

CONSTRUCTION AGREEMENT

This Construction Agreement ("Agreement") is made as of June 9, 2025 by and between Citi Station LLC ("Developer"), the address of which is 818 Stonebrook Drive, Lebanon, TN 37087, and the City of Mt. Juliet, Tennessee (the "City"), the address of which is 2425 N. Mt. Juliet Road, Mt. Juliet, TN 37122, for the relocation of approximately 500 linear feet of 12-inch water line located on East Division Street and N. Mt. Juliet Road.

RECITALS

- I. The City seeks to relocate approximately 500 linear feet of 12-inch water line belonging to West Wilson Utility District that currently runs along East Division Street and N. Mt. Juliet Road to accommodate the City's infrastructure plans to widen East Division Street.
- II. Right of way was dedicated to the City for the future widening of East Division Street as part of the Citi Station commercial development project currently being constructed at the corner of East Division Street and N. Mt. Juliet Road, which has necessitated the need for the City to relocate the waterline pursuant to the requirements of West Wilson Utility District.
- III. Citi Station has already redesigned their site work plan to accommodate West Wilson Utility District's requirements to move the water line.
- IV. The City agrees to contract with Citi Station LLC for construction management of the water line relocation and authorized their use of Powers Construction LLC as the contractor and Smith Bros Construction as the subcontractor.
- V. By allowing Citi Station LLC to complete the water line relocation as part of their ongoing project, the City can complete the construction at a substantially lower cost and it will allow for seamless integration with the ongoing site development, which will minimize disruption to the area and utility services, ensure efficient time management, and maintain a single point of responsibility for quality control.
- VI. By coordinating the water line relocation with the Citi Station project, the City will avoid logistical complications for completing the necessary infrastructure improvements in the future.
- VII. The subcontractor is currently mobilized and performing similar site work at Citi Station, creating an ideal window of opportunity for the water line relocation in order to avoid additional mobilization costs, scheduling conflicts, and potential disruption to completed work.
- VIII. Pursuant to the City of Mt. Juliet Charter, Section 6-19-104(c), "In case where the board indicates by unanimous resolution of those present at the meeting, based upon the written recommendation of the

manager, that it is clearly to the advantage of the city not to contract with competitive bidding, it may authorize noncompetitive contracts.”

- IX. On June 9, 2025, the City of Mt. Juliet Board of Commissioners unanimously voted to approve Resolution 2025- ____, thereby approving this Agreement.
- X. It is the purpose of this Agreement to provide for the terms and conditions upon which the Project may proceed.

IN CONSIDERATION OF THE MUTUAL TERMS, PROMISES, COVENANTS, AND CONDITIONS SET
OUT HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

- 1. THE CONSTRUCTION DOCUMENTS.** The Contract Documents consist of this Agreement and the following exhibits, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement:
- Exhibit A: West Wilson Utility District drawings and requirements
 - Exhibit B: Smith Bros Construction Schedule of Values for project scope of work
 - Exhibit C: AIA change order from Powers Construction
 - Any modifications issued after execution of this Agreement.
- 2. DESCRIPTION OF WORK.** The Developer shall fully execute the Work described in the Contract Documents, which specifically includes: (1) Construction management of the water line relocation through Powers Construction (contractor) and Smith Bros Construction (subcontractor); (2) Coordination with Powers Construction (contractor) and Smith Bros Construction (subcontractor); (3) Relocation of approximately 500 linear feet of 12-inch West Wilson Utility District water line; (4) Integration with ongoing Citi Station commercial development project; and (5) Compliance with and completion of all West Wilson Utility District requirements

All work shall be performed in compliance with:

- West Wilson Utility District standards and requirements;
- City of Mt. Juliet specifications;
- Tennessee Department of Environment and Conservation regulations; and
- All applicable building codes and safety standards.

Developer acknowledges that this work must be coordinated with the ongoing Citi Station commercial development project and agrees to minimize disruption to area traffic and utility services.

3. SPECIAL CONDITIONS AND CONSTRUCTION MANAGEMENT.

- a. **UTILITY COORDINATION.** The Developer shall ensure that all work is coordinated with West Wilson Utility District and all necessary approvals are obtained before commencing work on the water line relocation.
- b. **TRAFFIC MANAGEMENT.** The Developer shall ensure that appropriate traffic management plans are implemented during construction to minimize impact on East Division Street and N. Mt. Juliet Road.
- c. **ENVIRONMENTAL COMPLIANCE.** All work shall comply with environmental regulations and best practices for construction near water utilities.
- d. **QUALITY CONTROL.** The Developer maintains single point responsibility for quality control of all work performed under this contract through Powers Construction and Smith Bros Construction.

4. CONTRACT TIME AND SUBSTANTIAL COMPLETION.

- a. **DATE OF COMMENCEMENT.** Construction shall commence within ten (10) days after execution of this Agreement and receipt of all necessary permits and approvals from West Wilson Utility District. There shall be no unreasonable delay by the Developer in obtaining permits or approvals.
- b. **CONTRACT TIME.** The work to be performed under this Agreement shall begin on the Date of Commencement and shall be substantially completed, as defined in Section 3.c., no later than ninety (90) days from the Date of Commencement of the work.
- c. **SUBSTANTIAL COMPLETION.** Substantial Completion shall be deemed achieved when:
 - The 500 linear feet of 12-inch water line has been successfully relocated as shown on the West Wilson Utility District drawings;
 - The relocated water line is connected and operational;
 - The old water line has been properly handled in accordance with West Wilson Utility District requirements;
 - All necessary testing, inspection, and commissioning has been completed to West Wilson Utility District's satisfaction; and
 - West Wilson Utility District has provided written acceptance of the completed work.

Upon achievement of these conditions, the Developer will request a Certificate of Substantial Completion from the City, which shall be issued within five (5) business days of verification.

5. CONTRACT PRICE AND PAYMENTS.

- a. **PRICE.** The City shall pay the Developer the contract price of Six Hundred Seventeen Thousand Seven Hundred Sixty Dollars and Nineteen Cents (\$617,760.19) in current funds for the Developer's performance of the Contract. The contract sum is inclusive of all costs necessary for completion of the Work, including but not limited to:

- Construction Management Fee;
- Powers Construction contractor costs;
- Smith Bros Construction subcontractor costs;
- West Wilson Utility District fees and compliance requirements; and
- Materials, labor, equipment, permits, and all other services necessary for the Work.

One Hundred Percent (100%) of any savings realized from the contract price shall be credited to the City prior to payment. Adjustments to the contract price, if any, shall be by written change order.

- b. **PAYMENTS.** The contract price shall be paid in a single lump sum payment and shall be made within thirty (30) days after the City issues the Certificate of Substantial Completion. Given the single lump sum payment structure, no retainage shall be withheld.

6. RESPONSIBILITY OF DEVELOPER. Developer's duties and rights in connection with the above-described project are as follows:

- a. **RESPONSIBILITY FOR AND SUPERVISION OF CONSTRUCTION.** Developer shall be solely responsible for all work under this Agreement, including the techniques, sequences, procedures, and means and coordination of all work. Developer shall supervise and direct the work to the best of its ability and give it all the attention necessary for such proper supervision and direction.
- b. **DISCIPLINE AND EMPLOYMENT.** Developer shall maintain at all times strict discipline among its employees and contractors. Developer agrees not to employ or contract for work on the project any person unfit or without sufficient skill to perform the job for which he or she was employed.
- c. **FURNISHING OF LABOR, EQUIPMENT, ETC.** Developer shall provide, pay for, and/or contract for all labor equipment, including tools, machinery, utilities, including water, transportation, and all other facilities and services necessary for the proper completion of work on the project in

accordance with the contract documents, except where stated to the contrary within this Agreement.

- d. PAYMENT OF TAXES; PROCUREMENT OF LICENSES AND PERMITS.** As a tax-exempt entity, the City shall not be responsible for sales or use taxes incurred for products or services. The City shall supply Developer with its sales and use tax exemption certificate upon request. Developer shall bear the burden of providing its suppliers with a copy of the City's tax exemption certificate and vendor shall assume all liability for such taxes, if any should be incurred. Developer shall pay all taxes required by law in connection with the work in accordance with this agreement, including sales, use, and similar taxes. Developer shall secure all licenses and permits necessary for proper completion of the work, paying the fees for such licenses and permits.
- e. COMPLIANCE WITH LAWS AND REGULATIONS.** Developer shall comply with all laws and ordinances, and the rules, regulations, or orders of all public authorities relating to the performance of the work under and pursuant to this agreement. If any of the contract documents are at variance with any such laws, ordinances, rules, regulations, or orders, Developer shall notify the City promptly on discovery of such variance.
- f. RESPONSIBILITY FOR NEGLIGENCE OF EMPLOYEES AND SUBCONTRACTORS.** Developer assumes full responsibility for acts, negligence, or omissions of all its employees on the project, for those of its contractors/subcontractors and their employees, and for those of all other persons doing work under a contract with it.
- g. WARRANTY OF FITNESS OF EQUIPMENT AND MATERIALS.** Developer represents and warrants to the City that all equipment and materials used in the work, and made a part of the structures on such work, or placed permanently in connection with such work, will be new unless otherwise specified in the contract documents, of good quality, free of defects, and in conformity with the contract documents. It is understood and agreed between the parties to this Agreement that all equipment and materials not so in conformity will be considered defective. In addition, any manufacturer's warranty shall be in addition to the warranties contained within this Agreement.
- h. CLEAN-UP.** Developer agrees to keep the work premises and adjoining ways free of waste material and rubbish caused by its work or that of its contractors/subcontractors. Developer further agrees to remove all such waste material and rubbish on termination of the project, together with all its tools, equipment, machinery, and surplus materials. Developer agrees, on terminating its work at the City's premises, to conduct general clean-up operations, including the cleaning of all glass surfaces, paved streets and walks, and steps.

- i. **INDEMNITY AND HOLD HARMLESS AGREEMENT.** Developer agrees to defend, indemnify and hold the City harmless and any of its subsidiaries, agents or employees from and against all claims, demands, liabilities, suits, damages, or expenses, including reasonable attorney's fees, on account of injuries to or death of any person or persons or damage to any property occurring directly or indirectly from the performance of work hereunder by Developer or its employees, agents, servants, associates or contractors/subcontractors however such injuries or death or damage to property may be caused. The indemnification obligations of this agreement shall survive termination. The parties hereto agree that the City shall be in no event liable for any attorney's fees which Developer may incur due to breach of the agreement or an addendum by either party.
- j. **SAFETY PRECAUTIONS AND PROGRAMS.** Developer has the duty of providing for and overseeing all safety orders, precautions, and programs necessary to the reasonable safety of the work. In this connection, Developer shall take reasonable precautions for the safety of all employees and other persons whom the work might affect, all work and materials incorporated in the project, and all property and improvements on the work site and adjacent to the work site, complying with all applicable laws, ordinances, rules, regulations and orders.

7. INSURANCE.

- a. **CERTIFICATES OF INSURANCE.** The Developer shall provide certificates of insurance acceptable to the City evidencing compliance with the requirements in this section at the following times: (1) prior to commencement of the work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the City's written request.
- b. **ADDITIONAL INSURED.** The certificates shall name the City as an additional insured on the Developer's commercial general liability and excess or umbrella policy or policies for claims arising out of the Developer's, contractor's, and/or subcontractor's operations or made by the Developer's, contractor's, and/or subcontractor's employees, agents, guests, customers, invitees, or subcontractors. The Developers general liability insurance and additional insured coverage shall be primary and non-contributory to any of the City's general liability insurance policies.
- c. **CONTRACTORS AND SUBCONTRACTORS.** Developer shall be required to verify that all contractors and subcontractors maintain general liability insurance, workers' compensation insurance, and automobile liability insurance.
- d. **NO WAIVER OF SUBROGATION.** The City does not waive any rights of recovery against the Developer, contractors, or subcontractors for any damages.

- e. **WORKERS' COMPENSATION.** Developer shall comply with all applicable workers' compensation laws and other employee benefit laws and furnish to the City certificates indicating the name of the insurance companies, upon request.
- f. **REQUIRED INSURANCE COVERAGE.** The Developer shall purchase and maintain general liability insurance from an insurance company lawfully authorized in the jurisdiction where the project is located. The Developer shall maintain the required insurance for the duration of the project. The coverage shall have minimum policy limits of two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.

8. WORK CHANGES.

- a. The City reserves the right to order work changes in the nature of additions, deletions, or modifications, without invalidating this Agreement and agrees to make corresponding adjustments in the contract price and time for completion as indicated or required by said changes.
- b. All changes will be authorized by a written change order signed by the City or by its representative. The change order will include conforming changes in the agreement and completion time.
- c. Work shall be changed, and the contract price and completion time shall be modified only as set out in the written change order.
- d. Any adjustment in the contract price resulting in a credit or a charge to the City shall be determined by mutual agreement of the parties before starting the work involved in the change.

9. **TERMINATION FOR CAUSE.** City may, on seven (7) days' written notice to Developer, terminate this Agreement before the completion date specified in this Agreement, without prejudice to any other remedy it may have when Developer defaults in performance of any provision in this Agreement or fails to carry out the work in accordance with the provisions of the contract documents. On such termination, City may take possession of the work site and all materials, equipment, tools and machinery on the work site, and finish the work in whatever way it deems expedient. On any such default by Developer, City may elect not to terminate this agreement and, in such event, City may cure the default and deduct the costs of curing the default or deficiency from contract price.

10. MISCELLANEOUS PROVISIONS.

- a. **ASSIGNMENT.** This Agreement may not be assigned by either party without the prior express written consent of the other party. No consent to any assignment shall relieve or release either

party from any obligations under this Agreement, unless expressly provided to the contrary in such consent instrument.

- b. **RELATIONSHIP.** Nothing in this Agreement shall be construed as constituting a partnership, joint venture, or agency relationship between the City and Developer.
- c. **BINDING.** This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties.
- d. **SEVERABILITY.** If any provision of this agreement is illegal, invalid or unenforceable under present or future laws, then, and in that event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the parties to this Agreement that in lieu of each provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible, and be legal, valid and enforceable.
- e. **MEDIATION.** In the event any disputes arise related to the subject matter of this agreement and the parties cannot agree upon a resolution, the City may, at its option, require the attempted resolution of any disputes arising under the contract to agreement by mediation prior to the filing of any lawsuit or other claim.
- f. **APPLICABLE LAW AND VENUE.** The construction and validity of this Agreement shall be governed by the laws of the State of Tennessee. The venue of any action deemed necessary by either party hereto and in construction, interpretation or enforcement of this Agreement shall be a court of competent jurisdiction in Wilson County, Tennessee or the United States District Court for the Middle District of Tennessee.
- g. **PARAGRAPH HEADINGS.** The paragraph headings contained in this Agreement are for convenience only and shall in no way enlarge or limit the scope or meaning of the various and several paragraphs hereof.
- h. **BUSINESS DAY.** If any date or any period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period shall be extended to the first business day following such Saturday, Sunday, or legal holiday.
- i. **ENTIRE AGREEMENT.** This Agreement contains the entire understanding and agreement between the parties relating to the subject matters contained herein, including all the terms and conditions of the parties' Agreement. This Agreement supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating

hereto, whether written or oral and shall not be amended except by a written document executed by both parties. In the event of a conflict between this Agreement and any exhibits, the parties agree the terms of this Agreement shall prevail. This Agreement may be executed in counterpart manner, and copies of executed signature pages shall be binding upon the parties as if they were originals.

11. REPRESENTATIVES.

CITY REPRESENTATIVE

Kenny Martin, City Manager
2425 N Mt. Juliet Rd
Mt. Juliet, TN 37122
kmartin@cityofmtjuliet.org
615-566-1460

DEVELOPER REPRESENTATIVE

Kenneth Powers
818 Stonebrook Drive
Lebanon, TN 37087
kpowers@crsnashville.com
615-476-1127

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

THE CITY:

CITY OF MT. JULIET

By: _____
James Maness, Mayor

APPROVED AS TO FORM:

By: _____
Samantha A. Burnett, City Attorney

DEVELOPER:

CITI STATION LLC

By: _____
Kenneth Powers, Manager