

**AGREEMENT BETWEEN
CITY OF SPRING HILL, TENNESSEE
AND DEMPSEY DILLING AND ASSOCIATES, P.C.**

THIS AGREEMENT is made this the 20th day of February, 2018, by and between **CITY OF SPRING HILL, TENNESSEE** (hereinafter “City”), and **DEMPSEY DILLING AND ASSOCIATES, P.C.**, located at 502 Hazelwood Drive, Smyrna, TN 37167 (hereinafter “Dempsey Dilling”).

WITNESSETH:

WHEREAS, the Tennessee Department of Transportation (TDOT) desires to construct the Saturn Parkway Extension Project; and

WHEREAS, the City has water and sewer lines within the rights of way of the Project specifically, along Beechcroft Road (Project Shotgun) and at the intersection of Beechcroft Road and Cleburne Road; and

WHEREAS, the City and TDOT have entered cost sharing agreements to relocate the water and sewer lines; and

WHEREAS, TDOT is liable for the relocation of utility facilities located on private utility right of way but is not liable for adjustment of the facility located on publicly owned right of way or for any utility betterment costs; and

WHEREAS, the parties have entered into contracts for the relocation of the City’s water and sewer utilities in conjunction with this highway construction project; and

WHEREAS, TDOT plans to reimburse the City those cost that are attributable to the relocation work in the amount of \$170,068.12; and

WHEREAS, the remaining funds to pay for these services will come from water and sewer monies; and

WHEREAS, it is in the mutual interest of both parties that this utility relocation work be performed together with the proposed highway construction; and

WHEREAS, the City wishes to engage the services of Dempsey Dilling and Associates, P.C. to provide construction engineering and inspection services when city water and sewer lines are relocated; and

WHEREAS, by entering into this Agreement, Dempsey Dilling affirms that it has extensive experience in providing engineering services and that it shall provide such services in a professional manner in accordance with the terms and conditions of this Agreement as well as the standard of care practiced by other consultants and professionals performing similar services within the industry.

NOW, THEREFORE BE IT RESOLVED, in consideration of the premises and recitals hereinabove set forth, which are incorporated herein by reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual covenants contained herein, the City and Dempsey Dilling agree as follows:

ARTICLE 1-SCOPE OF SERVICES TO BE RENDERED BY DEMPSEY DILLING AND ASSOCIATES

1. Dempsey Dilling shall perform all necessary professional services in a satisfactory and proper manner, consistent with the City's requirements for the Project and by reference made a part hereof, including, but not be limited to, the following:

a. **See Attached Exhibit A (Scope of Work)**

2. All documents prepared by Dempsey Dilling that form a part of the services rendered hereunder shall become the property of the City. Such documents shall not be used by either party on any other project, except as reference materials.

3. The City will furnish all information, data, reports and maps as are existing and identified by Dempsey Dilling as necessary for carrying out the work that are available to the City without cost to Dempsey Dilling.

4. Dempsey Dilling shall have the authority to request work assignments necessary to obtain additional information to prepare the facility plan.

ARTICLE 2-CITY'S RESPONSIBILITIES

The City will provide to Dempsey Dilling all criteria and full information as to the Project's requirements, and shall furnish the following:

1. Provide Dempsey Dilling with all known available information that is pertinent to the Project.

2. Accompany Dempsey Dilling for on-site inspections to determine scope of work, if necessary.

3. Guarantee access to the work so Dempsey Dilling can enter upon public and private lands as required to perform the work essential to the Project.

4. Give thorough consideration to all reports, cost estimates, drawings, specifications and other documents presented by Dempsey Dilling, and inform Dempsey Dilling of all decisions within a reasonable time so as not to delay the work of Dempsey Dilling (i.e. furnish approval or instructions for change).

5. Promptly schedule all required special meetings, serve all public and private notices, and receive and act upon all protests.

6. Give prompt written notice to Dempsey Dilling when it is known that either the Project criteria or conditions have changed, or there is reason to believe Dempsey Dilling's work is deficient in intent or technical content.

7. Provide information previously assembled by others, including soil borings, probings, subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples and materials, appropriate professional interpretation of all of the foregoing, environmental assessment, impact statements, approvals and permits from regulatory agencies, and other special data or consultation.

ARTICLE 3-TERM

1. The services of the Consultant shall be undertaken and completed by August 31, 2019.

ARTICLE 4-FEES

1. In consideration of the performance of services rendered under this Contract, Dempsey Dilling shall be compensated for services performed in accordance with Article 1, not to exceed a lump sum fee of Two Hundred Nine Thousand, Eight Hundred Fifty-Two Dollars (\$209,852.00). The fee is inclusive of expenses such as printing, travel, phone calls, postage etc.

2. Invoices shall be submitted by Dempsey Dilling to the City in monthly statements for services rendered, if any. The statements shall be based on time and materials and incurred expenses. Each individual invoice shall be due and payable within forty-five calendar (45) days after receipt.

3. If the City disputes any portion of Dempsey Dilling's invoices, the undisputed portion will be paid by the City, and Dempsey Dilling will be notified in writing within ten (10) days of receipt of the exceptions taken to such invoice. The City and Dempsey Dilling will attempt to resolve any payment dispute within sixty (60) days, and both parties agree that no action for collection thereon shall be filed within this time period.

4. If the City delays the Project for more than six (6) months beyond the designated date when work is scheduled to begin, which is more particularly defined as the date this Agreement is executed, then the lump sum as designated in Sub-Paragraph 1 of this Section shall be increased by three percent (3%) per year. The intent of this language is that the increase shall be cumulative, as a delay would cause Dempsey Dilling to have to revisit the plans created in accordance with the designated start date as defined herein.

ARTICLE 5-PRIMARY CONTACT

1. This Agreement may be terminated by either party upon thirty (30) days' written notice should the other party fail substantially to perform in accordance with the terms outlined herein through no fault of the party initiating the termination.

2. This Agreement may be terminated by Dempsey Dilling in the event that the City permanently abandons the Project.

3. In the event of termination by either party, Dempsey Dilling shall be compensated for all services performed prior to the termination date.

ARTICLE 8-DISPUTE RESOLUTION AND GOVERNING LAW

1. The City and Dempsey Dilling shall attempt to resolve conflicts or disputes under this Agreement in a fair and reasonable manner, and agree that if an informal resolution cannot be achieved, the parties shall submit the matter to a mutually agreed upon mediator in an attempt to resolve the dispute through the mediation process. Such mediation process shall be initiated by a request in writing by either party.

2. The mediation provision can be waived by the mutual consent of the parties or by either party if such party's right would be irrevocably prejudiced by a delay in initiating a legal proceeding.

3. Venue and jurisdiction for any legal proceeding hereunder shall be the Circuit Court for Maury County, Tennessee.

ARTICLE 9-BREACH

1. The term "breach of agreement" specifically includes, but is not limited to, failure to comply with any applicable federal, state or local laws or regulations.

2. One or more waivers of breach of any provision of this Agreement by any party shall not be construed as a waiver of subsequent breach of the same provision, nor shall it be considered a waiver of any other then existing or subsequent breach of a different provision.

3. The substantially prevailing party in any legal proceeding hereunder by and between the parties shall in addition to their damages be entitled to attorney's fees and court costs incurred in said legal proceeding.

ARTICLE 10-MODIFICATION

This Agreement shall not be modified unless such modifications are evidenced in writing in the form of a written Amendment, which is signed by both the City and Dempsey Dilling. Should any changes in the design of the Project be necessary, the City's designee shall report such change to Dempsey Dilling in writing. If the City determines that any changes in work are

necessary to complete the Project, then Dempsey Dilling shall be allowed compensation in accordance with ARTICLE 19-CHANGES.

ARTICLE 11-INDEMNITY AND HOLD HARMLESS

1. Dempsey Dilling shall agree to indemnify and hold City, its officers, agents and/or employees, harmless from and against any and all lawsuits, damages and expenses, including court costs and attorneys' fees, by reason of any claim and/or liability imposed, claimed and/or threatened against the City, its officials, agents and/or employees, for damages because of bodily injury, death and/or property damages arising out of or in consequence of the performance of services under this Agreement to the extent that such bodily injuries, death and/or property damages are attributable to the negligence of the City, its agents, employees, or any other entity for which the City may be found to be legally liable. This provision shall survive the completion of all services, obligation and duties provided pursuant to the Project, or the termination of this Agreement for any reason.

ARTICLE 12-INSURANCE

Dempsey Dilling shall maintain, during the term of this Agreement, or any extension hereof, the following insurance policy, written by an insurance company authorized to do business within the State of Tennessee, and furnish City, in duplicate, Certificates of Insurance as evidence thereof:

1. Worker's Compensation: Providing coverage in compliance with the laws of the state in which any part of the work is to be performed, and Employer's Liability Coverage in the minimum amount of the statutory limit for each occurrence.

2. Comprehensive (Commercial) General Liability Insurance: Bodily injury and property damage combined single limit in the minimum amount of \$1,000,000.00 for each occurrence.

3. Automobile (Business) Liability Insurance: Bodily injury and property damage combined single limit in the minimum amount of \$1,000,000.00 for each occurrence, \$1,000,000.00 aggregate.

4. Professional Liability Insurance: Professional liability insurance covering claims arising from errors, omissions or negligent acts committed in the performance of professional services under this Agreement with limits of \$1,000,000.00.

ARTICLE 13-SUBCONSULTANTS

Dempsey Dilling shall not subcontract all or a portion of the Project without the prior written approval of the City which consent will not be unreasonably withheld. Dempsey Dilling must state in all subcontracts that services performed by any such subconsultant will be subject to the terms of this Agreement. All subconsultants must certify in writing that they are qualified to

perform the services to be rendered for the Project and have no financial or other interests in the outcome of the Project. Dempsey Dilling shall remain fully responsible for the performance of subconsultant and its personnel pursuant to this Agreement. The entry into any subcontract shall not relieve Dempsey Dilling of any of its obligations under the terms of this Agreement

ARTICLE 14-SEVERABILITY

In the event any provision of this Agreement or any instrument delivered in connection herewith shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof or thereof.

ARTICLE 15-BINDING EFFECT

This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective heirs, administrators, successors and assigns.

ARTICLE 16-INDEPENDENT CONTRACTOR RELATIONSHIP

It is specifically understood that Dempsey Dilling's relationship with City shall be that of independent contractor and Dempsey Dilling shall in no sense be considered an agent or employee of City, nor shall Dempsey Dilling be, as a result of the relationship established by this Agreement, entitled to or eligible to participate in any benefits or privileges extended or given by City to its employees, notwithstanding this Agreement.

ARTICLES 17-HEADINGS AND EXHIBITS

The paragraph headings in this Agreement are for convenience only, and they form no part of this Agreement and shall not affect its interpretation.

ARTICLE 18-FORCE MAJEURE

Dempsey Dilling shall not be liable to City or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond Dempsey Dilling's reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or the public enemy, terrorism, significant fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargoes, or Governmental Authorities approval delays which are not caused by any act or omission by Dempsey Dilling, and unusually severe weather. Dempsey Dilling agrees to notify City of the existence and nature of any delay.

ARTICLE 19-CHANGES

The City may, from time to time, request changes in the scope of the services of the Dempsey Dilling to be performed hereunder. Such changes, including any increase or decrease in the amount of Dempsey Dilling compensation, which are mutually agreed upon between the City and Dempsey Dilling shall be incorporated in written amendments to this Agreement. There shall

be no increase in the amount of Dempsey Dilling's compensation, as set forth above, unless approved by Resolution adopted by City.

ARTICLE 20-OWNERSHIP OF PROJECT MATERIALS

It is agreed that all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, films, duplicating plates, and reports prepared by Dempsey Dilling under this Agreement shall be considered the property of the City and upon completion of the services to be performed, they will be turned over to the owner provided that, in any case, Dempsey Dilling may, at no additional expense to the City, make and retain such additional copies thereof as Dempsey Dilling desires for its own use; provided further, that in no event may any of the documents, data, studies, surveys, drawings, maps, models, photographs, films, duplicating plates, or other reports retained by Dempsey Dilling be released to any person, agency, corporation, or organization without the written consent of the City.

ARTICLE 21-CONFIDENTIALITY

All reports, information, data, etc., given to, or prepared or assembled by Dempsey Dilling under this Agreement, shall be deemed confidential and none shall be made available to any individual or organization by Dempsey Dilling without the prior written consent of the City.

ARTICLE 22-ASSIGNMENT

Dempsey Dilling shall not assign, sublet or transfer or otherwise dispose of this Agreement in whole or in part to any individual, firm or corporation without the prior written consent of the City.

ARTICLE 23-ENTIRE AGREEMENT

This Agreement and accompanying documents contain the entire agreement between the parties with respect to the subject matter hereof and all prior or contemporaneous written or oral agreements with respect to the subject matter hereof are superseded hereby. The Agreement may be amended only by written instrument signed by both the City and Dempsey Dilling.

IN WITNESS WHEREOF, the City has caused this Agreement to be signed by its authorized representative, and Dempsey Dilling has caused this Agreement to be signed in its corporate name by its authorized representative as of the day and year first written above.

CITY OF SPRING HILL, TENNESSEE

By: _____
Rick Graham, Mayor

Dempsey Dilling and Associates, P.C.

By: _____
Jerome Dempsey, President

LEGAL FORM APPROVED:

Patrick Carter, City Attorney