

**WINTER & COMPANY
AGREEMENT FOR PROFESSIONAL SERVICES
WITH FARRAGUT, TENNESSEE**

This AGREEMENT is made and entered into on March 13 2014, by and between **TOWN OF FARRAGUT, A TENNESSEE MUNICIPAL CORPORATION** (hereinafter referred to as "CLIENT") and **WINTER & COMPANY, A COLORADO CORPORATION** (hereinafter referred to as "CONSULTANT") for lump-sum professional services.

PROJECT: TOWNWIDE ARCHITECTURAL DESIGN GUIDELINES
LOCATION: TOWN OF FARRAGUT, TENNESSEE

WHEREAS, CLIENT requires professional consulting services to produce town-wide architectural design guidelines (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:

SCOPE OF WORK

1. **Scope of Work.** Basic 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.** 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 accordingly. 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 by the sub-consultants, 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.
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. **Work Stoppage and Delays.** CONSULTANT will use reasonable efforts to complete the project within 12 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 **SIXTY-ONE THOUSAND ONE HUNDRED EIGHTY-FIVE DOLLARS (\$61,185.00)**, 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 than 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 Nore Winter 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:

Winter & Co.
Attention: Nore' Winter
1265 Yellow Pine Ave.
Boulder, CO 80304

Proper notice shall be served by digital transmission to:
nore@winterandcompany.net with copy to:
abe@winterandcompany.net

- 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:
dsmoak@townoffarragut.org (David Smoak)

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. CLIENT'S publicly published Request for Qualifications related to this project. CONSULTANT submitted Qualifications for Architectural Design Guidelines 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: Ralph McGill

Date: 3/13/2014

Ralph McGill
Title: Mayor

ATTEST: Allison Nguyen

For the CONSULTANT:

Winter & Company, Inc.

BY: Nore Winter

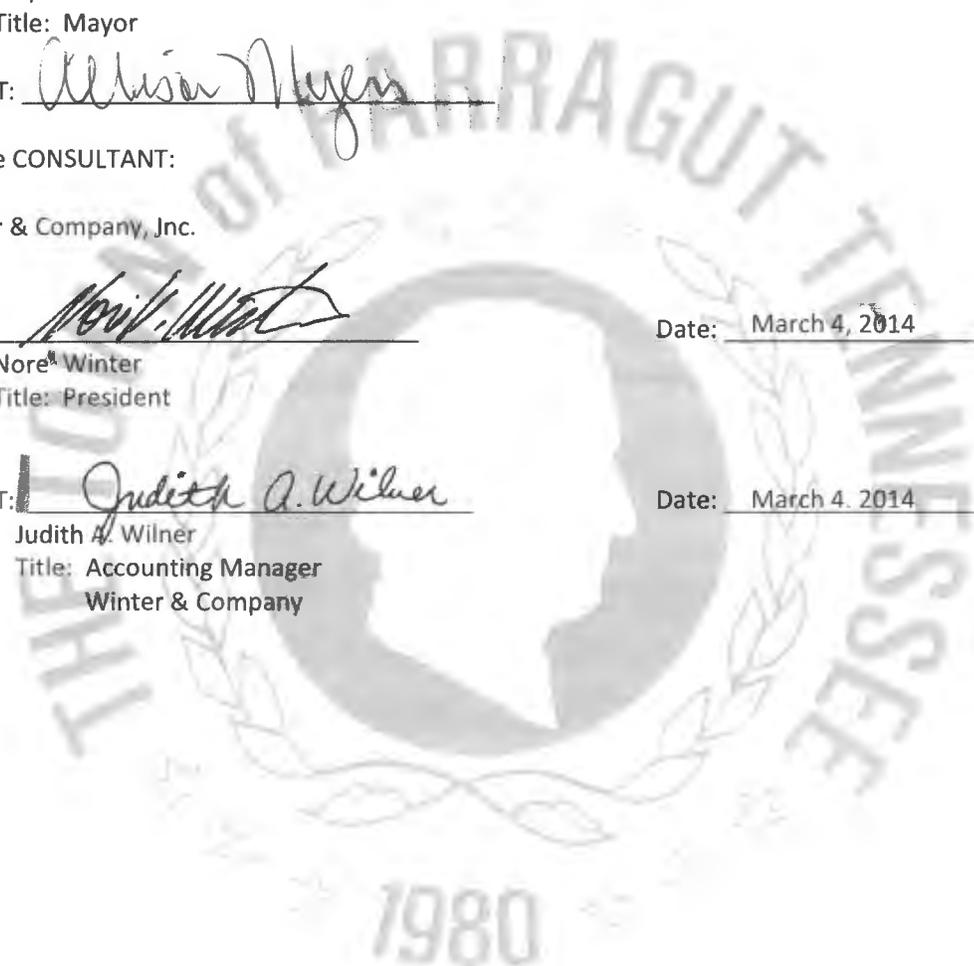
Date: March 4, 2014

Nore Winter
Title: President

ATTEST: Judith A. Wilner

Date: March 4, 2014

Judith A. Wilner
Title: Accounting Manager
Winter & Company



ATTACHMENT A: SCOPE OF WORK

CONSULTANT, by execution of this agreement declares it will prepare Town-wide Architectural Design Guidelines for CLIENT.

CLIENT recognizes the need to allow CONSULTANT professional latitude in tailoring a detailed scope of work for CLIENT; thus, for the purposes of this agreement CONSULTANT shall provide in general the services below. Furthermore, the listed scope of work is accepted by both parties to this agreement with the understanding the planning process may be dynamic and require changes as they progress through this endeavor. Thus, any changes to the scope of work and corresponding schedule shall be mutually agreed upon and memorialized by written amendment to this agreement

PHASE I SET THE STAGE

March 2014 – June 2014

CONSULTANT will thoroughly research with the intent of gaining an understanding of existing conditions in Farragut, including its physical character, architecture and urban design traditions, cultural assets and existing planning policies. CONSULTANT will also evaluate existing regulations, including the newly adopted *Comprehensive Land Use Plan: Farragut 2025*, and Town adopted Strategic Plan which sets a vision for the community. Noré Winter, Julie Husband and Paul Glasgow from MIG/Winston will visit Farragut in Step 1 to tour the community, facilitate on-site meetings and host a public kickoff meeting (Trip #1).

Video/Conference Calls

- Project Kick-off Video Conference Call with Town staff
 - discuss the project in general, schedule, public outreach strategy, and upcoming meetings
 - Review design guidelines analysis

On-Site Meetings (TRIP #1)

- Meet with Town staff
 - discuss final logistics for public meetings
 - Tour Town with Town staff to discuss issues and opportunities
 - Debrief meeting with Town staff
- Stakeholder work session with key Town officials
- Stakeholder focus group session (developers, previous applicants, guideline users, other special interest groups)
- Public kick-off meeting to identify issues, opportunities and vision

PHASE I DELIVERABLES

- Detailed project schedule
- Meeting agendas
- Presentation for Public Meeting
- Comment form and visual survey for public meeting
- Design guidelines analysis and strategy recommendation

PHASE II DEVELOP DRAFT DESIGN GUIDELINES

June 2014 – August 2014

CONSULTANT will provide an outline of the structure of the document, identify key topics to address, and develop a format for the document. After CLIENT review and approval, CONSULTANT will develop a draft of the Design Guidelines.

Draft Design Guidelines Elements

- District development pattern, connectivity, circulation, access, natural resources, drainage and topography
- Landscape, open space, and public space
- Parking
- Site Lighting
- Building placement and orientation
- Building fenestration, articulation, mass and scale, building form
- Building character: entrance, street-level interest, awnings, canopies, materials
- Accessory structures
- Utilities and service areas
- Building lighting

Draft Design Guidelines (draft) will include

- Photos
- Plan illustrations of compatible development
- 3-D models illustrating compatible development

Phase II Video/Conference Calls

- Meet with Town staff
 - Discuss outline and document format template
 - Receive comments on Draft #1 (CLIENT submits consolidated comments to CONSULTANT)

PHASE II DELIVERABLES

- Guidelines outline
- Document design template
- Meeting agendas
- Draft Design Guidelines outline

PHASE III DEVELOP FINAL DESIGN GUIDELINES

AUGUST 2014 – OCTOBER 2014

CONSULTANT will use CLIENT comments and feedback to generate the Final Design Guidelines document to present to the public. This step includes public meeting and stakeholder work session to review and receive feedback on this document.

Phase III Video/Conference Call

- Video/conference with Town staff to discuss upcoming meeting logistics and participants

Phase III On-Site Meetings (Trip #2)

- Meet with Town staff to discuss final logistics for public meeting
- Conduct stakeholder work session with key Town officials
- Conduct public meeting to present Design Guidelines (invite stakeholders/focus groups)
- Debrief meeting with Town staff to discuss comments received from meetings

PHASE III DELIVERABLES

- Final Design Guidelines
- Meeting agendas
- Presentation for public meeting
- Comment forms and worksheets for public meeting

PHASE IV ADOPTION AND TRAINING

October 2014 – November 2014

CONSULTANT will revise the Design Guidelines to reflect input received from Phase III to generate an adoptable document. Revisions will only address text edits and photo images. There will not be significant organizational or format changes to the work product at this stage. CONSULTANT will present the document to the Planning Commission and Board of Mayor and Aldermen at a joint adoption hearing. CONSULTANT will also conduct training sessions with Town staff and key officials on how to use the design guidelines.

Phase IV Video/Conference Calls

- Meet with Town staff to discuss adoption hearing and review presentation

Phase IV On-Site Meetings (Trip #3)

- Joint adoption hearing with Planning Commission and Board of Mayor and Aldermen
- Meeting with Town staff to debrief on the joint adoption hearing

PHASE IV DELIVERABLES

- Design Guidelines with final edits
- Meeting agendas
- Presentation for joint adoption hearing

OPTIONAL SERVICES OFFERED BY CONSULTANT

CONSULTANT will offer at CLIENT'S request, optional additional services to assist with guidelines implementation. Services could include preparation of the administrative planning forms used in the design review process such as submittal forms and compliance checklists. Additionally, CONSULTANT will offer at the CLIENT'S request training sessions to ensure CLIENT is able to interpret the guidelines when applied to a variety of project types. Training sessions may include mock design review submittals and discussion of their relationship with the Municipal Code and Comprehensive Land Use Plan.

Both parties understand optional services as listed in this section are not included in the Scope of Work and lump sum cost. CLIENT will pay CONSULTANT using the professional services rate schedule (Attachment B).

Optional Services Meetings (by conference call)

- Meetings with Town staff to discuss design review procedures and forms as well as options and materials for training services
- Training session for Town staff and key officials
- Meeting with Town staff to address design review issues and outcomes (approx. 6 months after adoption)

OPTIONAL SERVICE DELIVERABLES

- Memo on design review procedures
- Design review submittal form
- Design guidelines checklist
- Presentation for training sessions
- Design review test case materials
- Memo to address issues and outcomes (approx. 6 months after adoption)

**ATTACHMENT B: HOURLY RATE FOR SERVICES
NOT COVERED UNDER THE SCOPE OF WORK**

N. Winter:	\$165.00
A. Barge:	\$100.00
J. Husband:	\$110.00
C. Ball:	\$ 55.00
P. Glasgow:	\$100.00



ATTACHMENT C: SUB-CONSULTANT LIST

**Paul Glasgow, AICP
MIG (formerly Winston & Associates)
4696 Broadway
Boulder, CO 80304**

