

AGREEMENT

This Agreement is made the _____ day of _____, 2023, by and between the following:

CITY: City of Mt. Juliet, a Tennessee "home rule" municipality
2425 North Mt. Juliet Road
Mt. Juliet, TN 37122
(615) 754-2552; Fax (615) 754-5742
Email: kmartin@mtjuliet-tn.gov
ATTN: Kenny Martin, City Manager

CONTRACTOR: G E Merritt Construction, LLC
4470 Old Lebanon Dirt Road
Mt. Juliet, TN 37122
(615) 405-7080
Email: gmerritt@gemerrittconstruction.com
ATTN: Gary Merritt

In consideration of the mutual covenants set forth in this Agreement, City and Contractor agree as follows:

1. **Description of Work.** Contractor shall perform all work as shown in the contract documents for the completion of the work at the City's property located at 115 Clemmons Rd in Mt. Juliet, generally described as follows:

SEE EXHIBIT A – SCOPE OF WORK

2. **Contract Time.** The work to be performed under this Agreement shall begin on the ____24____ day of ____October____, 2023 ("Start Date"), and shall be completed no later than ____ (90) days from the Start Date. If the project is delayed through the fault of the Contractor, the City shall be entitled to liquidated damages of __One-Thousand__ Dollars (\$1,000) per day for each day the work remains unfinished after the completion date stated herein.

3. **Price.** The City will pay Contractor for performance of the work and upon completion of the project, in accordance with the contract documents and upon the City's approval of the work completed, subject to adjustment by modifications as provided in the contract documents, the contract price, which shall not exceed One Hundred Ninety-Four Thousand Five Hundred Dollars (\$194,500) ("Contract Price"). Within thirty (30) calendar days of receipt of Contractor's periodic Application for Payment, the City will pay Contractor the sum then due and owing under the Application for Payment. The City's obligation to make such payment is conditioned upon the City's review of the Application for Payment and its supporting documentation, review and acceptance of the Work covered therein, and the provision to the City by Contractor of releases of mechanics' and materialmen's liens for the Work covered therein. One Hundred Percent (100%) of any savings realized from the Contract Price shall be credited to the City. Adjustments to the Contract Price, if any, shall be by written Change Order.

4. **Contract Documents.** The Contract Documents that comprise the Agreement between the City and Contractor are attached to and made a part of this agreement and consist of the following:

- (a) This Agreement consisting of six (6) pages;
- (b) Exhibit A – Scope of Work consisting of one (1) page;

- (c) Exhibit B – Specimen Certificate of Liability Insurance with Limits Required by the City;
- (d) Exhibit C – Drawings – Specifications; and,
- (e) Any modifications, including change orders, duly delivered after execution of this Agreement.

5. **Responsibility of City.** The City shall give all instructions to Contractor through one individual, who is designated as such to Contractor. The City shall furnish all necessary surveys and site plans for the work. The City shall secure easements for permanent structures or permanent changes in the existing structures or facilities at the work site, or which are necessary for its proper completion. The City reserves the right to let other contracts in connection with the project. Contractor shall cooperate with all other contractors to the effect that their work shall not be impeded by his work and shall give such other contractors access to the work site necessary to perform their contracts.

6. **Responsibility of Contractor.** Contractor's duties and rights in connection with the above-described project are as follows:

(a) **Responsibility for and Supervision of Construction.** Contractor shall be solely responsible for all work under this Agreement, including the techniques, sequences, procedures, and means, and coordination of all work. Contractor 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.** Contractor shall maintain at all times strict discipline among its employees, and Contractor agrees not to employ 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.** Contractor shall provide and pay 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.** Contractor shall pay all taxes required by law in connection with the work in accordance with this Agreement, including sales, use and similar taxes. Contractor 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.** Contractor 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, Contractor shall notify the City promptly on discovery of such variance.

(f) **Responsibility for Negligence of Employees and Subcontractors.** Contractor assumes full responsibility for acts, negligence, or omissions of all its employees on the project, for those of his 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.** Contractor 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) **Furnishing of Samples and Shop Drawings.** Contractor agrees to furnish, at the City's direction, all samples and shop drawings for the City's consideration and approval as to conformance with the specifications of the Contract Documents.

(i) **Clean-up.** Contractor agrees to keep the work premises and adjoining ways free of waste material and rubbish caused by its work or that of its subcontractors. Contractor 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. Contractor 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, steps, and interior floors and walls.

(j) **Indemnity and Hold Harmless Agreement.** Contractor 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 Contractor or its employees, agents, servants, associates or subcontractors however such injuries or death or damage to property may be caused. The indemnification obligations of this Agreement shall survive termination.

(k) **Safety Precautions and Programs.** Contractor 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, Contractor 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.** Contractor shall procure and maintain in effect during the term of this Agreement the following insurance with a company satisfactory to the City, certificates of which shall be furnished to the City on or before commencing work hereunder:

**SEE EXHIBIT B – SPECIMEN CERTIFICATE OF LIABILITY
INSURANCE WITH LIMITS REQUIRED BY THE CITY**

(a) **ADDITIONAL INSURED.** Contractor shall provide certificates of insurance to the City indicating the name of the insurance companies and naming the City as an additional insured on Contractor's liability policy for claims arising out of Contractor's, subcontractor's or sub-subcontractor's operations or made by Contractor's, subcontractor's or sub-subcontractor's employees, agents, guests, customers, invitees or subcontractors. Contractor must verify its liability insurance policy is primary in the event of a covered claim or cause of action against the City.

(b) **SUBCONTRACTORS.** Contractor shall be required to verify that all subcontractors maintain general liability insurance, workers' compensation insurance and automobile liability insurance.

(c) **NO WAIVER OF SUBROGATION.** The City does not waive any rights of recovery against the Contractor, subcontractor or sub-subcontractor for any damages.

(d) **WORKERS' COMPENSATION; NO CHANGES.** Contractor 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. Contractor's insurance coverage shall not be altered or cancelled without thirty (30) days' prior notice to the City.

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.**

(a) **Termination for Convenience.** This Agreement may be terminated by the City, without cause, at any time by giving the Contractor seven (7) days' prior written notice. In such event, Contractor shall be paid under the terms of this Agreement for all work performed and accepted by the City prior to the effective date of termination.

(b) **Termination for Cause.** City may, on seven (7) days' written notice to Contractor, terminate this Agreement before the completion date specified in this Agreement, without prejudice to any other remedy it may have when Contractor 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. If the unpaid balance on the Contract Price at the time of such termination exceeds the expense of finishing the work, City will pay such excess to Contractor. If the expense of finishing the work exceeds the unpaid balance at the time of termination, Contractor agrees to pay the difference to City. On any such default by Contractor, 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 the progress payment then or to become due to Contractor.

10. **Binding Effect.** This Agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors and assigns of the parties.

11. **Miscellaneous Provisions.**

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.

Relationship. Nothing in this Agreement shall be construed as constituting a partnership, joint venture or agency relationship between the City and Contractor. The relationship of the parties to each other shall be that of independent contractor.

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.

Waiver. Any failure by a party hereto to insist, or any election by a party hereto not to insist, upon strict performance by the other party of any of the terms, provisions or conditions of this Agreement shall not be deemed to be a waiver thereof or of any other term, provision or condition hereof, and such party shall have the right at any time or times thereafter to insist upon strict performance of any and all of the terms, provisions and conditions hereof.

Mediation. In the event any disputes arise related to the subject matter of this Agreement and the parties cannot agree upon a resolution, the issue(s) shall first be submitted for mediation.

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 Wilson County, Tennessee.

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.

Grammatical Construction. Wherever appropriate, the masculine gender may include the feminine or neuter, and the singular may include the plural, and vice versa.

Representation by Counsel. The parties acknowledge that each party to this Agreement has been represented by counsel or has had the opportunity to be represented by counsel in the negotiation and preparation of this Agreement. This Agreement shall be construed without regard to any presumption or rule requiring that it be construed or constructed against the party who has drafted or caused the Agreement to be drafted.

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.

Prevailing Party. In the event of any litigation or disputes regarding this Agreement, the prevailing party or parties shall be entitled to recover reasonable attorneys' fees and all costs at all trial and appellate levels and in any mediation.

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.

12. **Notices.** Any notice provided for or concerning this Agreement shall be in writing and be deemed sufficiently given when sent by certified or registered mail to the respective address of each party as set forth hereinabove.

IN WITNESS WHEREOF, each party to this Agreement has caused it to be executed on the date indicated below.

CITY:

APPROVED AS TO FORM:

CITY OF MT. JULIET

By: _____
James Maness, Mayor L. Gino Marchetti, Jr., City Attorney

Date: _____ Date: _____

CONTRACTOR:

G E MERRITT CONSTRUCTION, LLC

By:  _____
[Authorized Signature]

Name: Gary E Merritt
[Print Name]

Its: Owner
[Print Title]

Date: 10/26/23

EXHIBIT A
SCOPE OF WORK

Contractor shall furnish the materials and perform the work at the City's property as described herein for the remodel of the city building at 115 Clemmons Rd in Mt. Juliet, Tennessee. The project includes remodeling the lobby, the addition of men's and women's locker rooms and shower facilities, addition of a conference room, and the addition of a workspace and remodel an office space. Project includes demo and removal of construction debris. The building is sprinkled and sprinkler heads will be dropped into required new spaces.

EXHIBIT B
SPECIMEN CERTIFICATE OF LIABILITY INSURANCE
WITH LIMITS REQUIRED BY THE CITY

EXHIBIT C
DRAWINGS – SPECIFICATIONS