

**RESOLUTION 21-01**

**A RESOLUTION TO APPROVE AN AGREEMENT WITH COLLIER ENGINEERING COMPANY, INC. TO PROVIDE CONSTRUCTION AND ENGINEERING INSPECTION SERVICES FOR THE TOM LUNN ROAD WIDENING PROJECT**

**WHEREAS**, the City of Spring Hill contracted with Collier Engineering Company, Inc. to provide professional engineering services for the design of the widening of Tom Lunn Road (“Project”) as provided by Resolution 17-105; and

**WHEREAS**, construction and engineering inspection services (“CEI) were not included in the original contract as the scope of work had not yet been clearly defined relative to design and extent of construction work necessary to complete the project but said services are necessary and integral to the completion of construction work given the complexity of the project; and

**WHEREAS**, Collier Engineering Company, Inc. has submitted a proposed Contract for CEI services for the duration of the Project to be performed according to the Tennessee Department of Transportation’s Standard Specification for Road and Bridge Construction for a lump sum not-to-exceed cost of \$85,000.00 and a not-to-exceed cost of \$10,000.00 for reimbursable expenses for a total cost of \$95,000.00; and

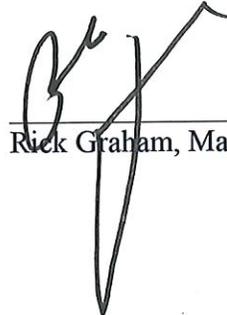
**WHEREAS**, funding for CEI services will be paid from Adequate Facilities Tax fund; and

**WHEREAS**, City staff recommends approval of the CEI services contract with Collier Engineering Company, Inc. at a lump sum not-to-exceed cost of \$85,000.00 and a not-to-exceed cost of \$10,000.00 for reimbursable expenses.

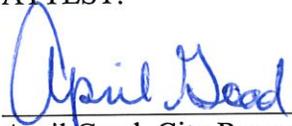
**NOW, THEREFORE BE IT RESOLVED**, the City of Spring Hill Board of Mayor and Aldermen:

1. Approves the Contract attached hereto with Collier Engineering Company, Inc. to provide construction and engineering inspection services for the widening of Tom Lunn Road at a lump sum cost not-to-exceed \$85,000.00 and a not-to-exceed cost of \$10,000.00 for reimbursable expenses for a total cost of \$95,000.00.
2. Authorizes the Mayor to sign the Contract attached hereto.

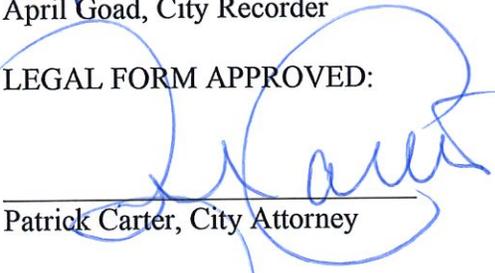
**Passed and Adopted by the Board of Mayor and Aldermen of the City of Spring Hill,  
Tennessee on the 19<sup>th</sup> day of January, 2021.**

  
\_\_\_\_\_  
Rick Graham, Mayor

ATTEST:

  
\_\_\_\_\_  
April Goad, City Recorder

LEGAL FORM APPROVED:

  
\_\_\_\_\_  
Patrick Carter, City Attorney



**REQUEST:** *Approval of Resolution 21-01*

**SUBMITTED BY:** Chuck Downham, Assistant City Administrator  
Missy Stahl, Senior Project Manager

**DATE:** December 7, 2020

**RE:** To authorize the Mayor to sign a contract with Collier Engineering Company, Inc. for CEI services for the widening of Tom Lunn Road

**ATTACHMENTS:** Resolution 17-105, CEI services contract

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**PURPOSE:**

The purpose of Resolution 21-01 is to approve a contract with Collier Engineering Company, Inc. for CEI services for Tom Lunn Road widening project and authorize the Mayor to execute the contract.

**BACKGROUND:**

The City of Spring Hill contracted with Collier Engineering Company, Inc. to provide professional engineering services for the design of the widening of Tom Lunn Road by Resolution 17-105. CEI services were not included in the original contract as the scope of work for such services had not yet been defined with the design of the widening project. With the design complete and the extent of construction work now well-defined in the engineering design plans for the project, a scope of work for CEI services can be developed. Given the complexity of the project, CEI services are necessary to ensure construction work adheres to plans and specifications. With the project scheduled to be advertised for proposals in January 2021 and with a Notice to Proceed anticipated to be issued in March/April 2021, it is prudent and appropriate to engage CEI services in advance of the contract award for the project. City staff requested Collier Engineering submit a proposal that was presented in the form of a contract for professional services for the provision of CEI services for the widening project. The contract includes a detailed description of services to be provided and corresponding fee and expense considerations.

Collier Engineering has submitted a contract with a proposed lump sum cost of not-to-exceed \$85,000 and a not-to-exceed cost of \$10,000 for reimbursable expenses for a total expenditure of \$95,000 for CEI services. The projected construction budget submitted by Collier in March 2020 was \$973,073.37. With the proposed cost of \$85,000, the CEI services would be approximately 8.7% of the construction estimate. All work will be performed according to the Tennessee Department of Transportation's Standard Specification for Road and Bridge Construction.

**FINANCIAL IMPACT:**

The CEI services will be funded through available uncommitted Adequate Facilities Tax funds.

**STAFF RECOMMENDATION:**

Staff recommends approval of Resolution 21-01 to approve the contract with Collier Engineering Company, Inc. and to subsequently authorize the Mayor to execute the contract for CEI services for the widening of Tom Lunn Road for a total not-to-exceed cost of \$95,000.00 inclusive of reimbursable expenses.

**AGREEMENT BETWEEN CITY OF SPRING HILL, TENNESSEE AND  
COLLIER ENGINEERING COMPANY, INC. FOR CONSTRUCTION ENGINEERING  
INSPECTION SERVICES FOR TOM LUNN ROAD WIDENING PROJECT**

**THIS AGREEMENT** is made this the 10th day of January, 2021, by and between **CITY OF SPRING HILL, TENNESSEE** (hereinafter "City"), and **COLLIER ENGINEERING COMPANY, INC.**, located at 2949 Nolensville Pike, Nashville, Tennessee 37211 (hereinafter "Collier").

**WITNESSETH:**

**WHEREAS**, the City has determined that Construction Inspection & Engineering (CEI) for the construction phase of the Tom Lunn Road - Roadway Improvements project between John Lunn Road and Port Royal Road ("Project") is to be completed; and

**WHEREAS**, the City submits that it has the authority to contract with Collier to provide professional engineering services for the construction phase of the Project; and

**WHEREAS**, by entering into this Agreement, Collier affirms that it has extensive experience in providing construction engineering inspection 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**, 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 Collier agree as follows:

**ARTICLE 1 - SCOPE OF SERVICES TO BE RENDERED BY COLLIER**

1. Collier 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. **Construction Phase:**

1. Review of shop drawings, product data, samples or other construction contractor submittal for approval of recommendation for any other appropriate action.
2. Provide construction monitoring services that includes furnishing Construction Engineering, Contract Administration, Resident Inspection and acceptance testing as required.
3. Assemble project closeout documents.
4. Assist in the Coordination of Utility Relocations, as needed. The cost associated with coordination efforts with the local utilities (outside the typical CEI scope of services) will be in addition to the fees set forth in this agreement.

5. All documents prepared by Collier that form a part of the services rendered hereunder shall, upon completion of the drawings, become the property of the City. Such documents shall not be used by either party on any other project, except as reference materials.
6. The City will furnish all information, data, reports, and maps as are existing and identified by Collier as necessary for carrying out the work that are available to the City without cost to Collier.
7. Collier shall have the authority to obtain work assignments necessary to obtain site surveys, soil borings, and soil reports; will request that the services be provided by the City, and the City shall provide such services, if available, at no cost to Collier prior to Collier retaining independent consultants for such purposes.
8. All work to be done according to Tennessee Department of Transportation's Standard Specifications for Road and Bridge Construction, January 1, 2015.

b. **Construction Monitoring:**

Collier shall monitor construction, but in no way assumes the responsibility of the City's agent in such process or warrants any work performed by others, but shall have the following authority:

1. Collier may disapprove or reject work that it believes to be defective or believes will not produce a completed Project that conforms with the design thereof or that will prejudice the integrity of the design concept of the completed Project as a functioning whole.
2. Collier shall determine the actual quantities and classifications of Unit Price Work performed by any contractor on the Project.
3. Neither Collier's responsibility or authority under this Section, or under any other provision related to the Project nor any decision made by Collier in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise or performance of any authority or responsibility by Collier shall create, impose or give rise to any duty owed by Collier to the City, any Subcontractor, any Supplier, any other person or organization, or to any surety for or employee or agent of any of them.
4. Collier shall not supervise, direct, control or have authority over or be responsible for another entity's means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of other entities to comply with laws and regulations applicable to the furnishing or performance of the work related to the Project, except as expressly agreed upon by Collier in writing.

5. Collier will not be responsible for the acts or omissions of entities, including contractors, subcontractors and suppliers, or of any other person or organization performing or furnishing any of the work performed on the Project.
6. The limitations upon authority and responsibility set forth in this Section shall also apply to Collier's Sub consultants and assistants.

## **ARTICLE 2 – CITY'S RESPONSIBILITIES**

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

1. Provide Collier with all known available information that is pertinent to the Project.
2. Guarantee access to the work so Collier can enter upon public and private lands as required to perform the work essential to design the Project.
3. Give thorough consideration to all reports, cost estimates, drawings, specifications and other documents presented by Collier, and inform Collier of all decisions within a reasonable time so as not to delay the work of Collier (i.e. furnish approval or instructions for change).
4. Promptly schedule all required special meetings, serve all public and private notices, receive and act upon all protests.
5. Designate, in writing, a single person to act as Collier's point of contact with the City. The single contact person for the city will be Missy Stahl, Senior Project Manager. The secondary contact person will be the City Administrator or his/her designee.
6. Give prompt written notice to Collier when it is known that either the Project criteria or conditions have changed, or Collier'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 term of this Agreement shall be one (1) year or such other time that may be specified between the City and Collier.
2. If the entire term of the Agreement is not set forth, there shall be an option to extend the Agreement for three (3) additional one (1) year periods under the same terms as outlined herein upon mutual agreement of the parties.

#### ARTICLE 4 - FEES

1. In consideration of the performance of services rendered under this Contract, Collier shall be compensated for services performed in accordance with Article 1, not to exceed a lump sum fee of Eight-Five Thousand Dollars (**\$85,000.00**) and a reimbursable expenses fee not to exceed Ten Thousand Dollars (**\$10,000.00**) for materials testing, lab fees, automobile expenses at the current Federal Mileage Rate plus other reimbursable expenses to be billed at direct cost.

2. Invoices shall be submitted by Collier to the City in monthly statements for services rendered, if any. The statements shall be based on the attached Collier Fee Schedule and other incurred expenses. Each individual invoice shall be due and payable thirty (30) days after receipt.

3. If the City disputes any portion of Collier's invoices, the undisputed portion will be paid by the City, and Collier will be notified in writing within ten (10) days of receipt of the exceptions taken to such invoice. The City and Collier 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 twelve (12) 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 Collier to have to revisit the plans created in accordance with the designated start date as defined herein.

#### ARTICLE 5 - NOTICE

All notices, certificates or other communications hereunder shall be deemed sufficiently given and shall be deemed given when delivered by hand-delivery or mailed by first class, postage prepaid, registered or certified mail and addressed as follows:

If to Collier: Attn: Jeffrey D. Stevens, P.E.  
Title: County Services Department Manager  
Collier Engineering Company, Inc.  
2949 Nolensville Pike  
Nashville, TN 37211

If to City: City Administrator  
City of Spring Hill  
199 Town Center Parkway  
Spring Hill, TN 37174

Copy to: Patrick M. Carter, Esq.  
City Attorney  
P.O. Box 1431  
Columbia, TN 38402-1431

## **ARTICLE 6 - TERMINATION**

1. This Agreement may be terminated by either party upon thirty days (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 Collier in the event that the City permanently abandons the Project.

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

## **ARTICLE 7 - DISPUTE RESOLUTION AND GOVERNING LAW**

1. The City and Collier 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 8 - 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 be entitled to their reasonable attorney's fees and court costs incurred in said legal proceeding.

## **ARTICLE 9 - 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 Collier. Should any

changes in the design of the Project be necessary, the City's designee shall report such change to Collier in writing. If the City determines that any changes in work are necessary to complete the Project, then Collier shall be allowed compensation based upon the original contract terms, including the additional work in the overall cost of the construction of the Project.

#### **ARTICLE 10 - INDEMNITY AND HOLD HARMLESS**

1. City shall agree to indemnify and hold Collier, 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.

2. Collier shall agree to indemnify and hold the 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 Collier, 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 Collier, its agents, employees, or any other entity for which Collier 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 11 - INSURANCE**

Collier shall maintain, during the term of this Agreement, or any extension hereof, the following insurance policy, designating the City as an additional insured when possible, 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 12 - 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 13 - 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 14 - INDEPENDENT CONTRACTOR RELATIONSHIP**

It is specifically understood that Collier's relationship with City shall be that of independent contractor and Collier shall in no sense be considered an agent or employee of City, nor shall Collier 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 15 - 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 16 - FORCE MAJEURE**

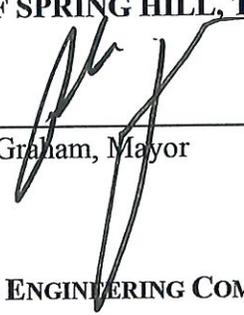
Collier shall not be liable to City or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond Collier's reasonable control and without its fault or negligence. Such causes may include, but are not limited to, acts of God or the public 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 Collier, and unusually severe weather. Collier agrees to notify City of the existence and nature of any delay.

#### **ARTICLE 17 - 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.

**IN WITNESS WHEREOF**, the City has caused this Agreement to be signed by its authorized representative, and Collier 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

**COLLIER ENGINEERING COMPANY, INC.**

By:   
Jeffrey D. Stevens, P.E.  
County Services Department Manager



2949 Nolensville Pike  
Nashville, TN 37211

Reimbursable Expenses - Estimate  
Tom Lunn Road - CEI  
December 23, 2020

Item	#	Unit	Rate	Extension
<b>FIELD SERVICES</b>				
Coring Crew #1	4	hrs	\$150.00	600.00
Coring Crew #2	4	hrs	\$150.00	600.00
Sum				1,200.00
<b>Subtotal - Field Services</b>				<b>\$1,200.00</b>

**LABORATORY SERVICES**

Coring Machine	2	days	\$95.00	190.00
Atterberg Limits	4	each	\$85.00	340.00
Core Analysis	4	each	\$50.00	200.00
California Bearing Ratio (CBR)	2	each	\$575.00	1150.00
Compaction & Density Std. Proctor	4	each	\$150.00	600.00
Extraction (Asphalt)	4	each	\$155.00	620.00
Marshall Density Specimens	2	each	\$150.00	300.00
Core Density (Asphalt)	4	each	\$50.00	200.00
Penetration & Specific Gravity	4	each	\$85.00	340.00
Sum				3,940.00
<b>Subtotal - Laboratory Services</b>				<b>\$ 3,940.00</b>

**MILEAGE**

Company Vehicle	8,500	miles	\$ 0.570	4845.00
Sum				4,845.00
<b>Subtotal - Mileage</b>				<b>\$ 4,845.00</b>

<b>Total Estimate</b>				<b>\$ 9,985.00</b>
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**RESOLUTION 17-105**

**A RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES CONTRACT WITH COLLIER ENGINEERING COMPANY, INC. FOR ENGINEERING DESIGN SERVICES RELATED TO TOM LUNN ROAD IMPROVEMENTS.**

**WHEREAS**, the City has determined that the project to design the Tom Lunn Road Improvements between John Lunn Road and Port Royal Road is to be completed; and

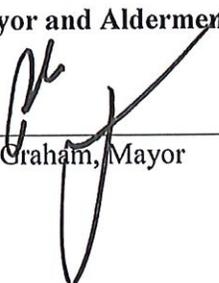
**WHEREAS**, the City submits that it has the authority to contract with Collier Engineering Company, Inc. to provide professional engineering services for the design of the Project; and

**WHEREAS**, by entering into this Agreement, Collier Engineering Company, Inc. affirms that it has extensive experience in providing engineering design 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.

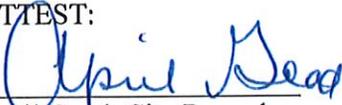
**NOW, THEREFORE**, in consideration of the premises and recitals outlined in a professional services agreement between the City of Spring Hill and Collier Engineering, Company, Inc. hereinabove set forth, which are incorporated herein by reference, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and the mutual covenants contained herein, the City and Collier Engineering Company, Inc. agree to the execution of work.

**NOW, THEREFORE BE IT RESOLVED**, that the City of Spring Hill authorizes a professional services agreement with Collier Engineering Company, Inc. for engineering design services on the Tom Lunn Road Improvements in the amount of One Hundred Thousand Dollars (\$100,000.00).

Passed and adopted by the Board of Mayor and Aldermen of the City of Spring Hill, Tennessee on the 16<sup>th</sup> day of October 2017.

  
\_\_\_\_\_  
Rick Graham, Mayor

ATTEST:

  
\_\_\_\_\_  
April Goad, City Recorder

LEGAL FORM APPROVED:

  
\_\_\_\_\_  
Patrick Carter, City Attorney

October 16, 2017

MEMO TO: Victor Lay, City Administrator

FROM: Philip R. Stuckert, P.E., Infrastructure Director

SUBJECT: Contract Award to Collier Engineering, Inc. for Professional Engineering Services Related to the Tom Lunn Road Improvements.

Recommendation:

That BOMA, by resolution, authorize a professional services agreement with Collier Engineering, Inc. for professional Engineering Services related to the Tom Lunn Road Improvements, in the amount of \$100,000.

Summary:

Collier Engineering was selected out of eight engineering companies to provide design services on the Tom Lunn Road Improvements. The selection process followed guidelines to solicit engineering services in Tennessee. Collier Engineering was chosen over others due to their local presence, ability to perform, and a comprehensive set of inhouse services covering geotechnical, surveying, civil, and transportation services.

Collier Engineering will provide engineering design services on Tom Lunn Road between John Lunn Road and Port Royal Road, approximately 6200 lineal feet. The project consists of rehabilitating the roadway surface and widening to accommodate future and present vehicular traffic. The contract will terminate on May 4, 2018 whereby a set of contract documents will be furnished to the Owner. The City at that time will consider funding the improvements during the upcoming FY 2019 Budget.

A resolution is prepared for BOMA's consideration. Funding for this contract is from Adequate Facilities. Sufficient monies are budgeted to fund these services.

**AGREEMENT BETWEEN  
CITY OF SPRING HILL, TENNESSEE  
AND COLLIER ENGINEERING COMPANY, INC.**

THIS AGREEMENT is made this the 17<sup>th</sup> day of October, 2016, by and between CITY OF SPRING HILL, TENNESSEE (hereinafter "City"), and COLLIER ENGINEERING COMPANY, INC., located at 5560 Franklin Pike Circle, Brentwood, Tennessee 37027 (hereinafter "Collier").

**WITNESSETH:**

**WHEREAS**, the City has determined that the project to design the Tom Lunn Road Improvements between John Lunn Road and Port Royal Road is to be completed; and

**WHEREAS**, the City submits that it has the authority to contract with Collier to provide professional engineering services for the design of the Project; and

**WHEREAS**, by entering into this Agreement, Collier affirms that it has extensive experience in providing engineering design 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**, 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 Collier agree as follows:

**ARTICLE 1 - SCOPE OF SERVICES TO BE RENDERED BY COLLIER**

1. Collier 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. **Planning Phase:**

1. Preparation of concept designs.
2. Prepare R.O.W. Plans and support document for the Tom Lunn Road Improvements.
3. Assist in R.O.W. negotiations, as needed. The cost associated with assisting in right-of-way negotiations will be in addition to the fees set forth in this Agreement.
4. Data collection of existing rights of way.
5. Data collection of soil engineering properties for design of the pavement section such as in place CBR.

6. Data collection of underground utilities such as water, sewer and other utilities
7. Data collection of driveways, trees, fences etc. within the established right of way.
8. Analysis and investigation of providing sewer along Tom Lunn Roadway.

b. **Design Phase:**

1. Preparation of construction documents, including any and all drawings, specifications, and details necessary for construction contract purposes. Plan and Profile sheets shall be drafted on 24 inches by 36 inches size paper. Detail sheets on 24 inches by 36 inches size paper. Cover Sheet on 24 inches by 36 inches size paper. Project manual consisting of Instruction to Bidders, general conditions (EJCDC or others approved of by the City), supplemental general conditions, performance and payment bonds, bid form, agreements, and standard specifications or special standard specifications. The Project Manual shall be provided in Word Format so that the project can be bid out at a later date.
2. Preparation of construction cost estimates.
4. Perform Geotechnical Services, as needed. Geotechnical Services will be performed by in-house staff of Collier, and the cost associated with Geotechnical Services will be part of the overall contract for services.
5. Perform surveying services, as needed. Surveying Services will be performed by in-house staff of Collier, and the cost associated with these services will be part of the overall contract for services.
6. Provide for Traffic control plan for use by contractor during construction phase.
7. Design of pavement section based on traffic information provided to the consultant in consultation with the City.
8. Provide digital copies of the project documents in Microsoft Word format to the city upon completion of the work.

c. **Public Involvement**

1. Neighborhood Public meetings. It is estimated that the City will have a maximum of two meetings. The second meeting will occur after a contractor is awarded the project for construction and not part of this contract.
2. Regular meetings with City staff during the course of this project.
3. Two meetings with the Transportation Advisory Committee, and one meeting with the Board of Mayor and Aldermen.

2. All documents prepared by Collier that form a part of the services rendered hereunder shall, upon completion of the drawings, 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 Collier as necessary for carrying out the work that are available to the City without cost to Collier.

4. Collier shall have the authority to obtain work assignments necessary to obtain site surveys, soil borings, and soil reports; will request that the services be provided by the City, and the City shall provide such services, if available, at no cost to Collier prior to Collier retaining independent consultants for such purposes.

## **ARTICLE 2 – CITY’S RESPONSIBILITIES**

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

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

2. Guarantee access to the work so Collier can enter upon public and private lands as required to perform the work essential to design the Project.

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

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

5. Designate, in writing, a single person to act as Collier’s point of contact with the City. The single contact person for the city will be Philip Stuckert, P.E. The secondary contact person will be Tom Wolf, P.E.

6. Provide all activities associated (as necessary) with property acquisition and/or relocation, including, but not limited to, appraisals, title search, and required legal services. Acquire all necessary R.O.W. for the implementation of the project.

7. Give prompt written notice to Collier when it is known that either the Project criteria or conditions have changed, or Collier’s work is deficient in intent or technical content.

8. 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 May 4, 2018

### **ARTICLE 4 - FEES**

1. In consideration of the performance of services rendered under this Contract, the Collier shall be compensated for services performed in accordance with Article 1, not to exceed a lump sum fee of One Hundred Thousand Dollars (\$100,000).

2. Invoices shall be submitted by Collier to the City in monthly statements for services rendered, if any. The statements shall be based on the attached Collier Fee Schedule and other incurred expenses. Each individual invoice shall be due and payable thirty (30) days after receipt.

3. If the City disputes any portion of Collier's invoices, the undisputed portion will be paid by the City, and Collier will be notified in writing within ten (10) days of receipt of the exceptions taken to such invoice. The City and Collier 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 twelve (12) 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 Collier to have to revisit the plans created in accordance with the designated start date as defined herein.

### **ARTICLE 5 - NOTICE**

All notices, certificates or other communications hereunder shall be deemed sufficiently given and shall be deemed given when delivered by hand-delivery or mailed by first class, postage prepaid, registered or certified mail and addressed as follows:

If to Collier: Attn: Jeffrey D. Stevens, P.E.  
Title: Senior Engineer / Project Manager  
Collier Engineering Company, Inc.  
5560 Franklin Pike Circle  
Brentwood, TN 37027

If to City: Attn: Victor Lay  
Title: City Administrator  
City of Spring Hill  
199 Town Center Parkway  
Spring Hill, TN 37174

Copy to: Patrick M. Carter, Esq.  
City Attorney  
P.O. Box 1431  
Columbia, TN 38402-1431

#### **ARTICLE 6 - TERMINATION**

1. This Agreement may be terminated by either party upon thirty days (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 Collier in the event that the City permanently abandons the Project.

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

#### **ARTICLE 7 - DISPUTE RESOLUTION AND GOVERNING LAW**

1. The City and Collier 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 8 - 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 be entitled to their reasonable attorney's fees and court costs incurred in said legal proceeding.

#### **ARTICLE 9 - 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 Collier. Should any changes in the design of the Project be necessary, the City's designee shall report such change to Collier in writing. If the City determines that any changes in work are necessary to complete the Project, then Collier shall be allowed compensation based upon the original contract terms, including the additional work in the overall cost of the construction of the Project.

#### **ARTICLE 10 - INDEMNITY AND HOLD HARMLESS**

1. City shall agree to indemnify and hold Collier, 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.

2. Collier shall agree to indemnify and hold the 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 Collier, 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 Collier, its agents, employees, or any other entity for which Collier 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 11 - INSURANCE**

Collier shall maintain, during the term of this Agreement, or any extension hereof, the following insurance policy, designating the City as an additional insured when possible, 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 12 - 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 13 - 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 14 - INDEPENDENT CONTRACTOR RELATIONSHIP**

It is specifically understood that Collier's relationship with City shall be that of independent contractor and Collier shall in no sense be considered an agent or employee of City, nor shall Collier 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 15 - 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 16 - FORCE MAJEURE**

Collier 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 Collier'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 Collier, and unusually severe weather. Collier agrees to notify City of the existence and nature of any delay.

**ARTICLE 17 - 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.

**IN WITNESS WHEREOF**, the City has caused this Agreement to be signed by its authorized representative, and Collier 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

**COLLIER ENGINEERING COMPANY, INC.**

By:  \_\_\_\_\_  
Jeffrey D. Stevens, P.E., Senior Engineer



<b>Collier Engineering - 2017 Hourly Rates</b>	
*Effective July 1, 2017 to June 30, 2018	
<b>Classification</b>	<b>Hourly Rate</b>
Principal	\$ 195.00
Senior Project Manager	\$ 140.00
Project Manager	\$ 120.00
Senior Project Engineer	\$ 140.00
Project Engineer	\$ 120.00
Design Engineer	\$ 105.00
Engineer in Training	\$ 75.00
CADD/GIS Analyst	\$ 100.00
CADD/GIS Technician	\$ 65.00
Construction Manager	\$ 100.00
Senior Inspector	\$ 75.00
Inspector	\$ 60.00
Survey Manager	\$ 95.00
Survey Party Chief	\$ 75.00
Survey Technician	\$ 55.00
Accountant	\$ 90.00
Final Records Clerk	\$ 75.00
Administrative	\$ 50.00
Seasonal Intern	\$ 40.00

### **Reimbursable Expenses**

Costs for the following items will be submitted for reimbursement at cost or as specified below:

- Fees for necessary permit applications submitted by Collier on behalf of the client.
- Printing and/or reproduction costs for materials larger than 12x18.
- Mileage will be reimbursed at the effective IRS rate. (53.5 cents as of January 1, 2017)

### **Testing and Inspection Fees**

See the attached schedule for additional material testing and inspection specific fees.



## Tom Lunn Road - Roadway Improvements

Sections & Plan

Prepared for the City of Spring Hill

9-26-17

