

# CONTESSA UNIT 2

## CONTRACT DOCUMENTS AND SPECIFICATIONS FOR CONSTRUCTION

**OWNER AND FOR THE BENEFIT OF:**

COMAL COUNTY SCHOENTHAL MUNICIPAL UTILITY DISTRICT  
1330 POST OAK BLVD, SUITE 2650  
HOUSTON, TEXAS 77056

**DEVELOPER:**

MERITAGE HOMES OF TEXAS, LLC  
2722 W. BITTERS  
SAN ANTONIO, TEXAS 78231

**PREPARED BY:**

CUDE ENGINEERS  
4122 POND HILL ROAD  
SAN ANTONIO, TX 78231

TBPE REGISTRATION NO. 455  
TBPLS NO. 10048500



05/08/2026

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ENGINEERS SEAL

## TABLE OF CONTENTS

- INVITATION TO BIDDERS
- INSTRUCTIONS TO BIDDERS
- BID FORM/SCHEDULE OF VALUES
- AGREEMENT
- GENERAL CONDITIONS TO THE CONTRACT
- ATTACHMENT A TO GENERAL CONDITIONS - INSURANCE REQUIREMENTS
- ATTACHMENT B TO GENERAL CONDITIONS - MINIMUM WAGE RATE
- SPECIAL CONDITIONS TO THE CONTRACT PART A
- SPECIAL CONDITIONS TO THE CONTRACT PART B
- PERFORMANCE BOND
- PAYMENT BOND
- MAINTENANCE BOND
- SALES TAX EXEMPTION
- STANDARD SPECIFICATIONS
- SPECIAL SPECIFICATIONS

## INVITATION TO BIDDERS

Sealed Bids addressed to Meritage Homes of Texas, LLC for the benefit of Comal County Schoenthal Municipal Utility District, Attention to the Board of Directors, will be received at the office of Cude Engineers, 4122 Pond Hill Road, Suite 101, San Antonio, Texas 78231, until 2:00 p.m. Local Time, May 26, 2026, and then publicly opened and read aloud for Contessa Unit 2, Comal County, Texas.” Bids received after the closing time will not be considered.

Scope of Work of the Contract Documents includes: The infrastructure to serve a 146-lot single family residential subdivision with associated water, drainage, roadways, and dry utilities.

A MANDATORY pre-bid conference will be held at the office of Cude Engineers, 4122 Pond Hill Road, Suite 101, San Antonio, Texas 78231, at 11:00 a.m. Local Time, May 19, 2026. Attendance by each prospective bidder or its representative at the pre-bid conference is MANDATORY, and no Bid will be opened unless the bidder or representative was present at the pre-bid conference.

Each Bid must be accompanied by a Bid Bond or a certified or cashier’s check, acceptable to the Owner, in an amount not less than two percent (2%) of the total amount Bid, as a guarantee that the successful bidder will enter into the Contract Documents and execute the Bonds on the forms provided and provide the required insurance certificates within seven (7) days after the date Contract Documents are received by the Contractor.

Copies of the bidding documents may be obtained from [www.CivcastUSA.com](http://www.CivcastUSA.com): search “Contessa Unit 2”. Bidders must register on this website in order to view and/or download specifications, plans, soils report, and environmental reports for this Project. There is NO charge to view or download documents.

By submitting a Bid, bidder acknowledges and agrees that the Contract Documents may be accepted, executed or agreed to through the use of an Electronic Signature, as defined by and in accordance with Owner’s Electronic Signature Rules for Construction Contracts.

The Owner reserves the right to reject any or all Bids and to waive all defects and irregularities in bidding or bidding process except time of submitting a Bid. The successful bidder, if any, will be the responsible bidder which in the Board’s judgment will be most advantageous to the District and result in the best and most economical completion of the Project.

The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Bid and the Contractor agrees that the Contract Documents can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.

Comal County Schoenthal Municipal Utility District



## INSTRUCTIONS TO BIDDERS

1. **PREPARATION OF BIDS.** Unless otherwise directed in the Invitation to Bidders, each Bid must be submitted on the bid forms provided or on photocopies of the forms, in conformity with the requirements of the **Invitation to Bidders**, these **Instructions to Bidders** (“Instructions”), and the instructions printed on the bid form. In addition, if submitting a paper Bid, the Bid must be submitted in duplicate.

All blanks on the bid form must be completed, and no change shall be made to the bid form or any other of the Contract Documents. All amounts must be in figures, with amounts extended and totaled. If minimum unit prices have been established for certain items, the minimum unit prices will be shown on the bid form. **See Paragraph 8 of these Instructions.** If the bidder chooses not to bid on optional items (if any), “No Bid” must be entered in the bid space. Any Bid may be rejected if it contains any omission, erasure, alteration, addition, irregularity of any kind, or items not called for; if it does not submit prices for each of the items in the bid form; if it is not signed by the bidder; if it is unbalanced; or if it in any manner, fails to conform to the conditions of the Invitation to Bidders and these Instructions. An “unbalanced” Bid means a Bid containing unit prices that are significantly less than cost for some items and significantly more than cost for others. This may be evidenced by submission of unit price Bid items where the cost is significantly higher/lower than the cost of the same Bid items submitted by other Bidders on the same Project.

The bidder must sign its Bid. If the Bid is made by a partnership or corporation, the name and address of the partnership or corporation must be shown together with the names and addresses of the partners or officers. If the Bid is made by an individual, it must be executed by that person; if made by a partnership, it must be executed by one of the partners (and if by a limited partnership, then executed by the general partner); or if made by a corporation, it must be executed in the corporate name by the president or a vice-president (or other corporate officer accompanied by evidence of authority to sign) and the corporate seal must be affixed and attested by the secretary or assistant secretary of the corporation. The corporate address and state of incorporation shall be shown below the signature.

When applicable, evidence of authority to conduct business as an out-of-state corporation in the State of Texas must be provided in accordance with the paragraph entitled QUALIFICATION OF BIDDERS. State contractor license number, if any, must also be shown.

The Bid, Bid Security, and proposed construction schedule must be sealed and must identify the contents (i.e., Bid or Bid Security), the bidder’s name, and the job name and number, and be addressed to the Owner as prescribed in the **Invitation to Bidders**.

2. **CONTRACT DOCUMENTS.** The Contract Documents are complementary and must be read together as a whole; what is called for by one is binding as if called for by all.

Bidders desiring further information or further interpretation of any part of the Contract Documents are hereby obligated to submit a written request online to the [www.CivcastUSA.com](http://www.CivcastUSA.com) system or directly to the Engineer ([jcastello@cudeengineers.com](mailto:jcastello@cudeengineers.com) and [jmckinnie@cudeengineers.com](mailto:jmckinnie@cudeengineers.com)) not less than six (6) calendar days (**May 20, 2026 @ 5:00**) before the Bid opening. If appropriate, answers to these requests will be given, in writing, to all bidders as addenda to the Contract Documents, and when each addendum is issued it becomes a part of the Contract Documents. No explanation or interpretation of the Contract Documents, other than written addenda, is binding.

Should a bidder find discrepancies or errors in or omissions from the Contract Documents or should the bidder be in doubt as to any meaning, the bidder is hereby obligated to notify Engineer in writing.



It is the responsibility of each bidder to determine if it has received all addenda, complete files of which will be maintained at the Engineer's office and the office designated to receive the Bids, if any.

Each bidder must inform itself fully of the construction and labor conditions under which the Work will be performed and will be presumed to have inspected the Site and to have read and to be thoroughly familiar with the Contract Documents. Failure to do so will not relieve the successful bidder of its obligation to furnish all materials and labor necessary to carry out the requirements of the Contract Documents and to complete the Work for the consideration in its Bid.

3. PRE-BID CONFERENCE. A **MANDATORY** pre-bid conference among Owner, Engineer, prospective bidders, and others will be held to discuss the scope of the Work and to answer questions concerning the Work. No addendum will be issued at this conference, but an addendum will be issued afterwards, if necessary, to answer questions. The **MANDATORY** pre-bid conference will be held at the place and time stated in the **Invitation to Bidders** or as modified by written addenda. Attendance by each prospective bidder or its representative at the pre-bid conference is **MANDATORY**, and no Bid will be opened unless the bidder or representative was present at the pre-bid conference. If an attendee fails to provide his/her name, firm represented, street address, and telephone number, Owner may treat such attendee as not having been present and as having failed to comply with the mandatory pre-bid conference requirement. No person can represent more than one bidder at the **MANDATORY** pre-bid conference. If a person claims to represent more than one bidder at the pre-bid conference, the Bid of each bidder so represented will be returned unopened.

4. BID SECURITY. Each Bid must be accompanied by a bid bond or a certified or cashier's check, acceptable to the Owner, in an amount not less than two (2) percent of the total amount bid (the "Bid Security"), as a guarantee that the successful bidder will enter into the Contract and execute the required Bonds on the forms provided and provide the required insurance certificates and Bonds within seven (7) days after the date Contract Documents are received by the successful bidder. Bid Securities will be returned to all but the three (3) most qualified, responsible bidders within three (3) days after opening of Bids, and the latter's Bid Securities will be returned after complete execution of the Contract Documents. If the successful bidder does not enter into the Contract after notice of award, then the bidder's Bid Security will be forfeited and will be retained by Owner. If the award of the Contract to the successful bidder is canceled or not executed for any reason, the Owner may accept the next lowest bid and proceed with the next-lowest qualified bidder.

5. BONDS. The successful bidder must furnish a performance bond and a payment bond each in the sum of 100 percent (100%) of the Contract Price. **The Payment Bond form must comply with the Requirements of Subchapter I of Chapter 53 of the Texas Property Code.** The Bonds must be from a surety company holding a permit from the State of Texas to act as surety. Unless otherwise specified, the cost of proving Bonds must be included in the bidder's total Bid amount. The surety company must have a minimum Best Key Rating of "B+" or better. The surety company, the agency and agent issuing the Bonds must be authorized to issue Bonds in Texas in an amount equal to the total Contract Price and such authorization must be recorded in the files of the Texas Department of Insurance. The person executing the Bonds must be a licensed Texas local recording agent and such licensing must be recorded in the files of the Texas Department of Insurance. All Bonds signed by an agent must be accompanied by a certified copy of the agent's authority to act. The Bonds must be executed by a duly appointed representative of the surety company licensed by the State of Texas as a General Lines Agent and such licensing must be recorded in the files of the Texas Department of Insurance. If the surety company does not have such a rating due to the length of time it has existed, the surety company must



be eligible to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety listed in the current **U.S. Department of Treasury Circular 570**, and must meet all of the rules and regulations of the Treasury Department with respect to performance and payment bonds for federal jobs, including specifically the rules related to underwriting limitation. For contracts over \$100,000, the surety must also hold a certificate of authority from the United States Secretary of Treasury to qualify as a surety on obligations permitted or required under federal law, or have obtained reinsurance for any liability in excess of \$1,000,000 from a reinsurer that is authorized and admitted as a reinsurer in the State of Texas and is the holder of a certificate of authority from the United States Secretary of Treasury to qualify as a surety or reinsurer on obligations permitted or required under federal law. If bidder's proposed surety company, agency or agents do not meet the requirements herein, then Owner may refrain from considering the bid for Contract award and Owner may require bidder to forfeit its Bid Security.

It is further agreed that the successful bidder will execute the Bonds required for the satisfactory performance of the Work, the fulfillment of any guarantees required, and the prompt payment to all persons supplying labor and materials in the prosecution of the Work, in accordance with the Contract Documents and on the forms provided for this purpose. It is agreed that this Contract is not in effect until the required Bonds are furnished and approved by Owner. Upon increase of the Contract Price authorized by Change Order, Contractor must immediately provide revised Bonds for such increased Contract Price. Contractor's failure to provide compliant Bonds may be grounds for immediate termination regardless of whether the Contractor has started the Work on the Project.

If the surety on any Bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements herein Contractor must promptly notify Owner and Engineer and must, within ten (10) calendar days after the event giving rise to such notification, provide another Bond and surety to fulfill the required obligations.

6. **DELIVERY OF BIDS.** It is each bidder's responsibility to deliver its Bid, Bid Security, and proposed construction schedule as stated in the **Invitation to Bidders** before the closing time. The fact that a Bid and a Bid Security were dispatched will not be considered. The Bid and Bid Security must be timely delivered to be considered.

7. **"OR EQUAL" SUBMISSIONS.** Where materials or equipment are specified by a trade or brand name, it is not the intention of the Owner to discriminate against an equal product of another manufacturer, but to set a definite standard of quality or performance. In preparing its proposal, each bidder is expected to include in its base Bid the cost of the item so specified. However, in certain Technical Specification sections, manufacturers are listed followed by "or equal". In certain other Technical Specification sections, manufacturers are listed with "or equal" not included. In those items where "or equal" is not included, it is hereby added and understood to be included, even though not specifically stated in each Technical Specification. If a bidder chooses to submit a suggested "or equal" product in lieu of a product by one of the named manufacturers, Owner will evaluate the item to determine if it is an "equal". The bidder is responsible for providing all data required to evaluate an item submitted as a suggested "or equal." Owner's decision on whether a suggested manufacturer is an "equal" is final. No claims for additional cost or time delay, etc. will be accepted if a suggested manufacturer is submitted by bidder as an "equal" and Owner decides the item is not "equal".

Bidder must submit its list of suggested "or equal" items at time of Bid submission. No additional suggested "or equal" items will be considered after bid opening.



8. MINIMUM UNIT PRICE ITEMS. If the approximate quantity and a minimum unit price have been established for items in the bid form, the bidder may not bid a unit price less than the minimum value; however, it may bid an amount greater than the minimum unit price. If no entry is made in the spaces provided, the minimum unit prices shown apply.

9. EXTRA UNIT PRICE ITEMS. Extra Unit Price Items are included to facilitate payment for changes and alterations that may be required to complete the Work. The Work, as provided by the Contract Documents, is described in bid items other than Extra Unit Price Items. When additional Work covered by Extra Unit Price Items is performed, payment will be based on the quantity constructed and the unit prices entered in the Bid.

10. TIME FOR COMPLETION. Contractor will **not** be allowed time extensions (i) due to inclement weather except for Force Majeure events as defined under **Section 1.01 of the General Conditions of the Contract**; (ii) due to non-availability of equipment or material, when the principal units of Work and tasks on the critical path are not in progress or are not delayed by the event of delay, interference, disruption, or hindrance; (iii) when at least seven (7) hours of available working time remain out of the working day; (iv) while materials are drying and it is possible for the Contractor to enclose the area and use drying devices; (v) when an event of delay, interference, disruption, or hindrance occurs on a day other than a working day or other day when the Contractor had not originally planned to work; (vi) when an event of delay, interference, disruption, or hindrance occurs after the expiration of the Contract Time; (vii) to the extent the Contractor could have anticipated or alleviated the impact of the event of delay, interference, disruption, or hindrance through reasonable efforts; (viii) when events of concurrent delay overlap the claimed delay; and/or (ix) when an extension of time is precluded by any provision of the Contract Documents.

The Contractor will be allowed **290** calendar days to achieve Substantial Completion and 30 calendar days to achieve Final Completion of all Work to meet all requirements for final payment. Contractor's proposed schedule should anticipate a start date of **June 15, 2026**, and substantial completion no later than **April 1, 2027**.

11. QUALIFICATION OF BIDDERS. The Owner will select the most qualified contractor to perform the Work. The apparent low bid and responsible bidder must submit to Owner, as requested, within five (5) calendar days of notification of award, a written statement of qualifications. The selected bidder must demonstrate to the Owner that the low bidder has started and successfully completed five (5) similar projects in the San Antonio MSA over the past three (3) years. Selected bidder will be required to provide, at a minimum, the name of the project, scope of work, and Client name with contact information.

12. MODIFICATION AND WITHDRAWAL OF BIDS. Bids may be modified or withdrawn by an appropriate document duly executed (in the manner that a Bid must be executed) and delivered in the same manner as Bids were submitted at any time prior to the opening of Bids. If, within twenty-four (24) hours after Bids are opened, any bidder files a duly signed, written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid despite the exercise of ordinary care, that bidder may withdraw its Bid and the Bid Security will be returned.

13. AWARD OF CONTRACT. Owner reserves the right to reject any or all Bids, including without limitation the right to reject any or all nonconforming, non-responsive, unbalanced or conditional Bids and to reject the Bid of any bidder if Owner believes that it would not be in the best interest of the Project to make award to that bidder, whether because the Bid is not responsive or the bidder is



unqualified or of doubtful financial ability or fails to meet any other pertinent standard or criteria of Owner. Owner also reserves the right to waive all informalities and defects in bidding, except time of submitting a Bid. Discrepancies between the multiplication of units and unit prices in a Bid will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum if the correct sum is evident from the face of the Bid.

In evaluating Bids, Owner will consider, among other things, the qualifications of bidders, whether the Bids comply with the prescribed requirements, and such substitutions, alternates, unit prices and other data, as may be requested in the bid form or prior to the Bid opening. Alternate bid items will not be considered unless requested in the bid form.

Owner may consider the qualifications and experience of subcontractors, suppliers, and other persons and organizations proposed for the Work. Owner also may consider the operating costs, maintenance requirements, performance data and guarantees of major items of materials and equipment proposed for incorporation in the Work.

Owner may conduct such investigations as Owner deems necessary to assist in the evaluation of any Bid and to establish the responsibility, qualifications and financial ability of bidders, proposed subcontractors, suppliers and other persons and organizations to perform and furnish the Work in accordance with the Contract Documents, to Owner's satisfaction.

BY SUBMITTING A BID, EACH BIDDER AUTHORIZES OWNER TO PERFORM ALL INVESTIGATIONS INTO THE BIDDER'S BACKGROUND, CAPABILITIES, PRIOR EXPERIENCE, AND OTHER FACTORS PERTAINING TO BIDDER'S PERFORMANCE OF THE WORK AS OWNER DEEMS NECESSARY IN ITS SOLE DISCRETION, AND FOR THAT PURPOSE, SUBMISSION OF A BID ACTS AS BIDDER'S SPECIFIC AUTHORIZATION TO PERSONS AND ENTITIES CONTACTED BY OWNER IN CONNECTION WITH SUCH INVESTIGATIONS TO PROVIDE OWNER WITH THE INFORMATION REQUESTED BY OWNER AND TO DISCUSS AND EXPRESS OPINIONS CONCERNING BIDDER. FURTHER, BY SUBMISSION OF A BID, BIDDER AGREES TO FULLY AND FOREVER WAIVE AND RELEASE ANY CLAIM (KNOWN OR UNKNOWN) IT HAS OR MAY HAVE AGAINST THE OWNER AND ENGINEER AND THEIR RESPECTIVE ATTORNEYS, EMPLOYEES, CONSULTANTS, REPRESENTATIVES, AND AGENTS ("THE EVALUATING PARTIES") ARISING OUT OF OR IN CONNECTION WITH THE: (1) ADMINISTRATION, EVALUATION, OR RECOMMENDATION (OR LACK THEREOF) OF ANY BID; (2) WAIVER OF ANY REQUIREMENTS UNDER THE BID DOCUMENTS OR THE CONTRACT DOCUMENTS; AND (3) ACCEPTANCE OR REJECTION OF ANY BIDS AND AWARD OF THE CONTRACT.

Owner reserves the right to award the Bid, at Owner's discretion, based on the amount of the total base bid (without including "Extra Unit Price Items" or "alternate" bid items) or on the amount of the total amount bid (including "Extra Unit Price Items" or "alternate" bid items), or based on any other combination, means or method determined appropriate by Owner.

If the Contract is to be awarded, it will be awarded to the responsible bidder whose evaluation by Owner indicates that the award will be most advantageous to the Owner and result in the best and most economical completion of the Work.

**If the Contract is to be awarded, Owner will give the successful bidder a notice of award within sixty (60) days after the day of the Bid opening. All bidders must honor their Contract Price on the bid form, if the Contract is awarded within the timeframe provided herein. A Notice to Proceed will be issued within a reasonable period after the Contract Documents are fully executed.**



Within seven (7) calendar days of receipt from the Owner after notice of award, the successful bidder must submit to the Engineer the payment and performance bonds and all information or other items necessary to complete the Contract Documents, including the required insurance, anticipated construction schedule, and Contractor's safety program. **See SAFETY under Section 5.20 of the General Conditions of the Contract.** The successful bidder must return the fully executed Contract Documents to Engineer within seven (7) calendar days of receipt, or Owner may at its sole discretion disqualify the Bid and accept another Bid and the bidder must, at Owner's option, forfeit its Bid Security.

14. **TAXES, LICENSES AND FEES.** Certain taxes, licenses, fees, and other similar items are part of the cost of the Work, and it is bidder's responsibility to familiarize itself with these costs and to observe and comply with the Laws and Regulations relating to same. The prices, sums, rates, and other charges set forth in the bidder's Bid must cover and include all such costs. If this Contract is for construction of a water or wastewater system, certain tax exemptions under **Tax Code 151.355** may apply. If the improvements under this Contract will be owned by a governmental entity that is not the District, **Tax Code 151.309** may apply. Contractor, and all subcontractors to Contractor (i) must not include any provision for Texas sales and use taxes with respect to such exempt items in any Bid or the Contract Price, and (ii) must pass on to the Owner cost savings due to any exempt status of such exempt items. Contractor's contracts with all subcontractors to Contractor must include the foregoing provisions. Contractor must pay taxes on items that are not exempt.

15. **ELECTRONIC COUNTERPARTS; FORM OF BONDS TO BE PROVIDED TO OWNER.** The Contract Documents may be executed and delivered in any number of counterparts, each of which so executed and delivered will be deemed to be an original and all of which will constitute one and the same instrument.

16. **INSURANCE.** See section entitled "*INSURANCE REQUIREMENTS*" attached to and incorporated into the **General Conditions of the Contract as Attachment A to the General Conditions of the Contract.**

17. **SOILS REPORT.** If a soils investigation has been made for this Project, the soils report and log of borings is available for bidder's information only. The report is not a warranty of subsurface conditions, nor is it a part of the Contract Documents. Bidders are expected to examine the Site and such reports and then decide for themselves the soils or conditions that may be encountered.

Owner and Engineer disclaim any responsibility for the accuracy, true location and extent of the surface and subsurface investigations that have been prepared by others. Owner and Engineer further disclaim responsibility for interpretation of that data by bidder, e.g., projecting soil-bearing values, rock profiles, soil stability and the presence, level and extent of underground water or other underground facilities or utilities.



18. LABOR CLASSIFICATION AND MINIMUM WAGE SCALE.

(A) General: The public improvements being constructed under this Contract will be owned, operated, and maintained by a governmental entity. Since the public improvements being constructed under this Contract will be owned by a governmental entity, **Chapter 2258 of the Texas Government Code** applies to this Contract. Chapter 2258 of the Texas Government Code provides that any political subdivision of the State of Texas shall determine the general prevailing wage rate received by the classes of workers employed on projects similar to this Project and shall specify in the call for bids and in the Contract Documents the minimum wage rates which must be paid for each type of worker. This statute further provides that the Contractor or subcontractors must pay, as penalty to Owner, Sixty Dollars (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the Contract. Owner is authorized to withhold from the Contractor the amount of this penalty from any payment due under the Contract Documents.

The statute likewise requires that the Contractor and subcontractors keep an accurate record of the names and occupations of all persons employed by them on the construction of the Project and to show the actual per diem wages paid to each worker. These records are open to the inspection of Owner.

(B) The minimum wage rates that apply to this Contract are specified in **Attachment B to the General Conditions of the Contract**. Contractor and subcontractors must review and ascertain such wage rates and pay at least such minimum rates.

19. **The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract and the Contractor agrees that the Contract can be terminated if the Contractor knowingly or intentionally fails to comply with a requirement of that subchapter.**

20. LIQUIDATED DAMAGES. The Contractor and the Owner agree that with regard to all dates, time periods, and deadlines set forth or referred to in this Contract, time is of the essence. The Contractor and the Owner agree that a breach of this Contract by failure to complete the Work in the specified time will cause harm to the Owner, and further agree that the harm the Owner would sustain and the actual measure of damages the Owner would incur from the breach is incapable or very difficult of ascertainment. Therefore, the Contractor and the Owner agree that for each and every calendar day the Work or any portion thereof shall remain uncompleted after the expiration of the time limit(s) set in the Contract, or as extended under the terms of the Contract (including, without limitation, due to a delay caused by Contractor's failure to comply with the Contract Documents or due to Owner's termination of Contractor for default under the Contract Documents), Contractor shall be liable to Owner for liquidated damages in the amount of \$500 for each such calendar day, which sum the parties agree is a reasonable forecast of just compensation for the damages the Owner will sustain per day that the Work remains uncompleted. The Owner shall have the option to deduct and withhold said amount from any monies that the Owner owes the Contractor or its sureties or to recover such amount from the Contractor or the sureties on the Contractor's Bond.



**Bid Form/Schedule of Values Attached**



| BID FORM (SCHEDULE OF VALUES)            |  |      |          |                |                 |
|--|--|------|----------|----------------|-----------------|
| ITEM NO.                                 | ITEM DESCRIPTION   | UNIT | QUANTITY | UNIT BID PRICE | EXTENDED AMOUNT |
| M1                                       | MOBILIZATION   | EA   | 1        | \$ -           | \$ -            |
| M2                                       | INSURANCE AND PERFORMANCE,<br>PAYMENT, & MAINTENANCE BONDS | EA   | 1        | \$ -           | \$ -            |
| M3                                       | PREPARE RIGHT-OF-WAY                                       | EA   | 1        | \$ -           | \$ -            |
| <b>MOBILIZATION &amp; BONDS SUBTOTAL</b> |  |      |          |                | \$ -            |
| G1                                       | UNIT 2 EXCAVATION  | SY   | 5643     | \$ -           | \$ -            |
| G2                                       | UNIT 2 EMBANKMENT  | SY   | 939      | \$ -           | \$ -            |
| G3                                       | UNIT 3 FILL  | SY   | 4704     | \$ -           | \$ -            |
| <b>GRADING SUBTOTAL</b>                  |  |      |          |                | \$ -            |
| E1                                       | CONCRETE WASHOUT PIT                                       | EA   | 1        | \$ -           | \$ -            |
| E2                                       | CONSTRUCTION ENTRANCE/EXIT                                 | EA   | 3        | \$ -           | \$ -            |
| E3                                       | STAGING AREA   | EA   | 1        | \$ -           | \$ -            |
| E4                                       | ROCK FILTER DAM  | LF   | 360      | \$ -           | \$ -            |
| E5                                       | CURB INLET GRAVEL FILTERS                                  | LF   | 115      | \$ -           | \$ -            |
| E6                                       | SILT FENCE   | LF   | 4344     | \$ -           | \$ -            |
| <b>SW3P (ONSITE) SUBTOTAL</b>            |  |      |          |                | \$ -            |
| <i>DRAIN 'E'</i>                         |  |      |          |                |                 |
| D1                                       | CONCRETE RIP-RAP (5" THICK)                                | SY   | 175      | \$ -           | \$ -            |
| D2                                       | REVEGETATION (INCLUDING TOP SOIL)                          | SY   | 151      | \$ -           | \$ -            |
| D3                                       | INLET TYPE I (COMPLETE) (20 FT)<br>(PRECAST)               | EA   | 2        | \$ -           | \$ -            |
| D4                                       | REINFORCED CONCRETE BOX CULVERT<br>(4'X2')(PRECAST)        | LF   | 86       | \$ -           | \$ -            |
| D5                                       | REINFORCED CONCRETE BOX CULVERT<br>(5'X2')(PRECAST)        | LF   | 12       | \$ -           | \$ -            |



|                  |  |    |      |      |      |
|------------------|--|----|------|------|------|
| D6               | WINGWALL   | CY | 25   | \$ - | \$ - |
| D7               | PIPE RAILING                                     | LF | 122  | \$ - | \$ - |
| <i>DRAIN 'I'</i> |  |    |      |      |      |
| D8               | REVEGETATION (INCLUDING TOP SOIL)                | SY | 2153 | \$ - | \$ - |
| <i>DRAIN 'M'</i> |  |    |      |      |      |
| D9               | CONCRETE RIP-RAP (5" THICK)                      | SY | 107  | \$ - | \$ - |
| D10              | REVEGETATION (INCLUDING TOP SOIL)                | SY | 1390 | \$ - | \$ - |
| D11              | INLET TYPE I (COMPLETE) (25 FT) (CAST IN PLACE)  | EA | 2    | \$ - | \$ - |
| D12              | REINFORCED CONCRETE BOX CULVERT (3'X2')(PRECAST) | LF | 209  | \$ - | \$ - |
| D13              | WINGWALL   | CY | 11   | \$ - | \$ - |
| D14              | PIPE RAILING                                     | LF | 72   | \$ - | \$ - |
| <i>DRAIN 'O'</i> |  |    |      |      |      |
| D15              | CONCRETE RIP-RAP (5" THICK)                      | SY | 201  | \$ - | \$ - |
| D16              | REVEGETATION (INCLUDING TOP SOIL)                | SY | 2889 | \$ - | \$ - |
| D17              | GABION MATTRESS                                  | SY | 10   | \$ - | \$ - |
| D18              | REINFORCED CONCRETE BOX CULVERT (4'X2')(PRECAST) | LF | 149  | \$ - | \$ - |
| D19              | WINGWALL   | CY | 29   | \$ - | \$ - |
| D20              | PIPE RAILING                                     | LF | 108  | \$ - | \$ - |
| <i>DRAIN 'R'</i> |  |    |      |      |      |
| D21              | CONCRETE RIP-RAP (5" THICK)                      | SY | 146  | \$ - | \$ - |
| D22              | REVEGETATION (INCLUDING TOP SOIL)                | SY | 3572 | \$ - | \$ - |
| D23              | GABION MATTRESS                                  | SY | 15   | \$ - | \$ - |
| <i>DRAIN 'S'</i> |  |    |      |      |      |



|                          |   |    |      |      |      |
|--------------------------|---|----|------|------|------|
| D24                      | CONCRETE RIP-RAP (5" THICK)                     | SY | 21   | \$ - | \$ - |
| D25                      | REVEGETATION (INCLUDING TOP SOIL)               | SY | 230  | \$ - | \$ - |
| D26                      | INLET TYPE I (COMPLETE) (25 FT)<br>(PRECAST)    | SY | 1    | \$ - | \$ - |
| D27                      | PIPE RAILING                                    | LF | 15   | \$ - | \$ - |
| <i>DRAIN 'T'</i>         |   |    |      |      |      |
| D28                      | CONCRETE RIP-RAP (5" THICK)                     | SY | 133  | \$ - | \$ - |
| D29                      | SIDEWALK BOX DRAIN (5 ~ 5')                     | EA | 1    | \$ - | \$ - |
| <i>DRAIN 'X'</i>         |   |    |      |      |      |
| D30                      | CONCRETE RIP-RAP (5" THICK)                     | SY | 35   | \$ - | \$ - |
| D31                      | REVEGETATION (INCLUDING TOP SOIL)               | SY | 82   | \$ - | \$ - |
| D32                      | SIDEWALK BOX DRAIN (5 ~ 5')                     | EA | 1    | \$ - | \$ - |
| D33                      | GABION MATTRESS                                 | SY | 53   | \$ - | \$ - |
| <b>DRAINAGE SUBTOTAL</b> |   |    |      |      | \$ - |
| P1                       | REINFORCED CONCRETE PIPE (CLASS<br>IV)(24" DIA) | LF | 161  | \$ - | \$ - |
| P2                       | CONCRETE RIP-RAP (5" THICK)                     | SY | 335  | \$ - | \$ - |
| P3                       | GABION MATTRESS                                 | SY | 28   | \$ - | \$ - |
| P4                       | REVEGETATION (INCLUDING TOP SOIL)               | SY | 5472 | \$ - | \$ - |
| P5                       | 8" PVC PIPE                                     | LF | 211  | \$ - | \$ - |
| P6                       | 6' WOODEN FENCE WITH METAL POLES                | LF | 1199 | \$ - | \$ - |
| P7                       | 6' ACCESS GATE                                  | EA | 2    | \$ - | \$ - |
| P8                       | 4' X 4' JUNCTION BOX W/ ALUMINUM<br>VAULT HATCH | EA | 1    | \$ - | \$ - |
| P9                       | LOGIC CONTROLLER AND SOLAR BATTERY<br>BACKUP    | EA | 1    | \$ - | \$ - |
| P10                      | 8" BUTTERFLY VALVE WITH ELECTRIC<br>ACTUATOR    | EA | 1    | \$ - | \$ - |



|                                |  |     |       |      |             |
|--------------------------------|--|-----|-------|------|-------------|
| P11                            | CONCRETE DRIVEWAY ACCESS   | SY  | 125   | \$ - | \$ -        |
| P12                            | GRAVEL DRIVEWAY  | SY  | 199   | \$ - | \$ -        |
| P13                            | CLAY LINER   | SY  | 3091  | \$ - | \$ -        |
| P14                            | RISER PIPE, TRASH RACK, SEDIMENT DEPTH MARKER & FLOAT SWITCH         | EA  | 1     | \$ - | \$ -        |
| P15                            | DEMO OF EXISTING PAVED POND DRIVEWAY (ALONG VIA SICILIA & VIA LUCCA) | SY  | 1751  | \$ - | \$ -        |
| <b>DETENTION POND SUBTOTAL</b> |  |     |       |      | <b>\$ -</b> |
| W1                             | 8" PVC C-909 WATER MAIN, PC 235                                      | LF  | 6027  | \$ - | \$ -        |
| W2                             | 8" GATE VALVE & BOX, COMPLETE  | EA  | 10    | \$ - | \$ -        |
| W3                             | STANDARD F.H. COMPLETE W/ VALVE                                      | EA  | 12    | \$ - | \$ -        |
| W4                             | CAST IRON FITTINGS   | TON | 7     | \$ - | \$ -        |
| W5                             | 2" BLOWOFF, PERMANENT  | EA  | 4     | \$ - | \$ -        |
| W6                             | 2" BLOWOFF, TEMPORARY  | EA  | 5     | \$ - | \$ -        |
| W7                             | 3/4" LONG SERVICE  | EA  | 62    | \$ - | \$ -        |
| W8                             | 3/4" SHORT SERVICE   | EA  | 84    | \$ - | \$ -        |
| W9                             | TRENCH EXCAVATION PROTECTION   | EA  | 6027  | \$ - | \$ -        |
| W10                            | METER BOXES  | EA  | 146   | \$ - | \$ -        |
| W11                            | HYDROSTATIC TESTING  | EA  | 1     | \$ - | \$ -        |
| W12                            | 24" STEEL CASING   | LF  | 131   | \$ - | \$ -        |
| W13                            | TIE INTO EXISTING WATER MAIN   | EA  | 5     | \$ - | \$ -        |
| <b>WATER ONSITE SUBTOTAL</b>   |  |     |       |      | <b>\$ -</b> |
| R1                             | LIME TREATED SUBGRADE (8" COMPACTED DEPTH)                           | SY  | 20478 | \$ - | \$ -        |
| R2                             | LIME (35LB/SY)   | TON | 358   | \$ - | \$ -        |



|                          |   |     |       |      |      |
|--------------------------|---|-----|-------|------|------|
| R3                       | AGGREGATE BASE (8" COMPACTED DEPTH)                                       | SY  | 17736 | \$ - | \$ - |
| R4                       | HOT MIX ASPHALTIC PAVEMENT, TYPE D (2.5" COMP. DEPTH)                     | SY  | 18093 | \$ - | \$ - |
| R5                       | AGGREGATE BASE (10" COMPACTED DEPTH)                                      | SY  | 2742  | \$ - | \$ - |
| R6                       | HOT MIX ASPHALTIC PAVEMENT, TYPE D (3" COMP. DEPTH)                       | SY  | 2742  | \$ - | \$ - |
| R7                       | HOT MIX ASPHALTIC PAVEMENT, TYPE B (6" COMP. DEPTH)                       | SY  | 356   | \$ - | \$ - |
| R8                       | HOT MIX ASPHALTIC PAVEMENT, TYPE D (2.5" COMP. DEPTH) - TEMP. TURNAROUND  | SY  | 877   | \$ - | \$ - |
| R9                       | AGGREGATE BASE (8" COMPACTED DEPTH) - TEMP TURNAROUND                     | SY  | 877   | \$ - | \$ - |
| R10                      | PRIME COAT  | GAL | 4414  | \$ - | \$ - |
| R11                      | TACK COAT   | GAL | 2207  | \$ - | \$ - |
| R12                      | CONCRETE CURB   | LF  | 12093 | \$ - | \$ - |
| R13                      | TIMBER GUARD POSTS  | EA  | 18    | \$ - | \$ - |
| R14                      | HEADER CURB   | LF  | 90    | \$ - | \$ - |
| R15                      | REMOVE HEADER CURB & GUARD POSTS  | LF  | 90    | \$ - | \$ - |
| R16                      | R1-1 STOP (30" )(HIGH INTENSITY)  | EA  | 4     | \$ - | \$ - |
| R17                      | OM-4P END OF ROAD MARKER (18"x18" )(HIGH INTENSITY)                       | EA  | 3     | \$ - | \$ - |
| R18                      | 9 INCH [229mm] STREET NAME, BLOCK NUMBER (VARIES x9" )(HIGH INTENSITY)    | EA  | 9     | \$ - | \$ - |
| R19                      | PAVEMENT MARKER (TYPE II C-R)   | EA  | 12    | \$ - | \$ - |
| R20                      | ADA CURB RAMPS  | EA  | 12    | \$ - | \$ - |
| R21                      | DEMOLITION OF TEMPORARY TURNAROUNDS (TORINO WAY, VIA LUCCA & VIA SICILIA) | SY  | 1478  | \$ - | \$ - |
| <b>ROADWAY SUBTOTAL</b>  |   |     |       |      | \$ - |
| SW1                      | CONCRETE SIDEWALK   | SY  | 1868  | \$ - | \$ - |
| <b>SIDEWALK SUBTOTAL</b> |   |     |       |      | \$ - |



|   |                              |    |      |      |      |
|---|------------------------------|----|------|------|------|
| DU1   | PRIMARY - 2.5" PVC CONDUIT   | LF | 1420 | \$ - | \$ - |
| DU2   | SECONDARY - 2.5" PVC CONDUIT | LF | 1860 | \$ - | \$ - |
| <i>DRY UTILITIES SUBTOTAL</i>   |                              |    |      |      | \$ - |
| <b>TOTAL BID AMOUNT</b>   |                              |    |      |      | \$ - |
| <p><b>NOTE: THE "CONTESSA U2 - DRAIN GRADING PLAN" EXHIBIT SHOWS CUT &amp; FILL DENOTED ON THIS BID FORM. EXCESS MATERIAL TO BE PLACED WITHIN UNIT 3 WITHIN THE CONTESSA SUBDIVISION.</b></p> |                              |    |      |      |      |



Project Name: \_\_\_\_\_  
Contract No.: \_\_\_\_\_  
Vendor Name: \_\_\_\_\_ Vendor No.: \_\_\_\_\_  
Cost Code: \_\_\_\_\_ Job No.: \_\_\_\_\_

### AUTHORIZATION AGREEMENT

THIS AUTHORIZATION AGREEMENT (“Authorization Agreement”) dated \_\_\_\_\_ is made and entered into as of the “Effective Date”, by and between “Meritage” and “Contractor” (each as defined below), in connection with, and upon and subject to the terms and conditions of, that certain Master Land Development Agreement between Meritage and Contractor dated \_\_\_\_\_ (the “Master Agreement”). Meritage may be referred to as “Developer” in the Master Agreement.

NOW, THEREFORE, the parties do hereby mutually agree as follows:

1. Defined Terms. Initially capitalized terms used and not otherwise defined in this Authorization Agreement shall have the meanings given to them in the Master Agreement, which Master Agreement is fully incorporated herein by this reference.
2. Project Location. \_\_\_\_\_
3. The Work. Contractor shall perform the Work described in the Master Agreement and the Scope of Work attached as Exhibit 2 in strict compliance with the Contract Documents. Notwithstanding the fact that this Authorization Agreement is executed as of the date set forth above, the parties recognize that a portion of the Work may have been performed prior to such date and Contractor shall not be entitled to any compensation for such prior Work except as expressly provided in this Authorization Agreement and the Master Agreement. All of Contractor’s liabilities and obligations to Meritage under this Authorization Agreement and the Master Agreement shall apply to all Labor performed and Materials provided by or on behalf of Contractor prior to the execution of this Authorization Agreement, notwithstanding the fact that such Labor or Materials may have been performed or provided prior to the date hereof pursuant to prior negotiations, representations, agreements, understandings or otherwise, unless such Labor and Materials were (i) not a portion of the Work described in Exhibit 2 attached hereto, and (ii) satisfactorily performed, provided and completed pursuant to a written agreement duly executed by Meritage and Contractor prior to the date hereof, in which case the terms and conditions of such written agreement shall govern solely to the extent such Labor and Materials were authorized and satisfactorily performed, provided and completed thereunder.
4. Contract Price. The Contract Price for the Work shall be as set forth on the Contract Price Schedule attached as Exhibit 3 (or any updated Contract Price Schedule or Change Order(s) issued by Meritage in connection with this Authorization Agreement).
5. Performance Schedule. Upon execution of this Authorization Agreement, Contractor shall commence the Work and shall achieve Completion of the Work in accordance with Section 2.1 of the Master Agreement and the Construction Schedule attached as Exhibit 4.
6. Project Owner. Meritage
7. Effective Date: \_\_\_\_\_

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

“Meritage”  
MERITAGE HOMES OF TEXAS, LLC, an Arizona limited liability company (San Antonio Division)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

“Contractor”  
Company: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**GENERAL CONDITIONS OF THE CONTRACT**  
**TABLE OF CONTENTS**

|               |  |    |
|---------------|--|----|
| ARTICLE I.    | DEFINITIONS.....   | 2  |
| ARTICLE II.   | CONTRACT DOCUMENTS.....  | 5  |
| ARTICLE III.  | PRELIMINARY MATTERS .....  | 7  |
| ARTICLE IV.   | SITE ACCESS/ CONDITIONS/ REFERENCE POINTS .....                        | 11 |
| ARTICLE V.    | CONTRACTOR’S RESPONSIBILITIES/INDEMNITIES .....                        | 13 |
| ARTICLE VI.   | ENGINEER’S STATUS DURING CONSTRUCTION.....                             | 25 |
| ARTICLE VII.  | EXTRA WORK/ CHANGE ORDERS/ CLAIMS .....                                | 27 |
| ARTICLE VIII. | TESTS AND INSPECTIONS/ DEFECTIVE WORK/ WARRANTY .....                  | 31 |
| ARTICLE IX.   | MINIMUM WAGE RATE SCALE/PRICE FOR WORK/ PAYMENTS TO CONTRACTOR .....   | 32 |
| ARTICLE X.    | SUBSTANTIAL COMPLETION, PARTIAL USE, FINAL COMPLETION & ACCEPTANCE ... | 34 |
| ARTICLE XI.   | SUSPENSION OF WORK/ TERMINATION/ DEFAULT .....                         | 36 |
| ARTICLE XII.  | MISCELLANEOUS .....  | 39 |

**ATTACHMENT A – INSURANCE REQUIREMENTS**

**ATTACHMENT B – MINIMUM WAGE RATE SCALE**



## GENERAL CONDITIONS OF THE CONTRACT

### ARTICLE I. DEFINITIONS

**1.01. DEFINITIONS.** The following terms shall be defined as described below unless such definition is expressly modified by the Contract Documents. Any capitalized terms used in the Contract Documents not defined in this Section shall have the meaning assigned to such term under the Contract Documents.

- a. Bid. The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
- b. Bond(s). Performance bonds, maintenance bonds and payment bonds, or any of them, as required by the Contract Documents.
- c. Change Order. A document signed by Contractor, Engineer, and Owner and entered into in accordance with the Contract Documents that authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the time for completion.
- d. Claim. A “Claim” is a claim, demand, or assertion by the Contractor seeking for itself or on behalf of a subcontractor or supplier: adjustment or interpretation of any Contract term, including without limitation, adjustment of the Contract Price or Contract Time; payment of money; relief from obligations; or other relief or recovery with respect to the terms of the Contract. The term “Claim” also includes other disputes and matters in question asserted by the Contractor (whether for itself or on behalf of a subcontractor or supplier) arising out of or relating to the Contract.
- e. Contract. The entire and integrated written agreement between the Owner and Contractor concerning the Work, including the Contract Documents. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.
- f. Contract Documents. The Bid, Contract, Instructions to Bidders, General Conditions, Addendum to the General Conditions, Special and Supplemental Conditions, if any, Technical Specifications, Plans, Change Orders, any written amendment to the Contract signed by Contractor, Engineer, and Owner, Written Work Orders, addenda issued by Engineer, and all other documents designated as incorporated by reference. Documents incorporated by reference are Contract Documents, whether attached or not. Approved Shop Drawings and other Contractor’s submittals, inspections, and reports, such as testing of subsurface and physical or environmental conditions, are not Contract Documents and are not part of the Contract.
- g. Contractor. The entity with whom Owner has entered into this Contract.
- h. Contractor Parties. The Contractor, and all its subcontractors, suppliers, and their respective agents, representatives, or employees, or any of them.
- i. Contract Price. The amount of money stated in the Contract as payable by Owner to Contractor for timely completion of the Work in accordance with the Contract Documents, plus or minus any increases or decreases to the initial Contract Price agreed to by Owner as provided by the Contract.
- j. Contract Time. The number of days or the dates stated in the Contract to achieve Final Completion, expressed as a number of calendar days or as a reference to the date of



Final Completion. If the Contract Time is measured by calendar days, each and every calendar day shall be counted against the Contract Time, and the Contract Time will be computed to exclude the first day and include the last day of such period.

- k. Contracting Information. The following: 1) information in a voucher or contract relating to the receipt or expenditure of public funds by a governmental body; 2) solicitation or bid documents relating to a contract with a governmental body; 3) communications sent between a governmental body and a vendor, contractor, potential vendor, or potential contractor during the solicitation, evaluation, or negotiation of a contract; 4) documents, including bid tabulations, showing the criteria by which a governmental body evaluates each vendor, contractor, potential vendor, or potential contractor responding to a solicitation and, if applicable, an explanation of why the vendor or contractor was selected; and 5) communications and other information sent between a governmental body and a vendor or contractor related to the performance of a final contract with the governmental body or work performed on behalf of the governmental body.
- l. INTENTIONALLY DELETED.
- m. Engineer. The design consultant so identified in the Contract, or such other firm that Owner may designate, is herein called Engineer and is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned to Engineer in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.
- n. Extra Unit Price Items. All extra unit price items or alternate unit price items so specified in the Bid.
- o. Extra Work. All Work that may be required by Engineer or Owner to be done by Contractor to accomplish any change, alteration, or addition to the Work shown upon the Plans, implied by the Technical Specifications, or otherwise within the Contract Documents and not covered by Contractor's Bid. Notwithstanding the foregoing, Extra Unit Price Items or alternate unit price items so specified in the Bid and required by Engineer or Owner as described herein are not included in the definition of Extra Work.
- p. Final Acceptance. Action at a formal meeting of the Owner, wherein Owner accepts the completed Project.
- q. Final Completion. The date on which the entire Work or an agreed portion thereof is complete in strict conformance with the Contract Documents. If any governmental entity has jurisdiction to approve or accept Contractor's Work on the Project, or any portion thereof, Final Completion is not achieved unless and until written approval or acceptance of the entity is received, including Final Acceptance by Owner.
- r. Force Majeure. Fire, flood, or act of God, earthquakes, hurricanes, tornadoes, epidemics, war, riot, civil disturbance, sabotage, terrorism, governmental or judicial restraint but only to the extent such event: (i) is beyond the control of and cannot be reasonably anticipated by, or the effects alleviated by, the Contractor; and (ii) prevents the performance of the Work on the critical path. Events not specifically listed herein shall not constitute events of Force Majeure.
- s. Hazardous Environmental Condition. The presence at the Site of asbestos, PCBs, petroleum, hazardous waste, contaminants, or radioactive material in such quantities or circumstances that may present a danger to persons or property exposed thereto in connection with the Work.



- t. Indemnified Parties. Owner, Engineer, and the officers, directors, managers, members, employees, agents, and representatives of each such party.
- u. Laws and Regulations. Any and all applicable federal, state and local laws, rules, regulations, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction and any and all rules of common law pertaining to the Contractor's services, the Site, Contractor's employees and subcontractor's employees and/or the Work, and those of any other governmental entities with jurisdiction, including, without limitations all applicable laws of the State of Texas, Chapter 411 of the Texas Labor Code, Title VII (Equal Employment Opportunity) of the Civil Rights Act of 1964, The Occupational Safety and Health Act of 1970, The National Environmental Policy Act, The Federal Water Pollution Control Act, The Clean Air Act, The Clean Water Act, The Toxic Substance Control Act, The Resource Conservation and Recovery Act, and all amendments thereof. The agencies charged with the administration and enforcement of the Laws and Regulations include, but are not limited to, the Department of the Interior, the Equal Employment Opportunity Commission, the Occupational Safety and Health Administration, the Environmental Protection Agency, the U.S. Corps of Engineers, the National Fire Protection Association, the U.S. Geological Survey, the Minerals Management Service, the Texas Commission on Environmental Quality, the county in which the Site is located, and the municipality, as applicable, in whose corporate or extraterritorial jurisdiction the Site is located. Certain specific regulations that may be applicable to the Work are the Occupational Safety and Health Construction and General Industry Standards (29 CFR Part 1926 and 1910), and various environmental regulations.
- v. Notice to Proceed. A written notice given by or on behalf of Owner to Contractor fixing the date on which the Contract Time will begin to run and on which Contractor shall start to perform the Work.
- w. Owner. The entity so specified in the Contract.
- x. Plans. That part of the Contract Documents which graphically shows the scope, extent, and character of the Work to be performed by Contractor.
- y. Project. The total construction on the Site, which may include work performed by the Owner or other contractors.
- z. Regulatory Agencies. Any and all governmental bodies, agencies, authorities, counties, municipalities, and courts having jurisdiction over the Project.
- aa. Shop Drawing. All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
- bb. Site. The land or area furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access.
- cc. Substantial Completion. The time at which the Work, or any portion thereof, is sufficiently completed in accordance with the Contract Documents so that Owner can occupy the entirety of the Work and put it to the full and unrestricted use for which it was intended, and all required certificates of occupancy and other permits, approvals, licenses, and documents required to occupy the Project by all entities, agencies and governmental authorities having jurisdiction over the Project and/or the operation and occupancy of the Project, as determined by the Engineer, have been given so that the Project may operate for its intended purpose, although the Project may still require



minor miscellaneous Work and adjustment. The Work will not be considered substantially complete if: (i) any project systems included in the Work are not operational as designed and scheduled; (ii) designated instructions of Owner, Engineer, or Owner's other representative in the operation of systems have not been completed; (iii) any final finishes within the Contract Documents are not in place; or (iv) an Engineer's Certificate of Substantial Completion in the form attached hereto and incorporated by reference herein has not been issued by the Engineer. The terms "substantially completed" or "substantially complete" as applied to all or part of the Work shall have the same meanings as set forth herein.

- dd. Technical Specifications. That part of the Contract Documents, including any written addenda thereto, consisting of written requirements for materials, equipment, systems, standards, and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable to the Work.
- ee. Work. All obligations of the Contractor under the Contract Documents and all equipment, materials, labor, construction, management, supervision, services, punch list, and activities of every kind and nature, whether commenced or not, or completed or partially completed, undertaken by the Contractor, provided or to be provided by the Contractor, required of the Contractor, or inferable from the Contract Documents to perform and fulfill all of the Contractor's obligations pursuant to the Contract Documents.
- ff. Written Work Order. A written statement to Contractor signed by Owner or Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions. A Written Work Order will not change the Contract Price or Contract Time but is evidence that the parties expect that the Written Work Order will be incorporated in a subsequently issued Change Order following agreement by the parties as to its effect, if any, on the Contract Price or Contract Time.

## ARTICLE II. CONTRACT DOCUMENTS

### 2.01. INTERPRETATION OF CONTRACT DOCUMENTS AND PHRASES.

- a. Whenever the words "required," "permitted," "designated," "considered necessary," "prescribed," or words of like import are used, it shall be understood that the requirement, permission, order, designation, or prescription of Engineer is intended and similarly, the words "approval," "acceptable," or "satisfactory," or words of like import shall mean approved by, or acceptable to, Engineer.
- b. Whenever in the Technical Specifications or Plans accompanying this Contract, the terms or descriptions of various qualities relative to finish, workmanship, or other qualities of similar kind which cannot from their nature be specifically and clearly described and specified, are necessarily described in general terms, the fulfillment of which must depend on individual judgment, then, in all such cases, any question of the fulfillment of said judgment of said Technical Specifications or Plans shall be decided by Engineer, and said Work shall be done in accordance with Engineer's interpretations of the meaning of the words, terms, or clauses defining the character of the Work.



- c. The parties hereto agree that these Contract Documents shall not be construed against any party hereto on the basis that such party did or did not draft the Contract Documents.
- d. The section headings used herein are for convenience only and shall not affect the construction or terms hereof.
- e. If there is an irreconcilable conflict between Contract Documents, the more stringent requirement shall control, but except in such event and to avoid such conflict, every construction of provisions shall be that each is in aid to, or supplementary to or complementary of, each other provision, to control and secure for Owner the completion of the entire Work in an expeditious, orderly, and coordinated manner. The precedence, from highest to lowest, shall be in the following order:
  1. **Statutory Requirements:** Any provision required by Chapter 2258 of the Texas Government Code (Prevailing Wage Rates) or Texas Tax Code (Sales Tax Exemption).
  2. **Master Land Development Agreement (MLDA):** The Master Agreement between Meritage Homes and Contractor, including its indemnity, dispute resolution (as applied to Meritage), progress payments, final payment, and warranty provisions.
  3. **This Authorization Agreement (CONTESSA UNIT 2 Contract):** The specific agreement executed for this Project.
  4. **Special Conditions of the Contract: Part A and Part B.**
  5. **Technical Specifications & Plans.**
  6. **General Conditions of the Contract.**

The most recently issued document takes precedence over previously issued forms of the same document. Modifications take precedence over applicable previously issued documents. Detailed drawings shall take precedence over general drawings. In the event of any discrepancies between the Plans and Technical Specifications, or likewise, in the event of any doubt as to the meaning and intent of any portion of the Contract Documents, including the Technical Specifications or Plans, Engineer shall define that which is intended to apply to the Work.

- f. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period.
- 2.02. **EXHIBITS.** All Work shall be done, and all materials furnished in strict conformity with the Contract Documents, all of which are hereto attached (or considered as if attached) and are hereby made a part of this Contract.
- 2.03. **ACCURACY.** These Contract Documents, including the Technical Specifications, Plans, and Bid, are intended to show all Work to be done and material to be furnished hereunder. **If the Work under the Contract Documents is for a critical infrastructure facility, as defined by Chapter 59 of the Texas Business and Commerce Code, the following statements in this Section apply: Contractor understands and acknowledges that errors may exist in the Contract Documents and that the Owner does not warrant the accuracy or sufficiency thereof. The Contractor acknowledges that the Contract Documents are sufficiently detailed, accurate and comprehensive to enable Contractor to have adequately estimated and established the Contract Price and to perform the Work within the Contract Time.**



- 2.04. CONTRACTING INFORMATION.** If the Contract Price is equal to or greater than \$1,000,000, Contractor, pursuant to the **Government Code Section 552.372**, shall:
- a. preserve all Contracting Information related to the Contract Documents as provided by the records retention requirements applicable to the Owner for the duration of the Contract;
  - b. promptly provide to the Owner any Contracting Information related to the Contract Documents that is in the custody or possession of the Contractor on request of the Owner; and
  - c. on Final Completion of the Contract, provide at no cost to Owner all Contracting Information related to the Contract Documents that is in the custody or possession of the Contractor or preserve the Contracting Information related to the Contract Documents as provided by the records retention requirements of the Owner.

### **ARTICLE III. PRELIMINARY MATTERS**

- 3.01 CONSTRUCTION SCHEDULE.** The Contractor shall submit a construction schedule based on critical path method (“CPM”) or other method specifically approved by the Engineer and that is sufficiently accurate during the entire Contract Time to determine if the Contractor is performing on schedule.

Within ten (10) days following the end of each month after Notice to Proceed, or at more frequent intervals when requested by Engineer, the Contractor shall submit an updated and revised schedule; the revision must be current as of the immediate past schedule period. Each element shall be updated to reflect the actual start and stop dates, actual duration and actual number of days worked, anticipated changes to future start and stop dates, and changes due to change in amount of Work or Contract Time. When requested by Engineer, the Contractor will submit only that portion of the CPM submittal required.

Failure to meet any schedule submission dates or to comply with any requested submittal or failure to provide an acceptable submittal will be cause to withhold payment of all or portions of the next scheduled monthly payment or any portions of future monthly payment until an acceptable submittal has been made.

As a minimum, the Contractor shall have available at least one individual with authority to maintain and revise the schedule as needed to reflect the actual and planned work schedule. This individual is to cooperate with Engineer’s staff and be available to discuss the schedule with Engineer’s staff when requested.

- 3.02 SCHEDULE OF VALUES.** If directed by Engineer or the Contract Documents, Contractor shall submit a schedule of values showing the subdivision of the Contract into various items of payment of construction. This schedule of values must state quantities and prices to the smallest common measurement, e.g., cubic yard, pound, linear feet, etc., and will be used as a basis for computing value to the Owner of Work to be paid for in partial payments. Except for Work associated with prices bid as supplemental items listed in the Bid, the schedule of values also will be used to determine the value of like or similar work that may be added to or deleted from the Contract Documents. The above-mentioned schedule of values must be in a format and of such detail to be acceptable to the Engineer. No partial payments will be made unless



the schedule of values has been submitted by Contractor and accepted by the Engineer. Engineer may require that the schedule of values be cross-referenced to CPM with each item on schedule of values to show which CPM activity corresponds to or includes the item.

**3.03** KEEPING PLANS AND SPECIFICATIONS ACCESSIBLE. Contractor shall be furnished with five (5) copies of all Plans and Technical Specifications without expense to Contractor and shall keep one (1) copy of each constantly accessible on the Site.

**3.04** SHOP DRAWING SUBMITTALS.

a. Shop Drawing Submittal List. Within fifteen (15) days after the date of the Notice to Proceed, Contractor shall submit for the Engineer's review a complete Shop Drawing submittal list. The list is to include Shop Drawings for all equipment and manufactured materials to be furnished under this Contract. The list should include, but not be limited to, the following, with each submittal to be numbered with a consecutive numbering system.

1. Name (description) of submittal.
2. Applicable specification number or drawing number.
3. Scheduled submission date.
4. Latest date acceptable submittal required to prevent delay in purchase.

The Engineer may waive all or portions of the submittal requirements for any Shop Drawing on the submittal list. No payment will be made for the Work until the submittal list is accepted by the Engineer.

b. Contractor's Duties. The Contractor shall review Shop Drawings prior to submittal to verify field measurements, field construction criteria, manufacturer model number, and other pertinent data, to ensure conformance with the Contract Documents, coordination with other submittals, and schedule for submittal and review.

The Contractor shall stamp and sign submittals with stamp which states, "This submittal is certified to be in conformance with Contract Documents unless noted herein." All submittals without this certification will not be reviewed but will be returned to the Contractor for proper submission. The Engineer will rely on this statement when performing the review of the submittal.

The Contractor shall schedule submittals to allow sufficient time for the review process and to coordinate submittals with the schedule to prevent delay to Work.

The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, product data, samples or similar submittals until the respective submittal has been approved by the Engineer.

The Work shall be in accordance with approved submittals. Provided, however, the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Engineer's approval of Shop Drawings, product data, samples or similar submittals unless the Contractor has specifically informed the Engineer in writing of such deviation at the time of submittal and (1) the Engineer has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order has been issued authorizing the deviation. The Contractor shall not be



relieved of responsibility for errors or omissions in Shop Drawings, product data, samples or similar submittals by the Engineer's approval thereof.

The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, product data, samples or similar submittals, to revisions other than those requested by the Engineer on previous submittals. In the absence of such written notice, the Engineer's approval of a resubmission shall not apply to such revisions.

No Work may be performed in connection with fabrication, manufacturer, or purchase of materials or equipment until submittals have been reviewed and marked "No Exception Taken" or "Make Corrections Noted." Work performed on submittals marked "Make Corrections Noted" must be in accordance with all corrections noted thereon.

The Contractor shall correct submittals and resubmit or shall prepare new submittals for review by Engineer for all submitted items marked "Submit Specified Item," "Rejected," or "Revise and Resubmit." No Claims for extra time or delays will be considered due to time required for review of submittals or resubmittals unless, due to no fault of the Contractor, Engineer does not review the submittals in a timely fashion pursuant to paragraph c, below.

- c. Engineer's Duties. The Engineer shall review submittals as expeditiously as possible, but the amount of time required for review will vary depending on the complexity and quantity of data submitted. All submittal schedules shall allow for at least thirty (30) days for initial review by the Engineer. Failure by the Engineer to timely review a submittal shall not constitute the basis of a Claim except for an adjustment in the Contract Time.

Such review by the Engineer shall be for the sole purpose of determining the general conformity of said Shop Drawings or schedules to the Contract Documents and shall not relieve the Contractor of its duty as an independent contractor as set forth herein, it being expressly understood and agreed that the Engineer does not assume any duty to pass upon the propriety or adequacy of such drawings or schedules or any means or methods reflected thereby, in relation to the safety of either person or property during Contractor's performance hereunder. The Engineer's review of drawings will not constitute an acceptance of all dimensions, quantities, and details of the material, equipment, device, or item shown and does not relieve the Contractor from any responsibility for errors or deviations from the Contract requirements.

The Engineer shall clearly mark four (4) copies of submittals with required corrections and shall stamp drawings noting the appropriate action, signature, and date.

- d. Form of Submittal. The Contractor must submit four (4) copies of all submittals. One (1) copy of the appropriately marked submittal will be retained at the Engineer's office, one (1) copy will be retained at the Engineer's field office, and two (2) copies will be returned to the Contractor for Contractor's use. The Engineer will not mark additional copies for the Contractor. If the Contractor desires additional copies, they must be marked by the Contractor.

The Contractor shall submit a complete copy of relevant Contract Document items which have been marked by the manufacturer to certify each point of the Contract Document item noting compliance and each point of deviation.



The Contractor must submit relevant literature, catalog cuts, or written descriptive matter backing up all points of the Contract Documents item compliance.

Contractor must submit comparative life cycle, cost, performance, or other data supporting consideration of all points of the Contract Documents item deviation.

All information supplied must be carefully and completely cross-referenced to the relevant Contract Document item requirement.

When required by an individual Contract Document item, the Contractor shall submit written step-by-step test plan for functional checkout and demonstration test of respective equipment. Submissions that do not conform to the form of submittal as outlined herein will not be considered and will be returned to the Contractor for proper submission.

The Contractor must have acceptable Shop Drawings at the Site. Failure of the Contractor to supply acceptable drawings will be deemed sufficient cause for Owner to delay the Work at Contractor's risk and expense until such drawings are available. This procedure shall not entitle Contractor to an extension of time.

- e. Installation Drawings. When required by individual items of the Technical Specifications, the Contractor shall provide, for the Engineer's use, two (2) copies of installation drawings and instructions consisting of all necessary details required for field assembly, erection, and installation of a particular component of Work, including, but not limited to, unloading and storage instructions, layout/placement drawings, erection sequences, assembly drawings, connection details, and wiring diagrams.

**3.05** VARIATIONS AND ALTERNATE DESIGNS. Foundations, structural supports, electrical work, and piping when shown on Plans for items of equipment may be changed by Engineer if necessary to accommodate equipment furnished. Effort has been made to design foundations, structural supports, electrical work, and piping so that no changes not usually and normally encountered in work of the type to be performed hereunder will be necessary; however, exact dimensions and size of subject foundations and structural supports and exact electrical and piping installations may not be finally determined until the applicable Shop Drawings are submitted to the Engineer. Changes to the Plans or Technical Specifications will be signed and sealed by the Engineer in accordance with applicable laws. Contractor shall make required changes in the Work, after prior consultation with the Engineer, at no cost to Owner.

If substitute items of equipment are authorized which vary materially from those shown on Plans, Contractor shall prepare equipment data and detailed drawings covering necessary modifications and submit to the Engineer for approval. Contractor shall make drawings the same size as Plans and of comparable quality. Contractor shall pay the charges resulting from modifications including engineering charges for checking modifications.

If alternate design features are proposed for the convenience of the Contractor, the Contractor shall submit design calculations and detailed drawings covering proposed changes and related modifications of the Plans to the Engineer for review. Design calculations and detailed drawings submitted by the Contractor must be signed and sealed by a professional engineer licensed in the State of Texas. The Contractor shall make drawings the same size as the Plans and of comparable quality. Contractor shall pay the charges resulting from modifications, including engineering charges for checking such designs.



#### ARTICLE IV. SITE ACCESS/ CONDITIONS/ REFERENCE POINTS

- 4.01** ACCESS AND AVAILABILITY OF LANDS. Except as provided herein, the Owner shall provide, as indicated on the Plans, land upon which the Work is to be done, rights-of-way for access to same, and such other lands which are designated for use of the Contractor. If required, Contractor shall provide, at its own cost, for additional lands and access for temporary construction facilities or storage of materials and equipment.

Contractor shall propose, for Engineer's review and approval, access roads for moving construction personnel and equipment. The access routes are subject to change by the Engineer, occasioned by the progress of the Work or unforeseen conditions. If routes are changed, Contractor may propose alternate routes. Changes required in haul routes shall not be the basis for extra payment, unless such changes are required by written directive from the Engineer.

Contractor shall, whenever possible, keep all construction traffic out of existing neighborhoods. Contractor shall keep haul routes clean at all times to the satisfaction of the Engineer and the local governing body having jurisdiction over the haul routes.

- 4.02** SURVEYING; LINES AND GRADES. The Owner will establish reference points for construction only; the Contractor is responsible for staking from benchmarks and horizontal control references established by Engineer. The Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of the Engineer. The Contractor shall report to the Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

- 4.03** SOILS REPORT. If provided, any soils report and log of borings is available for Contractor's information only. The report is not a warranty of subsurface conditions, nor is it a part of the Contract Documents. Contractor is expected to examine the Site and such reports and then decide for itself the character of the materials to be encountered.

Owner and Engineer disclaim any responsibility for the accuracy, true location, and extent of the surface and subsurface investigations that have been prepared by others. Owner and Engineer further disclaim responsibility for interpretation of that data by Contractor, i.e. projecting soil-bearing values, rock profiles, soil stability and the presence, level and extent of underground water or underground facilities.

- 4.04** SUBSURFACE EXPLORATION. It is not represented that the Plans show all existing storm sewer, sanitary sewer, water, gas, telephone and electrical facilities, and other underground structures. Contractor shall determine the location of these installations in the way of the Work by referring to available records, consulting appropriate municipal departments and utility owners, and by making necessary exploration and excavations.

- 4.05** DEVIATIONS OCCASIONED BY UTILITY STRUCTURES. Whenever existing utilities, not indicated on the Plans, present obstructions to grade and alignment of pipe, Contractor shall immediately notify the Engineer who, without delay, will determine whenever existing



improvements are to be relocated or grade and alignment of pipe changed. Where necessary to move services, poles, guy wires, pipelines, or other obstructions, the Contractor will make arrangements with owners of utilities. The Owner will not be responsible for or liable for damages for any delays due to changes made by owners of utilities which hinder progress of any Work. The Owner may, at its sole discretion, determine whether to grant any extension of time and/or additional compensation.

- 4.06** DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS. Contractor shall give prompt written notice to Engineer if any subsurface or physical condition is uncovered or revealed and either: (i) differs materially from that shown or indicated in the Contract Documents or the technical data or related documents; or (ii) is of a highly unusual nature and differs materially from conditions ordinarily encountered and generally recognized as inherent in work performed at the location. After receipt of Contractor's written notice, Engineer will promptly review the condition, determine the necessity of Owner's obtaining additional exploration or tests and advise Owner in writing of Engineer's findings and conclusions. Contractor shall not further disturb such condition or perform any Work in connection therewith until receipt of Written Work Order from Engineer to do so. Absent an emergency, any Work performed by Contractor before receiving Engineer's response will be at the sole expense of the Contractor.

The Contract Price and/or the Contract Time may be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work. Provided, however, Contractor shall not be entitled to any adjustment in the Contract Price or Contract Time if: (i) Contractor knew, or should have known, of the existence of such conditions at the time Contractor entered into the Contract; (ii) the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site required by the Contract Documents to be conducted prior to Contractor's entering into the Contract; or (iii) Contractor failed to give the written notice as required. If Owner and Contractor cannot agree on entitlement to, or the amount or extent of, any adjustment in the Contract Price or Contract Time, or both, a Claim may be made.

- 4.07** ARCHAEOLOGICAL OR HISTORICAL MATERIALS. On discovery of materials with potential archaeological or historical significance, the Contractor shall stop Work and notify the Engineer. The Contractor shall protect the Site from disturbance until it is cleared by the Engineer to resume Work. If the discovery results in a delay exceeding sixty (60) days or more, the Contractor may receive damages for delay, limited to the actual costs of de-mobilization and re-mobilization, without mark-up, and may make a Claim for an extension to the Contract Time.

- 4.08** HAZARDOUS ENVIRONMENTAL CONDITIONS. Reports identifying Hazardous Environmental Condition are not Contract Documents. **Owner and Engineer do not warrant the accuracy or completeness of such documents and disclaim all responsibility and liability for accuracy of investigations and reports prepared by third parties.** Owner and Engineer also disclaim any responsibility for Contractor's interpretation of such reports and tests. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby; and (iii) notify Owner and Engineer (and promptly thereafter



confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Contractor shall not be required to resume Work in connection with such condition or in any affected area until the affected area is or has been rendered safe for the resumption of Work. Except as provided in this Section, it will not be the Contractor's duty to provide any required governmental notifications relative to the discovery of Hazardous Environmental Conditions.

- 4.09** LOSSES FROM UNFORESEEN CIRCUMSTANCES AND CONDITIONS OR NATURAL CAUSES. Except as specifically provided in the Contract Documents, all loss or damage arising out of the nature of the Work to be done, or from the action of the elements, or from any unforeseen circumstances or natural causes in the prosecution of the same, or from the soil, subsurface, and other conditions, whether naturally occurring or manmade, or from concealed conditions or unusual obstructions or difficulties which may be encountered in the prosecution of the Work, shall be sustained and borne by Contractor at its own cost and expense. Contractor accepts such risk even for circumstances and conditions that differ materially from those indicated in the Contract Documents, geotechnical report, a review of the Site and surrounding areas or other information furnished by or on behalf of Owner. Accordingly, Contractor shall not be entitled to any additional compensation or time associated with unforeseen circumstances or conditions or natural causes except as specifically allowed by the Contract Documents.

#### **ARTICLE V. CONTRACTOR'S RESPONSIBILITIES/ INDEMNITIES**

- 5.01.** INDEPENDENT CONTRACTOR. It is understood and agreed that all Work done by Contractor shall meet with the approval of Owner's representative but that the detailed manner and method of doing the Work shall be under the control of Contractor as set forth more fully in these General Conditions, Owner being interested only in the result obtained, and that Contractor is an independent contractor as to all Work performed hereunder.
- 5.02.** TIME AND ORDER OF COMPLETION. Time is of the essence of this Contract. It is the meaning and intent of this Contract, unless otherwise herein specifically provided, that Contractor shall be allowed to prosecute its Work at such times, in such order of precedence, and in such manner as shall be most conducive to economy of construction; provided, however, that:
- a. In all instances Contractor shall comply with the Contract Documents and the order, time, techniques, sequences, procedures, manner, means and methods of prosecution of the Work shall be such that the Work shall comply with and shall be completed as a whole and in part, in strict accordance with the Contract Documents, including the Plans and Technical Specifications, and within the required time of completion, and Contractor shall have no right to perform any portion of the Work or utilize means, methods, techniques, sequences, procedures or individuals in violation of the Contract Documents or that may damage the Work or decrease the life expectancy of the Project.
  - b. The exercise of any of the rights and authority granted the Owner in the Contract Documents (including, without limitation, ordering changes in the Work, rejecting proposed means, methods, techniques, sequences or procedures, and directing suspension, rescheduling, re-execution or correction of the Work) shall not be



construed as or deemed to be control of, charge of, responsibility for, or an assumption of Contractor's obligations with respect to, such construction means, methods, techniques, sequences, procedures, safety precautions, and programs.

- c. When Owner is having other work done, either by contract or by its own forces, Engineer may prescribe the time and sequence of constructing the Work done under this Contract so that conflict will be avoided, and the various construction being done for Owner shall be harmonized.

With regard only to items (a) and (b), above, any additional schedules or charts furnished; acquisition of any necessary additional equipment; work hours in excess of those encompassed within Contractor's normal workday; or performance of certain tasks whether similar or dissimilar to the foregoing shall be done without additional cost to Owner.

- 5.03. CONTRACTOR'S DUTY AND STANDARD OF CARE.** Contractor is an independent contractor and shall give personal attention to the faithful prosecution and completion of the Work and shall be present either in person or by duly authorized representatives on the Site continuously during its progress. Contractor shall exercise the highest degree of skill, care, attention, effort, judgment, and diligence that a professional Contractor would use in the performance of the Work. Contractor warrants that Contractor will: (i) perform, supervise and direct the Work, using the Contractor's best skill and attention, in a good and workmanlike manner and in the best and most expeditious and economical manner consistent with the interests of the Owner; (ii) utilize its best skill, efforts and judgment in furthering the interests of the Owner; (iii) perform the Work in strict compliance with applicable Laws and Regulations, such that the Work, no later than the time for completion, will comply with applicable Laws and Regulations; (iv) furnish efficient business administration and supervision (all of the foregoing collectively, the "Standard of Care"); and (v) perform the Work in strict accordance with the Contract Documents. If directed by the Engineer, Contractor shall maintain an office on or adjacent to the Site. Regardless of what authority and rights may be assigned by the Owner to the Engineer, Contractor remains fully and solely responsible and liable for its obligations to perform the Work in strict accordance with the requirements of the Contract Documents; to insure against failures in safety precautions; to carry out the Work pursuant to safe methods of construction; to select and fulfill the proper manner, means, and methods in performing the Work in order to fully comply with the Plans, Technical Specifications and other Contract Documents; and to otherwise complete the Work in accordance with the Contract Documents.
- 5.04. CONTRACTOR'S AGENT.** Contractor, during Contractor's absence from the Site, shall keep a competent English-speaking superintendent or foreman upon the Site, fully authorized to act for Contractor in Contractor's absence. Contractor shall provide Engineer and Owner with written notification of such individual's position, name, and contact information. Any notice given by Engineer, when given to any superintendent, foreman, or agent of Contractor in charge of any operation of the Work in the absence of Contractor, shall be considered as notice to Contractor, provided any notice given under this paragraph shall be in writing.
- 5.05. CHARACTER OF WORKERS.** Contractor agrees to employ only orderly, competent, and skillful people to do the Work; and agrees that whenever Owner shall inform the Contractor in writing that any person(s) or subcontractors on the Work are, in Owner's opinion, incompetent, unfaithful, or disorderly, such person(s) or subcontractor shall be discharged from the Work and shall not again be employed on the Work without Owner's written consent.



5.06. CONSTRUCTION MATERIALS. Contractor shall provide all labor, tools, equipment, machinery, and material necessary in the prosecution and completion of this Contract, unless otherwise specifically provided. It is understood that Owner shall not be held responsible for the care, preservation, conservation, or protection of any material, tools, or machinery of Contractor. **Owner shall not be responsible for any part of the Work until the risk of loss has transferred to the Owner upon Final Completion.** The Contractor shall incorporate into the Work only new materials and equipment and shall store these materials and equipment in a manner to protect them from damage. The manner of protection is subject to specific approval of the Engineer. Pipe, fittings, equipment, and other serviceable materials found on the Site or dismantled by reason of construction shall remain property of the Owner unless otherwise designated. The Contractor shall remove and deliver materials to Owner at designated points and shall pay, at prevailing market price, for usable materials that are damaged through negligence or otherwise.

5.07. OTHER CONTRACTS. Other construction may be underway concurrently in this area. The Contractor shall afford utility companies and other contractors' reasonable opportunity for introduction and storage of their materials and execution of their work. All Work under this Contract must be properly connected and coordinated with that constructed by others and Contractor has the duty and obligation to connect and coordinate the Work with work constructed by others related to the Project so the Work and Project function as intended.

5.08. DAMAGES. Notwithstanding any liquidated damages provisions contained in the Contract Documents, in the event Owner is damaged in the course of the Work by the act of negligence, omission, mistake, or default of the Contractor Parties or intentional acts or omissions of the Contractor Parties or should the Contractor Parties delay the progress of work by others on the Project or the projects of Owner so as to cause loss or liability to Owner, then Contractor shall reimburse Owner for such loss, including attorney's fees, and Owner's damages shall not be capped by any liquidated damages/economic disincentives provisions in the Contract Documents.

NOTWITHSTANDING ANY OTHER PROVISION OF THE CONTRACT DOCUMENTS, IN NO EVENT (INCLUDING, WITHOUT LIMITATION, DEFAULT BY OWNER), SHALL OWNER'S LIABILITIES, IF ANY, TO CONTRACTOR EVER EXCEED THE TOTAL CONTRACT PRICE, LESS ALL SUMS FOR WORK, MATERIALS AND/OR LABOR PREVIOUSLY PAID TO CONTRACTOR BY OWNER AND CONTRACTOR RELEASES OWNER FOR ANY LIABILITIES IN EXCESS OF SUCH TOTAL CONTRACT PRICE, INCLUDING WITHOUT LIMITATION LIABILITIES ARISING FROM OWNER'S NEGLIGENCE, BREACH OF CONTRACT, OR ANY OTHER CAUSES OF ACTION OR CLAIMS.

5.09. TITLE AND RISK OF LOSS. Although Contractor has custody and possession of the Work, as between Owner and Contractor, ownership, and title to (as opposed to risk of loss of) all of the Work completed and in the course of construction at the Site and of all materials furnished irrespective of the location thereof, shall be in the name of the Owner. The vesting of such title in the Owner shall not impose any obligations on the Owner or relieve Contractor of any of its obligations hereunder. The Contractor warrants that it shall acquire no Work or equipment and materials, whether directly or through a subcontractor, subject to an agreement under which a security interest is retained by the seller or otherwise imposed by the Contractor, any subcontractor, or any other person or entity. **Notwithstanding the passage of title, risk of loss or damage shall remain with Contractor until Final Completion approved by the Owner.**



- 5.10. PROTECTION OF PERSONS AND PROPERTY.** Contractor shall at all times take reasonable precautions for the safety of its employees and of all other persons at the Site, and for the protection of property of the Owner and of others, including property adjacent to the Site. Contractor shall comply with all applicable federal, state, and municipal safety laws and regulations and building and construction codes. All machinery and equipment and other physical hazards shall be guarded in accordance with the Manual of Accident Prevention in Construction published by the Associated General Contractors of America unless such instructions are incompatible with Laws and Regulations. Where damage occurs to property of others due to Contractor's or its subcontractors' or suppliers' acts or omissions, or where necessary to take down fences, signs, or other obstructions, Contractor shall repair, renew or replace in their original condition and restore damaged property or make satisfactory restitution to a condition equal to or better than that which existed before Contractor caused the damage or removal, at no cost to Owner. Contractor shall promptly report to Engineer all accidents involving Contractor's employees or any other parties or property. Where livestock are present, Contractor shall take all necessary precautions to assure that no construction or construction related activity will allow livestock to leave their confine. Where existing fences are being crossed, Contractor shall maintain the integrity of the fence during construction through placement of guards, temporary fences, or other adequate measures as approved by the Engineer. All construction activities, including ingress and egress, shall occur within the boundaries and constraints of the temporary and permanent construction limits. Additionally, no staging, parking, loading, and/or unloading shall occur outside of the designated construction limits.
- 5.11. INSURANCE AND BONDS.** Contractor shall procure and maintain in full force and effect during the Work the insurance described in **Attachment A to the General Conditions**. In addition, Contractor agrees to insure the Work under an appropriate builder's risk or other insurance policy until the risk of loss transfers to Owner pursuant to **Section 5.09**. It is further agreed by the parties to this Contract that Contractor will execute a performance bond, maintenance bond and/or payment bond, each as further specified in the Contract Documents.
- 5.12. INDEMNIFICATION.**

**General Indemnity. TO THE MAXIMUM EXTENT PERMITTED BY LAWS AND REGULATIONS, CONTRACTOR SHALL, WITH COUNSEL ACCEPTABLE TO THE OWNER, AND AT NO EXPENSE TO THE INDEMNIFIED PARTIES, INDEMNIFY, DEFEND AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST ANY AND ALL LOSSES, EXPENSES, LIENS, CLAIMS, DEMANDS, DAMAGES AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER WHATSOEVER, FOR INJURY TO OR DEATH OF ANY THIRD PARTY PERSONS (INCLUDING BUT NOT LIMITED TO OWNER'S EMPLOYEES) AND/OR LOSS OR DAMAGE TO ANY PROPERTY (INCLUDING BUT NOT LIMITED TO PROPERTY BELONGING TO OWNER), AND/OR ALL OTHER LIABILITY, DAMAGES, FINES OR PENALTIES (EXCEPT WHERE REIMBURSEMENT FOR FINES OR PENALTIES IS PROHIBITED BY LAWS AND REGULATIONS), INCLUDING ALL COSTS OF DEFENSE, ATTORNEY'S FEES, ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, AND OTHER PROFESSIONALS AND ALL COURT OR OTHER DISPUTE RESOLUTION COSTS ARISING OUT OF OR RELATING TO THE LABOR, MATERIALS, WORK, SERVICES OR OPERATIONS OF THE CONTRACTOR OR ANY SUBCONTRACTOR OR SUPPLIER, OR THE PERFORMANCE OR FAILURE TO PERFORM ANY OBLIGATION UNDER THE CONTRACT DOCUMENTS; PROVIDED THAT, EXCEPT AS EXPRESSLY PROVIDED OTHERWISE BELOW, AND THEN ONLY TO THE EXTENT PERMITTED BY LAWS AND**



REGULATIONS, CONTRACTOR'S OBLIGATIONS OF INDEMNITY AND DEFENSE HEREUNDER SHALL NOT APPLY TO ANY CLAIM TO THE EXTENT IT IS CAUSED BY AN INDEMNIFIED PARTY'S NEGLIGENCE OR FAULT (INCLUDING FAULT BASED UPON STRICT LIABILITY, WHETHER ARISING BY STATUTE OR COMMON LAW, INCLUDING STRICT LIABILITY ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM ANY NON-DELEGABLE DUTY), OR BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR BREACH OF CONTRACT.

Indemnity and Defense Obligations with respect to Bodily Injury to or Death of Certain Individuals. CONTRACTOR SHALL INDEMNIFY, DEFEND AND HOLD THE INDEMNIFIED PARTIES HARMLESS FROM AND AGAINST ANY CLAIM ARISING FROM THE WORK OR OPERATIONS OF THE CONTRACTOR OR ANY SUBCONTRACTOR FOR BODILY INJURY OR DEATH TO ANY PERSON WHO IS AN EMPLOYEE OF THE CONTRACTOR, A SUBCONTRACTOR OR SUPPLIER, EVEN IF CAUSED OR ALLEGED TO BE CAUSED BY AN INDEMNIFIED PARTY'S NEGLIGENCE OR FAULT, IN WHOLE OR IN PART, OR A BREACH OR VIOLATION OF A STATUTE, ORDINANCE, GOVERNMENTAL REGULATION, STANDARD, OR RULE, OR BREACH OF CONTRACT, NEGLIGENT MISREPRESENTATION, GROSS NEGLIGENCE, NEGLIGENCE PER SE, OR FRAUD. THE TERM "FAULT" AS USED HEREIN INCLUDES FAULT BASED UPON STRICT LIABILITY, WHETHER ARISING BY STATUTE OR COMMON LAW, INCLUDING STRICT LIABILITY ARISING OUT OF THE PERFORMANCE OR FAILURE TO PERFORM ANY NON-DELEGABLE DUTY.

THE INDEMNITY PROVISION IN THIS SECTION 15.12 IS INTENDED TO MEET THE TEXAS "EXPRESS NEGLIGENCE RULE" BECAUSE CONTRACTOR AGREES THAT IT APPLIES AND IS ENFORCEABLE EVEN AS TO LOSSES, DAMAGES, INJURIES, EXPENSES, CLAIMS, CAUSES OF ACTION, JUDGMENTS, OR LIABILITIES JOINTLY OR CONCURRENTLY CAUSED BY THE NEGLIGENCE OR OTHER FAULT OF THE INDEMNIFIED PARTIES. THE TERM "FAULT" IN THE PREVIOUS SENTENCE INCLUDES THE VIOLATION OR BREACH BY THE INDEMNIFIED PARTIES OF ANY COMMON LAW DUTY, ANY TERM OF THIS CONTRACT, OR ANY STATUTE OR REGULATION.

THESE INDEMNIFICATION OBLIGATION SHALL NOT BE LIMITED IN ANY WAY BY ANY OTHER PROVISION OF THIS CONTRACT OR BY ANY LIMITATIONS ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR THE CONTRACTOR PARTIES UNDER WORKERS' COMPENSATION ACTS, DISABILITY BENEFIT ACTS OR OTHER EMPLOYEE BENEFITS ACTS.

THESE INDEMNIFICATION OBLIGATION IS IN ADDITION TO ALL OTHER LEGAL, EQUITABLE, OR INDEMNIFICATION REMEDIES AVAILABLE TO THE INDEMNIFIED PARTIES. THIS INDEMNIFICATION OBLIGATION SURVIVES THE TERMINATION OR EXPIRATION OF THIS CONTRACT. THESE INDEMNITY OBLIGATIONS ARE INDEPENDENT OF THE INSURANCE REQUIRED HEREIN.

In the event that any statute, rule of law, or equitable principle should be held applicable to any indemnity clause contained in this Contract in favor of one or more of the Indemnified Parties which would render void, voidable, or unenforceable any such indemnity clause as to any party by reason of any provisions contained therein, then and in only such event, such indemnity clause shall be deemed modified and read, construed, and enforced as to such party with respect to the provisions held to violate the statute, rule of law, or equitable principle to require indemnity by Contractor of the Indemnified Parties to the fullest extent required by such indemnity provision modified and limited only to the degree or extent necessary to bring such



indemnity into compliance with such statute, rule of law, or equitable principle, but otherwise, the indemnity shall remain in full force and effect and binding upon the parties hereto.

Each party hereto agrees and covenants that it will not contest the validity or enforceability of any indemnity or exculpatory provision of this Contract on the basis that the party has no notice or knowledge of such provision or that the provision is not “conspicuous.”

If other provisions contain any indemnities or limitations, such indemnities shall be deemed to be cumulative of and to operate independently of the indemnities provided herein to the end that all indemnities provided in the Contract Documents shall be construed to grant indemnity to the Indemnified Parties to the fullest extent of each such indemnity.

Contractor shall include in each of its subcontracts with its subcontractors of every tier provisions the same as in all material respects those contained herein. Such provisions shall be for the benefit of and in favor of the Indemnified Parties and such other parties on whom Contractor and such subcontractors may agree. Contractor shall turn the Work over to Owner free and clear of all liens, claims and encumbrances, and shall defend, indemnify and hold harmless Owner from all such liens, claims and encumbrances arising out of the Contractor’s performance of the Work, including attorney’s fees and legal expenses. Contractor shall bond off or otherwise discharge any lien or encumbrance filed against any Project within five (5) days receipt of demand by Owner, whether or not Contractor believes the claim is valid.

#### **5.13. INTELLECTUAL PROPERTY RIGHTS, COPYRIGHT AND INDEMNIFICATION.**

- a. Contractor shall not furnish or provide to Owner any materials or Work that infringe a third party’s intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, or the like). Contractor shall not disclose or provide to Owner any information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas which Contractor does not own or otherwise have the right to disclose or provide to Owner.
- b. Contractor represents and warrants that the materials and the Work shall be free from third party claims of ownership and that Owner’s right to own, use, or otherwise disclose such materials and Work shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like).
- c. Contractor represents and warrants to Owner that all information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas disclosed or provided to Owner shall be free from third party claims of ownership and that Owner’s right to own, use, or otherwise disclose such information, ideas, concepts, improvements, discoveries, inventions, or forms of expression of ideas shall be free from third party claims of infringement of intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, trademark infringement or the like).
- d. Contractor represents and warrants that all processes or methods utilized by Contractor to provide its services to Owner are free from infringement of third party intellectual property rights (whether it be claims of improper use of confidential information, patent infringement, copyright infringement, or the like) and that all



products provided by Contractor to Owner are free from third party claims of infringement of intellectual property rights, including allegations that the product infringes the claims of the United States process patent in violation of the Process Patents Amendment Act of 1988. Contractor shall cooperate fully and promptly with Owner with respect to any notice of infringement or request for disclosure or response to a request for disclosure generated or received by Owner in connection with Contractor's Work pursuant to the Process Patents Amendment Act of 1988. To the extent that Contractor obtains products from third parties which it intends to provide to Owner, Contractor shall obtain agreements from Contractor's vendors to cooperate in connection with requests for disclosure generated or received by Owner pursuant to the Process Patents Amendment Act of 1988.

- e. THE INDEMNITY AGREEMENT PROVIDED IN CONTRACTOR'S INDEMNITY OBLIGATION PROVIDED IN **SECTION 5.12** ABOVE, INCLUDES, BUT IS NOT LIMITED TO THE FOLLOWING: (I) CONTRACTOR'S BREACH OF ANY COVENANT, REPRESENTATION OR WARRANTY, WHETHER EXPRESS OR IMPLIED, REGARDING INTELLECTUAL PROPERTY RIGHTS; (II) ALLEGATIONS THAT OWNER, BY USE OF THE MATERIALS OR THE WORK, INFRINGES ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS (WHETHER IT BE CLAIMS OF IMPROPER USE OF CONFIDENTIAL INFORMATION, PATENT INFRINGEMENT, COPYRIGHT INFRINGEMENT, TRADEMARK INFRINGEMENT OR THE LIKE); (III) ALLEGATIONS THAT A THIRD PARTY OWNS INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS, DESCRIBED OR PROVIDED BY CONTRACTOR TO OWNER; (IV) ALLEGATIONS THAT OWNER'S OWNERSHIP OR USE OF INFORMATION, IDEAS, CONCEPTS, IMPROVEMENTS, DISCOVERIES, INVENTIONS, OR FORMS OF EXPRESSION OF IDEAS DISCLOSED OR PROVIDED BY CONTRACTOR TO OWNER INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS; (V) ALLEGATIONS THAT THE PROCESSES UTILIZED BY CONTRACTOR IN PROVIDING ITS SERVICES TO OWNER INFRINGE THIRD PARTY INTELLECTUAL PROPERTY RIGHTS (INCLUDING A VIOLATION OF THE PROCESS PATENTS AMENDMENT ACT OF 1988); OR (VI) THE COSTS, AND EXPENSES, INCLUDING ATTORNEY'S FEES INCURRED BY OWNER, IN ENFORCING THE INTELLECTUAL PROPERTY INDEMNITY INCLUDED IN THIS PARAGRAPH.

**IN ADDITION TO CONTRACTOR'S INDEMNITY OBLIGATIONS PROVIDED IN SECTION 5.12 ABOVE, TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL PROTECT, DEFEND, INDEMNIFY AND HOLD HARMLESS THE INDEMNIFIED PARTIES FROM AND AGAINST EVERY LOSS, ITEM OF DAMAGE, INJURY, EXPENSE, DEMAND, CLAIM, CAUSE OF ACTION, JUDGMENT OR LIABILITY, OF WHATSOEVER KIND OR CHARACTER, WHETHER ARISING IN CONTRACT OR TORT OR UNDER ANY STATUTE, FOR EVERY ELEMENT OF RECOVERY, WHETHER DIRECT OR INDIRECT, INCLUDING SPECIAL AND CONSEQUENTIAL DAMAGES, AND INCLUDING ALL RELATED FEES AND COSTS, TO INCLUDE ALL FEES AND CHARGES OF ENGINEERS, ARCHITECTS, ATTORNEYS AND OTHER PROFESSIONALS AND ALL COURT OR ARBITRATION OR OTHER DISPUTE RESOLUTION COSTS, BASED UPON, ARISING OUT OF, OR RELATING TO ANY ALLEGATION OF VIOLATION OF COPYRIGHT LAWS AS A RESULT OF CONTRACTOR'S PERFORMANCE (OR NON-PERFORMANCE) OF THE WORK.**



- f. Contractor confirms and agrees that the Owner has and shall retain all rights, title, and interest in and to the drawings, documents, designs and information, including, without limitation, any copyright or other intellectual property rights, provided to Contractor by or on behalf of Owner, and that by use of such drawings, documents, designs and information, the Contractor shall not acquire any right, title, or interest in such drawings, documents, designs and information, including, without limitation, any copyright or other intellectual property rights. ***The Owner makes no representation or warranty, and hereby disclaims any such representation or warranty, that any information provided to the Contractor by or on behalf of the Owner in connection with the Work IS ACCURATE, CORRECT, SUFFICIENT COMPLETE OR can be used without infringing any intellectual property rights of third parties under any intellectual property rights of the world.***

- 5.14. SUBCONTRACTOR'S ASSIGNMENT AND SUBLETTING.** Contractor shall be fully responsible to Owner for all acts and omissions of any subcontractor, supplier, or other person or organization performing or furnishing any of the Work under a direct or indirect contract with Contractor. All Work performed for Contractor by such subcontractor, supplier, persons or organization shall be pursuant to an appropriate agreement between Contractor and each such party that specifically binds such party to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer.

Contractor shall timely pay its subcontractors and material suppliers, as required by law and any agreements between or among Contractor and its subcontractors/material suppliers or other persons or organizations performing the Work, and such payments are a condition precedent to final payment.

- 5.15. CONTRACTOR'S SETTLEMENT OF THIRD-PARTY CLAIMS.** Contractor shall promptly settle or cause the settlement of all claims for which it is responsible, in whole or in part, pursuant to the Contract Documents. Upon receipt of any claim, Contractor shall immediately notify the Owner of the full particulars thereof, and the Owner may elect, by notice to Contractor, to have its representative accompany Contractor's representative in making settlement of the same.

- 5.16. SETTLING THIRD- PARTY SMALL CLAIMS.** Owner shall provide Contractor written notice of any claims made arising out of or relating to the Contract or the Contractor's performance of the Work. Contractor shall, within ten (10) calendar days following such notice, appoint in writing and thereafter, until Final Completion, unless earlier allowed by Owner, maintain on the Site a special agent who shall have full duty and authority on behalf of Contractor to settle and pay any claims payable by Contractor described herein, to request or confirm payment by Owner of such claims for the account of Contractor, and to do all other things necessary or convenient in connection with the foregoing authority. In addition, Contractor shall cause said special agent to accompany the representative of Owner to solicit the settlement of such claims as Owner's representative may request. Contractor, through its special agent, shall settle and pay claims payable by Contractor hereunder, but only in the presence and with the cooperation of the representative of the Owner, and in such settlement, Contractor shall take receipts and releases in favor of and releasing the Indemnified Parties as well as Contractor.

Understanding that Owner has a special interest in preserving the good will of persons whose property may be injured in the course of the Work, should Contractor fail to settle and pay claims, including providing written receipts and releases in favor of and releasing the



Indemnified Parties, within thirty (30) calendar days of Owner's initial written notice, Owner shall thereafter have the rights and authority (in Owner's discretion) to itself settle and pay, on Contractor's behalf, such claims as described in this paragraph. Contractor expressly acknowledges, acquiesces, and confirms that a representative of Owner may, in good faith, determine whether claims are payable in whole or in part by Contractor under the provisions herein (the hazard and expense of litigation and the special interest of Owner in liquidating all claims being considered), and if found so payable in part, the portion thereof payable by Contractor. To minimize the expense of employing agents in settling claims, Contractor hereby further authorizes Owner to settle and pay any claims payable by Contractor hereunder which may be settled at Owner's sole election for up to \$10,000 per claim (or such greater amount per claim as Contractor may fix by written notice to Owner). The amount of any such claims and associated costs and expenses related to same may be withheld from Contractor's progress or final payment.

Contractor shall reimburse Owner for all costs and expenses incurred by Owner in the settlement of any claims payable by Contractor.

**5.17. CONTRACTOR'S USE OF OWNER'S PROPERTY.** In the event that any arrangement is made whereby Contractor or any of its subcontractors of any tier use any employees of Owner, any tools, equipment, apparatus, improvements or other personal property of Owner or any utilities (such as electricity, gas, water, compressed air and toilet facilities) furnished by or through Owner, irrespective of who pays the employees and regardless of whether any consideration is paid for the use of the tools or the utilities, then the employees while engaged in the use of the tools or the utilities shall be conclusively considered the agents, servants, and employees of Contractor, and the acceptance and/or use of the tools or the utilities by Contractor or its subcontractors of every tier shall mean the Contractor has inspected and determined the tools and utilities satisfactory for Contractor's intended purposes and uses, and accepted full responsibility for the tools and utilities. **Owner makes no representation or warranty regarding the condition or suitability of any such tools, equipment, apparatus, improvements, other property or utilities and Contractor releases Owner from all such claims of representation and/or warranty with regards to the conditions of suitability of such tools, equipment, apparatus, improvements, other property, or utilities.** Contractor shall return the tools at the conclusion of Contractor's use thereof in the same condition as when received, ordinary wear and tear excepted.

**5.18. LAWS AND REGULATIONS.**

- a. Prior to beginning the Work, Contractor shall become familiar with all of the Laws and Regulations relating to the Work or which in any manner might affect the Work and shall thereafter comply with all such Laws and Regulations. Contractor shall, at its expense, obtain all permits, licenses, certificates, and other authorizations required by or reasonably necessary in connection with the Work and shall at all times observe and comply with the Laws and Regulations.
- b. Contractor agrees that all financial settlements, billings, and reports rendered to Owner as provided for in the Contract Documents will, to the best of its knowledge and belief, reflect properly the facts about all activities and transactions handled for the account of Owner, which data may be relied upon by Owner and Engineer as being



complete and accurate in any further recording and reporting made by Owner for whatever purpose.

- c. Contractor agrees to notify Owner promptly upon discovery of any instance where the Contractor fails to comply with provision (a), above, or where Contractor has reason to believe data covered by (b), above, is no longer accurate and complete.

**5.19. BUSINESS STANDARDS.** Contractor, in performing its obligations under this Contract, shall establish and maintain appropriate business standards, procedures, and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interests of the Owner. Contractor shall review with the Owner at reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees and agents in their relations with the Owner's employees, agents, and representatives, vendors, subcontractors and other third parties, and those relating to the placement and administration of purchase orders and subcontracts.

In connection with this Contract and the Work, neither Contractor, its subcontractors of every tier, nor the employees, representatives, and agents of Contractor or any such subcontractor shall at any time solicit, accept, offer, or bestow gratuities of more than nominal value from or to one or more of the Indemnified Parties, any of Owner's other contractors associated with the Work, the employees, agents, or representatives of such other contractors, or anyone else associated with the Work. Violation of this policy by Contractor or any subcontractor shall constitute a material breach of Contractor's obligations under the Contract Documents that may result, at the Owner's election, in a declaration of default.

**5.20. SAFETY.**

- a. Contractor shall develop a safety program applicable to each job site and to the Work to be done and enforce such program at all times. Further, Contractor shall comply with all applicable Laws and Regulations including, but not limited to, the standards and regulations promulgated by the Secretary of Labor under the Occupational Safety and Health Act of 1970 (OSHA) and any other legislation enacted for the safety and health of Contractor employees. Contractor shall have complete control of the Work and Site and responsibility for protecting the safety and health of its employees, subcontractors, and all other persons.
- b. Contractor shall notify Owner immediately by telephone, with prompt confirmation in writing, of injuries and fatalities that occur on the Site in connection with any Work being performed under this Contract and shall provide Owner with such reports of injuries and fatalities as Owner shall deem necessary, including but not limited to, copies of all reports or other documents filed or provided to Contractor's insurers or the State of Texas in connection with such injury or fatality.
- c. Nothing contained herein shall be interpreted as enlarging Owner's legal duty to Contractor or to Contractor's agents, employees, subcontractors, or third parties, or altering the status of Contractor as an independent contractor.

**5.21. ALCOHOL, DRUGS, WEAPONS, ETC.** The use of alcohol or controlled substances by any Contractor Parties on Owner's property or the Site or any person remaining on Owner's



property or the Site under the influence of such substances is strictly prohibited. In addition, possession of alcohol, controlled substances, firearms, explosives, weapons, and hazardous substances or articles without proper authorization is not permitted on Owner's property or the Site. Entry onto Owner's property is deemed to be consent to and recognition of the right of Owner or a representative of the Owner who has been specifically authorized to search the person, motor vehicles, and other property of each individual while entering, on, or departing the Site.

**5.22. UTILITY SERVICES FOR CONSTRUCTION.** The Contractor shall provide all utilities necessary for construction at no additional cost to Owner unless otherwise specified in the Contract Documents.

**5.23. OPERATION AND MAINTENANCE MANUALS.** Operation and maintenance manuals are to be provided where required by an item in the Technical Specifications. The Contractor is responsible for obtaining installation, operation, and maintenance manuals from manufacturers and suppliers for equipment furnished under the Contract and shall submit three copies of each complete manual and one CD to the Engineer within ninety (90) days after approval of Shop Drawings, product data, and samples, and not later than the date of shipment of each item of equipment to the Site or storage location. Operations and maintenance manuals specified hereinafter are in addition to any operation, maintenance, or installation instructions required by the Contractor and/or Engineer to install, test, and start up equipment. Contractor shall comply with all such manuals in installing and operating such equipment.

Each manual must be bound in a folder and labeled to identify the contents and project to which it applies. The Engineer may additionally request electronic copies of each manual, stored on electronic media suitable to the Engineer. The manual should contain the following:

- a. An 8-1/2-inch x 11-inch typewritten sheet listing the manufacturer's identification, including order number, model, and serial number and location of parts and service centers.
- b. A separate 8-1/2-inch x 11-inch typewritten list of recommended stock of parts, including part number and quantity.
- c. Complete replacement parts list.
- d. Performance data and rating tables.
- e. Specific instructions for installation, operation, adjustment, and maintenance.

**5.24. INTERRUPTION OF UTILITY SERVICES.** The Contractor shall not operate any valve or other control on existing systems. The Contractor shall exercise care in performing Work so as not to interrupt service, including, but not limited to, locating and uncovering existing utilities ahead of heavy excavation equipment and at house connections, either lifting trenching machine over lines or cutting and reconnecting with minimum interruption of service, as approved.

**5.25. TRAFFIC AND OTHER SAFETY MEASURES.** If the Work occurs on, near, or adjacent to any street, alley, or public place or where construction creates hazard to property, traffic, or public safety, the Contractor shall furnish and maintain suitable barricades, warning signs, lights and other safety items or mechanisms and remove same when no longer necessary. The Contractor shall be responsible for all phases of traffic control according to the guidelines as set forth in Manual on Uniform Traffic Control Devices and per all Laws and Regulations.



- 5.26. USE OF STREETS. Except where approved otherwise, the Contractor may not hinder or inconvenience travel on streets or intersecting alleys for more than two blocks at any one time. Whenever streets are closed the Contractor shall comply with all Laws and Regulations and place properly worded signs announcing such fact to the public, with proper barricades at the nearest street corners, on both sides of obstruction. The Contractor shall leave no street or driveway blocked at night. When streets are closed, Contractor shall also notify the Engineer, the Fire Department and the Police Department and any other parties required by Laws and Regulations. The Contractor shall not block ditches, inlets, fire hydrants, etc., and, where necessary, shall provide temporary drainage.

The Contractor shall remove as soon as practicable, accumulated rubbish and open each block for public use. Use of any portion of a street shall not constitute acceptance of any portion of Work. The Contractor shall backfill and shape trenches across street intersections or driveways for safe traffic at night or, where permitted, span open trenches with steel plates or bridges to permit traffic flow. When driveways are cut, the immediate placement of mats for ingress or egress of vehicles may be directed if undue hardship to property owner would otherwise result or the Laws and Regulations require.

- 5.27. CONSTRUCTION STORMWATER DISCHARGES. The Contractor shall, without any additional expense to the Owner, be responsible for obtaining any necessary licenses and permits and for complying with all applicable Laws and Regulations, including, but not limited to, any Laws and Regulations concerning storm water permitting and management. Specifically, without limitation, the Contractor will comply with all aspects of the Texas Pollutant Discharge Elimination System (“TPDES”) General Permit for Storm Water Discharges from Construction Activities in Texas and with the Storm Water Pollution Prevention Plan (SWPPP) that has been developed for the Project. At Owner’s expense, the baseline SWPPP for the Project will be provided by the Engineer to Contractor. The Contractor will implement the baseline SWPPP and advise the Engineer in writing prior to implementing any changes required to the SWPPP due to changes in construction activities. The Engineer may update SWPPP due to changes in construction activities. The Contractor will file the Notice of Intent (“NOI”) for permit coverage with the Texas Commission on Environmental Quality and will maintain a copy thereof, file stamped by such governmental authority, at the Site. Weekly inspection to ensure compliance with the SWPPP and other permit requirements will be performed by the Contractor. Upon Final Completion, the Contractor shall file the Notice of Termination (“NOT”) with the Texas Commission on Environmental Quality.

**The Contractor, and not the Owner, shall be responsible for, and the Contractor shall indemnify Owner from and against, any and all monetary fines or damages assessed by any governing agency resulting from the failure to comply with the requirements of the SWPPP.**

- 5.28. SITE MAINTENANCE AND CLEAN-UP. Contractor shall maintain the Site during construction to keep it reasonably neat and free of trash, rubbish, and other debris. In clean-up operations, Contractor shall remove from the Site and from public and private property temporary structures, rubbish, and waste materials and dispose of excavated materials beyond that needed to bring the Site to elevations shown. During final clean-up, any road constructed by Contractor for access to the Site must be leveled and ruts filled so that surface drainage is not hindered.



- 5.29. AS-BUILT DIMENSIONS/RECORD DRAWINGS. The Contractor shall make daily measurements of facilities constructed and keep accurate records of location (horizontal and vertical) of all facilities. Upon Final Completion of Work, the Contractor shall furnish Owner with one set of direct prints, marked with red pencil, to show as-built dimensions and location of all Work constructed.
- 5.30. SANITATION. Necessary sanitary conveniences for the use of laborers on the Work, properly secluded from public observation, shall be constructed and maintained by Contractor, in accordance with all Laws and Regulations and in such manner and at such point as shall be approved by Owner, and their use shall be strictly enforced.
- 5.31. CONTRACTOR'S BUILDINGS. The building of structures for housing men, or the erection of tents or other forms of protection will be permitted only at such places as Owner shall prescribe, and the sanitary conditions of the grounds in or about such structures shall at all times be maintained in a manner satisfactory to Owner in accordance with all Laws and Regulations.
- 5.32. LIENS. In the event that any subcontractor, sub-subcontractor, supplier, design professional or any other party of any tier for whom the Contractor is responsible establishes a lien against the Project and/or the Site, the Contractor shall, within five business days of receipt of notice from the Owner regarding such lien, cause the lien to be discharged (either by obtaining and recording a lien discharge bond from a surety and in a form acceptable to the Owner or otherwise) at no cost to the Owner, except to the extent that any such lien is attributable to Owner's failure to pay undisputed amounts as and when due under the Contract Documents (other than amounts for which withholding is permitted under the Contract Documents). The Owner shall have the right to withhold all further payments to the Contractor until the lien is discharged. The Owner may either (a) apply amounts so withheld to discharging such lien or (b) retain such amounts until such lien is discharged or released by the Contractor or the lienor, and shall thereafter credit to the Contractor any amounts remaining after payment of the fees and expenses the Owner incurs in connection with such lien. **The Contractor agrees to indemnify, defend and hold harmless the Owner from all claims and all costs and expenses incurred by the Owner in connection with such liens, except to the extent that any such lien is attributable to Owner's failure to pay undisputed amounts as and when due under the Contract Documents (other than amounts for which withholding is permitted under the Contract Documents).**

#### ARTICLE VI. ENGINEER'S STATUS DURING CONSTRUCTION

- 6.01. ENGINEER'S AUTHORITY AND DUTY. It is mutually agreed between the parties to this Contract that: Engineer will act as Owner's representative during the construction of the Project, and that no act or omission on the part of Engineer, or its subordinates or representatives, will excuse Contractor from full and proper performance of this Contract according to its terms, or give rise to any liability or obligation from Engineer to Contractor. All authority and rights assigned by the Owner to the Engineer with respect to the Work are solely and exclusively for the benefit of the Owner and not for the Contractor. The Engineer shall have no liability to Contractor under these Contract Documents.

As a contractual adjudication procedure and in order to prevent delays, it is further agreed by and between the parties to the Contract that, if it cannot be otherwise agreed, Engineer shall in all cases: (i) determine the amounts and quantities of the several kinds of Work which are to be paid for under this Contract; (ii) determine all questions in relation to said Work and the



construction thereof; and (iii) decide every question in writing which may arise relative to the performance of this Contract on the part of Contractor. Provided, however, that should Engineer render any decision or make any requirement which, in the opinion of Contractor, is not in accordance with the meaning and intent of this Contract, Contractor must file with Engineer, as part of the contractual adjudication procedure, within thirty (30) calendar days of Engineer's written decision Contractor's written notice of objection(s) to the decision or requirement so rendered. Contractor's failure to object to Engineer's decision or requirement within such contractual adjudication period of thirty (30) calendar days shall be deemed Contractor's agreement with such decision or requirement. It is the intent of this Contract that there shall be no delay in the performance of the Work. To this end, the decision or requirement of Engineer shall be promptly carried out. Engineer shall, within a reasonable time or as otherwise required in the Contract Documents, render and deliver to both Owner and Contractor a written decision on all Claims of the parties hereto and on all questions that may arise relative to the execution of the Work or the interpretation of the Contract, Technical Specifications, or Plans. **See Section 7.06 for additional notice and contractual adjudication procedures.**

**6.02. EXAMINATION, OBSERVATION, AND TESTING.** It is agreed by Contractor that Engineer shall be and is hereby authorized to appoint from time to time such subordinate engineers or Project representatives as Owner may deem proper to examine the material furnished and observe the Work done and to ascertain whether the said material is furnished and said Work is done in accordance with the Contract Documents. Contractor shall furnish all reasonable aid and assistance required by the subordinate engineers or Project representatives for the proper examination and testing of the Work and materials. The authority of subordinate engineers and Project representatives shall be limited to examination, observation, and testing of Work and materials, and reporting same to Engineer.

**6.03. PRELIMINARY APPROVAL.** Neither Engineer nor its subordinates shall have any power to waive the obligations of this Contract for the furnishing by Contractor of good, new material, or for Contractor's obligations to perform the Work in a good and workmanlike manner as herein described and in full accordance with the Plans, Technical Specifications, and other Contract Documents. No action taken or thing done, written or oral, including, but not limited to, inspections made, payments made, or Final Completion of the Work, and no failure or omission of Engineer or its subordinates to discover, object to, or condemn any defective Work or material, shall release Contractor from the obligation to fully and properly perform the Contract, including, without limitation, the obligation to at once tear out, remove, and properly replace the same.

Any questioned Work may be ordered by Engineer to be taken up or removed for re-examination prior to Final Acceptance, and if found not in accordance with the Contract Documents for said Work, all expense of removing, reexamination, and replacement shall be borne by Contractor; cost of uncovering any Work will be borne by Owner only when the Work is found acceptable and the Work was originally performed with the knowledge of the Engineer.

**6.04. RIGHT OF ENGINEER TO MODIFY MATERIALS AND EQUIPMENT.** The Contractor shall provide and use accepted equipment and materials in sufficient qualities and quantities to facilitate diligent prosecution of the Work to the end that the Work will be completed within the time for completion and otherwise in accordance with the Contract Documents. If at any time Engineer



shall find that the materials or equipment used by Contractor are faulty or inadequate to secure the quality of Work or the rate of progress necessary for Contractor to complete the Work (or any portion thereof) within the time period required by this Contract or otherwise will prevent the Work from being completed in accordance with the Contract Documents, Engineer may, in writing, require Contractor to improve the materials and/or equipment, and/or replace and/or supplement them, and Contractor shall comply with such requirements.

- 6.05. WORK FORCE AND EQUIPMENT.** If at any time the work force of Contractor is inadequate for securing the progress herein specified, Contractor shall, if so notified in writing, increase its work force or equipment, or both, to such an extent as to ensure compliance with the schedule of progress (and timely completion of the Work) all in accordance with the Contract Documents.

#### ARTICLE VII. EXTRA WORK/ CHANGE ORDERS/ CLAIMS

- 7.01. CHANGES AND ALTERATIONS.** Contractor further agrees that Owner may make such changes and alterations as Owner may see fit in the line, grade, form, dimensions, Plans, Technical Specifications, or materials for or scope of the Work herein contemplated, or any part thereof, either before or after the beginning of the construction, without affecting the validity of this Contract and the accompanying Bonds.

**If such changes or alterations diminish the quantity of the Work to be done, such changes may reduce the Contract Price according to the quantity of Work actually done and the unit price established for such Work under this Contract and shall not constitute the basis for a Claim. If such changes or alterations increase the amount of Work and the increased Work can fairly be classified under the Plans, Technical Specifications, or other Contract Documents, such increase shall be paid for according to the quantity of Work actually done and at the unit prices established for such Work under this Contract, otherwise Extra Work shall be paid for as provided in this Article. If Owner makes such changes or alterations as makes useless any Work already done or materials already furnished or used in accordance with the Contract Documents in connection with said Work, then Owner shall recompense Contractor for such Work, labor and materials, in accordance with the prices therefore in the Contract Documents, made useless by such change.**

- 7.02. EXTRA WORK.** It is agreed that Contractor shall perform all Extra Work when presented with a Written Work Order or Change Order. **The Contract Price for Extra Work may be changed only by a Change Order signed by Owner, Engineer, and Contractor.** It is agreed that pricing in any Change Order for performing Extra Work shall be determined by one (1) or more of the following methods:

Method (A) - By agreed unit prices; or

Method (B) - By agreed lump sum; or

Method (C) - If neither Method (A) nor Method (B) be agreed upon before the Extra Work is commenced, then Contractor shall be paid the “actual field cost” of the Extra Work, less any savings attributable to the change, alteration or addition, plus fifteen percent (15%) of the net amount.

In the event said Extra Work be performed and paid for under Method (C), then the provisions of this paragraph shall apply and the “actual field cost” is hereby defined to include the cost of



all workmen, such as foremen, timekeepers, mechanics, and laborers, and all materials, supplies, teams, trucks, and rentals on machinery and equipment for the time actually employed or used on such Extra Work, plus actual transportation charges necessarily incurred if such equipment or machinery be not already on the job together with all power, fuel, lubricants, water, and similar operating expenses; also all necessary incidental expenses, incurred directly on account of such Extra Work, including Social Security, Old Age Benefits, and other payroll taxes, and a ratable proportion of premiums on all Bonds and all insurance as may be required by any law or ordinance, or required by Engineer or Owner, or by them agreed to. Engineer may prescribe the form in which accounts of the “actual field cost” shall be kept and may also specify, in writing, before the Work commences, the type and kind of machinery and equipment to be used, otherwise these matters shall be determined by Contractor. Where practicable, the terms and prices for the use of machinery and equipment shall be incorporated in the Written Work Order or Change Order. The fifteen percent (15%) of the “actual field cost” to be paid Contractor shall cover and compensate Contractor for its profit, overhead, general superintendence and field office expense, and all other elements of cost and expense not embraced within the “actual field cost” as herein defined, save that where Contractor’s camp or field office must be maintained primarily on account of such Extra Work, then the cost to maintain and operate this office shall be included in the “actual field cost.” When Extra Work is performed by a subcontractor, the fifteen percent (15%) will apply to the subcontractor only. The Contractor will be allowed five percent (5%) for overhead and profit.

**No Claim for Extra Work of any kind will be allowed unless ordered in writing by Engineer.** In case any requirements, response to request for information, response to a submittal or other communication made by Engineer or any other event appear to Contractor to involve Extra Work for which Contractor should receive compensation, Contractor shall immediately, and in any event within thirty (30) calendar days after being notified of any such requirement, response, or communication or after such event, make written request to Engineer for written authorization therefore. Such written request for written authorization shall set forth Contractor’s belief of, basis for, and amount of expected compensation. IN NO EVENT SHALL CONTRACTOR BEGIN PERFORMING THAT PORTION OF THE WORK AFFECTED BY SUCH REQUIREMENT, RESPONSE, OR COMMUNICATION PRIOR TO GIVING SUCH WRITTEN REQUEST FOR WRITTEN AUTHORIZATION TO THE ENGINEER. Any written request for written authorization not timely made by the Contractor shall be deemed a waiver by the Contractor of its right to assert and recover any additional compensation or otherwise on a Claim in respect of such request, response, or communication. Should a difference of opinion arise as to what does or does not constitute Extra Work, or as to the payment therefor, and Engineer insists upon its performance, Contractor shall proceed with the Work after making its written request for written authorization to Engineer and shall keep an accurate account of the “actual field cost” thereof, as provided under Method (C). Engineer shall, within a reasonable time, render and deliver to both Owner and Contractor a written decision on all Claims as provided under **Section 6.01** in these General Conditions.

**7.03** ESTIMATED QUANTITIES. The estimated quantities of the various classes of Work to be done and material to be furnished under this Contract are approximate and are to be used only as a basis for estimating the probable cost of the Work and for comparing the Bids offered for the Work. It is understood and agreed that the actual amount of Work to be done and material to be furnished under this Contract may differ somewhat from these estimates, and that the basis



for determining quantities for payment under this Contract shall be the actual amount of such Work done and the material incorporated.

**CONTRACTOR AGREES THAT IT WILL MAKE NO CLAIM AND RELEASES OWNER FOR DAMAGES, ANTICIPATED PROFITS, OR OTHERWISE ON ACCOUNT OF ANY DIFFERENCES WHICH MAY BE FOUND BETWEEN THE QUANTITIES OF WORK ACTUALLY DONE OR THE MATERIAL ACTUALLY INCORPORATED UNDER THIS CONTRACT AND THE ESTIMATED QUANTITIES CONTEMPLATED AND CONTAINED IN THE BID.**

Where the final quantity of Work performed by Contractor on “Major Unit Price Work” item differs by more than twenty-five percent (25%) from quantity of the item stated in the Contract, a party may request (subject to Owner’s approval) an adjustment in the unit price, for the portion that differs by more than twenty-five percent (25%), by a Change Order. Major Unit Price Work is defined as an individual unit price line item whose original total value: (i) is greater than five percent (5%) of original Contract Price; (ii) becomes greater than five percent (5%) of original Contract Price as the result of an increase in quantity; or (iii) is greater than or equal to \$100,000, whichever is least.

- 7.04. EXTENSION OF TIME.** Subject to the remainder of this paragraph, should Contractor be delayed in the completion of the Work by any act or negligence of Owner or Engineer, or by any employee of either, or by other contractors employed by Owner, or by changes ordered in the Work, then, if the other requirements for an extension of time are met, an extension of time shall be allowed for completing the Work sufficient to compensate for the delay, the amount of the extension to be the amount approved by Owner, based on the recommendation by Engineer; provided, however, that Contractor shall give Engineer notice in writing of the cause of such delay and the impact to the critical path of the schedule prior to the tenth day of the month following the month in which the delay occurred. Failure to file requests for extension of time within the time set forth herein and otherwise as required by this paragraph shall constitute a waiver of any rights the Contractor may have had to such extensions of time. Contractor shall support its request for time extension with such information as required by Engineer. Approved extensions of time must be made in writing, signed by the Owner, Engineer, and Contractor.

**Contractor will not be allowed time extensions: (i) due to inclement weather except for Force Majeure events as defined under Section 1.01 of these General Conditions; (ii) due to non-availability of equipment or material, when the principal units of Work and tasks on the critical path are not in progress or are not delayed by the event of delay, interference, disruption, or hindrance; (iii) when at least seven (7) hours of available working time remain out of the working day; (iv) while materials are drying and it is possible for the Contractor to enclose the area and use drying devices; (v) when an event of delay, interference, disruption, or hindrance occurs on a day other than a working day or other day when the Contractor had not originally planned to work; (vi) when an event of delay, interference, disruption, or hindrance occurs after the expiration of the Contract Time; (vii) to the extent the Contractor could have anticipated or alleviated the impact of the event of delay, interference, disruption, or hindrance through reasonable efforts; (viii) when events of concurrent delay overlap the claimed delay; and/or (ix) when an extension of time is precluded by any provision of the Contract Documents.**

- 7.05 HINDRANCES, INTERFERENCES, DISRUPTIONS, AND DELAYS.** Excluding Owner’s fraud, bad faith, or intentional interference, the Contractor shall receive no financial compensation for



delay, interference, disruption, or hindrance at any time in the commencement or progress of the Work for any reason and for any period of time, by an act, omission or neglect, or otherwise, of the Owner, Engineer or any other consultant or contractor of the Owner, or of an employee of any of them; or by changes ordered in the Work; or by fire, unavoidable casualties or other causes beyond the Contractor's control; or by delay authorized by the Owner pending mediation; or by other causes that may justify delay. To the fullest extent allowed by applicable Laws and Regulations, in no event shall the Owner be liable to the Contractor or any subcontractor or supplier, any other person or any surety for or any employee or agent of any of them, and Contractor releases Owner for any damages arising out of or associated with any delay, interference, disruption, or hindrance to the Work, regardless of the source of the delay, interference, disruption, or hindrance, AND EVEN IF SUCH DELAY, HINDRANCE, DISRUPTION OR INTERFERENCE RESULTS FROM, ARISES OUT OF OR IS DUE, IN WHOLE OR IN PART, TO THE NEGLIGENCE, BREACH OF CONTRACT OR OTHER FAULT, HOWEVER CHARACTERIZED, OF THE OWNER OR THE ENGINEER OR THE EMPLOYEES, REPRESENTATIVES OR AGENTS OF THE OWNER OR ENGINEER. The Contractor's sole remedy in any such case shall be an extension of time in such amount as allowed by **Section 7.04** of these General Conditions.

**7.06** NOTICE/CONTRACTUAL ADJUDICATION PROCEDURES. It is agreed that, unless specifically waived in the Contract Documents, all Claims shall be referred to Engineer for a decision. All Claims shall be in writing and filed with Engineer within thirty (30) calendar days of the event giving rise to such Claim, unless a specific provision of the Contract Documents provides a shorter period of time for such filing, in which case it shall occur within such shorter time. Written notice stating the general nature of each Claim and the amount or extent of the Claim, with supporting data, must be provided so the Owner and Contractor can investigate and settle disputes, if any, while construction continues. The Claim shall also be accompanied by Contractor's written statement that the adjustment claimed is the entire adjustment to which the Contractor believes it is entitled as a result of said event. Engineer shall reply to such written Claims by Contractor and render its final decision in writing within thirty (30) days of receipt of the Contractor's last submittal. In the event Engineer shall take no action, the Claim shall be deemed denied. Contractor must provide notice of its intent to appeal Engineer's decision within ninety (90) days of Engineer's final decision or within ninety (90) days from the end of the thirty (30) day timeframe for Engineer to reply to Contractor's written Claim, whichever is earlier.

Contractor hereby confirms its willingness and ability to comply with the contractual adjudication procedures of the Contract Documents for seeking an adjustment in price or time, or other relief and hereby agrees that the time periods, notice requirements and procedures set forth in the Contract Documents are reasonable time periods, notice requirements and procedures and that Owner will be prejudiced if Contractor fails to comply with such time periods, notice requirements and procedures. ACCORDINGLY, CONTRACTOR'S FAILURE TO COMPLY WITH THE TIME PERIODS, NOTICE REQUIREMENTS AND CONTRACTUAL ADJUDICATION PROCEDURES OF THE CONTRACT DOCUMENTS WITH RESPECT TO A CLAIM FOR ADJUSTMENT IN PRICE OR TIME, DAMAGES OR OTHER RELIEF SHALL CONSTITUTE A WAIVER OF THE CLAIM, INCLUDING CLAIMS ARISING OUT OF OWNER'S NEGLIGENCE, BREACH OF CONTRACT OR OTHER FAULT OR STRICT LIABILITY WITHOUT REGARD TO FAULT.

IT IS FURTHER AGREED THAT ACCEPTANCE BY CONTRACTOR OF THE FINAL PAYMENT SHALL BE A BAR TO ANY CLAIMS OR SUITS BY CONTRACTOR AGAINST OWNER FOR ANY MATTERS RELATED



TO THIS CONTRACT, INCLUDING MATTERS ARISING OUT OF OWNER'S NEGLIGENCE, BREACH OF CONTRACT OR OTHER FAULT OR STRICT LIABILITY WITHOUT REGARD TO FAULT.

7.07 INTENTIONALLY DELETED.

#### ARTICLE VIII. TESTS AND INSPECTIONS/ DEFECTIVE WORK/ WARRANTY

8.01. TESTING AND INSPECTION. The Owner shall arrange and obtain all inspections and tests required by the Contract Documents; provided, however, that if initial testing fails, all retests will be at Contractor's sole expense. Such testing and inspection is for the sole benefit of Owner, and Owner makes no representation or warranty as to the accuracy of the results of any test or inspection. Contractor at its own expense shall provide such laboratory with all test specimens required by the Contract Documents. The Contractor shall notify the Engineer prior to manufacture or fabrication of items so that observation may be accomplished and furnish field samples of materials to Engineer for testing.

8.02. DEFECTS AND THEIR REMEDIES; WARRANTY PERIOD. It is agreed that if the Work or any part thereof, or any material delivered to the Site for use in the Work or selected for the Work, shall be deemed by Engineer as unsuitable or not in conformity with the Contract Documents, Contractor shall, after receipt of written notice thereof from Engineer, forthwith remove such material and rebuild or otherwise remedy such Work so that it shall be in full accordance with this Contract.

It further is agreed that all Work or any part thereof, including equipment installed, shall be free from defects due to faulty workmanship or materials during the warranty period of two (2) year(s) from the date of Final Completion. Contractor shall notify Engineer in writing thirty (30) days in advance of the expiration of such warranty period, and Engineer shall thereafter schedule a final inspection of the Work prior to the expiration of the warranty period. Contractor's failure to notify the Owner of the expiration of the warranty period, as provided herein, shall extend the warranty period for successive thirty (30) day periods until such written notice is received. Upon notice from Owner, Contractor shall repair defects in all construction that develop during the warranty period, or as noted on the final inspection report, at no cost to Owner. Neither Final Acceptance nor final payment nor any provision in the Contract Documents relieves Contractor of the above guarantee.

If observed by Owner, notice of the defects will be given by Owner to Contractor with reasonable promptness. Failure to repair or replace defect upon notice entitles Owner to repair or replace same and recover reasonable cost thereof from Contractor and/or its surety.

8.03. RIGHT OF ENTRY. Owner reserves the right to enter the property or location on which the Work herein contracted for is to be constructed or installed, by Engineer and such agent or agents as Owner may elect, for the purpose of examining, observing, or testing the Work, or for the purpose of constructing or installing such collateral Work as Owner may desire.

#### ARTICLE IX. MINIMUM WAGE RATE SCALE/PRICE FOR WORK/ PAYMENTS TO CONTRACTOR

9.01. LABOR CLASSIFICATION AND MINIMUM WAGE RATE SCALE. Work being constructed under this Contract may be owned, operated, and maintained by a governmental entity. Since the Work being constructed under this Contract may be owned, operated, and maintained by a



governmental entity, **Chapter 2258 of the Texas Government Code** applies to this Contract. **Chapter 2258 of the Texas Government Code** provides that any political subdivision of the State of Texas shall ascertain the general prevailing wage rate received by the classes of workers employed on projects similar to this Project and shall specify in the call for Bids and in the Contract Documents the minimum wage rates which shall be paid for each type of worker. This statute further provides that the Contractor or subcontractors shall pay, as penalty to Owner, Sixty Dollars (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the Contract. Owner is authorized to withhold from the Contractor the amount of this penalty from any payment due under the Contract Documents. The statute likewise requires that the Contractor and subcontractors keep an accurate record of the names and occupations of all persons employed by them on the construction of the Project and to show the accrual per diem wages paid to each worker. These records are open to the inspection of Owner. The minimum wage rates that apply to this Contract are specified in **Attachment B to these General Conditions**. Contractor and subcontractors shall review and ascertain such wage rates and pay at least such minimum rates.

**9.02. PRICE FOR WORK.** In consideration of the furnishing of all the necessary labor, equipment, and material and the completion of all Work by Contractor, and on the Final Completion of all Work and the delivery of all materials embraced in this Contract in full conformity with the Contract Documents, Owner agrees to pay Contractor the final Contract Price. Contractor hereby agrees to pay such prices as are necessary for furnishing all materials and all labor required for the aforesaid Work, including all expenses incurred by Contractor, and for well and truly performing the same and the whole thereof in the manner prescribed by and in accordance with the Contract Documents, including the Plans and the attached Technical Specifications, and requirements of Engineer.

**9.03. PROGRESS PAYMENTS.** On or before 25<sup>th</sup> day of each month, the Contractor shall submit an application for progress payment to the Engineer showing the total value of the Work completed. Progress payments for unit price work will be based on the number of units completed. No payment shall be requested nor made for materials purchased and stored on-site that are not yet incorporated into the Work unless specifically authorized by the Owner and Engineer and Contractor furnishes satisfactory evidence that Contractor has acquired title to the material and that it will be utilized in the Work. If requested, Contractor shall meet with the Engineer at the Site to verify the quantity of Work completed.

Each application for progress payment shall be deemed to include a representation by the Contractor that, except as expressly disclosed to the Owner in writing in such application for progress payment: (a) the Contractor has paid all amounts owed to its subcontractors and suppliers for previous payment periods; (b) the Contractor has no knowledge that any party has filed or threatened to file a lien against the Site; and (c) the Contractor has no knowledge of any basis on which it may assert a claim for an extension of the Contract Time or an increase in the Contract Price.

The Contractor warrants that title to all Work covered by an application for progress payment will pass to the Owner no later than receipt of payment by the Contractor, free and clear of all liens, claims, security interests or encumbrances. The Contractor further warrants that upon



submittal of an application for progress payment, all Work for which payment have been received from the Owner shall be free and clear of liens.

Beginning with the second application for progress payment, each application shall include an affidavit and lien release of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations with respect to the prior application for payment.

Engineer shall promptly review each application for payment, including required submittals. Engineer shall provide to Owner a statement showing, as complete as practicable and based upon Engineer's observations, the total value of the Work completed by the Contractor together with Engineer's recommendation as to payment. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, such payments are not due and payable under the Contract Documents. Payments based on such interim statements are subject to adjustment and correction as set forth in the Contract Documents.

Owner shall pay Contractor the amount due under each approved application for progress payment within thirty-five (35) days from the date Owner receives the approved application for progress payment. Interest of 1½ percent per month will accrue on applications for progress payment that are not paid timely. In making progress payments, ten (10) percent of the estimated amount shall be retained until Final Completion. However, if the Owner at any time after fifty (50) percent of the Work has been completed finds that satisfactory progress is being made, Owner may authorize any of the remaining progress payments to be made in full. Also, if the Work has reached Substantial Completion, the Owner, if Owner finds the amount retained to be in excess of the amount adequate for the protection of the Owner, at its discretion, may release to the Contractor all or a portion of the excess amount retained.

If Owner, in good faith, believes there is a dispute on what is owed to Contractor, Owner may withhold one hundred (100) percent of the difference between the amount Contractor claims is due and the amount Owner claims is due. Owner may, at Owner's option, withhold an appropriate amount which may include part or all of any payment due the Contractor if: (i) any Work progress falls behind schedule or any requirement of the Contractor as provided in the Contract is not performed timely or as scheduled, including submission of any submittals, reports, Shop Drawings, samples, test reports; (ii) any Work is defective or not in strict compliance with this Contract or should Contractor otherwise fail to perform Work in accordance with the provisions of this Contract; (iii) Owner has incurred damages, including, without limitation, any additional costs associated with design professionals, attorneys or other consultants, as a result of any action or inaction by Contractor not in accordance with the Contract; (iv) claims have been made against Owner on account of Contractor's performance (or non-performance) or furnishing of the Work; (v) Contractor is in breach of the Contract Documents; (vi) there is evidence that the Work cannot be completed for the unpaid balance of the Contract Price; (vii) Contractor has failed to submit proper statements for payment with all required attachments and supporting documentation, which documentation shall expressly include consent of Contractor's surety as to payment without obligation to the surety to do so, if, in Owner's sole discretion, any cause for such consent exists; (viii) Contractor has failed or allegedly failed to make payment to any tier of subcontractor or supplier; and (ix) any other items entitling Owner to an offset against the amount recommended for payment. It is understood, however, that in case the whole Work is near completion and some unexpected



and unusual delay occurs due to no fault or neglect on the part of the Contractor, the Owner may, at Owner's option and upon written recommendation of the Engineer, pay a reasonable and equitable portion of the retained percentage to the Contractor; or the Contractor, at the Owner's option, may be relieved of the obligation to fully complete the Work and, thereupon, the Contractor shall receive payment of the balance due him under the Contract, subject to the conditions stated in **Article X**.

**Partial payment shall not be construed as an acceptance of defective or non-conforming Work.**

- 9.04. PAYMENT OF SUBCONTRACTOR/MATERIAL CLAIMS.** Should Owner receive notice of any claim(s) of unpaid labor or materials (or damages) from subcontractors, material suppliers, or any other person or entity, Owner may, at its option, withhold part or all of any payment due the Contractor until Owner, in its discretion, is satisfied that such claim(s) have been fully resolved and paid by Contractor, or Owner may, at its option, pay such claim(s) using the withheld funds.
- 9.05. RIGHT OF SET-OFF.** If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, or if the Contractor owes the Owner money for any other reason, then, for all purposes and at all times, without waiver or limitation of any of its other rights or remedies under this Contract and applicable Laws and Regulations, Owner shall have the right, but not the obligation, to deduct and withhold the amount of money, if any, that may ever be due from Contractor (or its surety) to Owner from any monies that Owner owes Contractor (or its surety), or to issue a written notice to the Contractor reducing the Contract Price by an amount equal to that which the Owner is entitled.

#### **ARTICLE X. SUBSTANTIAL COMPLETION, PARTIAL USE, FINAL COMPLETION, AND ACCEPTANCE**

- 10.01. SUBSTANTIAL COMPLETION.** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall notify Engineer and request a determination as to whether the Work or designated portion thereof is substantially complete. If Owner, or Owner's Engineer does not consider the Work substantially complete, Engineer will notify Contractor giving reasons for the position. After performing any required Work, Contractor shall then submit another request for Engineer to determine Substantial Completion. If Owner considers the Work substantially complete, Engineer will prepare and deliver a Certificate of Substantial Completion which shall establish the date of Substantial Completion, shall include a punch list of items to be completed or corrected before Final Acceptance and final payment, and may establish responsibilities of the Owner and Contractor for security, maintenance, utilities, or damage to the Work and insurance until the time of Final Acceptance. If the Certificate of Substantial Completion omits responsibilities as to security, maintenance, utilities, or damage to the Work or insurance, the responsibility for the omitted item(s) shall remain with the Party assigned the responsibility in the Contract Documents. Failure to include an item on the punch list does not alter the responsibility of Contractor to complete the Work in accordance with the Contract Documents. Contractor, Engineer, and Owner shall sign the Certificate of Substantial Completion



confirming the matter is set forth in such Certificate. Once Contractor reaches Substantial Completion, Owner may, in its sole discretion, release to Contractor all or a portion of the retainage in excess of the amount adequate for the protection of Owner.

**10.02. PARTIAL USE.** Use by Owner, at Owner's option, of any substantially completed part of the Work which: (i) has specifically been identified in the Contract Documents; or ii) Owner and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, may be accomplished prior to Substantial Completion of all the Work in accordance with the following: Owner at any time may request Contractor to permit Owner to use any such part of the Work which Owner believes to be ready for its intended use and is substantially complete. If Contractor agrees that such part of the Work is substantially complete, Contractor will certify to Engineer that such part of the Work is substantially complete and request Engineer to issue a notice specifying what portion of the Work is substantially complete for the purpose of payment and what Work remains to be done on the portion being accepted. Contractor at any time may notify Engineer that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a notice specifying what portion of the Work is substantially complete for the purpose of payment and what Work remains to be done in the portion being accepted. The notice for the portion of the Work that is substantially complete may establish responsibilities of the Owner and Contractor for security, maintenance, utilities, damage to the Work and insurance for the portion of the Work which is substantially complete and being utilized by Owner. If the notice for the portion of the Work that is substantially complete omits responsibilities of the Owner and Contractor for security, maintenance, utilities, damages to the Work or insurance for the portion of the Work which is substantially complete and being utilized by Owner, the responsibility for the omitted item(s) remains with the party assigned the responsibility in the Contract Documents.

**10.03. FINAL COMPLETION, INCLUDING FINAL ACCEPTANCE, AND PAYMENT.** Upon Final Completion of the Work, Contractor shall give the Engineer written notice that the Work has been fully and finally completed and must certify that the Work is complete and was built in conformance with the Plans, Technical Specifications, and other Contract Documents. Such written notice must be accompanied by all documentation called for in the Contract Documents, including but not limited to: (i) maintenance bonds if required by the Contract Documents; (ii) the consent of surety to final payment; (iii) Contractor Affidavit for final payment and Bills Paid; (iv) affidavits of final payment and lien releases from all subcontractors who performed Work on the Project; and (v) as-built drawings, as described in **Section 5.29** of these General Conditions. Drawings will be reviewed by Engineer and returned to Contractor so that any adjustment required may be made. Production of these documents is a condition precedent to final payment

Within ten (10) calendar days after Engineer receives Contractor's written notice, certification(s), and required documentation, Engineer will schedule inspection by Engineer, Owner, and Regulatory Agencies; provided, however, that additional time shall be allowed for scheduling such inspections if required due to the Regulatory Agencies' availability or responsiveness. If the Work is found to be completed in accordance with the Contract Documents, including the Plans and Technical Specifications, and acceptable to the Engineer, Owner, and Regulatory Agencies, Engineer shall proceed to make final measurements and prepare a final statement of the value of all Work performed and materials furnished under the



terms of the Contract Documents and shall submit the final statement to Contractor for approval. Upon receipt from the Contractor of the executed approved final statement and all other documents required by the Contract Documents for final payment, the Engineer shall issue to the Owner a certificate of completion and Contractor approved final statement of the value of the Work performed. The Owner shall thereafter make Final Acceptance of the Work and shall pay to the Contractor on or before the 31st day after the date of the certificate of completion the balance due Contractor under the terms of this Contract, provided Contractor has fully performed its contractual obligations under the terms of this Contract.

The Owner shall be entitled to withhold from such final payment for any circumstance for which Owner is entitled to withhold pursuant to General Conditions. For example, but not by limitation, should Owner receive notice of any claim(s) of unpaid labor or materials (or damages) from subcontractors, material suppliers, or any other person or entity, Owner may, at its option, withhold part or all of any of the final payments due the Contractor until Owner, in its discretion, is satisfied that such claim(s) have been fully resolved and paid by Contractor, or Owner may, at its option pay for such claims(s) using the withheld funds.

Neither Final Acceptance by Owner, nor the final payment, nor any provision in the Contract Documents, shall relieve Contractor of: (i) the obligation for fulfillment of any warranty or guarantee that may be required in the Contract Documents, including the Technical Specifications; (ii) the obligation to repair defective Work or materials; (iii) Contractor's indemnification obligations under this Contract; or (iv) any of Contractor's continuing obligations.

- 10.04. OPERATION OF FACILITIES.** The Owner reserves the right to operate new facilities during the construction period. Use of new facilities by the Owner during construction will not constitute Final Acceptance of the Work and will not constitute the date for start of any required warranty periods or guarantees. The Contractor will provide all necessary maintenance, including normal lubrication and adjustment, to new facilities operated by the Owner until Final Acceptance of the Work.

#### **ARTICLE XI. SUSPENSION OF WORK/ TERMINATION/ DEFAULT**

- 11.01. SUSPENSION OF WORK.** At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than sixty (60) consecutive calendar days by written notice to Contractor.
- 11.02. OWNER'S RIGHT TO CARRY OUT THE WORK.** If the Contractor defaults or neglects to carry out the Work in accordance with the Contract and fails within a ten (10) day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case the Owner may offset from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Engineer's or other consultant's additional services made necessary by such default, neglect or failure (the "Cost to Cure"). Such action by the Owner and Cost to Cure are both subject to prior approval of the Engineer. If payments then or thereafter due the Contractor are less than the Cost to Cure, the Contractor shall pay the difference to the Owner.



**11.03. TERMINATION FOR CONVENIENCE OF OWNER.** Owner may terminate Contractor’s performance under the Contract for Owner’s convenience at any time upon written notice to Contractor, whether or not Contractor is in default, and, in such event, Owner’s only liability will be to pay Contractor the following amounts:

- a. The unpaid balance due Contractor for the Work performed and accepted, based on the schedules and tables, unit prices and lump sums enumerated in the Contract Documents; and
- b. Reasonable expenditures made and costs incurred by Contractor for the materials ordered by Contractor for the Work prior to the date of termination and not incorporated in the Work, less reasonable salvage, or resale value, provided such materials conform to the Technical Specifications, and for labor performed on any such materials prior to the date of termination and associated labor insurance and labor payroll taxes.

From the total of the items enumerated in items (a) and (b), above inclusive, there shall be deducted the total dollar amount of all claims of Owner against Contractor, including the total dollar amount of claims on account of delay or defects in materials and/or workmanship.

The amount payable under the provisions of this Section, plus the sum of all amounts previously paid under the Contract, shall in no event exceed the Contract Price. Notwithstanding anything to the contrary contained herein or in the other Contract Documents, neither the Owner nor any other party shall be responsible for damages for loss of anticipated profits on Work not performed on account of any termination of the Contract.

Contractor shall transfer and assign to Owner in accordance with Owner’s instructions, all materials, supplies, Work in process, and other things for which Contractor is entitled to receive reimbursement hereunder, and all plans, drawings, working drawings, sketches, specifications, and information in connection with the Work, and shall take such action as may be necessary to secure to Owner, at Owner’s election, the rights of Contractor under any or all orders and subcontracts made in connection with the Work.

If and as Owner so directs or authorizes, Contractor shall sell at a price approved by Owner, or retain at a price mutually agreeable, any such materials, supplies, Work in progress or other things as referred to above. The proceeds of any such sale or the agreed price shall be paid or credited to Owner in such manner as Owner may direct to reduce the amount payable by Owner.

If requested by Owner, Contractor shall endeavor to cancel any or all of its outstanding orders or subcontracts upon such terms as may be approved by Owner.

Upon the performance of the obligations described in this Section by the respective parties, all obligations of the respective parties under the Contract shall be discharged, except such obligations as by their terms, express or implied, contemplate continued obligations after acceptance of the Work.

Nothing herein shall affect the right of Owner to terminate Contractor’s performance as provided elsewhere in the Contract Documents.

**11.04. TERMINATION FOR CAUSE AND EVENTS OF DEFAULT.** An event of default includes, without limitation, any one (1) or more of the following:



- a. A petition in bankruptcy is filed by or against Contractor, or Contractor makes a general assignment for the benefit of creditors, or a receiver is appointed on account of the insolvency of Contractor or to take charge of the Work or any part thereof.
- b. Contractor fails or refuses to supply enough properly skilled workers or proper equipment or fails to make prompt payment when due to subcontractors for materials, equipment or labor.
- c. Contractor disregards the Laws and Regulations or the instructions of Owner or of Engineer.
- d. Contractor breaches any of the provisions of the Contract Documents, or breaches any of its representations or warranties in the Contract Documents, or otherwise fails or refuses to perform or fulfill all or any part of its obligations under the Contract Documents.

If one (1) or more of the identified events occur, Owner or Engineer, in Owner's sole discretion without waiving any rights, may provide written notice to Contractor and Contractor's surety of its intent to terminate for cause. Owner will allow a minimum of ten (10) calendar days to cure deficiencies in performance, then in any such case, Owner may, by written notice to Contractor and its surety, declare Contractor in default under the Contract Documents and terminate Contractor's performance under the Contract and may at its option employ any remedies provided for in the Contract Documents or otherwise available at law or in equity.

Nothing contained herein shall be interpreted as enlarging Owner's legal duty to Contractor or to Contractor's agents, employees, subcontractors, or third parties, or altering the status of Contractor as an independent contractor. Should Owner elect to terminate the performance of Contractor hereunder, then such termination shall not waive, extinguish or diminish the obligations and liabilities of the Contractor or its surety existing as of the termination date. Contractor shall submit and does hereby submit to the personal jurisdiction of the state or federal courts having subject matter jurisdiction and sitting in the county in which the Site is located, for the adjudication of any suit brought to enforce Owner's rights and remedies under the Contract.

If for any reason, the Owner's termination for cause is deemed to be invalid, improper, or not enforceable, the Owner's termination for cause is automatically converted to a termination for convenience under **Section 11.03**.

- 11.05. REMEDIES FOR DEFAULT OF CONTRACTOR.** In the event the Owner elects to terminate Contractor for cause, Owner shall have the right, but not the obligation, at its sole election and discretion, and without prejudice to any other right or remedy available to it, to take possession of the Work and the Site and use all or any part of Contractor's equipment, tools and materials to itself finish, or cause to be finished by another contractor, the Work by whatever method Owner may deem expedient. Further, Contractor shall not be entitled to receive further payment until the Work achieves Final Completion. If the unpaid balance of the Contract Price exceeds the costs and expenses of terminating the Contract and finishing the Work, (including, without limitation, attorney's, engineering, surveying and other professionals' fees and costs, together with the costs of completing the Work), such excess shall be paid to Contractor. If such costs and expenses exceed the unpaid balance of the Contract Price, Contractor or its surety shall pay the difference to Owner. The amount to be paid to the Contractor or Owner, as



applicable, shall be certified by the Engineer, upon application, and this obligation for payment shall survive termination of the Contract.

In the event Owner elects to make demand on Contractor's performance Bond, the Contractor's surety shall be obligated to complete or cause completion of the Work in strict conformity with the Contract, including Contract Times. If the Owner reasonably determines that the surety is not proceeding diligently and with promptness to complete its obligation hereunder, the Owner may take possession of the Work and the Site and use all or any part of Contractor's equipment and materials to itself finish, or cause to be finished by another contractor, the Work by whatever method Owner may deem expedient as provided in the preceding paragraph.

## ARTICLE XII. MISCELLANEOUS

- 12.01. NO THIRD-PARTY BENEFICIARIES.** Except as provided herein, the Contract Documents shall not create any rights in third parties and no provision of the Contract Documents shall be construed as creating any obligations for the benefit of, or rights in favor of, any person or entity other than the Owner, the Indemnified Parties, and the Contractor. Without limiting the foregoing, the Owner shall have no obligation to pay or to see to the payment of any monies due to any of Contractor's subcontractors or material suppliers of every tier or to any other person or entity.
- 12.02. SEVERABILITY.** Except as otherwise provided under **Section 5.12** of these General Conditions, if any term, condition or provision of the Contract Documents, or the application thereof to any person or circumstance, shall ever be held to be void, voidable or unenforceable, then in each such event the remainder of the Contract Documents or the application of such term, condition or provision to any other person or any other circumstance (other than those as to which it shall have been held void, voidable or unenforceable) shall not be affected thereby, and each term, condition or provision of the Contract Documents shall remain valid and enforceable to the fullest extent permitted by Laws and Regulations.
- 12.03. NON-WAIVER OF RIGHTS.** Any failure by the Owner at any time, or from time to time, to enforce or require the strict keeping and performance of any of the terms or conditions of the Contract Documents shall not constitute a waiver of the right to enforce or require the strict keeping of such terms or conditions and shall not affect or impair such terms or conditions in any way or the right of Owner at any time to avail itself of such remedies as it may have for any subsequent breach or breaches of any such term or condition or of any other term or condition of the Contract Documents, including, without limitation, the right to terminate. Notwithstanding any provision hereof, neither Owner's receipt of non-compliant Bonds or non-compliant insurance certificates nor Owner's allowance of Contractor to proceed with the Work, shall be construed to relieve Contractor of its obligation to provide Bonds and insurance in favor of Owner according to the requirements of these Contract Documents.

Contractor agrees that Owner shall not be precluded or estopped by any action taken or thing done, written or oral, including, but not limited to, inspections made, payments made, or Final Completion of the Work, from showing that the actual amount and character of the Work done and equipment and materials furnished by Contractor do not in fact conform to the Plans, Technical Specifications or other Contract Documents. Contractor also agrees that Owner shall not be precluded or estopped because of any action taken or not taken, from demanding and



recovering from Contractor any damages resulting therefrom or from the Contractor's other failure to comply with the Contract Documents.

In the event of termination by Owner of Contractor's performance under the Contract for convenience, on account of Force Majeure, or by reason of Contractor's default, no rights or remedies of Owner shall thereby be waived, nor shall any breach by Contractor of the provisions in the Contract Documents which has occurred or is continuing at the time of such termination be waived, regardless of whether or not default has been declared.

**12.04. OWNER'S AUDIT RIGHTS.** Owner's duly authorized representatives shall have access at all reasonable times to all Contractor's and subcontractor's personnel, job description, employment and qualification records, books, records, correspondence, instructions, plans, drawings, receipts, vouchers, data stored in computers, and memoranda of every description pertaining to Work for the purpose of auditing and verifying costs of Work or for any other reasonable purpose. Owner's representatives shall have the right to reproduce any of the aforesaid documents.

If audit by Owner reveals charges or costs charged to or paid by Owner as costs or fees which are not proper or exceed the rates or amounts permitted under the Contract Documents for any such matters, the Owner shall be entitled upon demand for a refund from Contractor of all such amounts, plus interest thereon from the date of payment by Owner until the date of refund by Contractor at the rate of the lesser of: (i) eighteen percent (18%) per annum; or (ii) the maximum rate allowed by law.

**12.05. NO ASSIGNMENT.** Contractor shall not be allowed to assign or otherwise convey all or any portion of this Contract without the express written consent of Owner.

**12.06. CUMULATIVE RIGHTS AND REMEDIES.** The rights and remedies of Owner provided in the Contract Documents shall be cumulative of and not in lieu of all other rights and remedies available to Owner at law or in equity. It is expressly agreed that exercise of a right or pursuit by Owner of any one or more of the remedies provided in the Contract Documents or otherwise available at law or in equity shall not constitute an election of remedies by Owner or forfeiture of any other right of Owner.

**12.07. BINDING EFFECT.** This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective assigns and successors.

**12.08. PREVAILING PARTY RECOVERS ATTORNEYS' FEES.** The prevailing party of any dispute, as set forth herein, shall be entitled to recover reasonable and necessary attorney's fees. If a party claiming a right to payment of an amount in dispute is awarded all or substantially all of such disputed amount, then such claiming party shall be the prevailing party. If the party defending against such claim is found to be not liable to pay all or substantially all of the disputed amounts claimed by the other party, then the party so defending against such claim shall be the prevailing party. If both parties prevail with respect to different claims, then the party who is prevailing with respect to the greater monetary sum shall be deemed the prevailing party. Notwithstanding anything to the contrary, nothing herein waives any immunities from suit or damages to which the Owner is entitled.



**ATTACHMENT A TO THE GENERAL CONDITIONS OF THE CONTRACT**  
**INSURANCE REQUIREMENTS**

**I. BUILDER'S RISK INSURANCE OR INSTALLATION FLOATER INSURANCE**

A. Not Required

**II. LIABILITY INSURANCE**

- A. Insurance Certificates. In addition to the coverages described and required in **Section I** above and before beginning the Work under this Contract, Contractor shall furnish certificates of insurance to Owner evidencing that the insurance required below is in force and effect. Contractor shall provide new, replacement certificates, evidencing the procurement of successor policies, prior to the expiration of each required policy for so long as this Contract is in effect. Owner may require Contractor to provide certification of insurance on an ACORD form.
- B. Accuracy of Information. Contractor warrants the accuracy of all information shown on each certificate furnished to Owner by Contractor or on Contractor's behalf by Contractor's broker or other representative.
- C. Minimum Required Insurance and Minimum Limits of Liability. Before beginning the Work, and throughout performance of the Work and the term of this Contract, Contractor shall obtain and maintain in force and effect, at Contractor's sole expense, insurance of the following types and amounts from insurance rated by Best's A- and VII or better:
- i. **Workers' Compensation Insurance** affording statutory benefits in accordance with all requirements of the Texas Workers' Compensation Act and covering Contractor's employees.
  - ii. **Employer's Liability Insurance** with limits of not less than \$1,000,000 per accident or disease.
  - iii. **Commercial General Liability Insurance**, including coverage for bodily injury and property damage, personal and advertising injury, the products-completed operations hazard, and insured contracts, applicable in Texas, on a form no less broad than the Insurance Services Office ("ISO") CG 00 01 form dated 2004 or thereafter, and with limits of not less than:
    - (1) Each Occurrence - \$1,000,000
    - (2) General Aggregate - \$2,000,000
    - (3) Products-Completed Operations Aggregate - \$2,000,000
    - (4) Personal & Advertising Injury -\$1,000,000
  - iv. **Business Automobile Liability Insurance**, including coverage for bodily injury and property damage, on a form no less broad than the ISO CA 00 01 form dated 2010 or thereafter, with limits of not less than \$1,000,000 combined single limit for each accident and covering owned, hired or leased, and non-owned autos.
  - v. **Excess or Umbrella Liability Insurance**, affording coverage no less broad than, and applying excess of the limits of liability, of the policies required by II.C.ii., II.C.iii., and II.C.iv., above, with limits of not less than \$2,000,000 per occurrence and in the aggregate.
  - vi. **Contractor's Pollution Liability (CPL) Insurance** – Not Required
- D. Additional Insurance or Limits. Paragraphs II.C, above, states the minimum types of liability insurance and limits of liability required by this Contract in connection with the Work.



Contractor may, in its sole discretion, procure additional insurance or higher limits of liability at Contractor's sole expense.

- E. Additional Insureds. To the extent allowed by law, the Commercial General Liability Insurance, Business Automobile Liability Insurance, and Excess or Umbrella Insurance required by II.C.iii. through II.C.vi. above, shall be endorsed to provide that the Indemnified Parties (collectively, "the Additional Insureds"), are added as additional insureds for liability arising out of the Work, to include liability based on either alleged fault or vicarious liability. Such additional insured coverage shall not be limited to liability caused by Contractor or Contractor's fault. The Additional Insureds shall be afforded additional insured status on the policies required by paragraphs II.C.iii and II.C.v, above, under a combination of the ISO CG 20 10 07 04 and ISO CG 20 37 07 04 endorsements.
- F. Primary/Non-Contributing. The insurance policies required by II.C.iii. through II.C.vi., above, shall provide that the Additional Insureds are covered on a primary basis. Also, the insurance policies required by II.C.iii., through II.C.vi. above shall be endorsed to provide that Contractor's insurers will not seek contribution or recovery from such other insurance as may be available to the Additional Insureds.
- G. Insurance Required of Contractor's Subcontractors. Contractor shall require all subcontractors who will perform any of the Work to obtain the same insurance and limits of liability as required by II.C.iii. through II.C.vi. above. Contractor shall also require all such subcontractors to cause their insurers to waive subrogation to the same extent as required of Contractor's insurers by the following provision, II.H. Contractor shall obtain certificates of insurance from its subcontractors before they begin any of the Work and, upon request, shall provide copies thereof to Owner.
- H. Waiver of Subrogation in Favor of Indemnified Parties. The parties intend that none of Contractor's insurers shall subrogate against the Indemnified Parties. Accordingly, Contractor agrees to cause all of its insurers—not limited to insurers underwriting the policies required above—to waive subrogation against the Indemnified Parties and its directors. **For the avoidance of doubt, Contractor also agrees that it presently waives and releases all rights of recovery, claims, or causes of action that might hereafter arise in favor of Contractor against Indemnified Parties for any loss, damage or liability that is covered by Contractor's insurance, regardless of whether the loss, damage or liability is caused by the negligence, breach of any legal duty, or other fault of the Indemnified Parties.** The foregoing waiver and release is effective even if Contractor fails to obtain the required insurance.
- I. Notice of Cancellation, Modification or Impairment of Limits. The policies required above shall be endorsed to provide that they will not be canceled, or the coverage or limits of liability thereunder materially changed, without at least thirty (30) days' prior written notice to Owner.
- J. Notice of Impairment of Limits. Contractor shall give written notice to Owner no later than seven (7) days after the date on which an impairment of a required aggregate limit, due to the payment of a claim or defense expense, reduces the available aggregate limit to an amount 50% or less than the aggregate limit required above. If Contractor's available excess insurance will not drop down and comply with paragraph II.C.iii., through II.C.vi. of these insurance requirements, Owner may require reinstatement of an impaired aggregate limit up to the amount required.
- K. Information Concerning Contractor's Insurance Program. If Owner has questions concerning Contractor's casualty insurance program, Contractor agrees to promptly answer them. Complete, true and correct copies of each policy required above shall be furnished to Owner



promptly upon Owner's request, but Contractor may redact payroll and premium information. Contractor agrees to cooperate with Owner, and with Owner's insurance broker, in the event Owner elects to seek or obtain additional insurance benefiting Owner. Contractor also provides Owner permission to communicate with Contractor's insurance broker regarding coverages required under the Contract Documents.

- L. Contractor's Compliance with Policy Conditions. Contractor shall comply with and not violate, or knowingly permit to be violated, any condition of the insurance policies required in this **Attachment A**. Contractor agrees to give its insurers timely written notice of all occurrences, accidents or claims arising out of the Work, with a copy to Owner.
- M. Contractor's Payment of Premiums, Deductibles and SIRs. Contractor, not Owner, shall be responsible for any and all policy premiums, deductibles, or self-insured retentions payable in connection with Contractor's insurance, including the insurance required above.
- N. Non-Waiver - No Limitation of Owner's Rights. Contractor unilaterally agrees to comply with the provisions of this **Attachment A**. Accordingly, Owner's knowledge concerning deficiencies in Contractor's insurance, including non-compliance with this Article shown by any insurance certificate or other information furnished to Owner, shall not affect Owner's rights, and shall not result in a waiver or otherwise limit or impair Owner's remedies for Contractor's failure to comply with the requirements of this Article.
- O. No Impairment or Waiver of Rights. Nothing contained in this **Attachment A** shall restrict, limit, impair or waive Owner's rights or Contractor's duties under the other terms of this Contract or under applicable law. The cancellation, expiration, or exhaustion of any of the insurance required above shall not preclude Owner from recovery against Contractor for any liability arising under this Contract or under law.
- P. Automatic Reformation to Conform to Law. The parties intend this Contract to comply with Texas law. Accordingly, the parties agree that any legal limitations now or hereafter in effect and affecting the validity or enforceability of any provision of this Contract are made a part hereof and shall operate to amend this Contract to the minimum extent necessary to bring all provisions into conformity with the requirements of such limitations and, as so modified, this Contract shall continue in full force and effect.
- Q. Term of Insurance Requirements. All the foregoing insurance requirements shall survive termination of this Contract. All required insurance shall continue for at least thirty (30) days after Final Completion of the Work, to include performance of all warranty work.

### III. WORKERS' COMPENSATION INSURANCE COVERAGE

- A. Definitions.
  - i. Certificate of Coverage ("Certificate") - A copy of a certificate of insurance, a certificate of authority to self-insure issued by the Texas Workers' Compensation Commission, or a coverage agreement DWC-81, DWC-82, DWC-83, or DWC-84, showing statutory Workers' Compensation Insurance coverage for the person's or entity's employees providing services on a Project, for the duration of the Project.
  - ii. Duration of the Project - Includes the time from the beginning of the Work on the Project until the Contractor's/person's Work on the Project has been completed and accepted by the governmental entity and the warranty period has expired.
  - iii. Persons Providing Services on the Project ("Subcontractor" in §406.096 of the Texas Labor Code) - Includes all persons or entities performing all or part of the services the Contractor has undertaken to perform on the Project, regardless of whether that person contracted directly with the Contractor and regardless of whether that person has employees. This



- includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the Project.
- iv. **“Services”** - Include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a Project. Services does not include activities unrelated to the Project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.
- B. The Contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of **Texas Labor Code, Section 401.011(44)** for all employees of the Contractor providing Services on the Project, for the duration of the Project.
  - C. The Contractor must provide a Certificate of Coverage to the governmental entity prior to being awarded the Contract.
  - D. If the coverage period shown on the Contractor’s current Certificate of Coverage ends during the duration of the Project, the Contractor must, prior to the end of the coverage period, file a new Certificate of Coverage with the governmental entity showing that coverage has been extended.
  - E. The Contractor shall obtain from each person providing Services on a Project, and provide to the governmental entity:
    - i. a Certificate of Coverage, prior to that person beginning Work on the Project, so the governmental entity will have on file Certificates of Coverage showing coverage for all persons providing Services on the Project; and
    - ii. no later than seven (7) days after receipt by the Contractor, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage ends during the duration of the Project.
  - F. The Contractor shall retain all required Certificates of Coverage for the duration of the Project and for one (1) year thereafter.
  - G. The Contractor shall notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the Contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing Services on the Project.
  - H. The Contractor shall post on each Project site a notice, in the text, form, and manner prescribed by the Texas Workers’ Compensation Commission, informing all persons providing Services on the Project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.
  - I. The Contractor shall contractually require each person with whom it contracts to provide services on a Project, to:
    - i. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of **Texas Labor Code, Section 401.011(44)** for all of its employees providing services on the Project, for the duration of the Project;
    - ii. provide to the Contractor, prior to that person beginning work on the Project, a Certificate of Coverage showing that coverage is being provided for all employees of the person providing services on the Project, for the duration of the Project;



- iii. provide the Contractor, prior to the end of the coverage period, a new Certificate of Coverage showing extension of coverage, if the coverage period shown on the current Certificate of Coverage ends during the duration of the Project;
  - iv. obtain from each other person with whom it contracts, and provide to the Contractor:
    - (1) a Certificate of Coverage, prior to the other person beginning work on the Project; and
    - (2) a new Certificate of Coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current Certificate of Coverage ends during the duration of the Project;
  - v. retain all required Certificates of Coverage on file for the duration of the Project and for one (1) year thereafter;
  - vi. notify the governmental entity in writing by certified mail or personal delivery, within ten (10) days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the Project; and
  - vii. contractually require each person with whom it contracts, to perform as required by Paragraphs III.I.i through III.I.vi., with the Certificates of Coverage to be provided to the person for whom they are providing services.
- J. By signing this Contract or providing or causing to be provided a Certificate of Coverage, the Contractor is representing to the governmental entity that all employees of the Contractor who will provide Services on the Project will be covered by Workers' Compensation coverage for the duration of the Project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the Commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the Contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.
- K. The Contractor's failure to comply with any of these provisions is a breach of contract by the Contractor which entitles the governmental entity to declare the Contract void if the Contractor does not remedy the breach within ten (10) days after receipt of notice of breach from the governmental entity.



**ATTACHMENT B TO THE GENERAL CONDITIONS OF THE CONTRACT  
MINIMUM WAGE RATE SCALE**

- A. Chapter 2258 of the Texas Government Code provides that any political subdivision of the State of Texas shall determine the general prevailing wage rate received by the classes of workers employed on projects similar to this project and shall specify in the call for bids and in the Contract the applicable minimum wage rates. The statute further provides that the Contractor or Subcontractors shall pay, as a penalty, to the Owner Sixty Dollars (\$60.00) for each worker employed for each calendar day or part of the day that the worker is paid less than the wage rates stipulated in the Contract. The Owner is authorized to withhold from the Contractor the amount due under Contract.

The statute likewise requires that the Contractor and Subcontractors keep an accurate record of the name and occupations of all persons employed by them in the construction of the Project and to show the actual per diem wages paid to each worker. These records are open to the inspection of the Owner.

- B. The minimum wage rates that apply to this Contract are those in effect at the time the bids are received. Contractor agrees to review and ascertain such wage rates and to pay at least such minimum rates.



**SPECIAL CONDITIONS OF THE CONTRACT**  
**PART A**

1. Name and Location of Project.

Work covered by these Technical Specifications is entitled "CONTESSA UNIT 2."

2. Description of Work.

- a. Under this Contract, Contractor shall furnish all materials, appliances, tools, equipment, transportation, services, and all labor and superintendence necessary for the construction of the Work as described in these Technical Specifications and as shown on the Plans. The completed installation shall not lack any part that can be reasonably implied as necessary to its proper functioning or any subsidiary item that is customarily furnished, and Contractor shall deliver the installation to Owner in operating condition.
- b. The Work, in general, under this Contract includes the purchase, installation, and construction of all structures, equipment, and materials, including appurtenances, as indicated on the Plans.

Major items of construction and services required are designated as follows:

- (1) Install SWPPP controls
- (2) Clearing and Grading
- (3) Install sanitary sewer infrastructure
- (4) Install domestic water infrastructure
- (5) Install storm water infrastructure
- (6) Install dry utility infrastructure
- (7) Install roadway infrastructure
- (8) Clean-up project area upon completion.

3. Technical Specifications.

- a. Technical Specifications are of the abbreviated, simplified or streamlined type and include incomplete sentences. The omission of words or phrases such as "Contractor shall," "in conformity therewith," "shall be," "as noted on Plans," "according to Plans," "a," "an," "the," and "all," are intentional. Omitted words or phrases shall be supplied by inference in same manner as they are when a "note" occurs on Plans.
- b. The Technical Specifications are interpreted to require that Contractor shall provide all items, articles, materials, operation or methods listed, mentioned, or scheduled either on Plans or specified herein, or both, including all labor, materials, equipment, and incidentals necessary and required for their completion.
- c. Whenever the words "designated," "submitted," "observed," or similar words or phrases are used, it shall be assumed that the word "Engineer" follows the verb as the object of the clause, such as "observed by Engineer."



- d. All references to standard Technical Specifications or manufacturer’s installation directions shall mean the latest edition thereof on the date Bids are due unless specifically noted otherwise.
- e. Reference to technical society, organization or body is made in Technical Specifications in accordance with following abbreviations:

|        |  |
|--------|--|
| AASHTO | American Association of State Highway and Transportation Officials |
| ACI    | American Concrete Institute  |
| ASTM   | American Society for Testing and Materials                         |
| AWWA   | American Waterworks Association                                    |
| FS     | Federal Specifications   |
| PCA    | Portland Cement Association  |
| IEEE   | Institute of Electrical and Electronic Engineers                   |
| NEC    | National Electric Code   |
| UL     | Underwriters’ Laboratories   |
| AISI   | American Iron and Steel Institute                                  |
| API    | American Petroleum Institute                                       |
| IPCEA  | Insulated Power Cable Engineers Association                        |
| NEMA   | National Electrical Manufacturers Association                      |
| AWS    | American Welding Society   |
| PCI    | Prestressed Concrete Institute                                     |
| AISC   | American Institute of Steel Construction                           |
| ANSI   | American National Standards Institute (Formerly ASA)               |

- f. Some Technical Specification items cover construction requirements and materials in comprehensive manner, and only pertinent portions of these items apply.

4. Manufacturer’s Representative.

When required by Technical Specifications provide the services of trained, qualified technicians to check final equipment installation, to assist as required in placing same in operation, and to instruct operating personnel in the proper manner of performing routine operation and maintenance of the equipment.

5. Contract Time.

Commencement of Contract Time: The Contract Time begins to run as indicated in the Notice to Proceed. CONTRACTOR is required to begin Work within 7 calendar days of the date indicated on the Notice to Proceed.

The CONTRACTOR will be allowed 275 calendar days to achieve Substantial Completion. The CONTRACTOR will be allowed 30 calendar days to achieve Final Completion of all Work to meet all requirements for final payment.



## SPECIAL CONDITIONS OF THE CONTRACT

### PART B

Notwithstanding any other items, conditions, or provisions of the General Conditions or any other provisions of the Contract Documents to the contrary, Comal County Schoenthal Municipal Utility District (“District”) shall be deemed and considered as Owner for all purposes under the Contract Documents, except as provided herein.

- I. Meritage Homes of Texas, LLC (“Developer”) shall be considered the “Owner” for purposes of approving requests for and making payments to the Contractor of all or any portion of the Contract Price and for paying all monies, including damages, that might ever be due or payable by the District under the Contract or related to the Work, including any costs associated with any Change Orders to the Contract. After submission to and approval by the District and by Developer of the invoices, certificates and supporting documentation in connection with a request for payment, the Contractor agrees to and shall look solely to Developer for payment of such invoices. Developer agrees to pay Contractor’s invoices for work performed, in accordance with the terms of the Contract Documents, in an aggregate amount not to exceed the Contract Price, plus Change Orders and Extra Work approved by the board of directors of the District and by Developer. Failure by Developer to make such payments to the Contractor shall constitute a default by Owner and shall entitle the Contractor to all rights and remedies arising under the Contract Documents for a default in payment of sums due the Contractor pursuant to the Contract Documents; provided, however, the District shall have no obligation for payment of sums due or to become due under the approved invoices or any part of the Contract Price.
- II. If District is not the owner in fee title of the Site, Developer shall also be considered the “Owner” for purposes of satisfying the Owner’s obligation to provide to the Contractor the Site, rights-of-way for access to and from the Site, and such other lands that are designated for use of the Contractor in the Plans, and Developer hereby agrees to provide the Site, rights-of-way for access to and from the Site, and such other lands that are designated for use of the Contractor in the Plans, all in accordance with the Contract Documents.
- III. **IN CONSIDERATION FOR PAYMENT AND ACCESS PROVISIONS DESCRIBED ABOVE, DEVELOPER, ITS OFFICERS, DIRECTORS, AND EMPLOYEES, SHALL BE INCLUDED AS INDEMNIFIED PARTIES AND ADDITIONAL INSURED AND SUBJECT TO ALL RIGHTS AFFORDED THEREBY UNDER THE CONTRACT DOCUMENTS, IN LAW AND IN EQUITY.** Contractor shall cause Developer, and its officers, directors, and employees, to be named as additional insureds to the same extent and in the same manner as Contractor is required to cause the District to be named as an additional insured pursuant to the Contract Documents. Contractor shall furnish the Developer with certificates of insurance showing Contractor’s procurement of such required insurance.
- IV. **DEVELOPER INSURANCE REQUIREMENTS.** In addition to the **INSURANCE REQUIREMENTS** in [Exhibit C – Insurance Requirements/Attachment A to the General Conditions of the Contract] and the insurance requirements under **Section III** above, Contractor shall also comply with the following insurance requirements of Developer: INSERT ADDITIONAL INSURANCE REQUIREMENTS OF DEVELOPER, IF ANY.



- V. Developer reserves the right to assign its obligations hereunder to District, subject to written acceptance thereof by the District. Developer further reserves the right to assign its obligations hereunder to a third party, subject to written consent of the District and the Contractor, which consent shall not be unreasonably withheld, delayed or conditioned. A copy of any such assignment and the acceptance or consent thereof, as applicable, by the District shall be provided to the Contractor. Thereafter the assigned party shall be obligated to make all payments thereafter becoming due to the Contractor pursuant to this Contract and the obligations of Developer contained in the first paragraph of these Special Conditions shall terminate.
- VI. For purposes of convenient administration of this Contract, District may from time to time make payments due the Contractor pursuant to this Contract from funds available to the District; provided, however, no such payment by District will obligate District to make further payments due the Contractor or pursuant to this Contract unless and until District has accepted an assignment of Developer's obligations hereunder and a copy of the assignment and the District's acceptance is delivered to the Contractor, whereupon the District shall become liable for payment to the extent of the assignment.
- VII. If District or Developer breaches its obligations in any respect under the Contract Documents, before exercising any remedy the Contractor shall give written notice to Developer and District at their respective address below specifying the breach and the steps necessary to cure the breach and the non-breaching party shall have the right and power, within thirty (30) days after receipt of such notice, to cure or cause the breach to be cured, if it so elects, before Contractor exercises any of its remedies under the Contract Documents.

TO MERITAGE HOMES OF TEXAS, LLC:  
2722 W. BITTERS  
SAN ANTONIO, TEXAS 78231

TO COMAL COUNTY SCHOENTHAL MUNICIPAL UTILITY DISTRICT  
C/O SK LAW  
1330 POST OAK BLVD, SUITE 2650  
HOUSTON, TEXAS 77056

- VIII. Developer shall be added as an Obligee on all payment and performance bonds required by the Contract Documents.

The Contractor and the Developer agree that time is of the essence of this Contract. The Contractor and the Developer agree that a breach of this Contract by failure to complete the Work in the specified time will cause harm to the Developer, and further agree that the harm the Developer would sustain and the actual measure of damages the Developer would incur from the breach are incapable or very difficult of ascertainment. Therefore, the Contractor and the Developer agree that for each and every calendar day the Work or any portion thereof shall remain uncompleted after the expiration of the time limit(s) set in the Contract, or as extended under the provisions of these General Conditions (including, without limitation, due to a delay caused by Contractor's failure to comply with the Contract Documents or due to Owner's termination of Contractor for default under the Contract



Documents), Contractor shall be liable to Developer for liquidated damages in the amount of \$500 for each such calendar day, which sum.

- I. the parties agree is a reasonable forecast of the damages the Developer will sustain per day that the Work remains uncompleted. The Developer shall have the option to deduct and withhold said amount from any monies that the Developer owes the Contractor or its sureties or to recover such amount from the Contractor or the sureties on the Contractor's Bond.

District, Developer and Contractor hereby agree and acknowledge these **Special Conditions of the Contract Part B.**

MERITAGE HOMES OF TEXAS, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CONTRACTOR'S NAME

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

COMAL COUNTY SCHOENTHAL MUNICIPAL UTILITY DISTRICT

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

BOND NO: \_\_\_\_\_

**PERFORMANCE BOND**

STATE OF TEXAS Contract Date \_\_\_\_\_

COUNTY OF \_\_\_\_\_ Date Bond Executed \_\_\_\_\_

PRINCIPAL \_\_\_\_\_

SURETY \_\_\_\_\_

OWNER Meritage Homes of Texas, LLC for the benefit of COMAL COUNTY SCHOENTHAL MUNICIPAL UTILITY DISTRICT

PENAL SUM OF BOND (in words and figures) \_\_\_\_\_

being 100 percent of the Contract Price.

CONTRACT for CONTESSA UNIT 2, COMAL County, Texas (the “Contract”).

KNOW ALL PERSONS BY THESE PRESENTS, that we, Principal and Surety above named, are held and firmly bound unto Owner, its successors and assigns, in the penal sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves and our respective heirs, executors, administrators, officers, directors, shareholders, partners, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal entered into that certain Contract with Owner, which Contract is expressly incorporated herein for all purposes.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if Principal well and truly performs the work in accordance with the Plans, specifications and any other Contract Documents, during the original term of the Contract and any extensions thereof that may be granted by Owner, with or without notice to Surety, and during the life of any guaranty or warranty required under the Contract, then this obligation is void; otherwise it is to remain in full force and effect. Should the Principal fail to faithfully and strictly perform the work as required by the Contract in all its terms, the Surety will be liable for all damages, losses, expenses and liabilities that the Owner may suffer in consequence thereof.

This Bond is given in compliance with the provisions of Chapter 2253 of the Texas Government Code, as amended, which is incorporated herein by this reference. However, all of the express provisions contained herein and in the Contract are applicable whether or not within the scope of said statute.

Surety hereby agrees, for value received, that no change, extension of time, alteration or addition to the terms of the Contract or to work performed under the Contract, or to the plans, specifications or drawings accompanying the Contract, will in any way affect its obligations on this Bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder.

The bound parties have executed this instrument pursuant to authority of their respective governing body, to be effective on the same date of the Contract.

PRINCIPAL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

ATTEST

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(SEAL)

SURETY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(SEAL)

ATTEST

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Physical Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Local Recording Agent Personal Identification Number:

\_\_\_\_\_

Agency Name: \_\_\_\_\_

Agency Address: \_\_\_\_\_

Agency Telephone: \_\_\_\_\_

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_, certify that I am the secretary of the corporation named as Principal in the Bond; that \_\_\_\_\_, who signed the Bond on behalf of Principal, was then \_\_\_\_\_ of the corporation; that I know his or her signature, and his or her signature is genuine; and that the Bond was duly signed for and on behalf of the corporation by authority of its governing body.

\_\_\_\_\_  
Signature of Corporate Secretary

(Corporate Seal)

**ATTACH POWER OF ATTORNEY**

BOND NO: \_\_\_\_\_

**PAYMENT BOND**

STATE OF TEXAS Contract Date \_\_\_\_\_

COUNTY OF \_\_\_\_\_ Date Bond Executed \_\_\_\_\_

PRINCIPAL \_\_\_\_\_

SURETY \_\_\_\_\_

OWNER Meritage Homes of Texas, LLC for the benefit of COMAL COUNTY SCHOENTHAL MUNICIPAL UTILITY DISTRICT

PENAL SUM OF BOND (in words and figures) \_\_\_\_\_

being 100 percent of the Contract Price.

CONTRACT for CONTESSA UNIT 2, COMAL County, Texas (the “Contract”).

KNOW ALL PERSONS BY THESE PRESENTS, that we, Principal and Surety above named, are held and firmly bound unto Owner, its successors and assigns, in the penal sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves and our respective heirs, executors, administrators, officers, directors, shareholders, partners, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal entered into the Contract with Owner, which Contract is expressly incorporated herein for all purposes.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if Principal shall promptly pay claimants for all labor, subcontracts, materials and specially fabricated materials performed or furnished under or by virtue of the Contract, and duly authorized modifications and normal and usual extras thereto, notice of which modifications to Surety being hereby waived, then this obligation shall be void, otherwise to remain in full force and effect. Should Principal fail to promptly pay claimants for all labor, subcontracts, materials and specially fabricated materials performed or furnished under or by virtue of the Contract, Surety is hereby bound to make such payments on behalf of Principal up to a total aggregate amount equal to the penal sum of the Bond. Labor, subcontracts, materials, and specially fabricated materials shall be construed in accordance with Chapter 2253, Texas Government Code.

PROVIDED, HOWEVER, that Owner having required Principal to furnish this Bond in order to comply with the provisions of Chapter 2253, Texas Government Code, all rights and remedies on this Bond shall inure solely to such claimants and shall be determined in accordance with the provisions, conditions, and limitations of the aforesaid Government Code to the same extent as if they were copied at length herein.

The bound parties have executed this instrument pursuant to authority of their respective governing body, to be effective on the same date of the Contract.

PRINCIPAL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

ATTEST

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(SEAL)

SURETY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(SEAL)

ATTEST

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Physical Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Local Recording Agent Personal Identification Number:

\_\_\_\_\_

Agency Name: \_\_\_\_\_

Agency Address: \_\_\_\_\_

Agency Telephone: \_\_\_\_\_

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_, certify that I am the secretary of the corporation named as Principal in the Bond; that \_\_\_\_\_, who signed the Bond on behalf of Principal, was then \_\_\_\_\_ of the corporation; that I know his or her signature, and his or her signature is genuine; and that the Bond was duly signed for and on behalf of the corporation by authority of its governing body.

\_\_\_\_\_  
Signature of Corporate Secretary

(Corporate Seal)

ATTACH POWER OF ATTORNEY

BOND NO: \_\_\_\_\_

**MAINTENANCE BOND**

STATE OF TEXAS Contract Date \_\_\_\_\_

COUNTY OF \_\_\_\_\_ Date Bond Executed \_\_\_\_\_

PRINCIPAL \_\_\_\_\_

SURETY \_\_\_\_\_

OWNER Meritage Homes of Texas, LLC for the benefit of COMAL COUNTY SCHOENTHAL MUNICIPAL UTILITY DISTRICT

PENAL SUM OF BOND (in words and figures) \_\_\_\_\_

being 10 percent of the Contract Price.

CONTRACT for CONTESSA UNIT 2, COMAL County, Texas (the "Contract").

KNOW ALL PERSONS BY THESE PRESENTS, that we, Principal and Surety above named, are held and firmly bound unto Owner, its successors and assigns, in the penal sum of the amount stated above, for the payment of which sum well and truly to be made, we bind ourselves and our respective heirs, executors, administrators, officers, directors, shareholders, partners, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal entered into that certain Contract with Owner, which Contract is expressly incorporated herein for all purposes.

NOW, THEREFORE, THE CONDITIONS OF THIS OBLIGATION IS SUCH, that if Principal well and truly repair any and all defects in the work occasioned by or resulting from defects in materials furnished by, or workmanship of, the Principal in performing the work covered by the Contract, including any guaranty or warranty required under the Contract, then this obligation is void; otherwise it is to remain in full force and effect. Should the Principal fail to well and truly repair any and all defects in the work occasioned by or resulting from defects in materials furnished by, or workmanship of, the Principal in performing the work as required by the Contract in all its terms, the Surety will be liable for all damages, losses, expenses and liabilities that the Owner may suffer in consequence thereof.

The parties intend this maintenance bond to be a common law bond to be constructed in accordance with Texas law.

Surety hereby agrees, for value received, that no change, extension of time, alteration or addition to the terms of the Contract or to work performed under the Contract, or to the plans, specifications or drawings accompanying the Contract, will in any way affect its obligations on this Bond and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract or to the work to be performed thereunder.

The bound parties have executed this instrument pursuant to authority of their respective governing body, to be effective on the same date of the Contract.

PRINCIPAL

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

ATTEST

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(SEAL)

SURETY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

(SEAL)

ATTEST

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Physical Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Mailing Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

Local Recording Agent Personal Identification Number:

\_\_\_\_\_

Agency Name: \_\_\_\_\_

Agency Address: \_\_\_\_\_

Agency Telephone: \_\_\_\_\_

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, \_\_\_\_\_, certify that I am the secretary of the corporation named as Principal in the Bond; that \_\_\_\_\_, who signed the Bond on behalf of Principal, was then \_\_\_\_\_ of the corporation; that I know his or her signature, and his or her signature is genuine; and that the Bond was duly signed for and on behalf of the corporation by authority of its governing body.

\_\_\_\_\_  
Signature of Corporate Secretary

(Corporate Seal)

ATTACH POWER OF ATTORNEY



**Sales Tax Exemption Attached**

## TEXAS SALES AND USE TAX EXEMPTION CERTIFICATION

|  |   |
|--|---|
| Name of purchaser, firm or agency<br><b>Comal County Schoenthal Municipal Utility District</b> |   |
| Address (Street & number, P.O. Box or Route number)<br><b>Po Box 79349</b>                     | Phone (Area code and number)<br><b>713-932-7908</b> |
| City, State, ZIP code<br><b>Houston, TX 77279</b>  |   |

I, the purchaser named above, claim an exemption from payment of sales and use taxes (for the purchase of taxable items described below or on the attached order or invoice) from:

Seller: \_\_\_\_\_

Street address: \_\_\_\_\_ City, State, ZIP code: \_\_\_\_\_

Description of items to be purchased or on the attached order or invoice:

\_\_\_\_\_

\_\_\_\_\_

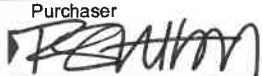
\_\_\_\_\_

Purchaser claims this exemption for the following reason:

**Political Subdivision, State of Texas**

I understand that I will be liable for payment of all state and local sales or use taxes which may become due for failure to comply with the provisions of the Tax Code and/or all applicable law.

*I understand that it is a criminal offense to give an exemption certificate to the seller for taxable items that I know, at the time of purchase, will be used in a manner other than that expressed in this certificate, and depending on the amount of tax evaded, the offense may range from a Class C misdemeanor to a felony of the second degree.*

|   |                     |                  |
|---|---------------------|------------------|
| Purchaser<br><b>sign here</b>  | Title<br>Bookkeeper | Date<br>5/7/2026 |
|---|---------------------|------------------|

NOTE: This certificate cannot be issued for the purchase, lease, or rental of a motor vehicle.

**THIS CERTIFICATE DOES NOT REQUIRE A NUMBER TO BE VALID.**

Sales and Use Tax "Exemption Numbers" or "Tax Exempt" Numbers do not exist.

This certificate should be furnished to the supplier. Do **not** send the completed certificate to the Comptroller of Public Accounts.



## STANDARD SPECIFICATIONS

All work to be performed under this contract is to be performed in accordance with these Standard Specifications, unless these Standard Specifications are superseded by the attached Special Specifications.

- COMAL COUNTY
- SAN ANTONIO WATER SYSTEMS
- CPS ENERGY
- Texas Department of Transportation (TxDOT)
- Texas Commission on Environmental Quality (TCEQ)

These forms in their current issue with all revisions and addenda, are made a part of the Contract Documents with the same force and effect as though bound herein. All construction performed under these Contract Documents shall be in accordance with the terms of these items used in conjunction with the other sections of the Contract Documents.



**SPECIAL SPECIFICATIONS**

NOT APPLICABLE