

ORDINANCE 2024-13

AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF FAIRVIEW, TENNESSEE, BY REZONING 5.60 (+/-) ACRES OF PROPERTY LOCATED AT THE SOUTHEAST CORNER OF THE INTERSECTION OF FAIRVIEW BOULEVARD AND CUMBERLAND DRIVE, CONSISTING OF WILLIAMSON COUNTY TAX MAP 046, PARCEL 108.05, FROM RS-40 (SINGLE FAMILY RESIDENTIAL) TO CMU (COMMERCIAL MIXED USE ZONING DISTRICT), PROPERTY OWNER: S&W FAIRVIEW PARTNERS

WHEREAS, the City of Fairview zoning ordinance, and the zoning maps therein adopted be, and the same are hereby amended by rezoning the property herein described as 5.60 (+/-) acres of property consisting of Williamson County tax map 046, parcel 108.05, located at the Southeast corner of the intersection of Fairview Boulevard and Cumberland Drive, from RS-40 (Single Family Residential) to CMU (Commercial Mixed Use Zoning District), property owner: S&W Fairview Partners; and

WHEREAS, said property to be rezoned from RS-40 to CMU is located within the corporate limits of the City of Fairview; and

WHEREAS, the City of Fairview Municipal Planning Commission forwarded the request to the Board of Commissioners on July 9, 2024, with a **positive** recommendation for approval without conditions; and

WHEREAS, that all ordinances or parts of ordinances in conflict are hereby repealed; and

NOW THEREFORE BE IT ORDAINED BY THE CITY OF FAIRVIEW, TENNESSEE, BOARD OF COMMISSIONERS AS FOLLOWS:

The zoning ordinance of the City of Fairview, Tennessee, is hereby amended by rezoning 5.60 (+/-) acres of property consisting of Williamson County tax map 046, parcel 108.05, located at the Southeast corner of the intersection of Fairview Boulevard and Cumberland Drive, from RS-40 (Single Family Residential) to CMU (Commercial Mixed Use Zoning District), as requested by owner S&W Fairview Partners, the public welfare requiring it. The rezoning of this site shall be subject to all City of Fairview ordinances and regulations.



Approved by the Board of Commissioners:

Lisa Anderson, Mayor

ATTEST:

Rachel Jones, City Recorder

LEGAL FORM APPROVED:

Patrick M. Carter, City Attorney

Passed 1st Reading: August 1, 2024

Public Hearing: September 5, 2024

Passed 2nd Reading: _____

Published for public notice on: August 21, 2024 In: Main Street Fairview Newspaper

ORDINANCE 2024-14**AN ORDINANCE TO AMEND THE ZONING ORDINANCE OF THE CITY OF FAIRVIEW, TENNESSEE, BY REZONING 37.52 (+/-) ACRES OF PROPERTY LOCATED AT 2451 FAIRVIEW BOULEVARD, CONSISTING OF WILLIAMSON COUNTY TAX MAP 046, PARCEL 087.00, FROM CG (COMMERCIAL GENERAL) TO RM-8 POD & RS-10 POD, PROPERTY OWNER: BARKEAST, LLC**

WHEREAS, the City of Fairview zoning ordinance, and the zoning maps therein adopted be, and the same are hereby amended by rezoning the property herein described as 37.52 (+/-) acres of property consisting of Williamson County tax map 046, parcel 087.00, located at 2451 Fairview Boulevard from CG (Commercial General) to RM-8 POD & RS-10 POD, property owner: Barkeast, LLC; and

WHEREAS, this request is for 37.52 (+/-) acres of the parcel, with 12.51 (+/-) acres requested to be rezoned to RS-10 POD and 25.01 (+/-) acres are requested to be rezoned to RM-8 POD; and

WHEREAS, said property to be rezoned from CG to RM-8 POD & RS-10 POD is located within the corporate limits of the City of Fairview; and

WHEREAS, the City of Fairview Municipal Planning Commission forwarded the request to the Board of Commissioners on July 9, 2024, with a **negative** (5-4 vote) recommendation for approval without conditions and again on August 13, 2024, with a **neutral** (4-4 vote) recommendation for approval without conditions; and

WHEREAS, that all ordinances or parts of ordinances in conflict are hereby repealed; and

NOW THEREFORE BE IT ORDAINED BY THE CITY OF FAIRVIEW, TENNESSEE, BOARD OF COMMISSIONERS AS FOLLOWS:

The zoning ordinance of the City of Fairview, Tennessee, is hereby amended by rezoning 37.52 (+/-) acres of property consisting of Williamson County tax map 046, parcel 087.00, located at 2451 Fairview Boulevard, from CG (Commercial General) to RM-8 POD & RS-10 POD, as requested by owner Barkeast, LLC, the public welfare requiring it. The rezoning of this site shall be subject to all City of Fairview ordinances and regulations.



Approved by the Board of Commissioners:

Lisa Anderson, Mayor

ATTEST:

Rachel Jones, City Recorder

LEGAL FORM APPROVED:

Patrick M. Carter, City Attorney

Passed 1st Reading: August 1, 2024

Public Hearing: September 5, 2024

Passed 2nd Reading: _____

Published for public notice on: August 21, 2024 In: Main Street Fairview Newspaper

RESOLUTION 40-24

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AGREEMENT
BETWEEN KIMLEY-HORN AND ASSOCIATES, INC. AND THE CITY OF
FAIRVIEW, TENNESSEE**

WHEREAS, the City of Fairview (“Fairview”) desires to retain Kimley-Horn and Associates, Inc. (“Kimley-Horn”) for Professional Design, Architectural, and Engineering Services for Fairview Historical Village Park; and

WHEREAS, the parties have negotiated an agreement for said services, which is attached as Exhibit A hereto.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners, that the Mayor be authorized and directed to execute the AGREEMENT BETWEEN KIMLEY-HORN AND ASSOCIATES, INC. AND THE CITY OF FAIRVIEW, TENNESSEE, attached hereto as Exhibit A.

Passed and adopted this 5th day of September, 2024.

Lisa Anderson, Mayor

ATTEST:

Rachel Jones, City Recorder

LEGAL FORM APPROVED:

Patrick M. Carter, City Attorney



August 12, 2024

Tom Daugherty
City Manager
City of Fairview
7100 City Center Way
Fairview, TN 37062

Re: Professional Services Agreement
Fairview Historical Village Park

Dear Mr. Daugherty:

Kimley-Horn and Associates, Inc. (“Kimley-Horn” or “Consultant”) is pleased to submit this letter agreement (the “Agreement”) to the City of Fairview, Tennessee (“Client”) for providing professional services for the design and improvement of Historical Village Park, located at 7112 Westview Drive, Fairview, TN (“Site”).

Project Understanding

Kimley-Horn understands the proposed project to consist of the improvements of the existing Historical Village Park. These improvements will consist of preserving the existing historical structures on site, adding parking, adding a prefabricated restroom building, designing an amphitheater, an open-air stage, and covered farmer’s market pavilion, as well as ADA compliant sidewalks connecting these amenities. This initial contract is for the Schematic Design phase of this project and supplemental contract amendments will be provided for the Design Development phase and the Construction Documents phase.

Scope of Services

Kimley-Horn will provide the services specifically set forth below.

Task 1 – Project Coordination and Meetings

This task will consist of general project management, administrative, and accounting activities for the project. Coordination activities will consist of preparing and distributing project correspondence, scheduling of meetings, meeting facilitation, and discussion of project elements with the Client throughout the process.

Task 1.1 – Meeting with Stakeholders

Kimley-Horn and its subconsultant will attend one (1) in-person meeting with the Fairview Historical Association, a key stakeholder in the project, to discuss the vision and goals for the project as well as any other key and pertinent information to this project. General notes and topics of discussion will be documented in meeting minutes.

Task 1.2 – Meeting with the Client

Kimley-Horn and its subconsultant will attend one (1) in-person meeting with the Client with the purpose to discuss pertinent information related to this project that was brought up in the meeting between Kimley-Horn and the Historical Association. Kimley-Horn will also discuss any other key issues consisting of a

project schedule, identifying other key stakeholders, and other applicable information to the project. General notes and topics of discussion will be documented in meeting minutes.

Task 1.3 – Public Outreach Meeting

Kimley-Horn will facilitate and attend one (1) in-person public outreach meeting with the goal of getting feedback from the community on a preliminary design of the project.

Task 1.4 – Additional Meetings

Kimley-Horn will attend up to three (3) additional in-person meetings and will coordinate three (3) virtual calls with the Client during the design process to discuss updates, design progress, and other pertinent items.

Task 1.5 – Prefabricated Restroom Building Coordination

Kimley-Horn will coordinate with the Client to select the prefabricated restroom building. Kimley-Horn and its subconsultant will work with the vendor to select the building and exterior materials. The vendor will provide the building floorplan and building elevation details in PDF and AutoCAD format.

Task 2 – Architectural Development of Programming Documents

Kimley-Horn, through its subconsultant, will use feedback from the initial meetings as a basis for a draft programming document that will then be reviewed with the Historical Association as well as the City of Fairview representatives. Feedback from this review will be utilized to create a final version of this programming document which will provide the basis of the Architecture Schematic Design documents.

Task 3 – Boundary/Limited Topographic Survey

Kimley-Horn, through its subconsultant, will survey the area outlined in **Figure 1 – Survey Area** in order to produce boundary/limited topographic survey for the Site. This survey will consist of the following information:

- Boundary of 3.7 acre tract
- Topographic survey area to include adjacent streets
- Total topographic survey area, approximately 5.5 acres
- Location of improvements
- Location of accessible adjacent streets
- Contour interval of one (1) foot
- Location of visible utilities and those marked by the utility one-call coordinator
- Spot elevations along edges of pavement, curb, sidewalks, and parking
- Benchmark location and elevation
- Site pictures
- Required notes and certifications
- Electronic AutoCAD copy of survey

All survey data is to be delivered in Tennessee State Plane 4100, USFT. Vertical datum will be delivered in NAVD 8. The survey results shall meet or exceed Category I minimum standards as defined in 0820-03-.05 ACCURACY OF SURVEYS of Tennessee State Board of Examiners Standard of Practice. The survey will be delivered in AutoCAD (DWG) format. A copy of the stamped/signed survey is to be delivered in the Adobe PDF format (24"x36").



Figure 1 – Survey Area (shown in **blue** outline)

Task 4 – Geotechnical Report

Kimley-Horn, through its subconsultant, will provide eight (8) traditional geotechnical boring points. The proposed boring depths will be fifteen (15) feet. Borings will be terminated at shallower depths if refusal is encountered. The borings will be drilled in a grid format across the Site. The borings will be evaluated, and a preliminary geotechnical engineering report will be prepared. This preliminary report will consist of the following:

- Boring logs with field and laboratory data
- Stratification based on visual soil classification
- Groundwater levels observed during and after the completion of drilling
- Site Location and Exploration Plans
- Subsurface exploration procedures
- Description of subsurface conditions
- Preliminary recommended foundation options and engineering design parameters
- Estimated settlement of foundations
- Preliminary recommendations for design and construction of interior floor slabs
- Seismic site classification
- Earthwork recommendations including site/subgrade preparation
- Preliminary recommended pavement options and design parameters

Task 5 – Schematic Design

Kimley-Horn and its subconsultant will provide the following services in this task:

Task 5.1 – Civil Engineering

Kimley-Horn will:

- Review the survey, geotechnical report, environmental report, and conceptual site plan and advise if additional information is required for civil design and permitting.
- Generate a base drawing of the site from the digital boundary and topographic survey. The base drawings will serve as the existing conditions plan for all design development and drawing production.
- Modify the conceptual site plan in an effort to make it dimensionally accurate, parallel and perpendicular, and suitable for use to prepare the site permit and construction documents.
- Request water and sewer capacity letters from Water Authority of Dickson County and develop a utility service concept.
- Review existing topography based on survey information and develop a grading concept to inform building and site elevations.
- Develop preliminary stormwater concepts for the required detention and water quality per City of Fairview standards and illustrate them on the modified conceptual site plan.
- Schematic Layout, Grading, and Utility Plan Set.
- Begin coordination with Middle Tennessee Electric for relocating powerlines. This coordination will consist of one (1) virtual meeting with Middle Tennessee Electric.

Task 5.2 – Landscape Architecture

Kimley-Horn will provide schematic design level concept plans for the project elements including parking, a prefabricated restroom facility, an amphitheater, an open-air stage, and covered farmer's market pavilion, as well as ADA compliant sidewalks connecting these amenities. During the schematic design phase, Kimley-Horn will provide the following service:

- The Schematic Design documents shall be based on the mutually agreed upon program, schedule, and budget for the project. The documents shall establish the conceptual design of the project illustrating the scale and relationship of the project components.
- Kimley-Horn shall provide one (1) computer-rendered schematic design plan with any character imagery that help define the project elements.
- The initial schematic design shall be presented at the one (1) Public Outreach Meeting, referenced in Task 1.3. One (1) round of revisions from the public and/or the Client will be incorporated into the documents. Major changes that represent a significant departure from the original design shall be considered an additional service.

Task 5.3 – Architecture

Kimley-Horn, through its subconsultant, will prepare Schematic Design (30% level) documents for an open-air amphitheater and covered pavilion to serve as the farmer's market as necessary to describe the project and generate preliminary pricing. These documents will consist of the following drawings as well as brief narrative information on each sheet to describe intent of building systems (power, lighting, etc.):

- Site Plan
- Floor Plan

- Elevations
- Sections

Task 6 – Architectural Evaluation of Existing Historical Buildings

Kimley-Horn, through its subconsultant, will evaluate the existing historic building (the Triangle School, the two smaller structures on site, and potential other historic structures that could be moved to the site) based on feedback and information provided by the Client and the Historical Association. Recommendations will be made for any repairs, relocations, or potential re-uses and a scope for necessary work will be provided in order to generate preliminary pricing.

Task 7 – 3D Illustrations

Kimley-Horn will prepare 3D illustrations using SketchUp & Lumion to model the Site based on a mutually agreed upon schematic design. Five (5) high resolution 3D illustrations will be provided for use at the Public Outreach Meeting, referenced in Task 1.3. One (1) round of revisions from the public and/or the Client will be incorporated into the 3D illustrations. Major changes that represent a significant departure from the original design shall be considered an additional service.

Task 8 – Opinion of Probable Cost

Kimley-Horn will provide an opinion of the probable construction cost to accompany the schematic design plans. The opinion of probable construction cost will be based on actual bid prices for recent projects which involved similar equipment and construction, to the extent that such information is available. This cost will be based on preliminary construction quantities developed from the schematic design plans.

Any opinions rendered as to costs, expenses, or revenue, including but not limited to opinions as to the costs of construction and materials, shall be made based on the Consultant's experience and represent its judgment as an experienced and qualified professional, familiar with the industry. The Consultant cannot and does not guarantee that proposals, bids, actual costs, or revenues will not vary from its opinions.

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. Additional services we can provide include, but are not limited to, the following:

- Additional meetings beyond those listed in the scope above
- Additional design beyond the scope that is outlined above
- Construction Documents
- Hydrological Determination Report
- Permitting
- Stormwater calculations, design, and permitting
- Structural engineering
- Utility design
- Site lighting and electrical design

- Irrigation design
- Bid phase services
- Construction phase services
- Others as requested by the Client

Fee and Expenses

Kimley-Horn will perform the services in the tasks noted as “Lump Sum” in the table below on a lump sum basis. All permitting, application, and similar project fees will be paid directly by the Client.

TASK	DESCRIPTION	FEE	FEE TYPE
1	Project Coordination & Meetings (Civil Engineering, Landscape Architecture, & Architecture)	\$18,300	Lump Sum
2	Arch. Development of Programming Documents	\$5,600	Lump Sum
3	Boundary/Limited Topographic Survey	\$9,500	Lump Sum
4	Geotechnical Report	\$9,750	Lump Sum
5	Schematic Design (Civil Engineering, Landscape Architecture, & Architecture)	\$45,000	Lump Sum
6	Arch. Evaluation of Historic Buildings	\$6,200	Lump Sum
7	3D Illustrations	\$8,000	Lump Sum
8	Opinion of Probable Cost	\$5,600	Lump Sum

Lump Sum tasks will be invoiced based upon percent complete. Payment will be due within 25 days of your receipt of the invoice and should include the invoice number and Kimley-Horn project number.

Closure

In addition to the matters set forth herein, our Agreement shall include and be subject to, and only to, the attached Standard Provisions, which are incorporated by reference. As used in the Standard Provisions, "Consultant" shall refer to Kimley-Horn and Associates, Inc., and "Client" shall refer to the City of Fairview.

Kimley-Horn, in an effort to expedite invoices and reduce paper waste, submits invoices via email in an Adobe PDF format. We can also provide a paper copy via regular mail if requested. Please include the invoice number and Kimley-Horn project number with all payments. Please provide the following information:

_____ Please email all invoices to _____

_____ Please copy _____

If you concur in all the foregoing and wish to direct us to proceed with the services, please have authorized persons execute both copies of this Agreement in the spaces provided below, retain one copy, and return the other to us. We will commence services only after we have received a fully-executed agreement. Fees and times stated in this Agreement are valid for sixty (60) days after the date of this letter.

We appreciate the opportunity to provide these services to you. Please contact me if you have any questions.

Sincerely,

KIMLEY-HORN AND ASSOCIATES, INC.



Brett Creasman, PE
Vice President

CITY OF FAIRVIEW, TENNESSEE

SIGNED: _____

PRINTED NAME: _____

TITLE: _____

DATE: _____

(Print or Type Name)

KIMLEY-HORN AND ASSOCIATES, INC.
STANDARD PROVISIONS (with modifications to sections 5 and 19)

- 1) **Kimley-Horn's Scope of Services and Additional Services.** Kimley-Horn will perform only the services specifically described in this Agreement ("Services"). Any services that are not set forth in the scope of Services described herein will constitute additional services ("Additional Services"). If requested by the Client and agreed to by Kimley-Horn, Kimley-Horn will perform Additional Services, which shall be governed by these provisions. Unless otherwise agreed to in writing, the Client shall pay Kimley-Horn for any Additional Services an amount based upon Kimley-Horn's then-current hourly rates plus an amount to cover certain direct expenses including telecommunications, in-house reproduction, postage, supplies, project related computer time, and local mileage. Other direct expenses will be billed at 1.15 times cost.
- 2) **Client's Responsibilities.** In addition to other responsibilities herein or imposed by law, the Client shall:
 - a. Designate in writing a person to act as its representative, such person having complete authority to transmit instructions, receive information, and make or interpret the Client's decisions.
 - b. Provide all information and criteria as to the Client's requirements, objectives, and expectations for the project and all standards of development, design, or construction.
 - c. Provide Kimley-Horn all available studies, plans, or other documents pertaining to the project, such as surveys, engineering data, environmental information, etc., all of which Kimley-Horn may rely upon.
 - d. Arrange for access to the site and other property as required for Kimley-Horn to provide its services.
 - e. Review all documents or reports presented by Kimley-Horn and communicate decisions pertaining thereto within a reasonable time so as not to delay Kimley-Horn.
 - f. Furnish approvals and permits from governmental authorities having jurisdiction over the project and approvals and consents from other parties as may be necessary.
 - g. Obtain any independent accounting, legal, insurance, cost estimating, and feasibility services required by Client.
 - h. Give prompt written notice to Kimley-Horn whenever the Client becomes aware of any development that affects Kimley-Horn's services or any defect or noncompliance in any aspect of the project.
- 3) **Period of Services.** Unless otherwise stated herein, Kimley-Horn will begin work after receipt of a properly executed copy of this Agreement. This Agreement assumes conditions permitting continuous and orderly progress through completion of the services. Times for performance shall be extended as necessary for delays or suspensions due to circumstances that Kimley-Horn does not control. If such delay or suspension extends for more than six months, Kimley-Horn's compensation shall be renegotiated.
- 4) **Method of Payment.** Client shall pay Kimley-Horn as follows:
 - a. Invoices will be submitted periodically for services performed and expenses incurred. Payment of each invoice will be due within 25 days of receipt. The Client shall also pay

any applicable sales tax. All retainers will be held by Kimley-Horn and applied against the final invoice. Interest will be added to accounts not paid within 25 days at the maximum rate allowed by law. If the Client fails to make any payment due under this or any other agreement within 30 days after Kimley-Horn's transmittal of its invoice, Kimley-Horn may, after giving notice to the Client, suspend services and withhold deliverables until all amounts due are paid.

- b. The Client will remit all payments electronically to:
Account Name: KIMLEY-HORN AND ASSOCIATES, INC.
Bank Name and Address: WELLS FARGO BANK, N.A., SAN FRANCISCO, CA 94104
Account Number: 2073089159554
ABA#: 121000248
 - c. The Client will send the project number, invoice number and other remittance information by e-mail to payments@kimley-horn.com at the time of payment.
 - d. If the Client relies on payment or proceeds from a third party to pay Kimley-Horn and Client does not pay Kimley-Horn's invoice within 60 days of receipt, Kimley-Horn may communicate directly with such third party to secure payment.
 - e. If the Client objects to an invoice, it must advise Kimley-Horn in writing giving its reasons within 14 days of receipt of the invoice or the Client's objections will be waived, and the invoice shall conclusively be deemed due and owing. If the Client objects to only a portion of the invoice, payment for all other portions remains due.
 - f. If Kimley-Horn initiates legal proceedings to collect payment, it shall recover, in addition to all amounts due, its reasonable attorneys' fees, reasonable experts' fees, and other expenses related to the proceedings. Such expenses shall include the cost, at Kimley-Horn's normal hourly billing rates, of the time devoted to such proceedings by its employees.
 - g. The Client agrees that the payment to Kimley-Horn is not subject to any contingency or condition. Kimley-Horn may negotiate payment of any check tendered by the Client, even if the words "in full satisfaction" or words intended to have similar effect appear on the check without such negotiation being an accord and satisfaction of any disputed debt and without prejudicing any right of Kimley-Horn to collect additional amounts from the Client.
- 5) **Use of Deliverables.** All documents, data, and other deliverables prepared by Kimley-Horn are related exclusively to the services described in this Agreement and may be used only if the Client has satisfied all of its obligations under this Agreement. They are not intended or represented to be suitable for use or reuse by the Client or others on extensions of this project or on any other project. Any modifications by the Client to any of Kimley-Horn's deliverables, or any reuse of the deliverables without written authorization by Kimley-Horn will be at the Client's sole risk and without liability to Kimley-Horn, and Kimley-Horn shall not be responsible for claims, damages, losses and expenses arising out or resulting from. Kimley-Horn's electronic files and source code remain the property of Kimley-Horn and shall be provided to the Client only if expressly provided for in this Agreement. Any electronic files not containing an electronic seal are provided only for the convenience of the Client and use of them is at the Client's sole risk. In the case of any defects in the electronic files or any discrepancies between them and the hardcopy of the deliverables prepared by Kimley-Horn, the hardcopy shall govern.

- 6) **Intellectual Property.** Kimley-Horn may use or develop its proprietary software, patents, copyrights, trademarks, trade secrets, and other intellectual property owned by Kimley-Horn or its affiliates (“Intellectual Property”) in the performance of this Agreement. Intellectual Property, for purposes of this section, does not include deliverables specifically created for Client pursuant to the Agreement and use of such deliverables is governed by section 5 of this Agreement. Unless explicitly agreed to in writing by both parties to the contrary, Kimley-Horn maintains all interest in and ownership of its Intellectual Property and conveys no interest, ownership, license to use, or any other rights in the Intellectual Property to Client. Any enhancements of Intellectual Property made during the performance of this Agreement are solely owned by Kimley-Horn and its affiliates. If Kimley-Horn’s services include providing Client with access to or a license for Kimley-Horn’s (or its affiliates’) proprietary software or technology, Client agrees to the terms of the Software License Agreement set forth at <https://www.kimley-horn.com/khts-software-license-agreement> (“the License Agreement”) which terms are incorporated herein by reference.
- 7) **Opinions of Cost.** Because Kimley-Horn does not control the cost of labor, materials, equipment or services furnished by others, methods of determining prices, or competitive bidding or market conditions, any opinions rendered as to costs, including but not limited to the costs of construction and materials, are made solely based on its judgment as a professional familiar with the industry. Kimley-Horn cannot and does not guarantee that proposals, bids or actual costs will not vary from its opinions of cost. If the Client wishes greater assurance as to the amount of any cost, it shall employ an independent cost estimator. Kimley-Horn's services required to bring costs within any limitation established by the Client will be paid for as Additional Services.
- 8) **Termination.** The obligation to provide further services under this Agreement may be terminated by either party upon seven days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof, or upon thirty days' written notice for the convenience of the terminating party. Kimley-Horn shall be paid for all services rendered and expenses incurred to the effective date of termination, and other reasonable expenses incurred by Kimley-Horn as a result of such termination.
- 9) **Standard of Care.** The standard of care applicable to Kimley-Horn’s services will be the degree of care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. No warranty, express or implied, is made or intended by Kimley-Horn's performance of services, and it is agreed that Kimley-Horn is not a fiduciary with respect to the Client.
- 10) **LIMITATION OF LIABILITY.** In recognition of the relative risks and benefits of the Project to the Client and Kimley-Horn, the risks are allocated such that, to the fullest extent allowed by law, and notwithstanding any other provisions of this Agreement or the existence of applicable insurance coverage, that the total liability, in the aggregate, of Kimley-Horn and Kimley-Horn's officers, directors, employees, agents, and subconsultants to the Client or to anyone claiming by, through or under the Client, for any and all claims, losses, costs, attorneys’ fees, or damages whatsoever arising out of or in any way related to the services under this Agreement from any causes, including but not limited to, the negligence, professional errors or omissions, strict liability or breach of contract or any warranty, express or implied, of Kimley-Horn or Kimley-Horn's officers, directors, employees, agents, and subconsultants, shall not exceed twice the total compensation received by

Kimley-Horn under this Agreement or \$50,000, whichever is greater. Higher limits of liability may be negotiated for additional fee. This Section is intended solely to limit the remedies available to the Client or those claiming by or through the Client, and nothing in this Section shall require the Client to indemnify Kimley-Horn.

- 11) **Mutual Waiver of Consequential Damages.** In no event shall either party be liable to the other for any consequential, incidental, punitive, or indirect damages including but not limited to loss of income or loss of profits.
- 12) **Construction Costs.** Under no circumstances shall Kimley-Horn be liable for extra costs or other consequences due to changed or unknown conditions or related to the failure of contractors to perform work in accordance with the plans and specifications. Kimley-Horn shall have no liability whatsoever for any costs arising out of the Client's decision to obtain bids or proceed with construction before Kimley-Horn has issued final, fully approved plans and specifications. The Client acknowledges that all preliminary plans are subject to substantial revision until plans are fully approved and all permits obtained.
- 13) **Certifications.** All requests for Kimley-Horn to execute certificates, lender consents, or other third-party reliance letters must be submitted to Kimley-Horn at least 14 days prior to the requested date of execution. Kimley-Horn shall not be required to execute certificates, consents, or third-party reliance letters that are inaccurate, that relate to facts of which Kimley-Horn does not have actual knowledge, or that would cause Kimley-Horn to violate applicable rules of professional responsibility.
- 14) **Dispute Resolution.** All claims arising out of this Agreement or its breach shall be submitted first to mediation in accordance with the American Arbitration Association as a condition precedent to litigation. Any mediation or civil action by Client must be commenced within one year of the accrual of the cause of action asserted but in no event later than allowed by applicable statutes.
- 15) **Hazardous Substances and Conditions.** Kimley-Horn shall not be a custodian, transporter, handler, arranger, contractor, or remediator with respect to hazardous substances and conditions. Kimley-Horn's services will be limited to analysis, recommendations, and reporting, including, when agreed to, plans and specifications for isolation, removal, or remediation. Kimley-Horn will notify the Client of unanticipated hazardous substances or conditions of which Kimley-Horn actually becomes aware. Kimley-Horn may stop affected portions of its services until the hazardous substance or condition is eliminated.
- 16) **Construction Phase Services.**
 - a. If Kimley-Horn prepares construction documents and Kimley-Horn is not retained to make periodic site visits, the Client assumes all responsibility for interpretation of the documents and for construction observation, and the Client waives any claims against Kimley-Horn in any way connected thereto.
 - b. Kimley-Horn shall have no responsibility for any contractor's means, methods, techniques, equipment choice and usage, equipment maintenance and inspection, sequence, schedule, safety programs, or safety practices, nor shall Kimley-Horn have any authority or responsibility to stop or direct the work of any contractor. Kimley-Horn's visits will be for

the purpose of observing construction and reporting to the Client whether the contractors' work generally conforms to the construction documents prepared by Kimley-Horn. Kimley-Horn neither guarantees the performance of contractors, nor assumes responsibility for any contractor's failure to perform its work in accordance with the contract documents.

- c. Kimley-Horn is not responsible for any duties assigned to it in the construction contract that are not expressly provided for in this Agreement. The Client agrees that each contract with any contractor shall state that the contractor shall be solely responsible for job site safety and its means and methods; that the contractor shall indemnify the Client and Kimley-Horn for all claims and liability arising out of job site accidents; and that the Client and Kimley-Horn shall be made additional insureds under the contractor's general liability insurance policy.

- 17) **No Third-Party Beneficiaries; Assignment and Subcontracting.** This Agreement gives no rights or benefits to anyone other than the Client and Kimley-Horn, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole benefit of the Client and Kimley-Horn. The Client shall not assign or transfer any rights under or interest in this Agreement, or any claim arising out of the performance of services by Kimley-Horn, without the written consent of Kimley-Horn. Kimley-Horn reserves the right to augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or market conditions. If Kimley-Horn exercises this right, Kimley-Horn will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are provided by in-house employees, contract employees, or independent subconsultants.
- 18) **Confidentiality.** The Client consents to the use and dissemination by Kimley-Horn of photographs of the project and to the use by Kimley-Horn of facts, data and information obtained by Kimley-Horn in the performance of its services. If, however, any facts, data or information are specifically identified in writing by the Client as confidential, Kimley-Horn shall use reasonable care to maintain the confidentiality of that material.
- 19) **Miscellaneous Provisions.** This Agreement is to be governed by the law of the State where the Project is located. This Agreement contains the entire and fully integrated agreement between the parties and supersedes all prior and contemporaneous negotiations, representations, agreements, or understandings, whether written or oral. Except as provided in Section 1, this Agreement can be supplemented or amended only by a written document executed by both parties. Any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by Kimley-Horn. If Client requires Kimley-Horn to register with or use an online vendor portal for payment or any other purpose, any terms included in the registration or use of the online vendor portal that are inconsistent or in addition to these terms shall be void and shall have no effect on Kimley-Horn or this Agreement. Any provision in this Agreement that is unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions. The non-enforcement of any provision by either party shall not constitute a waiver of that provision nor shall it affect the enforceability of that provision or of the remainder of this Agreement. Exclusive venue for any disputes arising pursuant to this Agreement shall be in the Circuit Court for Williamson County.

RESOLUTION 41-24

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE AN AMENDMENT TO THE WORK ORDER BETWEEN RAGAN SMITH ASSOCIATES, LLC AND THE CITY OF FAIRVIEW, TENNESSEE

WHEREAS, the City of Fairview retains Ragan Smith for Fairview’s on-call engineering services; and

WHEREAS, both parties have negotiated an amendment to the work order for the Northwest Highway roadway improvements, which is attached as Exhibit A hereto.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners, that the mayor be authorized and directed to execute the AMENDMENT TO THE ON-CALL WORK ORDER FOR ENGINEERING SERVICES BETWEEN RAGAN SMITH AND THE CITY OF FAIRVIEW, TENNESSEE, attached hereto as Exhibit A.

Passed and adopted this 5th day of September, 2024.

Lisa Anderson, Mayor

ATTEST:

Rachel Jones, City Recorder

LEGAL FORM APPROVED:

Patrick M. Carter, City Attorney



RaganSmith

a Pape-Dawson company

August 19, 2024

VIA EMAIL: egreer@fairview-tn.org

Mr. Ethan Greer
City Planner
City of Fairview
7100 City Center Way
Fairview, Tennessee 37062

**RE: ON-CALL FOR ENGINEERING SERVICES – AMENDMENT #3 TO
WORK ORDER #1 (NW HIGHWAY ROADWAY IMPROVEMENTS)**

Dear Ethan:

Ragan-Smith-Associates, LLC (f/k/a **Ragan-Smith-Associates, Inc.**) is pleased to provide the following proposal for surveying, transportation planning, preliminary engineering, ROW, permitting and construction engineering inspection services for the above-referenced project, in accordance with this letter and the Contract Terms and Conditions, which is attached hereto and incorporated by reference.

Introduction

The City of Fairview is seeking to provide design, bid management, and construction engineering inspections for \$9.4 million in various municipal road construction and road improvement projects.

Responsibilities will include, but are not limited to:

- Provide engineering design services for various roadway and related capital projects
- Prepare bid and construction documents for roadway and related capital projects
- Prepare itemized estimates of proposed project costs by using up to date costs information
- Prepare project specifications and bid documents
- Prepare bid notices
- Prepare bid advertisements
- Assist with the evaluation of bids and make recommendations for contract awards
- Perform construction engineering inspection (CEI) services for contracted projects
- Perform other services as necessary to complete the design, bidding, management, and construction engineering and inspections of roadways and related capital projects

This Amendment to Work Order #1 is for the development of right-of-way plans, acquisition of right-of-way, utility coordination, development of construction plans, environmental coordination and permitting, and oversight of the project contract bidding process for the improvements to Northwest Highway and State Route 96, as described below.

Scope of Work

RaganSmith has been asked to develop preliminary, right-of-way, and construction plans for the realignment and widening of NW Highway from SR-96 to approximately 875' to the south.

The proposed improvements seek to widen NW Highway to a 3 12-foot lane section with curb and gutter and 5-foot sidewalks along both sides of the road and to provide a realigned 90 degree signalized

NASHVILLE

315 Woodland Street
P.O. Box 60070
Nashville, TN 37206
(615) 244-8591

MURFREESBORO

1500 Medical Center Parkway
Suite 2 J
Murfreesboro, TN 37129
(615) 546-6050

CHATTANOOGA

35 Station Street
Chattanooga, TN 37408
(423) 490-9400



intersection at NW Highway and SR-96. A new box culvert will be designed to replace the existing culvert along the existing roadbed. SR-96 was to be widened symmetrically to accommodate a left turn lane and a dedicated right turn lane at the newly aligned NW Highway intersection.

Amendment #1 to Work Order #1 provided for the preliminary design of the improvements to Northwest Highway and State Route 96 as mentioned above.

Amendment #2 to Work Order #1 provided for the of preliminary design of the improvements to Northwest Highway and State Route 96, as stated in Amendment #1, but with SR-96 designed to be widened asymmetrically in order to reduce utility impacts along the State Route.

Amendment #3 to Work Order #1 is for the project management, the development of right-of-way plans, acquisition of right-of-way, utility coordination, development of construction plans, environmental coordination and permitting, and oversight of the project contract bidding process for the improvements to Northwest Highway and State Route 96, as described below.

1.0 - PROJECT MANAGEMENT AND COORDINATION

The Project Management and Coordination Tasks are further described below:

- 1.1. Progress meetings with the City during plans development, as needed
- 1.2. Internal team meetings / action items / coordination
- 1.3. Milestone meetings (ROW and Construction) with the City (remote meetings)
- 1.4. Invoices on a monthly basis

Deliverables:

- *Progress Meeting Agendas and Meeting Minutes*
- *Milestone Meeting Agendas and Meeting Minutes*
- *Monthly Invoices*

2.0 – RIGHT-OF-WAY PLANS DEVELOPMENT

The ROW Plans Development Tasks are further described below:

- 2.1. Develop design plans to establish permanent ROW and easement requirements for acquisition (approximately 75%)
- 2.2. Design underground roadway drainage system
- 2.3. Develop ditch design and ditch lining
- 2.4. Develop, label and describe final ROW, slope and construction easements
- 2.5. Develop pavement marking and signing
- 2.6. Develop traffic signalization pole locations and ROW needs at the intersection of NW Highway and SR-96
- 2.7. Develop roadway cross sections
- 2.8. Develop preliminary traffic control plans
- 2.9. Develop preliminary EPSC plans
- 2.10. Perform geotechnical testing for proposed box culvert under NW Highway (4 borings)
 - 2.10.1. Site clearing activities
- 2.11. Perform geotechnical testing for proposed retaining wall along NW Highway (4 borings)
 - 2.11.1. Traffic control measures – one lane temporary closure with flaggers
- 2.12. Perform geotechnical pavement cores along NW Highway (4 cores)
 - 2.12.1. Traffic control measures – one lane temporary closure with flaggers
- 2.13. Geotechnical Report
 - 2.13.1. Laboratory test results
 - 2.13.2. Site preparation recommendations including undercutting of existing unsuitable materials



- 2.13.3. Box culvert recommendations
- 2.13.4. Retaining wall recommendations
- 2.13.5. Analysis of existing pavement
- 2.13.6. Recommendations regarding geologic hazards
- 2.14. Perform hydraulic capacity analysis for proposed box culvert
- 2.15. Develop retaining wall design
- 2.16. Conduct early utility coordination
 - 2.16.1. Issuance of plans to impacted utilities
 - 2.16.2. Conduct initial correspondence, followed by 60-day and a final 10-day notice
 - 2.16.3. Review of plans for utility conflicts
 - 2.16.4. Coordination with the City and utility providers to resolve design conflicts
- 2.17. Continue coordination with TDOT Region 3 Traffic Office

Deliverables

- *Title Sheet with Index*
- *Typical Sections*
- *Detail Sheets*
- *ROW Notes, Utility Notes and Utility Owners*
- *Property Map and Acquisition Table*
- *Present Layout Sheets*
- *Proposed Layout Sheets*
- *Proposed Profile Sheets*
- *Driveway Profile Sheet*
- *Culvert Cross Section Sheet(s)*
- *Signal Plan Sheet(s)*
- *Preliminary Traffic Control Plans*
- *Preliminary EPSC Plans*
- *Retaining Walls Plans*
- *Roadway Cross Sections*

3.0 – RIGHT-OF-WAY ACQUISITION

The ROW Acquisition Tasks are further described below:

- 3.1. Management and coordination of the acquisition process and team
- 3.2. Develop legal descriptions and property exhibits for eight (8) right-of-way acquisition tracts
- 3.3. Perform property title searches for eight (8) acquisition tracts
- 3.4. Perform right-of-way staking for eight (8) acquisition tracts
- 3.5. Perform initial property appraisals for eight (8) acquisition tracts
- 3.6. Perform review appraisals for eight (8) acquisition tracts
- 3.7. Perform ROW plan revisions, as needed, during acquisition
- 3.8. Negotiate with property owners for eight (8) acquisition tracts
- 3.9. Negotiate to acquire ROW and easements from eight (8) acquisition tracts
- 3.10. Have acquisition documents recorded with the local government

Deliverables

- *ROW legal descriptions for eight (8) acquisition tracts*
- *ROW exhibits for eight (8) acquisition tracts*
- *ROW staking for eight (8) acquisition tracts*
- *Title search documentation for eight (8) acquisition tracts*
- *Property appraisals for eight (8) acquisition tracts*
- *Review appraisals for eight (8) acquisition tracts*



- *Acquisition for eight (8) acquisition tracts*
- *Recorded acquisition documents for eight (8) acquisition tracts*

4.0 – FINAL PLANS DEVELOPMENT

The Final Plans Development Tasks are further described below:

- 4.1. Finalize project design to establish construction bidding documents
- 4.2. Finalize underground roadway drainage design
- 4.3. Finalize traffic control design plans
- 4.4. Finalize ditch design
- 4.5. Finalize EPSC design
- 4.6. Finalize traffic signal design
- 4.7. Finalize retaining wall design
- 4.8. Coordinate with TDOT regarding traffic control plan and grading permit for work within the State of Tennessee ROW
- 4.9. Perform internal QA/QC and update plans as necessary
- 4.10. Provide plans to City for review
- 4.11. Address City's comments and produce plans for bidding
- 4.12. Engineers Opinion of Probable Construction Cost
- 4.13. Final utility coordination
- 4.14. Water Quality General Permit for Jurisdictional Impacts
 - 4.14.1. TDEC General Aquatic Resource Alteration Permit (ARAP)
 - 4.14.2. USACE Section 404 Nationwide Permit
- 4.15. General NPDES Permit for Stormwater Discharges from Construction Activities
 - 4.15.1. Storm Water Pollution Prevention Plan
 - 4.15.2. TDEC Notice of Intent

Deliverables

- *Title Sheet*
- *Index and Standard Drawings*
- *Roadway Standard Drawings*
- *Standard Structure and Traffic Operations Drawings*
- *Estimated Roadway Quantities*
- *Estimated Box Bridge Quantities*
- *Typical Sections (Including Retaining Walls)*
- *General Notes*
- *Special Notes*
- *Detail Sheets*
- *ROW Notes, Utility Notes and Utility Owners*
- *Property Map and Acquisition Table*
- *Present Layout Sheets*
- *ROW Detail Sheets*
- *Proposed Layout Sheets*
- *Roadway Profile Sheets*
- *Private Driveway Profile Sheet*
- *Culvert Cross Section Sheet*
- *Traffic Signal Design Sheet*
- *Traffic Control Plans*
- *EPSC Plans*
- *Signing and Marking Plans*
- *Sign Schedule Sheet*
- *Retaining Wall Plans*



- *Roadway Cross Sections*

5.0 – BIDDING PHASE SERVICES

RaganSmith will provide Bid Phase Services for 1 construction bidding. This service will include:

- 5.1. Prepare advertisement
- 5.2. Prepare bid/contract book
- 5.3. Prepare cost estimate
- 5.4. Attend pre-bid meeting
- 5.5. Respond to any RFI prior to bidding
- 5.6. Attend bid opening
- 5.7. Tabulate bids
- 5.8. Prepare contract award recommendation letter
- 5.9. Attend pre-construction meeting

Deliverables

- *Project advertisement*
- *Bid/Contract Book*
- *Construction Cost Estimate*
- *Written responses to any RFI*
- *Bid Tabulation*
- *Contract Award Recommendation Letter*

PROJECT EXCLUSIONS

1. Public involvement
2. Property owner meetings
3. Roadway lighting
4. ROW acquisition costs
5. ROW acquisition related fees (taxes, recording fees, etc.)
6. Utility relocation design
7. Steam mitigation or relocation design
8. Individual ARAP Permitting
9. Permitting and application fees
10. CEI Services



COMPENSATION

RaganSmith will provide the above **Scope of Services** on a lump sum basis with the maximum fee as summarized below.

1.0 PROJECT MANAGEMENT AND COORDINATION.....	\$ 15,000
2.0 RIGHT-OF-WAY PLANS DEVELOPMENT	\$ 125,500
3.0 RIGHT-OF WAY ACQUISITION	\$ 124,000
4.0 FINAL PLANS DEVELOPMENT	\$ 77,500
5.0 BIDDING PHASE SERVICES	\$ 15,000
 TOTAL FEE (AMENDMENT 3)	 \$ 357,000

This amendment will increase the contract ceiling for Work Order #1 from the current amount of \$192,500 to a revised amount of \$549,500.

RaganSmith will not exceed the lump sum fee detailed above without authorization from the City of Fairview. Individual task amounts are provided for budgeting purposes only. **RaganSmith** reserves the right to reallocate amounts among tasks as necessary.

Should additional services be required outside the Scope of Services outlined in this agreement, said services shall be mutually agreed to in writing prior to commencing and billed at an hourly rate in accordance with the attached Contract Terms and Conditions. Travel, shipping, printing, government fees and other such expenses directly related to the project will be billed at cost and are included in the fees above. Invoices will be submitted monthly and are due and payable within 30 days of invoice date.

SCHEDULE

The services will be provided as expeditiously as practical with the goal of meeting a mutually agreed upon schedule.

We appreciate the opportunity to provide this professional service agreement to you. If you agree to the terms, please sign and return a copy of this agreement that will serve as authorization to proceed.

Sincerely,

RAGAN-SMITH-ASSOCIATES, LLC

W. Lee Schumann, P.E.
Vice President

Scott M. Niesen, P.E.
Vice President

WLS/SMN:djb

Enclosures



CLIENT ACCEPTANCE and AUTHORIZATION TO PROCEED:

By: _____ **Date:** _____

Printed/Typed Name: _____ **Title:** _____

Address Invoices To: _____ **Email:** _____