watt Road

Parkside Drive

23. Publix Shopping Center
24. Lakes Edge Drive
25. Gander Mountain Shopping Center
26. Red Robin and Shopping Center

The services to be provided by CCI include all tasks associated with this project; TDOT Local Programs Coordination, Preliminary Engineering (Environmental Clearance and Systems Engineering Analysis), Design Engineering (Signal System Hardware Upgrades and Signal Timing Optimization) and Construction Engineering and Inspection (CEI). The following is a summary of the proposed scope of these activities:

TASK 1 – PROJECT MANAGEMENT

This will be an ongoing task through the duration of the project, which will include TDOT Local Programs coordination, status meeting coordination and preparation of meeting minutes. Meetings will include a Project Kickoff Meeting as well as status update meetings at various milestone points throughout the project.

TASK 2 – ENVIRONMENTAL CLEARANCE

Preparation of letters, communications, calculations, etc. required to obtain TDOT Environmental documentation and approval.

TASK 3 – DATA COLLECTION

Task 3.1 – Assemble Existing Data from Town

CCI will assemble data from the Town of Farragut and its traffic signal contractor, which may include but is not limited to the following:

- Historical turning movement count (TMC) data
- Historical average daily traffic (ADT) data
- Current signal timings and operational settings
- Current signal controller model and communication infrastructure
- GIS mapping of project area (electronic format)

Task 3.2 – Traffic Counts

CCI or a data collection sub-consultant will collect weekday turning movement traffic count data at each intersection where current data cannot be obtained from other sources. Additionally, CCI or its sub-consultant will collect TMC data at 2 of the more critical intersections during the peak traffic periods of a Friday, Saturday, and Sunday. It is assumed that the weekday traffic counts will be performed during the hours of 7:00 AM – 9:00 AM, 11:00 AM – 1:00 PM, and 4:00 PM – 6:00 PM. Weekend traffic counts will occur for a minimum consecutive four-hour period on Friday, Saturday, and Sunday. The most appropriate hours in which to count will be determined during the project

Directional ADT counts will be conducted at up to five locations within the Town. These counts will be positioned at mid-block locations and provide seven consecutive days of data.

Task 3.3 – Field Inventories and Observations

Field inventories will be performed at each intersection to confirm signal phasing, signal head displays, existing geometry, turn-bay storage lengths, approach and corridor speed limits, and other physical features pertinent to the project.

CCI will perform field visits during peak traffic periods in order to observe existing platooning and progression of traffic, observe queuing patterns, and identify and monitor traffic flow patterns.

Task 3.4 – "Before" and "After" Evaluations

CCI staff will collect and compile travel time and delay data during both the weekday and weekend peak traffic periods prior to the implementation of new timings ("before" conditions). Following implementation and fine-tuning of the new timings, "after" conditions will be collected for the corridor. Using the travel time data collected in the field, CCI will prepare a "before and after" analysis using parameters such as total travel time, total delay time, average speed, and number of stops.

TASK 4 – EVALUATE EXISTING CONDITIONS

Task 4.1 – Data Compilation / Validation

Using the data collected in the field and knowledge of the conditions observed during the field observations, a network will be built for each peak period using *Synchro* traffic analysis software. Existing geometry and traffic volumes along with existing signal timings / settings will be duplicated in *Synchro* and simulated in *SimTraffic.*

Task 4.2 – Operational Analysis

Once all field data has been collected and compiled, CCI staff will perform an operational analysis for each of the intersections in order to determine existing delays and levels-of-service during each of the peak traffic periods. Additionally, operational improvements will be identified such as pavement marking changes, geometric improvements, and signal phasing / sequencing.

TASK 5 – TIMING PLAN DEVELOPMENT

Task 5.1 – Local Controller Settings

For each intersection, CCI staff will calculate and recommend values for local controller settings such as minimum vehicular green, yellow change interval, red clearance interval, pedestrian walk time, and pedestrian flashing don't walk time.

Task 5.2 – Cycle Length Evaluation

Using the *Synchro* models developed in Task 4, CCI will begin the re-timing process by performing peak hour cycle length evaluations and will recommend a cycle length for each proposed timing plan. CCI will prepare up to 8 coordinated timing plans, including the following:

- Weekday AM Peak timing plan
- Weekday MD Peak timing plan
- Weekday PM Peak timing plan
- Off Peak timing plan
- Late night timing plan
- Friday PM Peak timing plan
- Weekend timing plan for normal shopping periods
- Weekend timing plan for seasonal shopping periods

Task 5.3 – Cycle, Split, Offset, and Phase Sequence Development

Once the cycle lengths for each period have been finalized, each intersection will be evaluated to determine the optimal phase splits for each vehicle movement. Next, phase sequencing and offset manipulation will be analyzed to maximize the arterial green bands, thus reducing vehicle stops and delay.

Task 5.4 – Coding Sheet / TOD Clock Development

Using the ADT counts performed in Task 3, CCI staff will develop and Time-of-Day (TOD) clock for the signal system to determine the optimal timing plan for each hour of a typical weekday / weekend. This will also include changing the TOD settings per seasonal traffic pattern variations as appropriate. Furthermore, CCI staff will transfer recommended timings for each intersection into a coding sheet format.

TASK 6 – HARDWARE UPGRADE DESIGN

Task 6.1 – Needs Assessment

CCI staff, in conjunction with personnel from the Town and signal contractor, will review the existing controller models, detection and communication infrastructure. From this review, CCI will provide guidance on infrastructure improvements to be installed as part of this project.

Task 6.2 – Prepare PS&E Package

CCI staff will develop a PS&E package to be submitted for construction of the hardware upgrades. This task will also include any Utility / ROW certifications needed as well as any needed construction cost estimates.

Task 6.3 – Construction Bid Phase

CCI staff will coordinate bid advertising and lettings for the hardware upgrades.

TASK 7 – FIELD IMPLEMENTATION

Task 7.1 – TOD Implementation

CCI staff will provide coding sheet data for the Time of Day signal coordination timing plans to Town staff and will coordinate implementation of the signal timing with the Town or contractor.

Task 7.2 – TOD Timing Evaluation

CCI staff will field verify the effectiveness of the coordinated timing plans and fine tune as necessary. Progression, as well as split times, may be adjusted based on these observations. During field implementation, any immediate adjustments will be made each day in the field. These adjustments will be communicated to Town staff, and updated coding sheets will be provided at the end of the evaluation period. Furthermore, these changes will be documented via a field implementation memorandum, and the *Synchro* files will be updated accordingly.

TASK 8 – PROJECT DOCUMENTATION

CCI will prepare a final summary report documenting the following:

- Project overview
- Analysis techniques and approaches used
- Timing plan data
- Summary of all data collected
- Recommended improvements
- "Before" and "After" travel time summaries
- Project results

This report will be provided in electronic and hard copy format to the Town of Farragut.

TASK 9 – CONSTRUCTION ENGINEERING AND INSPECTION SERVICES

CCI will provide all inspection and documentation of field construction activities as required by the Tennessee Department of Transportation.

DESIGN LABOR COST ESTIMATE & FEE PROPOSAL

Task No.	Task		Senior Project Manager	Project Engineer	CADD Designer		Admin	Task Cost
1	**PROJECT MANAGEMENT**							
	Local Programs Coordination		24				8	$4,320.00
	Project Kick-Off Meeting		8	8			4	$2,480.00
	Project Status Meetings		16	24				$5,440.00
	Invoicing & Project Records/Files		12				8	$2,400.00
	Meeting Agendas and Meeting Minutes		4	12			8	$2,560.00
	TASK 1 TOTAL							$17,200.00
2	**ENVIRONMENTAL CLEARANCE**							
	Prepare NEPA Document		8	20	12		8	$5,180.00
	Coordinate Clearance with TDOT		8	6	8			$2,680.00
	TASK 2 TOTAL							$7,860.00
3	**DATA COLLECTION**							
3.1	ASSEMBLE EXISTING DATA FROM THE CITY							
	Request and Assemble City-provided Data		2	8				$1,280.00
3.2	TRAFFIC COUNTS							
	Turning Movement Counts		2	8				$1,280.00
	ADT (tube) Counts		2	8				$1,280.00
	Check TMC's and ADT Counts for Accuracy		4	8				$1,600.00
	Acquire and Compile TDOT ADT Count Data			8				$960.00
3.3	FIELD INVENTORIES AND OBSERVATIONS							
	Field Inventories		8	32	48			$9,200.00
	Field Observations including MUTCD Compliance		12	24	12			$5,820.00
3.4	"BEFORE" AND "AFTER" EVALUATIONS							
	Collect "Before" Conditions			24				$2,880.00
	Collect "After" Conditions			24				$2,880.00
	Compile Travel Time Data			12				$1,440.00
	Perform "Before" and "After" Travel Time Analysis		4	12				$2,080.00
	TASK 3 TOTAL							$30,700.00
4	**EVALUATE EXISTING CONDITIONS**							
4.1	DATA COMPILATION / VALIDATION							
	Compile and Validate Data		4	16				$2,560.00
	Prepare Volume Maps		2	8	16			$2,640.00
	Code *Synchro* Data Files			20				$2,400.00
4.2	OPERATIONAL ANALYSIS							
	Capacity Analysis		4	16				$2,560.00
	Analyze Traffic Sign / Pavement Marking Needs		4	8				$1,600.00
	Analyze Potential Signal Phasing Improvements		4	12				$2,080.00
	Analyze Potential Geometric Improvements		4	8				$1,600.00
	TASK 4 TOTAL							$15,440.00
5	**TIMING PLAN DEVELOPMENT**							
5.1	LOCAL CONTROLLER SETTINGS							
	Determine Local Controller Settings		8	20				$3,680.00
5.2	CYCLE LENGTH EVALUATIONS							
	Run Cycle Length Evaluations		8	24				$4,160.00
5.3	CYCLE, SPLIT, OFFSET, AND PHASE SEQUENCE DEVELOPMENT							
	Develop Splits		8	24				$4,160.00
	Develop Phasing Sequencing		8	12				$2,720.00
	Develop Offsets		12	32				$5,760.00
	Run Simulation/Fine Tune Timings		4	8				$1,600.00
	QA/QC Timing		8					$1,280.00
	Revise Timings based upon Review		4	8				$1,600.00

DESIGN LABOR COST ESTIMATE & FEE PROPOSAL

Task No.	Task		Senior Project Manager	Project Engineer	CADD Designer		Admin	Task Cost
5.4	CODING SHEET / TOD CLOCK DEVELOPMENT							
	Prepare Coding Sheets		8	12	8			$3,400.00
	Prepare TOD Clocks		4	8	4			$1,940.00
	TASK 5 TOTAL							$30,300.00
6	**HARDWARE UPGRADE DESIGN**							
6.1	NEEDS ASSESSMENT							
	Evaluate Hardware Needs		4	4				$1,120.00
6.2	PREPARE PS&E PACKAGE							
	Develop Plans / Specs / Schematics		8	8	24		4	$4,520.00
	Utility Certification		8	4			4	$2,000.00
	ROW Certification		8	2			4	$1,760.00
	Prepare Construction Cost Estimate		4	8				$1,600.00
6.3	CONSTRUCTION PHASE							
	Coordinate Bid Advertising and Letting		12	4			4	$2,640.00
	TASK 6 TOTAL							$13,640.00
7	**FIELD IMPLEMENTATION**							
7.1	TIMING IMPLEMENTATION							
	Prepare Field Implementation Notebook			8			4	$1,200.00
	Coordinate Implementation with Contractor / City		2	4				$800.00
7.2	TIMING EVALUATION							
	Field Evaluation and Fine Tuning of TOD Plans		32	12	8			$7,240.00
	Document Evaluation Efforts		2	8			2	$1,400.00
	Revise *Synchro* Files based upon Implementation Edits			4				$480.00
	TASK 7 TOTAL							$11,120.00
8	**PROJECT DOCUMENTATION**							
	Prepare DRAFT Summary Report		12	16			4	$4,080.00
	Address Review Comments		4	4				$1,120.00
	Prepare FINAL Summary Report		4	10			6	$2,200.00
	TASK 8 TOTAL							$7,400.00
9	**CEI SERVICES**							
	Inspection and Documentation		20	60	48			$14,480.00
	TASK 9 TOTAL							$14,480.00
	Total Project		SR. PM	PE	CD		AD	Total
	Total Project Man-Hours		328	630	188	0	68	1214.00
	Labor Rate / Man-Hour		$160.00	$120.00	$85.00	$85.00	$60.00	
	Direct Labor Cost		$52,480.00	$75,600.00	$15,980.00	$0.00	$4,080.00	$148,140.00

Direct Expenses:	
Subconsultant Expenses	$ -
Traffic Count Expenses (estimated)	$ 16,380.00
Mileage	$ 250.00
Miscellaneous Expenses	$ 230.00
	$ 16,860.00

Total Labor	$148,140.00
Direct Expenses	$16,860.00
Total Project Cost	**$165,000.00**

CANNON & CANNON INC
CONSULTING ENGINEERS · FIELD SURVEYORS

SCHEDULE OF STANDARD CHARGES – HOURLY RATE BASIS

PROJECT MANAGEMENT & DESIGN:

Principal Project Manager	$180.00 per hour
Group Director	$160.00 per hour
Senior Project Manager	$160.00 per hour
Project Manager	$145.00 per hour
Senior Engineer	$130.00 per hour
Project Engineer	$120.00 per hour
Senior Project Facilitator	$120.00 per hour
Senior Designer	$110.00 per hour
Lead Designer	$95.00 per hour
Project Facilitator	$85.00 per hour
CADD Designer	$85.00 per hour
Administrative Assistant	$60.00 per hour

FIELD SURVEYING:

Group Director	$160.00 per hour
Field Crew	$145.00 per hour
Field Crew Coordinator; RLS	$120.00 per hour
Lead Survey Technician	$95.00 per hour
CADD Technician	$80.00 per hour
Administrative Assistant	$60.00 per hour

CONSTRUCTION PHASE SERVICES:

Group Director	$160.00 per hour
Senior Manager: Resident Project Representative	$90.00 per hour
Resident Project Representative: Senior RPR/Manager	$80.00 per hour
Resident Project Representative	$70.00 per hour
Administrative Assistant	$60.00 per hour

Unless otherwise noted in the Agreement; outside services contracted for a specific project, including but not limited to, professional and technical consultants, laboratory testing, reprographics, photography, etc. will be invoiced at the amount of the subcontractor's statement plus 7 percent.

Other expenses which are properly chargeable to the work will be invoiced as follows:

- Travel by company or private vehicle at reimbursable rate per Federal guidelines at time expense is incurred.
- Travel, living and per diem expenses for all personnel when required to be away from office in connection with the project will be evaluated on a project by project basis and provided for in the project contract.

Statements will be issued on a monthly basis and are due upon receipt.

Effective: July 1, 2014

AGENDA NUMBER VI.B. MEETING DATE November 12, 2015

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: Darryl W. Smith, PE

SUBJECT: Approval of Proposal from Kimley-Horn/Cannon & Cannon, Inc. for Engineering Services for Feasibility Study of Possible North-South Connector between Parkside Drive and Outlet Drive

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INTRODUCTION: The purpose of this item is the approval of a proposal for a feasibility study to consider a possible north-south connection between Parkside Drive and Outlet Drive.

STRATEGIC PLAN: This project is applicable to Goal 4 of the Strategic Plan, "Facilitate Future Growth, Development and Redevelopment, Objective 3: Develop Town infrastructure for future growth and development."

BACKGROUND: Development of the Parkside Drive corridor (also known as "the Shops at Turkey Creek") in the mid-2000's has resulted in a very low level of service at both the Campbell Station and Lovell Road intersections. Traffic counts on Campbell Station Road between Parkside Drive and I-40/75 are approximately 37,000 vehicles per day, while Lovell Road between Parkside Drive and I-40-75 sees approximately 41,000 vehicles per day. Published counts on Parkside Drive in the area of this project are approximately 32,000 vehicles per day, though this number increases significantly during peak shopping times. This heavy traffic generation increases the stresses on both Campbell Station and Lovell Roads, as well as both interstate interchanges. Development of this project will address the following needs:

- Improved access to/from Parkside Drive commercial area: Development of a north-south connector between Parkside Drive and Outlet Drive should provide easier movement from Parkside Drive to the two I-40 interchanges, as well as easier access to residential areas north of I-40. Depending upon the intended direction of motorists leaving Parkside Drive, the connector would greatly reduce the number of left-turn movements at both interchanges, greatly improving the levels of service.
- Improved facility for alternative modes of transportation: Currently, both Parkside Drive and Outlet Drive provide sidewalks and/or greenways, and a portion of Outlet Drive provides bike lanes. This connector roadway would include accommodations for both.
- Support for economic development: Construction of this new roadway would connect the already-developed Parkside Drive with the new commercial areas of Outlet Drive and Snyder Road, greatly enhancing the future growth of the commercial district.

Please note that this feasibility study is only the first phase of the project. If the study proves the project is both feasible and warranted, we will pursue funding through the state and KRTPO for further phases.

FINANCIAL SECTION:

Project: 310-93910-910, Parkside-Outlet Connector Feasibility Study

Project Budget	Requested Amount	Contracted Amount	Remaining Amount
$100,000	$100,000	$0	$0

Approved By: A Myers

RECOMMENDATION BY: Darryl Smith, Town Engineer, for approval.

PROPOSED MOTION: Approval of proposal from Kimley-Horn/Cannon & Cannon, with total fee of $100,000.

BOARD ACTION:

MOTION BY:_____________________________ **SECONDED BY:**__________________________

VOTE/TOTAL	MCGILL	LAMARCHE	HONKEN	MARKLI	PINCHOK
YES	______	______	______	______	______
NO	______	______	______	______	______
ABSTAIN	______	______	______	______	______

TOWN OF FARRAGUT

PROFESSIONAL SERVICES AGREEMENT

This Agreement is made by and between **Town of Farragut** ("Client") and **Kimley-Horn and Associates, Inc.** ("Contractor") for professional services for the assignment described as follows:

Project: Transportation Feasibility Study

Location: as identified in Attachment A

Description of Project: as described in Attachment A

1. **Professional Services**. Contractor agrees to perform the following Basic Services under this Agreement:

See **Attachment A** to this Agreement for a description of Basic Services.

2. **Compensation**. Client shall compensate Contractor for the Basic Services as follows: A lump sum fee of $100,000.00, including reimbursable expenses. In addition, Client shall pay Contractor for additional services that may be requested by the Client beyond the Basic Services in accordance with the hourly rate schedule attached as **Attachment B** to this Agreement.

3. **Schedule**. Contractor shall begin work upon notification of approval of this Agreement by the Board of Mayor and Aldermen and shall complete the services by submitting the final deliverables on or before OCTOBER 31, 2016 The schedule for the various meetings and presentations as outlined in the Basic Services shall be agreed upon by the Client and Contractor before beginning services.

4. **Invoicing and Payments**. Invoices or payment requests shall be submitted to the Client no more than monthly and shall include such information, documentation or data as the Town Administrator may require including, but not limited to, the amount and breakdown of the payment requested, the period covered by the request, and the work performed during the period covered by the payment request. After review, the Town Administrator will indicate his approval of the payment request, or shall explain to Contractor, in writing, his reasons for not approving any portion or all of the request, and authorize payment of the amount approved. In the event the Town Administrator does not approve any portion of a payment request, and has communicated the reasons to Contractor, Contractor will then take the necessary action to satisfy the reasons for non-approval and resubmit the payment request. Client shall endeavor to remit payment of payment requests or portions thereof which are approved by the Town Administrator within thirty (30) days of receipt by Client. From time to time approval of a payment request may require action by the Board of Mayor and Aldermen which meets on the second and fourth Thursday of most months.

5. **Time**. Contractor will perform its services in a timely manner commensurate with the exercise of due professional care which it acknowledges can be done consistent with the schedule provided for in Paragraph 3. Time for performance shall be extended as necessary for delays or suspensions due to circumstances beyond Contractor's control. If such delay or suspension extends more than six (6) months (cumulatively), Contractor's compensation shall be equitably adjusted; provided, however, such adjustment and amendment to this Agreement must be approved by the Board of Mayor and Aldermen before Client is bound.

6. **Suspension of Services**. If Client fails to pay any invoice when due or otherwise is in material breach of this Agreement, Contractor may, at its sole discretion, suspend performance of services upon five (5) days' written notice to Client. Contractor shall have no liability to Client and Client agrees to make no claim for any delay or damage as a result of such suspension, unless (i) the Town Administrator has refused to approve payment, (ii) his reasons are justified pursuant to this Agreement, and (iii) Contractor has failed to satisfy the reasons as required by Paragraph 4 hereof. Upon cure of the cause of a justified suspension, Contractor shall resume services within a reasonable time, and there shall be equitable adjustments of the project schedule and fees to reflect the effects of such suspension, if such adjustments are deemed reasonable and appropriate by the parties.

7. **Standard of Care**. Notwithstanding any other provision of this Agreement or any other document describing the services produced by Client, Contractor shall perform its services in accordance with the standard of professional care ordinarily exercised under similar circumstances by reputable members of its profession in the same locality at the time the services are provided. Beyond the foregoing and unless otherwise provided herein or in other documents produced, generated or provided by Contractor, no warranty, expressed or implied, is made or intended by Contractor. The parties further agree that Contractor is not a fiduciary of Client.

8. **Termination**. The obligation to provide further services under this Agreement may be terminated with or without cause by either party upon ten (10) days' written notice to the other party. On termination by either Client or Contractor, Client shall pay Contractor all amounts due for any services performed to the date of termination (plus all reimbursable expenses incurred) as Contractor's sole and exclusive remedy, subject to any setoffs to which the Client is entitled as a result of Contractor's failure to perform as required by this Agreement.

9. **Reuse of Documents**. All documents, including drawings, specifications, and reports, prepared by Contractor pursuant to this Agreement are instruments of professional service and shall become the property of the Client. They are not intended or represented to be suitable for reuse by Client or others for additions or modifications of the Project or on any other project. Any reuse without written consent, verification or adaption by Contractor for the specific purposes intended shall be at Client's sole risk and without liability or legal exposure to Contractor. Any such verification and adaption will entitle Contractor to further compensation at rates to be agreed upon by Client and Contractor.

10. **Access to the Site/Jobsite Safety**. Unless otherwise stated, Contractor will have access to the site for activities necessary for the performance of its services. Client agrees that Contractor shall have no responsibility for the means, methods, sequences, procedures, techniques, and scheduling of construction, as these decisions are solely the responsibility of the

contractors. Contractor further shall have no authority or duty to supervise the construction workforce and shall not be responsible for jobsite safety or for any losses or injuries that occur at the Project site.

11. **Insurance**. Prior to any access to the Project site, Contractor shall deliver to Client a certificate of insurance evidencing general liability coverage with a limit of not less than $1,000,000 each occurrence for bodily injury, personal injury and property damage. If such insurance contains a general aggregate limit, it shall apply separately to the work/location of the Project in this Agreement or be no less than $2,000,000. In addition, Contractor shall endeavor to secure and maintain insurance in such amounts as it deems necessary to protect itself from claims of professional negligence arising from the performance of services under this Agreement. Such insurance shall:

a. Except for professional liability insurance and workers compensation contain or be endorsed to contain a provision that includes Client, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work performed by or on behalf of the Contractor. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.

b. For any claims related to this Project, the Contractor's insurance coverage shall be primary insurance as respects the Client, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering the Client, its officials, officers, employees, and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

12. **Risk Allocation**. In recognition of the relative risks, rewards, and benefits of the Project to both Client and Contractor, to the fullest extent permitted by law, the parties agree to allocate the risks such that Contractor's total liability to Client for any and all injuries, claims, losses, expenses, damages, and/or claim expenses arising out of Contractor's services under this Agreement from any cause or causes shall not exceed the amount of Contractor's fee, or One Hundred Thousand Dollars ($100,000), or the amount of insurance coverage Contractor has, or is required to have, covering the risk or claim that is the basis for the injury, claim,, loss, expense or damages, recovery for which is sought, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

13. **Dispute Resolution**. It is agreed that all claims, disputes, or other matters in question arising out of or related to this Agreement shall be submitted to nonbinding mediation before any legal proceedings is commenced. The parties shall equally bear the fees and expenses charged by the mediator.

14. **Opinions of Construction Cost**. Any opinion of probable construction cost prepared by Contractor represents the judgment of one or more Contractor design professionals and is supplied for general guidance of Client. Since Contractor has no control over the construction marketplace and does not use the same pricing methods used by contractors, Contractor does not guarantee the accuracy of such opinions.

15. **Indemnification**.

a. The Contractor shall defend, indemnify and hold harmless the Client, its officers, employees and agents from any and all liabilities which may arise or be claimed against the Client, its officers, employees and agents or any third party for any and all lawsuits, claims, demands, losses or damages to the extent caused by a negligent act or omission of the Contractors, its employers, agents or contractors in performance of this Agreement or from the Contractor's failure to perform this Agreement using ordinary care and skill, except where such injury, damage, or loss was caused by the sole negligence of the Client, its agents or employees.

b. The Contractor shall save, indemnify and hold the Client harmless from the cost of the defense of any claim, demand, suit or cause of action made or brought against the Client alleging liability referenced above, including, but not limited to, costs, fees, attorney fees, and other expenses of any kind whatsoever arising in connection with the defense of the Client; and the Contractor shall assume and take over the defense of the Client in any such claim, demand, suit, or cause of action upon written notice and demand for same by the Client. The Contractor will have the right to defend the Client with notice and demand for same by the Client. The Contractor will have the right to defend the Client with counsel of its choice that is satisfactory to the Client and the Client will provide reasonable cooperation in the defense as the Contractor may request. The Contractor will not consent to the entry of any judgment or enter into any settlement with respect to an indemnified claim without the prior written consent of the Client, such consent not to be unreasonably withheld or delayed. The Client shall have the right to participate in the defense against the indemnified claims with counsel of its choice at its own expense.

c. The Contractor shall save, indemnify and hold Client harmless and pay judgments that shall be rendered in any such actions, suits, claims or demands against Client alleging liability referenced above.

d. The indemnification and hold harmless provisions of this Agreement shall survive termination of the Agreement.

16. **Miscellaneous**.

a. The Contractor will not assign or transfer any interest in this Agreement without obtaining the prior written approval of the Client.

b. The Contractor will not enter into a subcontract for any of the services performed under this Agreement without obtaining the prior written approval of the Client.

c. The contract between the parties consists of this Agreement, its attachments, any written request for services issued by Client and any response thereto made by Contractor, including any addenda thereto. To the extent there is a conflict between the terms of any of the documents that constitute the contract between the parties, the terms that are most specific to the matter in dispute shall govern over the more general. In the event the conflicting terms cannot be characterized as specific vs. general, then the terms that provide the greater benefit to the Client and/or impose the greater obligation on the Contractor shall control.

d. This Agreement may be modified only by a written amendment or addendum that has been executed and approved by the appropriate officials shown on the signature page of this Agreement.

e. If any provision of this Agreement is determined to be unenforceable or invalid, such determination will not affect the validity of the other provisions contained in this Agreement. Failure to enforce any provision of this Agreement does not affect the rights of the parties to enforce such provision in another circumstance, nor does it affect the rights of the parties to enforce any other provision of this Agreement at any time.

f. In the event legal action is necessary to enforce the terms of the contract between the parties, the prevailing party shall be entitled to recovery of its attorney's fees, court costs, and other expenses of the legal action.

g. In the performance of this contract, Contractor will comply with all applicable laws, ordinances, rules, regulations and orders of local, state and federal governments, including, but not limited to, the President's Executive Order No. 11246 and 11375, which prohibit discrimination in employment regarding race, color, religion, sex or national origin, Title VI of the Civil Rights Act of 1964, Copeland Anti-Kick Back Act, the Contact Work Hours and Safety Standards Act, Section 402 of the Vietnam Veterans Adjustment Act of 1974, Section 503 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, all of which are herein incorporated by reference.

h. This Agreement will be governed and construed in accordance with the laws of the state of Tennessee.

CLIENT:	**CONTRACTOR:**
Town of Farragut	Kimley-Horn and Associates, Inc.
By: ______________________	By: Chris D. Rhodes
Printed Name: ______________________	Printed Name: Christopher D. Rhodes
Title: ______________________	Title: Vice President
Date: ______________________	Date: 10-30-2015

ATTACHMENT A – TRANSPORTATION FEASIBILITY STUDY

The Town of Farragut is hereinafter referenced as "Town", and Kimley-Horn and Associates, Inc. is hereinafter referenced as "Consultant". Additionally, a future north-south roadway connection, over I-40/I-75, between Parkside Drive and Outlet Drive is hereinafter referenced as "New Connection".

The following subconsultants are anticipated to contribute to the Scope of Services:

- Cannon & Cannon, Inc.
- Additional Subconsultant for Traffic Data Collection

Task 1 – Project Management

This task will consist of general project management, administrative, and accounting activities. Additionally, a project milestone schedule will be developed and submitted to the Town. This task will further consist of correspondence that occurs between Consultant and the Town regarding the project.

Task 2 – Stakeholder Involvement

Consultant will attend up to three (3) meetings with the Town. It is anticipated that these meetings will consist of:

- One (1) Kick-Off Meeting
- Two (2) Project Status Meetings

Consultant will conduct two (2) stakeholder meetings to obtain stakeholder input. It is anticipated that the stakeholders will include:

- Town of Farragut
- City of Knoxville
- Knox County
- Knoxville Regional Transportation Planning Organization
- Tennessee Department of Transportation
- Up to Two (2) Adjacent Business Owners in the Project Vicinity

Consultant will provide up to four (4) professionals to attend each stakeholder meeting, and each of the two (2) stakeholder meetings will either immediately precede or follow the Kick-Off Meeting and/or a Project Status Meeting.

Consultant will prepare for, facilitate, document, and summarize each stakeholder meeting. Presentation materials, graphical representations, and feedback procedures will be developed by Consultant. Town will provide assistance and guidance to Consultant pertaining to the stakeholder meeting, and representatives from the Town will attend. It is anticipated that these meetings will consist of:

- Stakeholder Meeting #1 will occur earlier in the project. The purpose of this meeting will be to introduce the objectives of the project, hear and document stakeholder concerns, and evaluate this data quantitatively.
- Stakeholder Meeting #2 will occur later in the project. The purpose of this meeting will be to summarize the data collection, analysis, and results of the project. We anticipate that concept graphics and recommendations will be presented, and that stakeholder concerns will be heard and documented.

The Town will be responsible for providing (or arranging for) meeting facilities for all meetings.

Task 3 – Data Collection

Consultant will obtain historical traffic counts, Annual Average Daily Traffic (AADT), from the Tennessee Department of Transportation.

Consultant will obtain weekday AM, weekday Mid-Day, and weekday PM intersection turning movement counts for up to ten (10) intersections. These study intersections are:

- North Campbell Station Road at Parkside Drive
- North Campbell Station Road at I-40 / I-75 Eastbound Ramps
- North Campbell Station Road at I-40 / I-75 Westbound Ramps
- North Campbell Station Road at Snyder Road
- Lovell Road at Parkside Drive
- Lovell Road at I-40 / I-75 Eastbound Ramps
- Lovell Road at I-40 / I-75 Westbound Ramps
- Lovell Road at Outlet Drive
- Parkside Drive at Turkey Cove Lane
- Snyder Road at Outlet Drive

The existing roadway conditions will be inventoried through both a field visit and review of aerial imagery. The width of vehicle travel lanes and sidewalks will be collected as well as grades (slopes) and posted speed limits. The existing traffic control for study intersections and storage lengths of left-turn and right-turn lanes will be collected. Additionally, photographs will be collected along the roadway network and at study intersections.

Task 4 – Traffic Operations Analysis

The traffic data obtained within Task 3 will be used to determine the existing traffic volumes. Future traffic volumes will be generated with emphasis on two (2) factors:

- Diversion of existing traffic volumes from roads (e.g. North Campbell Station Road, Lovell Road, Parkside Drive, Outlet Drive) onto the New Connection.
- New traffic generated by future development along Parkside Drive and/or Outlet Drive

Consultant will generate a traffic analysis model using the Synchro 8 software developed by Trafficware. An existing conditions model will be prepared to simulate the existing road network and existing study intersections. Additionally, a traffic analysis model for future conditions will be prepared to simulate the future road network that incorporates the New Connection. Up to two (2) alternative scenarios will be evaluated as a future condition.

Consultant will coordinate with the Knoxville Regional TPO to evaluate the new connection within the travel demand model that is maintained by the Knoxville Regional TPO. The traffic forecasts generated by the travel demand model will be considered to develop the diverted existing traffic volumes, assuming completion of the New Connection.

Consultant, with input and feedback from the Town, will evaluate the future development potential along the study corridors, especially along Outlet Drive. The traffic expected to be generated by the undeveloped land parcels will be calculated using equations and methodologies provided in the *Trip Generation Manual, 9th Edition*, published by the Institute of Transportation Engineers. As necessary, consideration will be given to internal capture (mixed-use) reductions as well as pass-by trip reductions.

Capacity analyses will be performed for each study intersection using methodology provided in the Highway Capacity Manual. The capacity analysis results will be evaluated and documented to communicate the vehicular delay and level of service. The weekday AM, weekday Mid-Day, and weekday PM peak hours will be evaluated for up to three (3) traffic conditions:

- Existing Year Conditions
- Base Year Conditions
- Design Year Conditions

The capacity analysis results will contribute to developing recommendations for the New Connection. From a traffic operations perspective, recommendations will focus on improving roadway capacity, intersection capacity, and traffic control for study intersections.

Task 5 – Conceptual Design

Consultant will perform a desktop scan to identify socially and environmentally sensitive areas. This research will be performed along the future alignment, for up to two (2) alternative alignment routes, for the New Connection.

Features will be identified through desktop searches of resources using the following tools:

- The Environmental Protection Agency's EnviroMapper
- National Register of Historic Places GIS Database
- U.S. Geological Survey Quadrangle Maps
- GIS Databases from KGIS

Town will provide Geographic Information System (GIS) data to Consultant, including aerial imagery, parcel lines, existing road centerlines, and other data as deemed necessary by Consultant.

Conceptual design will be developed for the New Connection. Up to two (2) alternative alignment routes will be generated on top of aerial imagery provided by Town. The conceptual design will consist of a north arrow, scale, and linework showing the proposed horizontal alignment, pavement width, pedestrian and bicycle accommodations, and intersection geometry.

Consultant will identify the impact to existing utilities and right-of-way. The anticipated life cycle maintenance activities will be evaluated using a timeframe of 20 years.

Rough order of magnitude (ROM) cost estimates will be prepared, which will consist of the following phases:

- PE-NEPA – Preliminary Engineering / Environmental Documentation Services
- PE-DESIGN – Engineering Design Services
- ROW – Right-of-Way Acquisition Costs
- UTIL – Utility Coordination / Relocation Costs
- CONST – Construction Costs

Task 6 – Final Report

Consultant will prepare a final report that documents Stakeholder Involvement, Data Collection, Traffic Operations Analysis, and Conceptual Design. The final report will include recommendations for improvements, graphics, and tables.

A draft report will be submitted to Town in digital format for review. Upon receiving one (1) set of comments from Town, Consultant will address Town's comments by incorporating revisions into the report. The final report will be submitted to Town in digital format as well as five (5) hard copies.

Fee

Kimley-Horn will perform the services described in Task 1 through 6 for the total lump sum fee below:

Task 1 – Project Management	*$6,500*
Task 2 – Stakeholder Involvement	*$24,500*
Task 3 – Data Collection	*$11,500*
Task 4 – Traffic Operations Analysis	*$22,000*
Task 5 – Conceptual Design	*$23,000*
Task 6 – Final Report	*$12,500*
Project Total:	**$100,000**

Individual task amounts are provided for budgeting purposes only. Kimley-Horn reserves the right to reallocate amounts among tasks as necessary. The lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice.

ATTACHMENT B – HOURLY RATE SCHEDULE

Professional / Analyst	$120 – 145
Registered Professional	$170 – 195
Senior Professional	$195 – 225
Project Manager / Principal	$225 – 260
Designer	$145 – 155
Support Staff	$75 – 95

Parkside/Outlet Connector

KGIS - 606 Main St - Suite 150 - Knoxville, TN 37902 - www.kgis.org

Printed: 6/17/2015 at 3:16 PM

AGENDA NUMBER VI.C. MEETING DATE November 12, 2015

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: Darryl W. Smith, PE

SUBJECT: Approval of Amendment of TDOT Contract to Include Decorative Lighting on Concord Road Project (Turkey Creek Road to Northshore Drive).

INTRODUCTION: The purpose of this item is the approval of an amendment to our agreement with TDOT for improvement of SR 332 (Concord Road) from Turkey Creek Road to Northshore Drive. This amendment will allow for inclusion of decorative street lighting fixtures, as requested by staff and chosen by the Board in September 2013.

STRATEGIC PLAN: This project is applicable to Goal 4 of the Strategic Plan, "Facilitate Future Growth, Development and Redevelopment, Objective 3: Develop Town infrastructure for future growth and development."

BACKGROUND: The Town, in conjunction with the Tennessee Department of Transportation, has pursued improvement of the Campbell Station Road/Concord Road corridor for many years, and the final section of improvements is currently planned for construction to begin in 2016. Early on, the Town requested STP funding for the project through the Knoxville Regional Transportation Planning Organization (KRTPO). This funding provided an 80/20 federal/local cost share. We later requested that TDOT pick up the local match (20%), as this portion of the corridor is a state route. TDOT agreed, and the Town entered into an agreement with TDOT in 2008 that ensured this substantial cost savings to the Town. In 2013, we requested that TDOT include decorative street lighting on the project, as this corridor serves as the southern "gateway" to the Town. TDOT agreed to include this lighting, with the Town responsible for paying 20% of the anticipated difference in cost between traditional street lighting and decorative lighting. The attached amendment to the 2008 contract details our responsibility to pay $48,060, which is significantly below our original costs if the Town installed the fixtures under separate contract.

FINANCIAL SECTION:

Project: Concord Road Decorative Lighting, 310-43500-931

Project Budget	Requested Amount	Contracted Amount	Remaining Amount
$200,000	$48,060	$0	$151,940

Approved By: R Myers

RECOMMENDATION BY: Darryl Smith, Town Engineer, for approval.

PROPOSED MOTION: Approval of the attached contract amendment to include decorative lighting on Concord Road, from Turkey Creek Road to Northshore Drive.**BOARD ACTION:**

MOTION BY: ______________________ **SECONDED BY:** ______________________

VOTE/TOTAL	MCGILL	LAMARCHE	HONKEN	MARKLI	PINCHOK
YES					
NO					
ABSTAIN					

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
PROGRAM DEVELOPMENT & ADMINISTRATION DIVISION
LOCAL PROGRAMS DEVELOPMENT OFFICE
SUITE 600, JAMES K. POLK BUILDING
505 DEADERICK STREET
NASHVILLE, TN 37243-1402
(615) 741-5314

JOHN C. SCHROER
COMMISSIONER

BILL HASLAM
GOVERNOR

October 12, 2015

The Honorarble Ralph McGill
Mayor, Town of Farragut
11408 Municipal Center Dr.
Farragut, TN 37934

Re: Widening of SR-332(Concord Rd) from Turkey Creek to Northshore Dr.
Farragut, Knox County
PIN: 107777.00
Federal Project Number: STP-M-332(9)
State Project Number: 47033-3223-54
Agreement Number: 070201

Dear Mayor McGill:

I am attaching an amendment to the original contract. The amendment replaces Exhibit A with Exhibit A for Amendment 1. Please review the amendment and advise me if it requires further explanation. If you find the amendment satisfactory, please execute it in accordance with all rules, regulations and laws, obtain the signature of the attorney for your agency, and return it to me along with your agency share of the deposit of $48,060.00. Once the amendment is fully executed, we will send a copy to you for your records.

If you have any questions or need any additional information, please contact Ms. Maria Hunter at 615-532-3632 or maria.hunter@tn.gov.

Sincerely,

Whitney Sull

Whitney Sullivan
Transportation Manager

Attachment

Amendment Number: 1
Agreement Number: 070201
Project Identification Number: 107777.00
Federal Project Number: STP-M-332(9)
State Project Number: 47033-3223-54

FOR IMPLEMENTATION OF SURFACE TRANSPORTATION PROGRAM ACTIVITY

THIS AGREEMENT AMENDMENT is made and entered into this __________ day of __________, 20___ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the Town of Farragut (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

"Widening of SR-332 (Concord Rd) from Turkey Creek to Northshore Dr"

The language of AGREEMENT # 070201 dated February 12., 2008 Exhibit A is hereby deleted in its entirety and replaced with the attached Exhibit A for Amendment **1**.

All provisions of the original contract not expressly amended hereby shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

TOWN OF FARRAGUT		**STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION**	
By: ______________________	__________	By: ______________________	__________
Ralph McGill **Mayor**	**Date**	**John C. Schroer** **Commissioner**	**Date**

APPROVED AS TO FORM AND LEGALITY		**APPROVED AS TO FORM AND LEGALITY**	
By: ______________________	__________	By: ______________________	__________
Tom Hale **City Attorney**	**Date**	**John Reinbold** **General Counsel**	**Date**

EXHIBIT "A" for Amendment 1

AGREEMENT NUMBER: 070201
PROJECT IDENTIFICATION NUMBER: 107777.00
FEDERAL PROJECT NUMBER: STP-M-332(9)

PROJECT DESCRIPTION: SR-332 (CONCORD RD), TURKEY CREEK TO NORTHSHORE DR

CHANGE IN COST: Cost hereunder is controlled by the figures shown in the TIP and any amendments, adjustments or changes thereto.

TYPE OF WORK: WIDENING

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
PE-NEPA	STP	80%	20%	0%	$750,000.00
PE-DESIGN	STP	80%	20%	0%	$300,000.00
ROW	STP	80%	20%	0%	$6,200,000.00
CONST	STP	80%	20%	0%	$4,572,857.00
CONST	STP	80%	0%	20%	$240,300.00

INELIGIBLE COST: One hundred percent (100%) of the actual cost will be paid from Agency funds following expenditure of the most recently approved TIP cost or if the use of said federal funds is ruled ineligible at any time by the Federal Highway Administration.

LEGISLATIVE AUTHORITY: **STP: 23 U.S.C.A, Section 133**, Surface Transportation Program funds allocated or subject to allocation to the Agency.

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.

An Acuity Brands Company

Charleston Aluminum Pole
WLC Series Arm
Esplanade® Style Luminaire

POLE ATTRIBUTES:

CROSSARM ATTRIBUTES:

GENERAL DESCRIPTION The Roadway Arm shall be all aluminum one-piece construction. The arms shall consist of a decorative post-mounting piece and a bent tube arm. All welding shall be per ANSI/AWS D1.2-90. All welders shall be certified per ANSI/AWS D1.2-90 Section 5.

INSTALLATION The arms shall slip-fit a post top tenon and attach with socket set screws. The post top mounting piece shall have a removable finial for wiring access.

FIXTURE ATTRIBUTES:

The Esplanade® Pedestrian luminaire is styled to replicate the "teardrop" luminaires that lighted boulevards in the first half of this century. Designed for light control and ease of installation and maintenance, the Esplanade Pedestrian has a precision optical system for true street lighting performance.

Features for Tear Drop Utility Series:

- Classic, elegant appearance
- Tool-less lamp access
- Urban-scale, boulevard lighting
- Permanent, durable prismatic glass
- Permanent, durable prismatic glass
- High-wattage capability
- Utility friendly
- Ease of maintenance/installation

Luminaire Accepts 1.5NPT Configure Entire Pole Package Assmembly For Pole and Arm Combinations

Catalog #**ESU 250HP MA B 4 WLC 72/1 CA BKH WLLF/200 SCA R TPRCSBK BK CHA 20 L5J 16 P10 LAB BK**

Dwg. # **HLP-16150**

AGENDA NUMBER VI. D. MEETING DATE November 12, 2015

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: Darryl W. Smith, PE
SUBJECT: Approval of TDOT Contract for Intersection Improvements at SR-1 (Kingston Pike) at Watt Road

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INTRODUCTION: The purpose of this item is the approval of an agreement with the Tennessee Department of Transportation for development of a project to improve the intersection of Kingston Pike at Watt Road.

BACKGROUND: During design of the Old Stage Road/Watt Road Extension project in 2012, staff determined the need for improvements to the intersection of Kingston Pike at Watt Road. Specifically, lane assignments at this formerly "T" intersection do not properly align for what is now a "four-legged" intersection, resulting in the north-south through movements on Watt Road being made from the left-turn lanes of Watt Road. Additionally, pedestrian facilities that now lead to this intersection from the southwestern portion of Farragut necessitate improved pedestrian crossings of Kingston Pike, as many of our residents will use these facilities to access Mayor Bob Leonard Park, approximately 900 feet north of the intersection.

In 2014, the Town contracted with a design consultant (Qk4, Inc.) to develop plans for the project. At that time, the Town anticipated making all improvements under our own contract, as almost all work was located along Watt Road. As the design has progressed, however, the project scope has increased along with projected costs. While our own estimates are considerably lower, TDOT has estimated construction costs to be approximately $500,000. Earlier this year, we requested Spot Safety Funding from the Tennessee Department of Transportation's Traffic Department. The Region 1 Traffic Office applied for this funding on behalf of the Town, and TDOT has agreed to fund half of the total construction costs and conduct all contract administration. The attached contract outlines the Town's responsibilities, as well as those of TDOT.

Please note that while this additional funding is certainly welcome, it does come with additional costs. Development of project plans to TDOT standards, as well as TDOT plans review and environmental clearances, will require a significantly increased project scope for our consultant, Qk4. We anticipate a request for supplement to Qk4's contract soon, and will present to the Board in December.

FINANCIAL SECTION:

Project: 310-43961-900, Watt Road/Kingston Pike Intersection Improvements

Project Budget	Requested Amount	Contracted Amount	Remaining Amount
$385,000	$250,000	$20,520	$114,480

Approved By: A Myers

RECOMMENDATION BY: Darryl Smith, Town Engineer, for approval.

PROPOSED MOTION: Approval of the attached TDOT contract for improvements to the intersection of Kingston Pike at Watt Road

BOARD ACTION:

MOTION BY:____________________________ **SECONDED BY:**____________________________

VOTE/TOTAL	MCGILL	LAMARCHE	HONKEN	MARKLI	PINCHOK
YES	______	______	______	______	______
NO	______	______	______	______	______
ABSTAIN	______	______	______	______	______

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
PROGRAM DEVELOPMENT & ADMINISTRATION DIVISION
LOCAL PROGRAMS DEVELOPMENT OFFICE
SUITE 600, JAMES K. POLK BUILDING
505 DEADERICK STREET
NASHVILLE, TN 37243-1402
(615) 741-5314

JOHN C. SCHROER
COMMISSIONER

BILL HASLAM
GOVERNOR

October 8, 2015

The Honorable Ralph McGill
Mayor, Town of Farragut
11408 Municipal Center Dr.
Farragut, TN 37934

Re: Intersection Improvements and Signaling on SR-1 at Watt Rd. from LM 0.00 to LM 0.40
Farragut, Knox County
PIN: 122323.00
Federal Project Number: STP-SIP-1(253)
State Project Number: 47656-3227-94
Contract Number: 150139

Dear Mayor McGill:

I am attaching a contract providing for the development of the referenced project. Please review the contract and advise me if it requires any additional explanation. The estimated cost for your agency's share of the construction phase is $250,000.00. If you find the contract fully satisfactory, please execute it in accordance with all rules, regulations and laws, obtain the signature of the attorney for your agency and return the contract with your construction deposit of $250,000.00 to me. Once the contract is fully executed, we will forward a copy to you for your records.

If you have any questions or need any additional information, please contact Ms. Maria Hunter at 615-532-3632 or maria.hunter@tn.gov.

Sincerely,

Whitney Sullivan

Whitney Sullivan
Transportation Manager

Attachment

Agreement Number: 150139

Project Identification Number: 122323.00

Federal Project Number: STP-SIP-1(253)

State Project Number: 47956-3227-94

State of Tennessee Department of Transportation

LOCAL AGENCY PROJECT AGREEMENT

THIS AGREEMENT, made and entered into this ___________ day of __________, 20___ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the Town of Farragut (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

"Intersection Improvements on SR-1 at Watt Rd, from LM 0.00 to LM 0.40"

A. PURPOSE OF AGREEMENT

A.1 Purpose:

a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") and state the terms and conditions as to the manner in which the Project will be undertaken and completed.

A.2 Modifications and Additions:

a) Exhibit(s) are attached hereto and by this reference made a part hereof.

B. ACCOMPLISHMENT OF PROJECT

B.1 General Requirements:

a)

	Responsible Party	Funding Provided by Agency or Project.
Environmental Clearance by:	**Agency**	**Agency**
Preliminary Engineering by:	**Agency**	**Agency**
Right-of-Way by:	**Agency**	**Agency**
Utility Coordination by:	**Department**	**Project**
Construction by:	**Department**	**Project**

b) After receiving authorization for a phase, the Agency shall commence and complete the phases as assigned above of the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The Project will be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines, available in electronic format, which by this reference is made a part hereof as if fully set forth herein.

c) A full time employee of the Agency shall supervise the herein described phases of the Project. Said full time employee of the Agency shall be qualified to and shall ensure that the Project will be performed in accordance with the terms of this Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines and this Agreement.

B.2 Completion Date:

a) The Agency agrees to complete the herein assigned phases of the Project on or before **N/A**. If the Agency does not complete the herein described phases of the Project within this time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. Expiration of this Agreement will be considered termination of the Project. The cost of any work performed after the expiration date of the Agreement will not be reimbursed by the Department.

B.3 Environmental Regulations:

a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.

b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith to the extent permitted by Tennessee Law. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.

c) In the event the Agency is made responsible for the Environmental Clearances in section B.1.(a) of this Agreement, then the Agency must complete environmental clearances before it begins final design and understands that a separate Notice to Proceed will be submitted for final design. Any work on final design performed ahead of this Notice to Proceed will not be reimbursable.

B.4 Plans and Specifications

a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.

b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.

1) After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval and authorization to proceed with the next assigned phase of the Project. Failure to obtain this written approval and authorization to proceed shall be sufficient cause for nonpayment by the Department.

c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for the land in question. These plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

B.5 Right-of-Way

a) The Agency shall, without cost to the Department, provide all land owned by the Agency or by any of its instrumentalities as may be required for the Project right-of-way or easement purposes.

b) The Agency understands that if it is made responsible for the Right-of-Way phase in section B.1(a) hereof and federal and/or state funds are providing the reimbursement, any activities initiated for the appraisal or the acquisition of land prior to authorization from the Department will not be reimbursed and that failure to follow applicable Federal and State law in this regard may make the Project ineligible for federal and/or state funding.

c) The Department will review the processes the Agency used for the acquisition of land and other right-of-way activities. If those processes are found to be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), the Department will certify that the acquisition phase was completed appropriately. The Agency understands that the Project cannot proceed to the Construction phase until this certification of the acquisition phase has been provided. It further understands that if the processes used for acquisition are such that certification is impossible, federal and/or state funds will be withdrawn from the Project. If such withdrawal does occur, the Agency hereby agrees to reimburse the Department for all federal and/or state funds expended at the time of such withdrawal.

d) If the Agency is responsible for the Construction phase, it agrees to correct any damage or disturbance caused by its work within the State Highway Right-of-Way, including but not limited to the replacement of any control access fence removed by the Agency or its Contractor or agent during the Construction phase of the Project.

B.6 Approval of the Construction Phase

a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.

b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.

c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.

d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.

e) The Agency understands that all contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Under Federal law, however, no contractor shall be required by law, regulation, or practice to obtain a license before submitting a bid or before a bid may be considered for an award of a contract; provided, however, that this is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding.

B.7 Detours

a) If the Agency deems a detour to be necessary to maintain traffic during a road closure, then the Agency shall select, sign, and maintain the detour route in strict accordance with the Departments Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices.

B.8 Utilities

a) In the event that the Department is made responsible for the Construction phase in Section B.1(a) of this Agreement, the Department shall also be responsible for the Utilities phase.

b) In the event that the Agency is made responsible for the Utilities Phase in section B.1.(a) of this Agreement, the following applies:

1) The Agency shall assist and ensure that all utility relocation plans are submitted by the utilities and received by the Regional TDOT Utility Office per TDOT's coordination instructions for approval prior to the Project advertisement for bids.

2) The Agency agrees to provide for and have accomplished all utility connections within the right-of-way and easements prior to the paving stage of the Construction phase.

B.9 Railroad

a) In the event that a railroad is involved, Project costs may be increased by federally required improvements. The Agency agrees to provide such services as necessary to realize these improvements. The Agency understands it may have to enter into additional agreements to accomplish these improvements.

C. PAYMENT TERMS AND CONDITIONS

C.1 Total Cost:

In the event that the Agency shall receive reimbursement for Project expenditures with federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) The Department agrees to reimburse the Agency for eligible and appropriate Project expenditures as detailed in the Department's Local Government Guidelines with federal and/or state funds made available and anticipated to become available to the Agency, provided that the maximum liability of the Department shall be as set forth in Exhibit A.

C.2 Eligible Costs:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) Only Project costs incurred after the issuance of the Notice to Proceed for each phase as detailed in the Department's Local Government Guidelines are eligible for Department reimbursement.

C.3 Limits on Federal and State Participation:

a) Federal and/or state funds shall not participate in any cost which is not incurred in conformity with applicable federal and state law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Federal Highway Administration (FHWA). Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the Project or part thereof involving such cost. (23 CFR 1.9 (a)). If FHWA and/or the Department determines that any amount claimed is not eligible, federal and/or state participation may be approved in the amount determined to be adequately supported. The Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal and/or state participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, federal and/or state funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA and/or the Department may deny participation in Project costs in part or in total.

b) For any amounts determined to be ineligible for federal and/or state reimbursement for which the Department has made payment, the Agency shall promptly reimburse the Department for all such amounts within ninety (90) days of written notice.

c) The Agency agrees to pay all costs of any part of this project which are not eligible for federal and/or state funding. These funds shall be provided upon written request therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

C.4 Payment Methodology:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) The Agency shall submit invoices, in a form outlined in the Local Government Guidelines with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.

b) The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.

c) Should a dispute arise concerning payments due and owing to the Agency under this Agreement, the Department reserves the right to withhold said disputed amounts pending final resolution of the dispute.

C.5 The Department's Obligations:

In the event that the Department is managing all phases of the Project herein described, this provision C.5 does not apply.

a) Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the Project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect not to make a payment if:

1) **Misrepresentation:**
The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;

2) **Litigation:**
There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement or payments to the Project;

3) **Approval by Department:**
The Agency shall have taken any action pertaining to the Project, which under this Agreement requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;

4) **Conflict of Interests:**
There has been any violation of the conflict of interest provisions contained herein in D.16; or

5) **Default:**
The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

C.6 Final Invoices:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) The Agency must submit the final invoice on the Project to the Department within one hundred twenty (120) days after the completion of the Project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

C.7 Offset:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department. Offsetting any amount pursuant to this section shall not be considered a breach of agreement by the Department.

C.8 Travel Compensation

a) If the Project provided for herein includes travel compensation, reimbursement to the Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and subject to the Agreement Budget.

D. STANDARD TERMS AND CONDITIONS

D.1 Governing Law:

a) This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

D.2 General Compliance with Federal, State, and Local Law:

a) The Agency is assumed to be familiar with and observe and comply with those Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the State and Federal Government regarding fortifications, military and naval establishments and other areas. The Agency shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement.

b) The parties hereby agree that failure of the Agency to comply with this provision shall constitute a material breach of this Agreement and subject the Agency to the repayment of all damages suffered by the State and/or the Department as a result of said breach.

D.3 State Law:

a) Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law, provided, that if any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.

D.4 Submission of the Proceedings, Agreements, and Other Documents:

a) The Agency shall submit to the Department such data, reports, records, agreements, and other documents relating to the Project as the Department and the Federal Highway Administration may require.

D.5 Appropriations of Funds:

a) This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Agreement upon thirty (30) days written notice to the Agency. Said termination shall not be deemed a breach of agreement by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Agreement. Should such an event occur, the Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Agency shall have no right to recover from the Department any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.6 Rights and Remedies Not Waived:

a) In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

b) Nothing in this agreement shall be construed to limit the Department's right at any time to enter upon its highway right-of-way, including the area occupied by the Project, for the purpose of maintaining or reconstructing its highway facilities.

D.7 Department and Agency Not Obligated to Third Parties:

a) The Department and Agency shall not be obligated hereunder to any party other than the parties to this Agreement.

D.8 Independent Contractor:

a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

b) The Agency, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all other applicable laws.

D.9 Maintenance:

a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then the Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.

b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement and to the extent that the Department is responsible for accomplishing the construction of the project, the Department will notify the Agency when Construction phase of the project has been completed; provided however, that failure to notify the Agency shall not relieve the Agency of its maintenance responsibilities.

D.10 Disadvantaged Business Enterprise (DBE) Policy and Obligation:

In the event that the herein-described project is funded with federal funds, the following shall apply:

a) **DBE Policy:**
It is the policy of the Department that Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26, as amended, shall have the opportunity to participate in the performance of agreements financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state regulations apply to this Agreement; including but not limited to project goals and good faith effort requirements.

b) **DBE Obligation:**
The Agency and its Contractors agree to ensure that Disadvantaged Business Enterprises, as defined in applicable federal and state regulations, have the opportunity to participate in the performance of agreements and this Agreement. In this regard, all recipients and Contractors shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements. The Agency shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department-assisted agreements.

D.11 Tennessee Department of Transportation Debarment and Suspension:

a) In accordance with the Tennessee Department of Transportation regulations governing Contractor Debarment and Suspension, Chapter 1680-5-1, the Agency shall not permit any suspended, debarred or excluded business organizations or individual persons appearing on the Tennessee Department of Transportation Excluded Parties List to participate or act as a principal of any participant in any covered transaction related to this Project. Covered transactions include submitting a bid or proposal, entering into an agreement, or participating at any level as a subContractor.

D.12 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (applies to federal aid projects):

a) **Instructions for Certification - Primary Covered Transactions:**

By signing and submitting this Agreement, the Agency is providing the certification set out below.

1) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

2) The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

3) The Agency shall provide immediate written notice to the Department if at any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the Department for assistance in obtaining a copy of those regulations.

5) The Agency agrees by entering into this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.

6) The Agency further agrees by entering into this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the Department, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7) An Agency may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.

8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9) Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions:

The prospective participant in a covered transaction certifies to the best of its knowledge and belief, that it and its principals:

1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;

2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or agreement under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in this certification; and

4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

5) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

D.13 Equal Employment Opportunity:

a) In connection with the performance of any Project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

b) The Agency shall insert the foregoing provision in all agreements modified only to show the particular contractual relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such Contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for Project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

D.14 Title VI – Civil Rights Act of 1964:

a) The Agency shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. The Agency shall include provisions in all agreements with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

D.15 Americans with Disabilities Act of 1990 (ADA):

a) The Agency will comply with all the requirements as imposed by the ADA and the regulations of the federal government issued thereunder.

D.16 Conflicts of Interest:

a) The Agency warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subContractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement.

b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its Contractors to insert in each of it's subcontracts, the following provision:

1) "No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subContractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement."

D.17 Interest of Members of or Delegates to, Congress (applies to federal aid projects):

a) No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

D.18 Restrictions on Lobbying (applies to federal aid projects):

The Agency certifies, to the best of its knowledge and belief, that:

a) No federally appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c) The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

D.19 Records:

a) The Agency shall maintain documentation for all charges against the Department under this Agreement. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail and in a form acceptable to the Department the nature and propriety of the charges. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for at least three (3) years after final payment is made.

b) Copies of these documents and records shall be furnished to the Department, the Comptroller of the Treasury, or their duly appointed representatives, upon request. Records of costs incurred includes the Agency's general accounting records and the Project records, together with supporting documents and records, of the Agency and all subContractors performing work on the Project and all other records of the Agency and subContractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

c) The aforesaid requirements to make records available to the Department shall be a continuing obligation of the Agency and shall survive a termination of the Agreement.

D.20 Inspection:

a) The Agency shall permit, and shall require its Contractor, subContractor or materials vendor to permit, the Department's authorized representatives and authorized agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project.

b) The Department reserves the right to terminate this Agreement for refusal by the Agency or any Contractor, subContractor or materials vendor to allow public access to all documents, papers, letters or other material made or received in conjunction with this Agreement.

D.21 Annual Report and Audit:

a) In the event that an Agency expends $500,000 or more in federal awards in its fiscal year, the Agency must have a single or program specific audit conducted in accordance with the United States Office of Management and Budget (OMB) Circular A-133.

b) All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller's duly appointed representative. When an audit is required, the Agency may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit agreement between the Agency and the licensed independent public accountant shall be on an agreement form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury.

c) The Agency shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Agency shall be subject to the provisions relating to such fees contained in the prescribed agreement form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the Department, the Tennessee Comptroller of the Treasury, and the

Department of Finance and Administration and shall be made available to the public.

D.22 Termination for Convenience:

a) The Department may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement by the Department. The Department shall give the Agency at least thirty (30) days written notice before the effective termination date. The Agency shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the Department be liable to the Agency for compensation for any service which has not been rendered. The final decision as to the amount for which the Department is liable shall be determined by the Department. Should the Department exercise this provision, the Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.23 Termination for Cause:

a) If the Agency fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the Agency violates any terms of this Agreement, the Department shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Agency shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Agreement by the Agency.

b) In the event that the Project herein described includes Federal funds, the Agency understands that if the Federal Highway Administration (FHWA) determines that some or all of the cost of this project is ineligible for federal funds participation because of failure by the Agency to adhere to federal laws and regulations, the Agency shall be obligated to repay to the Department any federal funds received by the Agency under this agreement for any costs determined by the FHWA to be ineligible.

c) If the Project herein described lies on the state highway system and the Agency fails to perform any obligation under this section of this agreement, the Department shall have the right to cause the Agency, by giving written notice to the Agency, to close the Project to public use and to remove the Project at its own expense and restore the premises to the satisfaction of the Department within ninety (90) days thereafter.

D.24 How Agreement is Affected by Provisions Being Held Invalid:

a) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

D.25 Agreement Format:

a) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

D.26 Certification Regarding Third Party Contracts:

a) The Agency certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.

b) The Agency further certifies by its signature hereunder that it has disclosed and provided to the Department a copy of any and all contracts with any third party that relate to the Project or any work funded under this Agreement.

c) The Agency further certifies by its signature hereunder that it will not enter into any contract with a third party that relates to this project or to any work funded under this Agreement without prior disclosure of such proposed contract to the Department.

d) The Agency hereby agrees that failure to comply with these provisions shall be a material breach of this Agreement and may subject the Agency to the repayment of funds received from or through the Department under this Agreement and to the payment of all damages suffered by the Department as a result of said breach.

D.27 Amendment:

a) This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

D.28 State Liability:

a) The Department shall have no liability except as specifically provided in this Agreement.

D.29 Force Majeure:

a) The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

D.30 Required Approvals:

a) The Department is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.31 Estimated Cost:

a) The parties recognize that the estimated costs contained herein are provided for planning purposes only. They have not been derived from any data such as actual bids, etc

b) In the event that the Department is made responsible in section B.1.(a) of this Agreement for the management of the herein described Project, the parties understand that more definite cost estimates will be produced during project development. These more reliable estimates will be provided to the Agency by the Department as they become available.

D.32 Third Party Liability:

a) The Agency shall assume all liability for third-party claims and damages arising from the construction, maintenance, existence and use of the Project to the extent provided by Tennessee Law and subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T,C.A. Section 29-20-101, et seq, and all applicable laws.

D.33 Deposits:

a) Required deposits and any other costs for which the Agency is liable shall be made available to the Department, whenever requested.

D.34 Department Activities:

a) Where the Agency is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown herein.

D.35 Congestion Mitigation and Air Quality Requirement:

a) If the herein described project is funded with Congestion Mitigation Air Quality (CMAQ) funds, this section D.35 shall apply.

1) Whereas the Agency understands and agrees that the funding provided hereunder must be obligated with the Federal Highway Administration within three years from the date of this agreement. It is further agreed that once all requirements have been met for development of the project, the Agency will expend the funds in a manner to insure its expenditure on a continuous basis until the funds are exhausted. Failure to follow this process may result in a loss of funds.

D.36 Investment of Public Funds:

a) The facility on which this project is being developed shall remain open to the public and vehicular traffic for a sufficient time to recoup the public investment therein as shown below:

Amount		Open to Public and Vehicular Traffic
$1.00 - $200,000	=	5 Years
>$200,000 - $500,000	=	10 Years
>$500,000 - $1,000,000	=	20 Years

b) Projects over $1,000,000 carry a minimum 25 years open to public and vehicular traffic requirement and will be subject to individual review.

D.37 Federal Funding Accountability and Transparency Act:

a) **If the Project is funded with federal funds the following shall apply:** The Agency shall comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L. 109-282), as amended by section 6202 of Public Law 110-252 ("the Transparency Act") and the regulations and requirements of the federal government issued thereunder, including, but not limited to, 2 CFR Part 170. The Agency shall submit the information needed for the Transparency Act in accordance with the forms and processes identified by the Department.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

TOWN OF FARRAGUT		**STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION**	
By: ____________________	________	By: ____________________	________
Ralph McGill **Mayor**	**Date**	**John C. Schroer** **Commissioner**	**Date**

APPROVED AS TO FORM AND LEGALITY		**APPROVED AS TO FORM AND LEGALITY**	
By: ____________________	________	By: ____________________	________
Tom Hale **Attorney**	**Date**	**John Reinbold** **General Counsel**	**Date**

EXHIBIT "A"

AGREEMENT NUMBER: 150139
PROJECT IDENTIFICATION NUMBER: 122323.00
FEDERAL PROJECT NUMBER: STP-SIP-1(253)

PROJECT DESCRIPTION: SR-1 AT WATT RD FROM LM 0.00 TO LM 0.40

CHANGE IN COST: Cost hereunder is controlled by the figures shown in the TIP and any amendments, adjustments or changes thereto.

TYPE OF WORK: INTERSECTION IMPROVEMENTS

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
CONST	STP-SIP	80%	20%	0%	$250,000.00
CONST	LOCAL	0%	0%	100%	$250,000.00

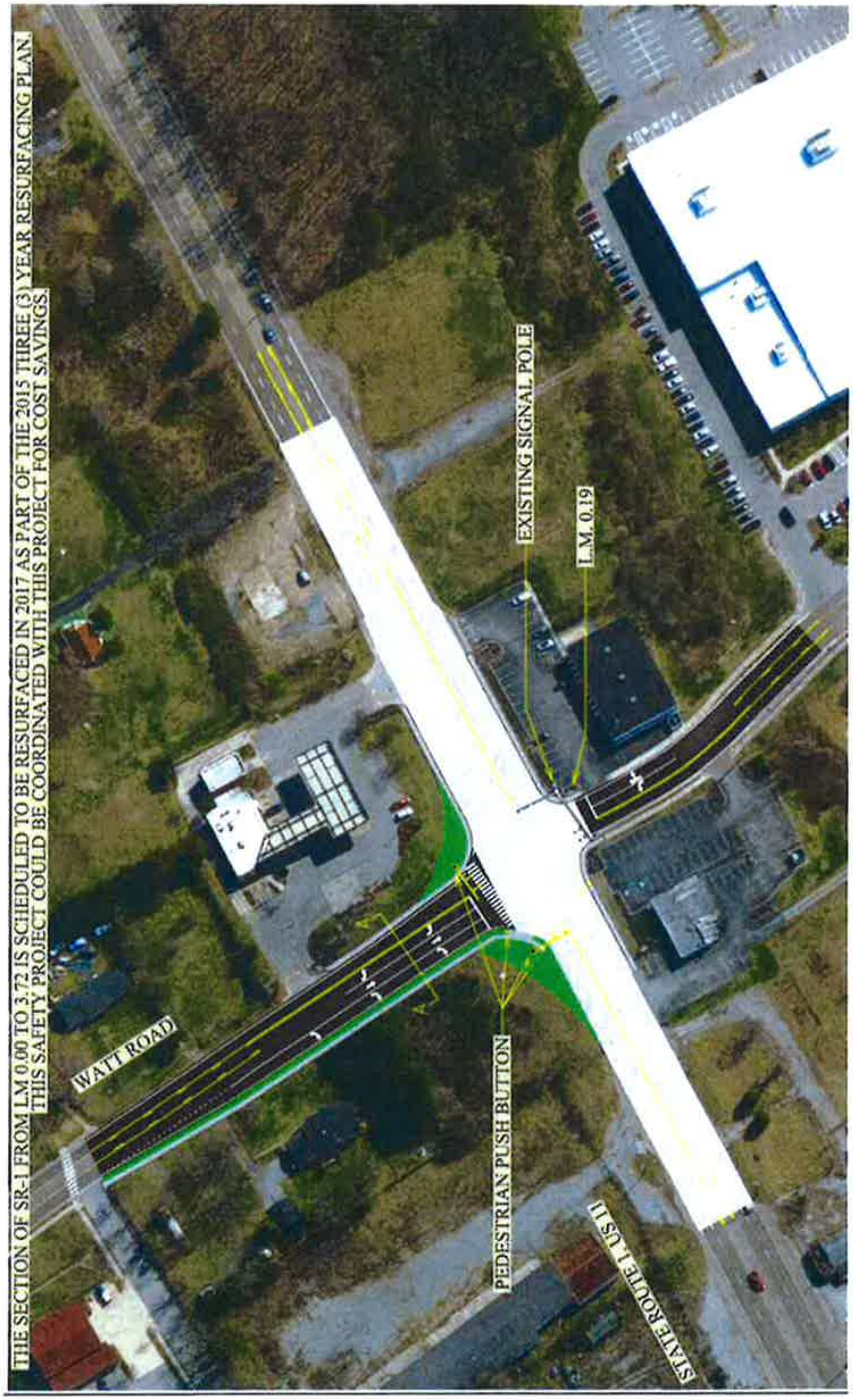
INELIGIBLE COST: One hundred percent (100%) of the actual cost will be paid from Agency funds following expenditure of the most recently approved TIP cost or if the use of said federal funds is ruled ineligible at any time by the Federal Highway Administration.

LEGISLATIVE AUTHORITY: STP: 23 U.S.C.A, Section 133, Surface Transportation Program funds allocated or subject to allocation to the Agency.

The Maximum Liability of the Department shall be 50 percent (50%) of the total construction cost. The Agency shall pay the other 50 percent (50%) of the construction cost as well as 100 percent (100%) of environmental, preliminary engineering, and right-of-way costs.

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.

Proposed:


THE SECTION OF SR-1 FROM LM 0.00 TO 3.72 IS SCHEDULED TO BE RESURFACED IN 2017 AS PART OF THE 2015 THREE (3) YEAR RESURFACING PLAN.
THIS SAFETY PROJECT COULD BE COORDINATED WITH THIS PROJECT FOR COST SAVINGS.
EXISTING SIGNAL POLE
L.M. 0.19
PEDESTRIAN PUSH BUTTON
WATT ROAD
STATE ROUTE 1 / US 11

AGENDA NUMBER VI.E. **MEETING DATE** **November 12, 2015**

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: G. Palmer, Assistant Town Manager

SUBJECT: Consideration Of An Agreement For Professional Services Between The Town Of Farragut And Berrydunn LLC For The Creation Of The Town's First 5-Year Information Technology Strategic Plan

Attachments: Draft Agreement and Scope of Work
Hyperlinks: Visit www.townoffarragut.org/it for
BerryDunn Proposal
LaVista NE IT Strategic Plan (example of BerryDunn work)

INTRODUCTION: In September 2015 the Town published a request for qualifications for professional planning services for an IT Strategic Plan. By the October 2015 closing date of the RFQ the Town received 12 qualification packets from professional firms. After careful evaluation by Town staff, it was determined BerryDunn was the most qualified firm for this project. Reference checks revealed accolades and positive feedback by former municipal clients of BerryDunn. Contract negotiations commenced shortly thereafter.

BACKGROUND: The Town has realized a substantial amount of growth not only in its population but within the Town organization. Additionally, the ever increasing demand for efficient service delivery to our citizens and business partners requires the organization to evolve and keep pace with best practices in E-government service delivery. Since we do have the ability or expertise to conduct this plan in-house we have to consult with outside professionals to ensure a quality plan.

At your spring 2015 Strategic Planning retreat we discussed this initiative which resulted in placing this as a priority for 2015 and subsequently budgeting $50,000 in the FY 2015-2016 budget, for professional services, to undertake this endeavor.

DISCUSSION: As you can see in Attachment A to the agreement the scope of work for this project is extensive and will require close collaboration with the Town staff. The process should take not more than 4-5 months and will result in a comprehensive 5-year IT Strategic Plan (generally) consisting of the following:

Analysis of existing conditions/Inventory
Identifying best practices in local government IT deployment
Identifying IT priorities specific to the Town in relation to the best practices
Ranking of priorities with cost for budget planning
Strategies for deployment
Plan adoption and implementation

At the time of the writing of this memo a final cost for services has not been finalized; therefore, the Financial Section below is blank. We will have either finalized cost by the November 12th meeting or will be requesting postponement until such time a cost can be successfully negotiated.

FINANCIAL SECTION:

Account Number:

Total Budget	**Requested Amount**	**Contracted Amount**	**Remaining Amount**
$ 50,000	$	$	$

Approved By:____________________

RECOMMENDATION BY: G. Palmer, Assistant Town Manager

PROPOSED MOTION: Approve the agreement between the Town of Farragut and BerryDunn LLC as proposed for an amount not to exceed $____________________

BOARD ACTION:

MOTION BY:________________________ **SECONDED BY:**________________________

VOTE/TOTAL	**MCGILL**	**HONKEN**	**LAMARCHE**	**MARKLI**	**PINCHOK**
YES	_____	_____	_____	_____	_____
NO	_____	_____	_____	_____	_____
ABSTAIN	_____	_____	_____	_____	_____

AGREEMENT FOR PROFESSIONAL SERVICES WITH FARRAGUT, TENNESSEE

This AGREEMENT is made and entered into on November 12, 2015 by and between **TOWN OF FARRAGUT, A TENNESSEE MUNICIPAL CORPORATION** (hereinafter referred to as "CLIENT") and **BERRY, DUNN, MCNEIL & PARKER, LLC (DBA BERRYDUNN)**
(hereinafter referred to as "CONSULTANT") for lump-sum professional services.

PROJECT: **INFORMATION TECHNOLOGY STRATEGIC PLAN**
LOCATION: **TOWN OF FARRAGUT, TENNESSEE**

WHEREAS, CLIENT requires professional consulting services to develop and document an Information Technology Strategic Plan for the Town organization (hereinafter referred to as the "PROJECT"); and,

WHEREAS, CONSULTANT, through a competitive process, was determined to be the most qualified firm to perform the required work for the CLIENT.

NOW, THEREFORE, for and in consideration of the promises contained in this agreement, CLIENT and CONSULTANT mutually assent to contract under the following terms:

1. **Scope of Work.** Basic professional consulting services to be performed by CONSULTANT and its sub-consultants shall consist of the services described in **Attachment A** to this agreement.

2. **Changes to the Scope of Work/Schedule.** CLIENT may at any time, by written order, propose reasonable changes to the general scope of this agreement and in the services or work to be performed. If such proposed changes cause an increase or decrease in CONSULTANT's cost or time required for performance of any services under this agreement and CLIENT agrees with the changes, an equitable adjustment shall be made and this agreement shall be modified in writing. Inasmuch as input from the public and decision-makers may alter the priorities and focus of the work, CONSULTANT may, to meet the needs of the project, adjust the Scope of Work by adding to or deleting from the work to be performed so long as it does not increase the Client's overall cost of the project. In any case, CONSULTANT shall obtain written approval by CLIENT prior to increasing the cost of the project or amending the work schedule.

3. **Commencement of Work.** Final execution of this agreement by authorized signature of CLIENT and CONSULTANT shall be deemed sufficient for "Notice to Proceed". CONSULTANT shall commence work on the project within a reasonable period of time after receiving an executed copy of this agreement.

4. **Term.** CONSULTANT will use reasonable efforts to complete the project within six months from notice to proceed, subject to CLIENT's compliance with this agreement and other factors beyond the control of CONSULTANT.

GENERAL TERMS AND CONDITIONS

1. **Compensation.** CLIENT shall compensate CONSULTANT for the project as follows: A fee of ______________________________ **DOLLARS ($XXXXXXXX)**, including reimbursable expenses. In addition, CLIENT shall pay CONSULTANT for additional services that may be requested by CLIENT beyond the Scope of Work in accordance with the hourly rate schedule attached as **Attachment B** to this agreement.

2. **Invoicing and Payments.** Invoices or payment requests shall be submitted to CLIENT no more that monthly. Invoices shall state the type of work completed for that pay period and shall indicate the percentage of the total completed for that pay period. Upon CLIENT'S request, CONSULTANT shall provide a detailed invoice to CLIENT which may include the amount and breakdown of the payment requested, the period covered by the request, and a detailed account of the work performed during the period covered by the payment request. After review, CLIENT will indicate approval of the payment request by processing the payment request during the next available pay cycle or shall explain to CONSULTANT by proper notice (see NOTICE below), the reason for not approving any portion or all of the request, and authorize payment of any amount approved. In the event CLIENT does not approve any portion of a payment request and has communicated the reasons to CONSULTANT, CONSULTANT will then take the necessary reasonable action to satisfy the reasons for non-approval and resubmit the payment request. CLIENT shall pay CONSULTANT within a reasonable time-frame after payment requests are approved by CLIENT.

3. **Time.** CONSULTANT will perform its services in a timely manner commensurate with the exercise of due professional care which it acknowledges can be done consistent with the schedule provided for in Attachment A. Time for performance may be extended as necessary for reasonable delays or suspension due to reasonable circumstances beyond CONSULTANT'S control.

4. **Contract Administration/Notice.**

   a. **PROJECT MANAGER; CONSULTANT**. CONSULTANT shall assign Keith Damon to manage the PROJECT. All services specified in this agreement shall be performed by or under the direction of the project manager. CONSULTANT may change the project manager only after pre-approval, in writing, by CLIENT.
   b. **PROJECT MANAGER; CLIENT**. CLIENT shall assign Gary M. Palmer, Assistant Town Manager, to manage CLIENT responsibilities for the PROJECT.
   c. **Notices to CONSULTANT**. All notices related to this agreement, correspondence, and any other information related to the project shall be digitally transmitted or mailed to:

BerryDunn
ATTN: Chad Snow
100 Middle Street
Portland ME 04104

Proper notice shall be served by digital transmission to:
csnow@berrydunn.com with copy to:
kdamon@berrydunn.com (Kevin Damon)

d. **Notices to CLIENT**. All notices related to this agreement, correspondence, and payment requests to CLIENT shall be digitally transmitted or mailed to:

Town of Farragut Administration
Attention: Gary Palmer
11408 Municipal Center Drive
Farragut, TN 37934

Proper notice shall be served by digital transmission to:
gpalmer@townoffarragut.org with copy to:
jhatmaker@townoffarragut.org (Jenn Hatmaker)

5. **Suspension of Services.** If CLIENT fails to pay an invoice for services rendered within a reasonable time period after CONSULTANT submits a proper invoice, CONSULTANT may suspend services only after ten (10) consecutive days' notice to CLIENT of missed payment. If CLIENT remits proper payment within that ten (10) day timeframe, CONSULTANT shall continue performance unabated.

6. **Document Review**. CLIENT review, approval, acceptance, or payment for any of the CONSULTANT's services herein shall not be construed to operate as a waiver of any rights enjoyed by the CLIENT under this AGREEMENT or of any cause or action arising out of the performance of this agreement.

7. **Records.** CONSULTANT will maintain accounting records, in accordance with generally accepted accounting principles and practices. These records will be available to CLIENT during CONSULTANT's normal business hours for a period of 1 year after CONSULTANT final invoice for examination to the extent required to verify PROJECT costs.

8. **Standard of Care**. CONSULTANT shall perform its services in accordance with the standard of professional care ordinarily exercised under similar circumstances by reputable members of its profession. No warranty, expressed or implied, is made or intended by CONSULTANT. The parties further agree that CONSULTANT is not a fiduciary of CLIENT.

9. **Termination.** The obligation to provide further services under this agreement may be terminated with or without cause by either party upon ten (10) consecutive days' notice to the other party. Upon termination by either party, CLIENT shall pay CONSULTANT all reasonable amounts due for performance and accrued reimbursable expenses up to the date of proper termination notice to CONSULTANT. Remittance of reasonable payment to CONSULTANT by CLIENT shall be the sole remedy for any conflict for performance up to the point of termination and release both parties from liability arising from this agreement.

10. **Reuse of Documents**. All documents including but not limited to, renderings, specifications, reports, charts, graphs, images, and so forth, regardless of format, generated by CONSULTANT in performance of this agreement, shall become the property of CLIENT. Any

reuse of these documents by CLIENT shall be at CLIENT'S sole risk and without liability or legal exposure to CONSULTANT.

11. **Access/Cooperation**. CLIENT agrees that its officers and employees will cooperate with CONSULTANT in the performance of this agreement and will be available for consultation with CONSULTANT at such reasonable times with advance notice so as not to conflict with CLIENT'S other responsibilities. CONSULTANT shall have reasonable access to CLIENT'S property and records in order to perform services under this agreement. Unless otherwise specified in this agreement, CONSULTANT will not be responsible for cost incurred by hosting public meetings associated with this project.

a. **CLIENT Data**. CLIENT, without charge to CONSULTANT, shall furnish or make available any reasonable data CONSULTANT deems necessary for performance of this agreement.
b. **CLIENT Assistance**. To the best of its ability, CLIENT shall assist CONSULTANT in obtaining data and documents from officers or agencies and from private citizens and business firms related to this project.
c. **Data Accuracy**. CONSULTANT will not be responsible for the accuracy of un-manipulated information supplied by CLIENT.
d. **Public Notice**, Advertisements, Permits. Unless otherwise specified in this agreement, CLIENT shall be responsible for, coordinate, obtain, arrange, and pay for all advertisements, permits, public notices, and licenses arising from this agreement.

12. **Changes in Conditions and Development**. CLIENT will give prompt notice to CONSULTANT whenever CLIENT observes or becomes aware of any development affecting the scope or timing of CONSULTANT'S services or any defect in the CONSULTANT'S work product.

13. **Insurance**. Upon execution of this agreement, CONSULTANT shall provide CLIENT a certificate of insurance evidencing general liability coverage with a limit of not less than $1,000,000 each occurrence for bodily injury, personal injury, and property damage. If such insurance contains a general aggregate limit, it shall apply separately to the work/location of the project in this agreement or be no less than $2,000,000. Additionally, CONSULTANT shall secure and maintain insurance in such amounts as it deems necessary to protect itself from claims of professional negligence arising from the performance of services under this agreement. Such insurance shall:

a. Contain or be endorsed to contain a provision that includes CLIENT, its officials, officers, employees, and volunteers as additional insured with respect to liability arising out of work performed by or on behalf of CONSULTANT. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insured.
b. For any claims related to this project, CONSULTANTS' insurance coverage shall be primary insurance covering CLIENT, its officials, officers, employees, and volunteers. Any insurance or self-insurance programs covering CLIENT its officials officers, employees, and volunteers shall be excess of CONSULTANTS' insurance.

14. **Risk Allocation**. In recognition of the relative risks, rewards, and benefits of the project to both parties, to the fullest extent permitted by law, the parties agree to allocate the risks such that CONSULTANT'S total liability to CLIENT for any and all injuries, claims, losses, expenses, damages, and/or claim expenses arising out of CONSULTANT'S services under this agreement from any cause or causes shall not exceed the amount of CONSULTANT'S fee, or $100,000, covering the risk or claim that is the basis for the injury, claim, loss, expense or damages, recovery for which is sought, whichever is greater. This limitation shall apply regardless of the cause of action or legal theory pled or asserted.

15. **Dispute Resolution**. It is agreed that all claims, disputes, or other matters in question arising out of or relating to this agreement shall be submitted to non-binding mediation in the State of Tennessee in accordance with TN Supreme Court Rule 31. The parties shall equally bear the cost for mediation.

16. **Indemnification**. CONSULTANT shall indemnify and hold harmless CLIENT, its officials, officers, employees, and agents, from any and all liabilities which may arise or be claimed against CLIENT, its officials, officers, employees, and agents or any third party for any and all lawsuits, claims, demands, losses, or damages arising from any negligent act or omission by CONSULTANT, its employees or contractors in performance of this agreement or from CONSULTANT'S failure to perform this agreement using ordinary care and skill except where such injury damage or loss was caused by the sole negligence of CLIENT, its agents or employees. The indemnification and hold harmless provision of this agreement shall survive termination of this agreement.

17. **Miscellaneous**.

a. CONSULTANT shall not assign or transfer any interest in this agreement without first obtaining written approval from CLIENT. Subsequent to the execution of this agreement, CONSULTANT shall not enter into a subcontract for any of the services performed under this agreement without first obtaining written approval from CLIENT. Pre-authorized subcontractors are listed in **Attachment C** to this agreement.

b. The contract between the parties consists of this agreement its attachments, any written request for services issued by CLIENT and any response thereto made by CONSULTANT including any addenda thereto. To the extent there is a conflict between the terms of any of the documents that constitute the contract between the parties the terms that are most specific to the matter in dispute shall govern over the more general. In the event the conflicting terms cannot be characterized as specific versus general, then the terms that provide the greater benefit to CLIENT and/or impose the greater obligation on the consultant shall prevail.

c. The agreement may be modified only by a mutually agreed upon written amendment or addendum that has been executed and approved by the appropriate officials shown on the signature page of this agreement.

d. If any provision of this agreement is determined to be unenforceable or invalid, such determination shall not affect the validity of the other provisions contained in this agreement. Failure to enforce any provision of this agreement does not affect the rights of the parties to enforce any other provision of this agreement at any time.

e. In the performance of this agreement, CONSULTANT shall comply with all applicable laws, ordinances, rules, regulations and orders of local state and federal governments; including but not limited to the President's Executive Orders No. 11246 and 11375 which prohibits discrimination in employment regarding race color religion sex or national origin Title VI of the Civil Rights Act of 1964 Copeland Anti-Kickback Act, the Contract Work Hours and Safety Standards Act, Section 402 of the Vietnam Veteran's Adjustment Act of 1974 Section 503 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990 all of which are herein incorporated by reference.

f. This agreement will be governed and construed in accordance with the laws of the State of Tennessee. Any legal action arising from this agreement shall be under the jurisdiction of the appropriate State of Tennessee Court within Knox County TN and/or the United States District Court of Eastern Tennessee.

18. **Attachments.** Attachment A: Scope of Work and Schedule, Attachment B: Hourly Rate, Attachment C: Approved Sub Contractors, and the CONSULTANT's submitted Qualifications for IT Strategic Planning in response to CLIENT'S Request for Qualifications.

IN WITNESS WHEREOF, the CLIENT and CONSULTANT have executed this agreement.

For the CLIENT:

Town of Farragut, TN

BY: ______________________________ Date: ________________

Ralph McGill, Mayor

ATTEST: ______________________________

For the CONSULTANT:

BerryDunn, Inc.

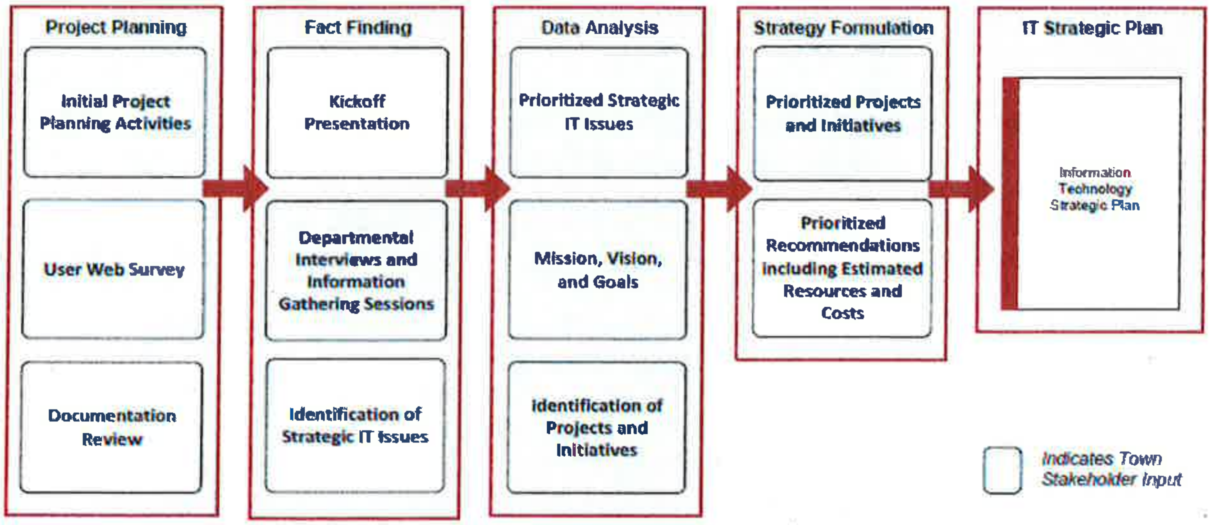
BY: ______________________________ Date: ________________

Chad Snow, Principal

ATTEST: ______________________________ Date: ________________

Attachment A SCOPE OF WORK

AMENDMENTS TO THE FOLLOWING SCOPE OF WORK AND/OR SCHEDULE MUST BE MUTUALLY AGREED UPON BY BOTH PARTIES' PRIMARY POINT OF CONTACT NAMED IN THIS THIS AGREEMENT AND REFLECTED, IN WRITING, AS AN ADDENDUM TO ATTACHMENT A.



Information Technology Strategic Plan Methodology

Phase 1: Project Planning

1. Conduct initial project planning. BerryDunn will conduct an initial project planning teleconference with the Town's E-government Team and any additional key stakeholders identified for inclusion by the Town. The purpose of this meeting is to review our proposed Project Work Plan and Schedule, clarify goals and objectives, identify known project constraints, and refine dates and/or tasks as appropriate. As part of this meeting, we will discuss our approach for managing communications between BerryDunn and the Town, as well as our approach to scope, risk, and resource management. We will also request names and contact information for staff members of the Town who will be involved in the project and schedule a project kickoff meeting and initial interviews.

2. Develop Project Work Plan and Schedule. Based on the information gathered from our initial project planning teleconference and documentation request, BerryDunn will develop the Project Work Plan and Schedule, which will address our approach for managing communications between BerryDunn and the Town, as well as our approach to scope, risks, and resource management. The Project Work Plan and Schedule also address BerryDunn's approach to providing the exact services requested by the Town and the agreed-upon timeframe for each task. In addition, the Project Work Plan will incorporate agreed-upon procedures between BerryDunn and the Town related to project control, including quality management and deliverable submission/acceptance management.

3. Request and review available documentation. Prior to conducting our on-site work, we will submit an Information Request Sheet to the Town to request available documentation that will be helpful to us during the project. The documents requested from the Town will be used to gain an understanding of the Town's current technology environment, and will likely include organizational charts; network diagrams and an inventory of Town hardware,

software, and applications; Best Practices; IT historical budget and spending information; documented IT policies and procedures; and other relevant information.
We respectfully request that the Town provide available documentation prior to the project kickoff meeting and interviews, as reviewing this information in advance of our on-site work will enable us to be more efficient, become more knowledgeable of the current environment, and make best use of Town personnel's time.

4. Develop and administer Web-based end-user survey. BerryDunn will develop a Web-based survey for use by Town stakeholders to review in advance of our on-site work. The survey will include an introduction explaining the project and a Strengths, Weaknesses, Opportunities, and Threats (SWOT) Analysis survey. Prior to administering the survey, we will review the content with the Town's Steering Committee and make any recommended changes.

Each stakeholder will be asked to complete the SWOT Analysis form with respect to the Town's services and environment. We have found that soliciting input via a Web survey allows us to collect input from a broad sampling of Town staff while allowing staff members to provide their opinions at their convenience and with minimal disruption to day-to-day activities. Moreover, we will review survey responses prior to our on-site fact-finding efforts, which allows our team to be better prepared for this visit and able to tailor our interview questions based on trends identified from the survey data.

Deliverable: D1. Project Work Plan and Schedule

Phase 2: Fact-Finding

5. Facilitate Project Kickoff Meeting. We will facilitate an on-site project kickoff meeting with the Town's E-government Team, and any additional stakeholders that may have been identified during our initial project planning meeting. During the meeting, we will work to communicate the importance of developing an integrated, cohesive, and concise IT Strategic Plan. We will also identify stakeholders affected by future IT initiatives, discuss the results of information we collected through the Web survey/SWOT analysis, and begin to determine how this information relates to the identification of business issues facing Town departments and the acquisition of new technology and future service delivery.

6. Conduct fact-finding meetings and interviews. We will conduct a series of interviews and work sessions with E-government Team. The purpose of these interviews is to provide our team with an understanding of the current environment as it relates to systems and network infrastructure; staff job responsibilities and workload; current disaster recovery plans and processes; project and task management, and IT governance reporting; content management; and plans, policies, and procedures. These discussions will also be used to clarify questions from our review of the Town's existing documentation and results of the SWOT Analysis. We will meet individually with each of the departments identified by the Town in its RFP, and will also hold a group meeting with the E-government Team. In addition to fact-finding meetings, our team will spend time touring Town facilities, observing business processes where appropriate, reviewing existing software applications, and other fact-finding activities. Through our experience conducting similar engagements, we understand the importance of involving Town stakeholders in a collaborative manner to facilitate

understanding of Town needs and obtain support for recommendations. Our consultants will be focused on identifying opportunities to leverage IT support and future Town-wide technologies to improve existing operations and delivery of services to constituents.
We envision this initial fact-finding process will take place over two days on-site, using up to two teams of BerryDunn personnel. Where appropriate, we will consolidate meetings to make best use of Town personnel's time and expertise.

7. Develop Preliminary List of Strategic IT Issues. As a result of our fact-finding efforts, including the review of background documentation, the survey results of the SWOT Analysis completed by Town personnel, and on-site interviews, we will develop a Preliminary List of Strategic IT Issues that will identify opportunities for growth as part of the Town's strategic planning effort. The development of this list will leverage our understanding of municipal best practices based on our experience working with over 200 local and state clients across the United States and Canada. In addition to bringing our experience with other clients, as well as the information collected during the fact-finding process, our team will utilize best practice information from several sources. Organizations BerryDunn may consider during this process include, but are not limited to:

- **Information Technology Infrastructure Library (ITIL):** ITIL has prescribed five core processes that provide a framework for delivering IT services to an organization in order to "enable organizations to deliver appropriate services and continually ensure they are meeting the business goals and delivering benefits."[1] These processes are documented in Version 3 of the Library, published in 2007 and updated in 2011.
- **Computer Economics:** Computer Economics provides metrics for IT management, focusing on research and advisory information regarding the "strategic and financial management of information systems."[2] The study IT Spending and Staffing Benchmarks is the primary document from Computer Economics that is leveraged by BerryDunn in our IT planning projects.
- **Project Management Institute (PMI):** PMI is a "leading not-for-profit membership association for the project management profession."[3] PMI provides concepts and a framework for best practices in project management and also certifies practitioners in project management with its certifications, including the Project Management Professional (PMP) certification.
- **International Organization for Standardization (ISO):** ISO is the world's largest developer and publisher of international standards with over 18,500 published standards.[4] Several standards are directly applicable to government organizations in a variety of topics such as security, risk management, and disaster recovery.
- **COBIT Framework (COBIT):** The framework created by the Information Systems Audit and Control Association (ISACA) for information technology management and IT governance.[5] ISACA's COBIT Framework provides an overarching view of enterprise IT governance reflecting the importance of information and technology in establishing a core direction for enterprises.
- **National Institute of Standards and Technology (NIST):** The National Institute of Standards and Technology (NIST) is an agency of the U.S. Department of Commerce. The NIST 800 Series is a set of documents that describe United States federal government computer security policies, procedures, and guidelines, such as Disaster Recovery Planning (DRP), Continuity of Operations Planning (COOP), and

other contingency planning.

We will meet with the Town's E-government Team, and other stakeholders on-site to walk through our Preliminary List of Strategic IT Issues and validate findings prior to facilitating the group work session to review and prioritize the list. Our experience has shown that validating the issues and findings helps create buy-in for future recommendations.

Deliverable: D2. Preliminary List of Strategic IT Issues

Phase 3: Data Analysis

8. Confirm and prioritize strategic IT issues. We will conduct an on-site meeting with department heads to walk through the Preliminary List of Strategic IT Issues, to confirm issues, and vote on the priority of issues. The Prioritized List of Strategic IT Issues will be utilized to guide the timing and cost allocation of future project initiatives, and help the Town with a methodology by which future initiatives can be prioritized for inclusion in the IT Strategic Plan.

Deliverable: D3. Prioritized List of Strategic IT Issues

9. Conduct follow-up meetings related to mission, vision, and goals. Following our on-site meeting to confirm and prioritize the List of Strategic IT Issues, we will meet with the Town project manager and relevant stakeholders to discuss the Town's mission, vision, and goals. We will use the information collected during these meetings to develop an IT strategic planning process for the Town that builds upon the Town and IT mission, vision, and goals. This planning process will enable the Town to continuously update the plan as needed.

10. Identify and document current and planned IT projects. Based on the information obtained to date and with the input of the Town's E-government Team representatives, we will identify and document the IT projects that are currently underway and those that are planned for the immediate to near future. This information will provide the reader of the Plan with an understanding of the history, trends, and future requirements for the Town's documented IT initiatives. Doing so will enable Town leaders to be better equipped to justify future IT expenditures during the budgeting process.

11. Develop and distribute IT initiatives planning templates. As part of the planning process, we will seek input from Town departments regarding relevant projects and initiatives that should be considered during the strategic planning process. BerryDunn will develop an IT initiatives planning template that will be provided to the Town project manager and department representatives prior to our strategy meetings. We will request that the Town departments use the template to identify projects and initiatives prior to our on-site strategy meeting so we may make best use of Town personnel time.

12. Develop Preliminary List of IT Projects and Initiatives. We will meet on-site with the Town project manager and department representatives to develop both short- and long-term IT initiatives and Town-wide strategies to include in the Town's IT Strategic Plan. The purpose of this work session will be to discuss the results of the projects and initiatives template and ask each department to vote on the priority of projects and initiatives at the conclusion of the meeting. Collaboration and involvement of Town departments is a key ingredient to the successful identification of IT-related initiatives that will become the basis for the Town's IT Strategic Plan.

Deliverable: D4. Preliminary List of IT Projects and Initiatives

Phase 4: Strategy Formation

13. Prioritize List of Projects and Initiatives. Following our on-site visit, we will prioritize the Preliminary List of Projects and Initiatives based on Town voting and BerryDunn recommendations.

Deliverable: D5. Prioritized List of Projects and Initiatives

14. Develop Information Technology Strategic Plan. BerryDunn will develop a draft of the Town's Information Technology Strategic Plan based on the fact-finding, research, and analyses conducted. We will document our repeatable methodology that will enable the Town to update this Plan on an ongoing basis and prioritize future initiatives. The Draft Plan will include descriptions of each strategic initiative, a timeline for implementation of the initiatives, and estimated costs over a five-year planning horizon with recommendations on options for capital and operational funding. In addition, we will provide recommendations for an IT governance strategy to guide the Town's IT operations and assets.

The Draft Plan will also include recommendations and guidelines for the Town's development of IT policies and procedures, as identified during the analysis phase of the project. We will provide a table of contents outlining the policy documentation we recommend for the Town.

We will submit the Draft Plan to the Town and provide at least 15 days for its E-government Team to review the content and provide feedback. We will meet with the Town's E-government Team via teleconference to review and discuss the content of the draft plan and receive feedback from the Town. Following our meeting, we will incorporate changes identified by the Town in an updated and final version.

Deliverable: D6. Information Technology Strategic Plan

15. Provide ongoing project management. As part of BerryDunn's ongoing project management of this engagement, we will provide bimonthly status updates. These brief reports will include a description of the activities and accomplishments for the reporting period, plans for the upcoming two weeks, problems encountered during the reporting period, anticipated problems that may impact any project deliverable, and hours worked on a daily basis by staff.

Deliverable: D7. Bimonthly Project Status Updates

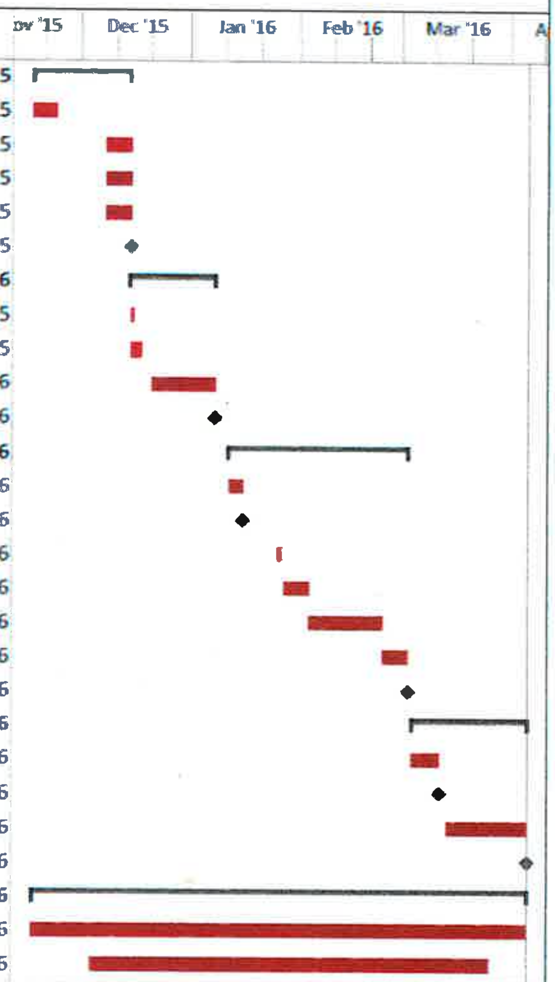
TOF and BerryDunn Agreement for Professional Services
Attachment A SCOPE OF WORK

PROJECT SCHEDULE

BerryDunn

Town of Farragut
Information Technology Strategic Plan
BerryDunn's Preliminary Project Schedule

Task Name	Duration	Start	Finish
Phase 1: Project Planning	**20 days**	**Tue 11/17/15**	**Mon 12/14/15**
Conduct initial project planning.	5 days	Tue 11/17/15	Mon 11/23/15
Request and review existing documentation.	5 days	Tue 12/8/15	Mon 12/14/15
Develop Project Work Plan and Schedule.	5 days	Tue 12/8/15	Mon 12/14/15
Develop and administer web-based end-user survey.	5 days	Tue 12/8/15	Mon 12/14/15
D1. Project Work Plan and Schedule	0 days	Mon 12/14/15	Mon 12/14/15
Phase 2: Fact-Finding	**18 days**	**Tue 12/15/15**	**Thu 1/7/16**
Facilitate project kickoff meeting.	1 day	Tue 12/15/15	Tue 12/15/15
Conduct on-site fact-finding meetings.	3 days	Tue 12/15/15	Thu 12/17/15
Develop Preliminary List of Strategic IT Issues.	14 days	Mon 12/21/15	Thu 1/7/16
D2. Preliminary List of Strategic IT Issues	0 days	Thu 1/7/16	Thu 1/7/16
Phase 3: Data Analysis	**37 days**	**Tue 1/12/16**	**Wed 3/2/16**
Confirm and prioritize strategic IT issues.	4 days	Tue 1/12/16	Fri 1/15/16
D3. Prioritized List of Strategic IT Issues	0 days	Fri 1/15/16	Fri 1/15/16
Conduct follow-up meetings related to mission, vision, and goals.	1 day	Tue 1/26/16	Tue 1/26/16
Identify and document current and planned IT projects.	5 days	Thu 1/28/16	Wed 2/3/16
Develop and distribute IT initiatives planning templates.	15 days	Thu 2/4/16	Wed 2/24/16
Develop Preliminary List of IT Projects and Initiatives.	5 days	Thu 2/25/16	Wed 3/2/16
D4. Preliminary List of IT Projects and Initiatives	0 days	Wed 3/2/16	Wed 3/2/16
Phase 4: Strategy Formation	**23 days**	**Fri 3/4/16**	**Tue 4/5/16**
Prioritize List of Projects and Initiatives.	6 days	Fri 3/4/16	Fri 3/11/16
D5. Prioritized Technology Projects and Initiatives Memo	0 days	Fri 3/11/16	Fri 3/11/16
Develop Information Technology Strategic Plan	17 days	Mon 3/14/16	Tue 4/5/16
D6. Information Technology Strategic Plan	0 days	Tue 4/5/16	Tue 4/5/16
Project Management	**101 days**	**Tue 11/17/15**	**Tue 4/5/16**
Provide ongoing project management.	101 days	Tue 11/17/15	Tue 4/5/16
D7. Bi-Monthly Project Status Updates	81 days	Fri 12/4/15	Fri 3/25/16



AGENDA NUMBER VII. A. 1. **MEETING DATE** **November 12, 2015**

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: Mark Shipley, Community Development Director

SUBJECT: Ordinance 15-17, an Ordinance to Amend the text of the Farragut Municipal Code, pursuant to authority granted by Section 13-4-310, Tennessee Code Annotated, by adding Title 14, Chapter 7., Farragut Vested Property Rights in Development Standards

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BACKGROUND:

Last year in the State of Tennessee Legislature, an amendment to the Tennessee Code Annotated (TCA) was approved in relation to vested property rights. This bill was known as the Vested Property Rights Act of 2014 (hereinafter referred to as the "law"). The law became effective on January 1, 2015. The municipal planning commission portion of this law (TCA, Section 13-4-310) is included in your packet.

The basic intent of this law is to provide an applicant with some certainty that plans/plats that have been approved will be subject to the applicable locally adopted development standards that were in effect when the approval occurred. In general, the law provides an initial 3 years of vesting with the possibility of an additional 2 years and further extensions authorized by the local government not to exceed 10 years, unless an extension is granted by the local government through an ordinance or resolution. Where developments are in multiple phases, the vesting period (for all phases) could be up to 15 years, unless an extension is granted by the local government through an ordinance or resolution.

The law addresses what would terminate vested rights, what would not apply to this law (such as, but not necessarily limited to, building and fire codes, federal or state laws, properties that are found to contain hazards or that otherwise may constitute a serious threat to the public health, safety, or welfare, etc.,), amendments to development plans that could nullify vesting, and definitions. Though the act provides its own language with respect to what would be vested, it does permit a local government to adopt by ordinance or resolution the specific types of development plans that will cause property rights to vest. The law also permits the local government to specify what constitutes approval of a development plan.

DISCUSSION:

Though adoption of such an ordinance or resolution is not mandatory, if the local government does not make the clarifications provided for in the law, the law would be applied as written in the TCA. The Town staff felt that such clarifications would be helpful in applying this aspect of the TCA. Consequently, Ordinance 15-17 was presented to the planning commission in September as a workshop item and, after some modifications provided by the Town Attorney and Town staff, was unanimously approved at the planning commission meeting on October 15.

RECOMMENDATION BY:

Ordinance 15-17 was approved on first reading and the staff recommends approval of Ordinance 15-17 on second reading.

PROPOSED MOTION:

To approve Ordinance 15-17 on second reading.

BOARD ACTION:

MOTION BY:____________________________ **SECONDED BY:**____________________________

VOTE/TOTAL	MCGILL	PINCHOK	HONKEN	LAMARCHE	MARKLI
YES					
NO					
ABSTAIN					

ORDINANCE:	**15-17**
PREPARED BY:	**Shipley**
REQUESTED BY:	**Staff**
CERTIFIED BY FMPC:	**October 15, 2015**
PUBLIC HEARING:	______________
PUBLISHED IN:	______________
DATE:	______________
1ST READING:	______________
2ND READING:	______________
PUBLISHED IN:	______________
DATE:	______________

AN ORDINANCE TO AMEND THE TEXT OF THE FARRAGUT MUNICIPAL CODE, PURSUANT TO AUTHORITY GRANTED BY SECTION 13-4-310, TENNESSEE CODE ANNOTATED BY ADDING TITLE 14, CHAPTER 7., FARRAGUT VESTED PROPERTY RIGHTS IN DEVELOPMENT STANDARDS.

WHEREAS, Tennessee Code Annotated (TCA) Section 13-4-310 as amended by Public Chapter No. 686, establishes statewide standards for municipal planning for "vesting periods" upon the approval of final development plans; and

WHEREAS, during the vesting periods established under the new Act, local governments may not apply development standards other than those in effect at the time of approval of the development plan, except as permitted by the Act; and

WHEREAS, the Act took effect January 1, 2015, provided that local governments may pass an ordinance or resolution to identify the types of development plans that will cause property rights to become vested and specify the actions that constitute approval of such development plans;

NOW, THEREFORE, BE IT ORDAINED the Board of Mayor and Aldermen of the Town of Farragut, Tennessee, that the Farragut Municipal Code, is hereby amended as follows:

SECTION 1.

The Farragut Municipal Code, Title 14, Land Use Controls, is amended by adding the following:

CHAPTER 7.

VESTED PROPERTY RIGHTS IN DEVELOPMENT STANDARDS

14-701. Purpose and intent. The purpose and intent of this ordinance is to comply with Tennessee Code Annotated, § 13-4-310(e), pursuant to which the Town is authorized to specifically identify by ordinance:

(1) The types of development plans within the Town's jurisdiction that will cause, once approved, property rights in development standards applicable to the specific development plan approved to become vested; and

(2) To specify what action constitutes approval of development plans within the Town, after the occurrence of which will result in the development standards applicable to the specific development plan approved being vested as required by Tennessee Code Annotated, § 13-4-310.

14-702. Plans constituting development plans and entitled to vesting.

(1) As provided in Tennessee Code Annotated, § 13-4-310(k)(5)(A), all preliminary plats, site plans, landscape plans, and final plats as provided for in the Town's regulations shall be entitled to vesting to the extent allowed by Tennessee Code Annotated, §13-4-310.

(2) As provided in Tennessee Code Annotated, § 13-4-310(k)(6), concept plans as provided for in the Town's regulations shall be entitled to vesting to the extent allowed by Tennessee Code Annotated, §13-4-310.

14-703. Plan approval. Approval of any development plan, as described in this ordinance, shall occur upon the affirmative acknowledgment in writing by Town staff of the satisfactory completion of all conditions and "subject to" requirements specified by the Town of Farragut Municipal Planning Commission, and/or the Town of Farragut Visual Resources Review Board, and/or the Town of Farragut Board of Mayor and Aldermen as part of the formal approval process.

SECTION 2.

This ordinance shall take effect from and after its final passage and publication, the public welfare requiring it.

____
Dr. Ralph McGill, Mayor

____
Allison Myers, Town Recorder

Certified to the Farragut Board of Mayor and Aldermen this _____ day of ___________, 2015, with approval recommended.

Rita Holladay
Rita Holladay, Chairman

E. K. Whit

Edwin K. Whiting, Secretary

FARRAGUT MUNICIPAL PLANNING COMMISSION

RESOLUTION PC-15-14

FARRAGUT MUNICIPAL PLANNING COMMISSION

A RESOLUTION TO AMEND THE TEXT OF THE FARRAGUT MUNICIPAL CODE, TITLE 14., LAND USE CONTROLS, TO CREATE CHAPTER 7. FARRAGUT VESTED PROPERTY RIGHTS IN DEVELOPMENT STANDARDS

WHEREAS, the Tennessee Code Annotated, Section 13-4-201 et seq, provides that the Municipal Planning Commission shall make and adopt a general plan for the physical development of the municipality; and

WHEREAS, the Farragut Municipal Planning Commission has adopted various elements of a zoning plan as an element of the general plan for physical development; and

WHEREAS, a public hearing was held on this request on October 15, 2015;

NOW, THEREFORE, BE IT RESOLVED that the Farragut Municipal Planning Commission hereby recommends approval to the Farragut Board of Mayor and Aldermen of an ordinance, amending the text of the Farragut Municipal Code, Title 14., Land Use Controls, by adding Ordinance 15-17.

ADOPTED this 15th day of October, 2015.

Rita Holladay

Rita Holladay, Chairman

Edwin K. Whiting

Edwin K. Whiting, Secretary

Tenn. Code Ann. § 13-4-310

TENNESSEE CODE ANNOTATED

*** Current through the 2015 Regular Session and amendments approved at the November 4, 2014 General Election ***

Title 13 Public Planning And Housing
Chapter 4 Municipal Planning
Part 3 Municipal Planning Regulations

Tenn. Code Ann. § 13-4-310 (2015)

13-4-310. Power of municipal planning commission to promulgate provisions for development -- Vesting period for development standards as to approved development plans.

(a) A municipal planning commission shall have the power to promulgate provisions in its subdivision regulations and recommend amendments to the zoning ordinance for the establishment of review and approval powers for site plans and the establishment under the zoning provisions for review and approval of planned unit developments, overlay districts, mixed use developments, condominiums and other types of sustainable design and development of property. The provision of well-designed and properly constructed infrastructure within such development is vital to the health, safety and welfare of the public utilizing said development and the community as a whole. These types of developments typically contain infrastructure that may be dedicated to a governmental entity or may be controlled by other types of bodies or non-governmental entities including, but not limited to, property owner associations. These infrastructure and internal development improvements such as, but not limited to, public and non-public roads, water and sewer lines, landscaping, green space, sustainable design features and other improvements as required by the planning commission, either through its subdivision regulation or through the local government's zoning ordinance, shall be subject to bonding or other methods of guaranteeing their installation. The planning commission may set and hold these guaranteeing instruments or may designate to another governmental body that duty and function.

(b) A vested property right shall be established with respect to any property upon the approval, by the local government in which the property is situated, of a preliminary development plan or a final development plan where no preliminary development plan is required by ordinance or regulation or a building permit allowing construction of a building where there was no need for prior approval of a preliminary development plan for the property on which that building will be constructed. During the vesting period described in subsections (c) and (d), the locally adopted development standards which are in effect on the date of approval of a preliminary development plan or the date of approval of a building permit, as described by this subsection (b), shall remain the development standards applicable to that property or building during the vesting period.

(c) Unless an extension is granted by the local government, the vesting period applicable to an approved construction project for which a building permit has been issued shall begin on the date of issuance of the building permit by the local government and shall remain in effect for the time period authorized by the approved building permit, including any approved renewal obtained by the applicant prior to the expiration or termination of the permit to be renewed; provided, that the applicant pursues with reasonable diligence site preparation, if applicable, and construction.

(d) (1) The vesting period applicable to a development plan shall be a period of three (3) years, beginning on the date of the local government's approval of the preliminary development plan; provided, that the applicant obtains local government approval of a final development plan, secures any necessary permits and commences site preparation within the vesting period. If the applicant obtains local government approval of a final development plan, secures any necessary permits, and commences site preparation within the vesting period, then the vesting period shall be extended an additional two (2) years to commence construction from the date of the expiration of the three-year period. During the two-year period, the applicant shall commence construction and maintain any necessary permits to remain vested.

(2) If construction commences during the vesting period, the development standards applicable during the vesting period shall remain in effect until the local government has certified final completion of the development or project; provided, the total vesting period for the project shall not exceed ten (10) years from the date of the approval of the preliminary development plan unless the local government grants an extension pursuant to an ordinance or resolution; provided further, that the applicant maintains any necessary permits during the ten-year period.

(3) In the case of developments which proceed in two (2) or more sections or phases as described in the development plan, there shall be a separate vesting period applicable to each section or phase. The development standards which are in effect on the date of approval of the preliminary development plan for the first section or phase of the development shall remain the development standards applicable to all subsequent sections or phases of the development; provided, that the total vesting period for all phases shall not exceed fifteen (15) years from the date of the approval of the preliminary development plan for the first section or phase unless the local government grants an extension pursuant to an ordinance or resolution; provided further, that the applicant maintains any necessary permits during the fifteen-year period.

(e) A local government may, by ordinance or resolution, specifically identify the type or types of development plans within the local government's jurisdiction that will cause property rights to vest; provided, that regardless of nomenclature used in the ordinance or resolution to describe a development plan, a plan which contains any of the information described in subdivision (k)(5) or (k)(6) shall be considered a development plan that will cause property rights to vest according to this section. Any such ordinance or resolution shall also specify what constitutes approval of a development plan within its jurisdiction. If a local government has not adopted an ordinance or resolution pursuant to this section specifying what constitutes a development plan that would trigger a vested property right, then rights shall vest upon the approval of any plan, plat, drawing, or sketch, however denominated, that is substantially similar to any plan, plat, drawing, or sketch described in subdivision (k)(5) or (k)(6).

(f) (1) During the vesting period described in subsections (c) and (d), the locally adopted development standards which are in effect on the date of approval of a preliminary development plan or the issuance of a building permit, whichever applies, shall remain the development standards applicable to the property described in such preliminary development plan or permit, except such rights shall terminate upon a written determination by the local government under the following circumstances pursuant to subdivision (f)(2):

(A) When the applicant violates the terms and conditions specified in the approved development plan or building permit; provided, that the applicant is given ninety (90) days from the date of notification to cure the violation; provided further, that the local government may, upon a determination that such is in the best interest of the community, grant, in writing, an additional time period to cure the violation;

(B) When the applicant violates any of the terms and conditions specified in the local ordinance or resolution; provided, the applicant is given ninety (90) days from the date of notification to cure the violation; provided further, that the local government may, upon a determination that such is in the best interest of the community, grant, in writing, an additional time period to cure the violation;

(C) Upon a finding by the local government that the applicant intentionally supplied inaccurate information or knowingly made misrepresentations material to the issuance of a building permit or the approval of a development plan or intentionally and knowingly did not construct the development in accordance with the issued building permit or the approved development plan or an approved amendment for the building permit or the development plan; or

(D) Upon the enactment or promulgation of a state or federal law, regulation, rule, policy, corrective action or other governance, regardless of nomenclature, that is required to be enforced by the local government and that precludes development as contemplated in the approved development plan or building permit, unless modifications to the development plan or building permit can be made by the applicant, within ninety (90) days of notification of the new requirement, which will allow the applicant to comply with the new requirement.

(2) A written determination by the local government of the occurrence of any of the circumstances provided in subdivision (f)(1) shall cause the vested property rights to terminate; provided, however, that a local government may allow a property right to remain vested despite such a determined occurrence when a written determination is made that such continuation is in the best interest of the community.

(g) **(1)** A vested development standard shall not preclude local government enforcement of any development standard when:

(A) The local government obtains the written consent of the applicant or owner;

(B) The local government determines, in writing, that a compelling, countervailing interest exists relating specifically to the development plan or property which is the subject of the building permit that seriously threatens the public health, safety or welfare of the community and the threat cannot be mitigated within a reasonable period of time, as specified in writing by the local government, by the applicant using vested property rights;

(C) Upon the written determination by the local government of the existence of a natural or man-made hazard on or in the immediate vicinity of the subject property, not identified in the development plan or building permit, and which hazard, if uncorrected, would pose a serious threat to the public health, safety, or welfare and the threat cannot be mitigated within a reasonable period of time, as specified in writing by the local government, by the applicant using vested property rights;

(D) A development standard is required by federal or state law, rule, regulation, policy, corrective action, order or other type of governance that is required to be enforced by local governments, regardless of nomenclature; or

(E) A local government is undertaking an action initiated or measure instituted in order to comply with a newly enacted federal or state law, rule, regulation, policy, corrective action, permit, order or other type of governance, regardless of nomenclature.

(2) A vested property right does not preclude, change, amend, alter or impair the authority of a local government to exercise its eminent domain powers as provided by law.

(3) This section shall not preclude, change, amend, alter or impair the authority of a local government to exercise its zoning authority, except a vested property right, once established as provided for in this section, precludes the effect of any zoning action by a local government which would change, alter, impair, prevent, diminish, or otherwise delay the development of the property, while vested, as described in an approved development plan or building permit.

(4) In the event the local government enacts a moratorium on development or construction, the vesting period authorized pursuant to this section shall be tolled during the moratorium period.

(h) **(1)** An amendment to an approved development plan by the developer must be approved by the local government to retain the protections of the vested property right. An amendment may be denied based upon a written finding by the local government that the amendment:

(A) Alters the proposed use;

(B) Increases the overall area of the development;

(C) Alters the size of any nonresidential structures included in the development plan;

(D) Increases the density of the development so as to affect traffic, noise or other environmental impacts; or

(E) Increases any local government expenditure necessary to implement or sustain the proposed use.

(2) If an amendment is denied by the local government based upon such a written finding, then the applicant may either proceed under the prior approved plan with the associated vested property right or, alternatively, allow the vested property right to terminate and submit a new application under this section. Notwithstanding this subsection (h), a vested property right shall not terminate if the local government determines, in writing, that it is in the best interest of the community to allow the development to proceed under the amended plan without terminating the vested property right.

(i) A local government shall not require an applicant to waive the applicant's vested rights as a condition of approval or as a consideration of approval of a development plan or the issuance of a building permit.

(j) A vested property right shall attach to and run with the applicable property and shall confer upon the applicant the right to undertake and complete the development and use such property under the terms and conditions of a development plan, including any amendments thereto or under the terms and conditions of any building permit that has been issued with respect to the property.

(k) As used in this section:

(1) "Applicant" means a landowner or developer who is responsible for filing with the local government an application for a building permit, a development plan or application for a permit requisite to a development plan, or the representatives, assigns, successors, transferees, heirs or agents of such landowner or developer;

(2) "Construction" means the erection of construction materials in a permanent position and fastened in a permanent manner. Where excavation, demolition or removal of an existing building has been substantially begun prior to rebuilding, such excavation, demolition or removal shall be deemed to be construction; provided, that work shall be carried on diligently and complies with all applicable requirements;

(3) "Development plan" means both a preliminary development plan and a final development plan;

(4) "Development standards":

(A) Means all locally adopted or enforced standards, regulations or guidelines applicable to the development of property, including, but not limited to, planning; local storm water requirements, layout, design; local construction standards for buildings, streets, alleys, curbs, sidewalks; zoning as provided for in subsection (g); lot size; lot configuration; yard dimensions; and off-site improvements, including public or private infrastructure, in which an applicant may acquire vested rights or vested property rights according to this section; and

(B) Does not include standards required by federal or state law; or building construction safety standards which are adopted pursuant to authority granted under § 68-120-101;

(5) **(A)** "Final development plan" means a plan which has been submitted by an applicant and approved by a local government describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of property. Such plan may be in the form of, but not be limited to, any of the following plans or approvals:

(i) A planned unit development plan;

(ii) A subdivision plat;

(iii) General development plan;

(iv) Subdivision infrastructure construction plan;

(v) Final engineered site plan; or

(vi) Any other land-use approval designation as may be utilized by a local government;

(B) Unless otherwise expressly provided by the local government, such a plan shall include the boundaries of the site; significant topographical and other natural features affecting development of the site; the location on the site of the proposed buildings, structures, and other improvements; the dimensions, including height, of the proposed buildings and other structures or a building envelope; and the location of all existing and proposed infrastructure on the site, including water, sewer, roads, and pedestrian walkways. A variance shall not constitute a final development plan, and approval of a final development plan with the condition that a variance be obtained shall not confer a vested property right unless and until the necessary variance is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type of use, the intensity of use, and the ability to be served with essential utilities and road infrastructure for a specified parcel or parcels of property may constitute a final development plan;

(6) "Preliminary development plan" means a plan which has been submitted by an applicant and that depicts a single-phased or multi-phased planned development typically used to facilitate initial public feedback and secure preliminary approvals from local governments. Examples of information found on development plans include proposed land uses, density and intensity of development, public utilities, road networks, general location of off-street parking, building location, number of buildable lots, emergency access, open space, and other environmentally sensitive areas such as lakes, streams, hillsides, and view sheds. An approved preliminary development plan serves as a guide for all future improvements within defined boundaries; and

(7) "Site preparation" means excavating, grading, demolition, removing excess debris to allow for proper grading, or providing a surface for a proper foundation, drainage, and settling for a development project, and physical improvements including, but not limited to, water and sanitary sewer lines, footings, or foundations installed on the site for which construction permits are required.

HISTORY: Acts 2010, ch. 634, § 2; 2014, ch. 686, § 2.

Municipal Technical Advisory Service

Published on *MTAS MORe* (https://mtasresource.mtas.tennessee.edu)

Dear Reader:

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We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MORe material.

Sincerely,

The University of Tennessee
Municipal Technical Advisory Service
600 Henley Street, Suite 120
Knoxville, TN 37996-4105
865-974-0411 phone
865-974-0423 fax
www.mtas.tennessee.edu

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Vested Property Rights

Reference Number: MTAS-1990

Public Chapter No. 686 Vested Property Rights Act of 2014

The Tennessee General Assembly enacted Public Chapter No. 686, the "Vested Property Rights Act of 2014" which amends Title 13, Chapters 3 and 4 regarding the powers of regional planning commissions and municipal planning commissions.

As enacted, far-reaching statutory requirements are established relative to development standards and vested property rights for landowners and developers that will affect the ability of cities to establish and update contemporary development standards to guide land use and growth in the future. The act is effective immediately for purposes of a city adopting a vested property rights ordinance or resolution (as discussed below), and becomes effective January 1, 2015 for all other purposes.

The act specifically amends T.C.A. § 13-3-413 for regional planning commissions and T.C.A. § 13-4-310 for municipal planning commissions.

The following summary sections are applicable to both regional planning commissions and municipal planning commissions. The full-text of the act should be consulted.

Definitions of Vested Property Rights

Reference Number: MTAS-1991

"*Applicant*" means a landowner or developer or any party, representative, agent, successor, or heirs of the landowner of developer.

"*Construction*" means the erection of construction materials in a permanent manner, and includes excavation, demolition, or removal of an existing building.

"*Development plan*" means both a preliminary development plan and a final development plan.

"*Development standards*" means all locally adopted or enforced standards applicable to the development of property including, but not limited to planning: storm water requirements; layout; design; local infrastructure construction standards, off-site improvements, lot size, configuration, and dimensions. NOT included are standards required by federal or state law, or building construction safety codes.

"*Final development plan*" means a plan approved by the local government describing with reasonable certainty the use of property. Such plan may be in the form of, but not limited to, a planned unit development plan; subdivision plat; general development plan; subdivision infrastructure construction plan; final engineered site plan; or any other land-use approval designated utilized. UNLESS otherwise expressly provided by the city, such a plan shall include the boundaries of the site; significant topographical features affecting the development of the site; locations of improvements; building dimensions; and the location of all existing and proposed infrastructure on the site. Neither a sketch plan or other document that fails to describe with reasonable certainty the use and development scheme may constitute a final development plan.

"*Preliminary development plan*" means a plan submitted to facilitate initial public feedback, and secure preliminary approvals from local government. It serves as a guide for all future improvements.

"*Site preparation*" means excavation, grading, demolition, drainage, and physical improvements such as water and sewer lines, footings, and foundations.

Vesting Rights and Periods

Reference Number: MTAS-1992

Vested property rights are established for any preliminary development plan, final development plan (where no preliminary development plan is required), or building permit issued to allow construction of a building to commence where there is no local requirement for prior approval of a preliminary development plan.

During the vesting period, the locally adopted development standards in effect on the date of approval remain the development standards applicable to that property or building during the vesting period as follows:

- **Building permit projects (no preliminary plan approval)** - The vesting period commences on the date of building permit issuance and remains in effect for the period authorized by the building permit.
- **Development plan project** - The vesting period applicable to a development plan is three years, beginning on the date of approval of the preliminary development plan; provided the applicant obtains final development plan approval, secure permits, and commences site preparation within the 3-year vesting period.
- If the applicant obtains approval of a final development plan, secures permits, and commences site preparation within the 3-year vesting period, then the vesting period is extended an additional two years (to a total of five years) to commence construction from the date of preliminary plan approval. During the two year period, the applicant shall commence construction and maintain any necessary permits to remain vested.
- If construction commences within the 5-year vesting period following preliminary development plan approval, the development standards in effect on the date of approval remain in effect until final completion of the project, provided however, that the vesting period shall not exceed ten (10) years unless the city grants an extension through an ordinance or resolution; and provided further that the applicant maintain all necessary permits during the 10-year period.
- **Multi-phase projects** – A separate vesting period applies for projects proceeding in two or more sections or phases (as set forth in the development plan). The development standards in effect on the date of approval of the preliminary development plan for the first section or phase remain in effect for all subsequent sections or phases; provided the total vesting period does not exceed fifteen (15) years unless the city grants an extension through an ordinance or resolution; and provided that the applicant maintain all necessary permits during the 15-year period.

Type of Project	Effective Date	Vesting Period	Total Vesting Period to Maintain Vested Rights	Required Actions
Building Permit (No development plan required)	Date of Issuance of Building Permit	Period authorized by the building permit	Period authorized by the building permit	Complete construction within period authorized by the building permit
Development Plan				
Preliminary Development Plan	Date of Issue	3 Years	3 Years	Obtain Final Development Plan approval; secure permits; and commence site preparation
Final Development Plan	3 years from date of Preliminary Plan approval	2 Years	5 Years	Commence construction, maintain permits
	5 years from date of Preliminary Plan approval	5 Years	10 Years	Complete construction; maintain permits
Multi-phase or sections	Date of Issue of Preliminary Development Plan	Separate vesting period for each phase or section	15 Years	Complete construction for each phase; maintain permits

A vested property right attaches to and runs with the applicable property and confers upon the applicant the right to undertake and complete the development and use such property under the terms and conditions of a development plan, including any amendments thereto or under the terms and conditions of any building permit that has been issued with respect to the property.

Adoption of Local Ordinances

Reference Number: MTAS-1994

Adoption of Local Ordinances Regarding Vested Property Rights

A city may, by ordinance or resolution, specifically identify the type or types of development plans that will cause property rights to vest; provided, that regardless of nomenclature used in the ordinance or resolution to describe a development plan, a plan which contains any of the information for a preliminary development plan or final development plan shall be considered a development plan that will cause property rights to vest. Although the law states a city may adopt a local ordinance or resolution, it must be in the form of an ordinance if an existing code previously enacted by ordinance (such as a zoning ordinance) will be amended.

Any such ordinance or resolution shall also specify what constitutes approval of a development plan. If a city has not adopted an ordinance or resolution pursuant to this section specifying what constitutes a development plan that would trigger a vested property right, then rights shall vest upon the approval of any plan, plat, drawing, or sketch, however denominated, that is substantially similar to any plan, plat, drawing, or sketch approved as a preliminary development plan or final development plan.

Termination of Vesting Rights

Reference Number: MTAS-1995

During the vesting period, the locally adopted development standards which are in effect on the date of approval of a preliminary development plan or the issuance of a building permit, whichever applies, remain the development standards applicable to the property described in such preliminary development plan or permit, except such vested property rights terminate upon a written determination by the city under the following circumstances:

- When the applicant violates the terms and conditions specified in the approved development plan or building permit; provided, the applicant is given ninety (90) days from the date of notification to cure the violation; provided further, that the city may, upon a determination that such is in the best interest of the community, grant, in writing, an additional time period to cure the violation;
- When the applicant violates any of the terms and conditions specified in the local ordinance or resolution; provided, the applicant is given ninety (90) days from the date of notification to cure the violation; provided further, that the city may, upon a determination that such is in the best interest of the community, grant, in writing, an additional time period to cure the violation;]
- Upon a finding by the city that the applicant intentionally supplied inaccurate information or knowingly made misrepresentations material to the issuance of a building permit or the approval of a development plan or intentionally and knowingly did not construct the development in accordance with the issued building permit or the approved development plan or an approved amendment for the building permit or the development plan; or
- Upon the enactment or promulgation of a state or federal law, regulation, rule, policy, corrective action or other governance, regardless of nomenclature, that is required to be enforced by the city and that precludes development as contemplated in the approved development plan or building permit, unless modifications to the development plan or building permit can be made by the applicant, within ninety (90) days of notification of the new requirement, which will allow the applicant to comply with the new requirement.

A city may allow a property right to remain vested despite such a determined occurrence when a written determination is made that such continuation is in the best interest of the community by the city.

Development Standards Enforcement

Reference Number: MTAS-1996

A vested development standard shall not preclude city enforcement of any development standard when:

- The city obtains the written consent of the applicant or owner;

- The city determines, in writing, that a compelling, countervailing interest exists relating specifically to the development plan or property which is the subject of the building permit that seriously threatens the public health, safety or welfare of the community and the threat cannot be mitigated within a reasonable period of time, as specified in writing by the city, by the applicant using vested property rights;
- Upon the written determination by the city of the existence of a natural or man-made hazard on or in the immediate vicinity of the subject property, not identified in the development plan or building permit, and which hazard, if uncorrected, would pose a serious threat to the public health, safety, or welfare and the threat cannot be mitigated within a reasonable period of time, as specified in writing by the local government, by the applicant using vested property rights;
- A development standard is required by federal or state law, rule, regulation, policy, corrective action, order, or other type of governance that is required to be enforced by the city, regardless of nomenclature; or
- A city is undertaking an action initiated or measure instituted in order to comply with a newly enacted federal or state law, rule, regulation, policy, corrective action, permit, order, or other type of governance, regardless of nomenclature.

Development Plan Amendment

Reference Number: MTAS-1997

An amendment to an approved development plan by the applicant must be approved by the city to retain the protections of the vested property right. An amendment may be denied based upon a written finding by the city that the amendment:

- Alters the proposed use;
- Increases the overall area of the development;
- Alters the size of any nonresidential structures included in the development plan;
- Increases the density of the development so as to affect traffic, noise or other environmental impacts; or
- Increases any local government expenditure necessary to implement or sustain the proposed use.

If an amendment is denied by the city based upon such a written finding, then the applicant may either proceed under the prior approved plan with the associated vested property right or, alternatively, allow the vested property right to terminate and submit a new application. Notwithstanding the foregoing, a vested property right shall not terminate if the city determines, in writing, that it is in the best interest of the community to allow the development to proceed under the amended plan without terminating the vested property right.

Waiver Rights Prohibited

Reference Number: MTAS-1998

A city may not require an applicant to waive the applicant's vested rights as a condition of approval, or as a consideration of approval, of a development plan or the issuance of a building permit.

Extension of Rights

Reference Number: MTAS-1999

The vesting period for an approved construction project may be extended as deemed advisable by the city.

Zoning with Vested Property Rights

Reference Number: MTAS-2000

A vested property right, once established, precludes the effect of any zoning action by a city which would change, alter, impair, prevent, diminish, or otherwise delay the development of the property, while vested, as described in an approved development plan or building permit. With said exception, nothing shall preclude, change, amend, alter or impair the authority of a city to exercise its zoning authority.

Development Moratorium

Reference Number: MTAS-2001

In the event a city enacts a moratorium on development or construction, the vesting period established by this act shall be tolled during the moratorium period.

Eminent Domain with Vested Property Rights

Reference Number: MTAS-2002

A vested property right does not preclude, change, amend, alter or impair the authority of a city to exercise its eminent domain powers as provided by law.

Next Steps for Vested Property Rights

Reference Number: MTAS-2003

The adoption of an ordinance to amend local development codes to comport city requirements to the Vested Property Rights Act of 2014 should be considered. Such an ordinance will provide clarity going forward as to the newfound vesting rights that are afforded to landowners and developers as of January 1, 2015.

Due to the unique nature and style of various development codes, requirements, and terminology used by cities across the state, the development of a model ordinance would be too general to be of use. Such ordinances must rather be tailored to fit each city's plan for development and growth.

Source URL (retrieved on *10/12/2015 - 14:44*): https://mtasresource.mtas.tennessee.edu/reference/vested-property-rights

AGENDA NUMBER VII.A.2. MEETING DATE **November 12, 2015**

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: Mark Shipley, Community Development Director

SUBJECT: Ordinance 15-18, an Ordinance to Amend the text of the Farragut Zoning Ordinance, Ordinance 86-16, as amended, pursuant to authority granted by section 13-4-201, Tennessee Code Annotated, by amending Chapter 4., Section XXIII., Site Plan Regulations, Subsection B., Validity, to clarify the procedure for approval of plans as it relates to the Vested Property Rights in Development Standards.

BACKGROUND:

Related to the previous item, Ordinance 15-18 includes an amendment to the Farragut Zoning Ordinance that would delete existing language concerning the validity of site plan approvals. The language would be replaced with a new subsection titled, Site Plan Approval, which would stipulate that site plan approvals shall be in accordance with the Vested Property Rights in Development Standards Ordinance that is being created through Ordinance 15-17.

RECOMMENDATION BY:

Ordinance 15-18 would make the zoning ordinance consistent with the Tennessee Code Annotated and the Town's Vested Property Rights in Development Standards Ordinance. At their meeting on October 15, the planning commission voting unanimously to approve Ordinance 15-18.

PROPOSED MOTION:

Ordinance 15-18 was approved on first reading and the staff recommends approval of Ordinance 15-18 on second reading.

BOARD ACTION:

MOTION BY:____________________ **SECONDED BY:**____________________

VOTE/TOTAL	MCGILL	PINCHOK	HONKEN	LAMARCHE	MARKLI
YES					
NO					
ABSTAIN					

ORDINANCE:	**15-18**
PREPARED BY:	**Shipley**
REQUESTED BY:	**Staff**
CERTIFIED BY FMPC:	**October 15, 2015**
PUBLIC HEARING:	______________________
PUBLISHED IN:	______________________
DATE:	______________________
1ST READING:	______________________
2ND READING:	______________________
PUBLISHED IN:	______________________
DATE:	______________________

AN ORDINANCE TO AMEND THE TEXT OF THE FARRAGUT ZONING ORDINANCE, ORDINANCE 86-16, AS AMENDED, PURSUANT TO AUTHORITY GRANTED BY SECTION 13-4-201, TENNESSEE CODE ANNOTATED, BY AMENDING CHAPTER 4., SECTION XXIII., SITE PLAN REGULATIONS, SUBSECTION B., VALIDITY, TO CLARIFY THE PROCEDURE FOR APPROVAL OF PLANS AS IT RELATES TO THE VESTED PROPERTY RIGHTS IN DEVELOPMENT STANDARDS

WHEREAS, the Board of Mayor and Aldermen of the Town of Farragut, Tennessee, wishes to amend Chapter 4, Section XXIII., Site Plan Regulations, Subsection B., Validity, of the Farragut Zoning Ordinance, Ordinance 86-16,

NOW, THEREFORE, BE IT ORDAINED by the Board of Mayor and Aldermen of the Town of Farragut, Tennessee, that the Farragut Zoning Ordinance is hereby amended as follows:

SECTION 1.

The Farragut Zoning Ordinance, Chapter 4, Section XXIII., Site Plan Regulations, Subsection B., Validity, is amended by deleting it in its entirety and substituting in lieu thereof the following:

SECTION 2.

B. Site Plan Approval

The development standards in existence at the time of and applicable to the specific site plan approved shall be vested in accordance with Title 14, Chapter 7, of the Farragut Municipal Code, as amended.

SECTION 3.

This ordinance shall take effect from and after its final passage and publication, the public welfare requiring it.

Dr. Ralph McGill, Mayor

Allison Myers, Town Recorder

Certified to the Farragut Board of Mayor and Aldermen this _____ day of ___________, 2015, with approval recommended.

Rita Holladay

Rita Holladay, Chairman

E. K. Whit

Edwin K. Whiting, Secretary

FARRAGUT MUNICIPAL PLANNING COMMISSION

Current Wording, Chapter 4, Section XXIII., B. of the Farragut Zoning Ordinance

B. *Validity.* Site plans shall expire six (6) months after planning commission approval if a grading permit has not been issued. If a building permit is not issued within three (3) months of grading permit issuance, the grading permit shall be rescinded. If a building permit or grading permit expires or is rescinded, the site plan shall also expire.

Once the site plan has been implemented, the site shall remain in compliance with the approved site plan. Any variation from the approved site plan shall require the approval of an amendment to the site plan.

Proposed Wording, Chapter 4., Section XXIII., B. of the Farragut Zoning Ordinance

B. *Site Plan Approval.* The development standards in existence at the time of and applicable to the specific site plan approved shall be vested in accordance with Title 14, Chapter 7, of the Farragut Municipal Code, as amended.

RESOLUTION PC-15-15

FARRAGUT MUNICIPAL PLANNING COMMISSION

A RESOLUTION TO APPROVE AN AMENDMENT TO THE TEXT OF THE FARRAGUT ZONING ORDINANCE, ORDINANCE 86-16, AS AMENDED, PURSUANT TO AUTHORITY GRANTED BY SECTION 13-4-201, TENNESSEE CODE ANNOTATED, BY AMENDING CHAPTER 4., SECTION XXIII., SITE PLAN REGULATIONS., B. VALIDITY, TO CLARIFY THE PROCEDURE FOR APPROVAL OF PLANS AS IT RELATES TO THE VESTED PROPERTY RIGHTS IN DEVELOPMENT STANDARDS PROVISIONS IN THE FARRAGUT MUNICIPAL CODE

WHEREAS, the Tennessee Code Annotated, Section 13-4-201 et seq, provides that the Municipal Planning Commission shall make and adopt a general plan for the physical development of the municipality; and

WHEREAS, the Farragut Municipal Planning Commission has adopted various elements of a zoning plan as an element of the general plan for physical development; and

WHEREAS, a public hearing was held on this request on October 15, 2015;

NOW, THEREFORE, BE IT RESOLVED that the Farragut Municipal Planning Commission hereby recommends approval to the Farragut Board of Mayor and Aldermen of an ordinance, amending Ordinance 86-16, of the Farragut Zoning Ordinance, by adding Ordinance 15-18.

ADOPTED this 15th day of October, 2015.

Rita Holladay

Rita Holladay, Chairman

Edwin K. Whiting

Edwin K. Whiting, Secretary

AGENDA NUMBER VII.B.1. **MEETING DATE** **November 12, 2015**

REPORT TO THE BOARD OF MAYOR AND ALDERMEN

PREPARED BY: Mark Shipley, Community Development Director

SUBJECT: Ordinance 15-19, an ordinance to rezone a portion of Parcel 78.01, Tax Map 142, located at 200 Boring Road, from R-2 to R-1 (Ryan Lynch, Applicant)

BACKGROUND:

This item involves a request to rezone a two acre tract that is being created as part of a re-subdivision plat involving Parcel 78.01, Tax Map 142. The property is currently zoned General Single-Family Residential (R-2) and the property owner is selling a two acre portion that fronts along Boring Road with the intent of using a portion of the existing barn on the property for hay and equipment storage for farming operations on adjacent properties.

DISCUSSION:

In the R-2 Zoning District agricultural structures are only permitted on lots that are at least five acres, which the current parent tract would satisfy. However, the lot cannot be subdivided when it would result in the creation of a zoning ordinance violation. In order to address this issue, the applicant is requesting that the proposed two acre tract be rezoned to Rural Residential (R-1). In the R-1 Zoning District, agricultural uses and structures are permitted as long as the lot is at least one acre.

RECOMMENDATION:

The property to the south and east of the proposed two acre tract is zoned R-1. As the staff noted at the planning commission meeting, any rezoning approval will need to be conditioned on a portion of the existing barn being removed so that it is at least 35 feet from all property lines. This is the required setback for agricultural structures in the R-1 Zoning District. A plat will also have to be submitted since zoning lines must follow property lines. The approval of such plat would also need to be a condition of the rezoning approval.

At their meeting on October 15, the planning commission unanimously recommended approval of Ordinance 15-19 subject to the barn being removed to the extent that it would meet required setbacks and to a plat being submitted that would establish the lot that is being rezoned. This plat has been submitted and will be considered for approval at the next planning commission meeting on November 19.

PROPOSED MOTION:

The staff recommends approval of Ordinance 15-19 on first reading.

BOARD ACTION:

MOTION BY:____________________ **SECONDED BY:**____________________

VOTE/TOTAL	MCGILL	PINCHOK	HONKEN	LAMARCHE	MARKLI
YES					
NO					
ABSTAIN					

ORDINANCE:	**15-19**
PREPARED BY:	**Shipley**
REQUESTED BY:	**Ryan Lynch**
CERTIFIED BY FMPC:	**October 15, 2015**
PUBLIC HEARING:	______________________
PUBLISHED IN:	______________________
DATE:	______________________
1ST READING:	______________________
2ND READING:	______________________
PUBLISHED IN:	______________________
DATE:	______________________

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE TOWN OF FARRAGUT, TENNESSEE, ORDINANCE 86-16, AS AMENDED, PURSUANT TO SECTION 13-4-201, TENNESSEE CODE ANNOTATED.

BE IT ORDAINED by the Board of Mayor and Aldermen of the Town of Farragut, Tennessee, that the Farragut Zoning Ordinance, Ordinance 86-16, as amended, is hereby amended as follows:

SECTION 1.

The Farragut Zoning Ordinance, Ordinance 86-16, as amended, is hereby amended by rezoning a portion of Parcel 78.01, Tax Map 142, located at 200 Boring Road, from General Single-Family Residential (R-2) to Rural Residential (R-1) (Exhibits A and B).

SECTION 2.

This ordinance shall take effect from and after its final passage and publication, the public welfare requiring it.

____
Dr. Ralph McGill, Mayor

____
Allison Myers, Town Recorder

Certified to the Farragut Board of Mayor and Aldermen this _____ day of ___________, 2015, with approval recommended.

Rita Holladay, Chairman

Edwin K. Whiting, Secretary

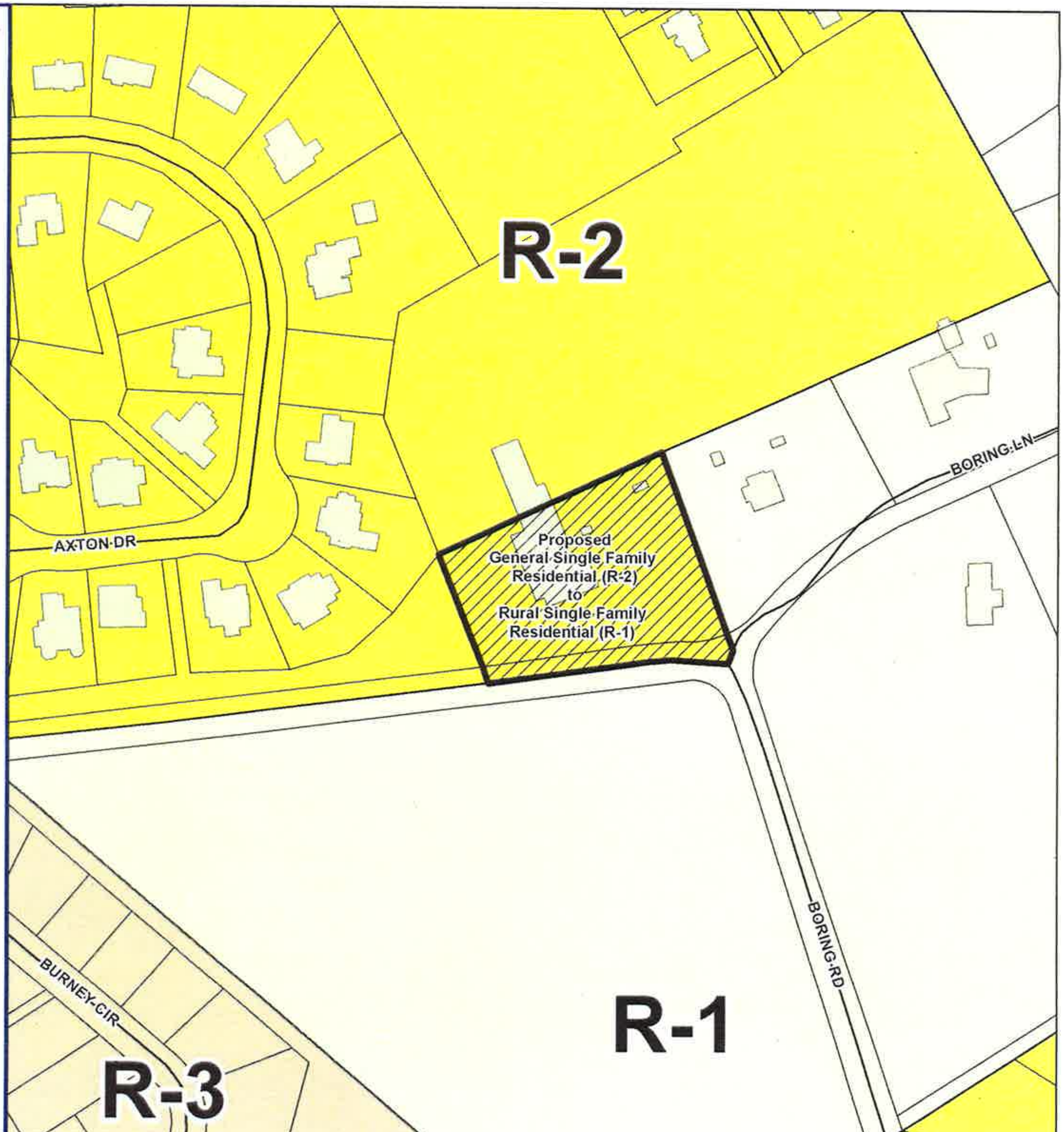
FARRAGUT MUNICIPAL PLANNING COMMISSION

farragut

Ordinance 15-19
Exhibit A

Rezone
a portion of Parcel 78.01, Tax Map 142

From
General Single Family
Residential (R-2)
to
Rural Single Family
Residential (R-1)



- Streets
- Parcel
- Subject Property
- Buildings
- R-1, Rural Single-Family Residential
- R-2, General Single-Family Residential
- R-3, Small Lot Single-Family Residential

1 in = 200 ft

Document Path: G:\Farragut\Map Documents\2015\Ordinance 15-19.mxd

RESOLUTION PC-15-17

FARRAGUT MUNICIPAL PLANNING COMMISSION

A RESOLUTION TO APPROVE AN AMENDMENT TO THE FARRAGUT ZONING MAP, ORDINANCE 86-16, TO RECOMMEND THE APPROVAL OF THE REZONING OF A PORTION OF PARCEL 78.01, TAX MAP 142, LOCATED AT 200 BORING ROAD, FROM R-2 TO R-1

WHEREAS, the Tennessee Code Annotated, Section 13-4-201et seq, provides that the Municipal Planning Commission shall make and adopt a general plan for the physical development of the municipality; and

WHEREAS, the Farragut Municipal Planning Commission has adopted various elements of a zoning plan as an element of the general plan for physical development; and

WHEREAS, a public hearing was held on this request on October 15, 2015;

NOW, THEREFORE, BE IT RESOLVED that the Farragut Municipal Planning Commission hereby recommends approval to the Farragut Board of Mayor and Aldermen of an ordinance, amending Ordinance 86-16, of the Farragut Zoning Ordinance, by adding Ordinance 15-19.

ADOPTED this 15th day of October, 2015.

Rita Holladay, Chairman

Edwin K. Whiting, Secretary