

TDOT PERMIT - DEVELOPMENT AGREEMENT

This PERMITTING AGREEMENT (the “Agreement”) entered into by and between EASTSIDE UTILITY DISTRICT (the “District”), a Tennessee public corporation, and _____ (the “Owner”); of _____ and _____ (the “Contractor”) working on behalf of the owner.

W I T N E S S E T H

THAT WHEREAS, the Owner has a need to connect his development to the District’s water system which requires a State of Tennessee Department of Transportation Right of Way Permit (the Permit).

WHEREAS, the Owner desires that the District apply and obtain the Permit on behalf of the Owner and the Owner’s Contractor as required by the Tennessee Department of Transportation;

NOW, THEREFORE, in consideration of the premises, the mutual promises contained in this Agreement and other good and valuable considerations, the receipt and sufficiency of all of which are hereby acknowledged, the parties to this Agreement agree as follows:

1. Responsibilities for expenses incurred

Owner and Contractor hereby agree to restore the ROW managed by the Tennessee Department of Transportation to the satisfaction of TDOT. All costs involved in the management and restoration of the ROW required by the Permit will be the sole responsibility of the Owner and Contractor. It is also agreed for the length of one year after the completion of the development that any costs associated with the performance of the work required in the Permit will be the sole responsibility of the Owner and Contractor. Owner and/or Contractor agree to provide plans showing the location, type, and scope of all work to be done or appliances to be installed

on the TDOT ROW, subject to the approval of the District and TDOT. The District will cooperate with Owner and Contractor in applying for a TDOT ROW permit.

2. Warranties and Representations of Owner Regarding Construction and Installation of Water Lines in the right of way

(a) Owner represents and warrants that it will construct and install the Water Lines in compliance with the District's Water Line Construction and Water Service Policy (the "Policy"), the District Specifications (as that term is defined in the Policy), the requirements of the Tennessee Department of Environment and Conservation, the requirements of any other department or agency having jurisdiction over the Water Lines and all applicable laws, rules and regulations. The Owner represents and warrants that it will perform all work in the ROW in accordance with the Permit obtained by the District and will perform all actions required by TDOT during the performance of the work and for one year after completion if follow up inspections require additional actions to be taken to maintain the right of way.

(b) Owner hereby warrants that the Water Lines shall be free from defects in workmanship and materials for a period of one year from the date the Water Lines are tied into the District's water main, water is supplied to the Water Lines and the necessary tests required by the District Specifications have been performed to the satisfaction of the District. Owner and Contractor agree to repair or replace immediately upon demand by the District, at Owner's and Contractor's cost, any defects existing or arising in the Water Lines during the one-year warranty period. The District has the right, but not the obligation, to make any such repairs or replacements. Owner shall reimburse the District upon demand for the cost of such repairs or replacements at the normal billing rate of the District. The warranty contained in this Subsection 2(b) shall cover defects which arise or exist during the

one-year warranty period even though such defects do not become apparent until after the one-year warranty period.

3. Performance Bond. In order to secure the performance by Owner of its warranty obligations under Section 2 above, upon the request of the District, the Owner shall provide the District prior to the execution and delivery of this Agreement with a performance bond issued by a company acceptable to the District, in amount, and containing terms acceptable to the District. The performance bond shall have a term of two years, or less if specified by the District. With the consent of the District, the Owner may furnish security other than a bond, which shall be in form and substance satisfactory to the District. The decision to require a bond or other similar security shall be made on behalf of the District at the sole discretion of the General Manager of the District.

4. Indemnification. Owner agrees to indemnify and hold the District harmless from and against any and all liabilities, obligations, claims and causes of action, whether now known, fixed or contingent, which arise with respect to or in connection with (a) the construction or installation of the Water Lines, and (b) the breach by Owner of any of its warranties, representations or covenants contained in this Agreement. The foregoing indemnification shall apply to any liabilities, obligations, claims or causes of action, including reasonable attorney's fees and expenses, resulting from any negligence of the Owner, but shall not apply to any liabilities, obligations, claims or causes of action resulting from the sole negligence of the District.

5. Miscellaneous.

(a) Binding Effect. This Agreement shall be binding upon and shall insure to the benefit of the parties, their successors and permitted assigns.

(b) Entire Agreement. This Agreement, including the exhibits to it and all documents and instruments to be delivered pursuant to this Agreement, contains

the entire agreement between the parties hereto with respect to the transactions contemplated by this Agreement and may not be changed or terminated except by a written instrument signed by each of the parties to this Agreement. All exhibits to this Agreement are incorporated into this Agreement by reference.

(c) Section Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

(d) Law of Agreement. This Agreement shall be interpreted and construed under and in accordance with the laws of the State of Tennessee.

(e) Waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

(f) Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(g) Assignment. The District shall have the unrestricted right to assign all or any part of its rights and interests under this Agreement. Upon notice to Owner of an assignment of all or any part of the District's rights and interests under this Agreement to an assignee, such assignee shall have all the rights and obligations of the District hereunder. Owner may assign or delegate any of its rights, interests and duties or obligations under this Agreement only with the prior written consent of the District.

IN WITNESS WHEREOF, each of the parties has caused its duly authorized officers to execute this Agreement this _____ day of _____, 2022.

ATTEST:

Title: _____

Owner -

By _____
(Owner's Signature)

Title: _____

ATTEST:

Title: _____

Owner -

By _____
(Contractor's Signature)

Title: _____

ATTEST:

Title: _____

EASTSIDE UTILITY DISTRICT

By _____
Jay Mullin, General Manager