

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re:	)	
	)	Chapter 11
	)	
ZACHRY HOLDINGS, INC., <i>et al.</i> <sup>1</sup>	)	Case No. 24-90377 (MI)
	)	
Debtors.	)	(Jointly Administered)
	)	

DEBTORS' OBJECTION TO  
FAIRWAY METHANOL, LLC'S CLAIM [CLAIM NO. 1323]

This is an objection to your claim. This objection asks the Court to disallow the claim that you filed in this bankruptcy case. If you do not file a response within 30 days after the objection was served on you, your claim may be disallowed without a hearing.

A hearing will be conducted on this matter on May 12, 2025 at 10:30 a.m. prevailing Central Time, in Courtroom 404, 4th floor, 515 Rusk Street, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Isgur's conference room number is 205691. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Isgur's home page. The meeting code is "JudgeIsgur". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Isgur's home page. Select the case name, complete the required fields and click "Submit" to complete your appearance.

The above-captioned debtors and debtors in possession (collectively, the "**Debtors**") represent as follows in support of this objection (this "**Objection**") to Proof of Claim No. 1323 (the "**Claim**") filed by Fairway Methanol, LLC ("**Fairway Methanol**"), and submit the

<sup>1</sup> The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' claims and noticing agent at [www.veritaglobal.net/ZHI](http://www.veritaglobal.net/ZHI). The location of the Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.



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*Declaration of Garry King in Support of the Debtors' Objection to Fairway Methanol, LLC's Claim [Claim No. 1323]* attached hereto as **Exhibit A**:

**Relief Requested**

1. The Debtors seek entry of an order in the form attached to this Objection (the “**Order**”) disallowing Fairway Methanol’s Claim (Claim No. 1323). The Claim is predicated on an unfounded allegation of grossly negligent conduct by Zachry Engineering Corporation (“**ZEC**,” and together with Fairway Methanol, the “**Parties**”) while providing services related to that certain *Engineering and Procurement Services Agreement* dated April 12, 2021 between Fairway Methanol and ZEC (the “**Contract**”). The Debtors categorically deny this allegation, and Fairway Methanol has provided no facts to support it. Furthermore, absent the occurrence of gross negligence, ZEC’s only possible liability under the Contract would be pursuant to a warranty that expired before Fairway Methanol gave notice to ZEC and filed the Claim. Finally, even if the warranty had not expired, the Claim and its backup documentation provide insufficient information to determine which repairs are valid and recoverable by Fairway Methanol. As such, the Debtors have no liability to Fairway Methanol, LLC for the Claim, and the Claim should be disallowed.

**Jurisdiction, Venue, and Predicates for Relief**

2. The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The predicates for the relief requested herein are sections 105(a) and 502(b) of title 11 of the United States Code (the “**Bankruptcy Code**”), rule 3007 of the Federal Rules of

Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rule 3007-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”).

### **Background**

5. On May 21, 2024 (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing the above-captioned chapter 11 cases. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases are being jointly administered pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these chapter 11 cases. On June 4, 2024, the Office of the United States Trustee for the Southern District of Texas appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “**Committee**”) [Docket No. 176].

6. A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to these chapter 11 cases, is set forth in the *Declaration of Mohsin Y. Meghji in Support of Debtors’ Petitions and Requests for First Day Relief* [Docket No. 7].

7. On July 16, 2024, the Debtors filed their Schedules of Assets and Liabilities and Statements of Financial Affairs (collectively, the “**Schedules and Statements**”). *See* Docket Nos. 510-531. On August 30, 2024, December 2, 2024, and December 20, 2024, several of the Debtors filed amendments to their Schedules and Statements. *See* Docket Nos. 855-865, 1564, 1770-1775

8. On July 26, 2024, the Court entered the *Order (I) Setting Bar Dates for Filing Proofs of Claim, Including Requests for Payment Under Section 503(b)(9), (II) Establishing Amended Schedules Bar Date and Rejection Damages Bar Date, (III) Approving the Form and Manner for Filing Proofs of Claim, Including Section 503(b)(9) Requests, (IV) Approving Notice of Bar Dates, and (V) Granting Related Relief* [Docket No. 636]. The Bar Date Order established

September 16, 2024, at 5:00 p.m. (prevailing Central Time) as the deadline for all non-governmental entities holding or wishing to assert a “claim” (as defined in section 101(5) of the Bankruptcy Code) against any of the Debtors that arose before the Petition Date to file proof of such claim. The bar dates for filing proofs of claim related to the amended Schedules and Statements were October 4, 2024, January 2, 2025, and January 20, 2025 at 5:00 p.m. (prevailing Central Time). The deadline for all governmental entities holding or wishing to assert a claim against any of the Debtors that arose prior to the Petition Date to file proof of such claim was November 18, 2024, at 5:00 p.m. (prevailing Central Time).

### **The Fairway Methanol Claim**

9. On April 12, 2021, Fairway Methanol and ZEC entered into the Contract for ZEC to provide design and engineering services in connection with the expansion of Fairway Methanol’s existing methanol facility at its plant in Clear Lake, Texas. *See* **Exhibit B** at Contract, Preamble. Certain key provisions of the Contract are:

- (a) Neither party is entitled to recover “any consequential, incidental, special or indirect damages,” unless such damages are related to “violation of Law, fraud, willful misconduct or gross negligence.” *See id.* at § 12.12.1.<sup>2</sup>
- (b) ZEC’s liability for the costs of rip, tear, and reconstruction to remedy engineering deficiencies pursuant to the Contract (“**Rectification Costs**”) is limited to \$250,000, and such liability is only incurred after Fairway Methanol has paid the first \$250,000 in Rectification Costs. *See id.* at § 2.2.4.<sup>3</sup>
- (c) ZEC is only liable for Rectification Costs if Fairway Methanol notifies ZEC, in writing, of engineering defects within eighteen months of completion of the Work as defined in the Contract (the “**Warranty Provision**”). *See id.*

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<sup>2</sup> The Contract also allows for consequential damages in other situations which are not relevant to this dispute.

<sup>3</sup> For example, if the total Rectification Costs were \$600,000, Fairway Methanol would be responsible for \$350,000 (*i.e.*, the first \$250,000 and the final \$100,000), and ZEC would be responsible for \$250,000 (*i.e.*, Rectification Costs above \$250,000 up to \$500,000).



- (d) ZEC’s sole and exclusive monetary liability to Fairway Methanol pursuant to the Contract is the Rectification Costs. *See id.* at § 2.2.5.<sup>4</sup>

10. The Work (“**Work**”) is defined in the Contract by reference to Section 2.1.1, which in turn defines Work as the “detailed engineering” as “identified in the Technical Specifications as set out in Exhibit A.” *Id.* at Art. 1 and § 2.1.1 (emphasis added). ZEC completed Work under the Contract as set out in Contract Exhibit A on or about October 6, 2022. Exhibit A at ¶ 4.

11. On June 3, 2024, over 20 months after the completion of work on the Contract, Fairway Methanol sent that certain *Notice of Breach and Claim* (the “**Notice**”) to ZEC. *See* Notice and correspondence, attached hereto as **Exhibit D** at 1; Exhibit A at ¶ 5. The Notice alleged that ZEC owed Fairway Methanol \$250,000—identified by Fairway Methanol as “Rectification Costs”—as well as \$2,137,500 in “additional direct damages” due to ZEC’s supposed “gross negligence in meeting the standards of performance” required by the Contract. *Id.* The Notice did not provide any explanation or evidence of ZEC’s supposed gross negligence, nor did it explain why the eighteen-month limitation in the Warranty Provision should not apply. *See* Exhibit D at 1-2; Exhibit A at ¶ 5.

12. ZEC responded to the Notice on June 17, 2024, noting that Fairway Methanol failed to allege any facts supporting their claim of gross negligence, and explaining its position that ZEC did not owe any amounts to Fairway Methanol under the Contract. Exhibit D at 3-4; Exhibit A at ¶ 6. In a reply dated July 8, 2024, Fairway Methanol stated that the supposed details supporting gross negligence would be reserved for a meeting on a later day; those details have never been provided, and ZEC maintains that such details do not exist. Exhibit D at 5; *see* Exhibit A at ¶ 7. Fairway Methanol’s reply letter included an itemized breakdown of costs, again entitled

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<sup>4</sup> The Contract also provides that ZEC may be required to re-perform certain “corrective Services” at ZEC’s own cost after being notified in writing by Fairway Methanol within 18 months after completion of the Work, but this provision is irrelevant to the Claim because Fairway Methanol is seeking monetary damages.

“Rectification Costs,” which includes various “detailed design issues” for which no notice was given to ZEC before the Warranty Period expired, and which in the aggregate (assuming they are valid Rectification Costs) well exceeds ZEC’s \$250,000 cap on Rectification Costs in the Contract. Exhibit D at 6-8; *See* Exhibit A at ¶ 7.

13. On September 16, 2024, Fairway Methanol filed the Claim against ZEC. **Exhibit C**. The addendum to the Claim states that Fairway Methanol has a claim against ZEC, relating to services provided by ZEC pursuant to the Contract, for an “aggregate amount of at least” \$2,446,302.55. *See id.* at Addendum to Claim ¶ 3. The Claim does not allege gross negligence, nor does it explain why the Warranty Period in the Contract should not apply. *See id.* The Claim includes the *same* itemized breakdown of the “Rectification Costs” alleged in Fairway Methanol’s earlier letter, in addition to several newly described items of consequential damages such as months of salary for Fairway Methanol’s construction management team, months of temporary office rental jobs, and unidentified “omissions and other deficiencies” in excess of \$1,000,000. *Compare* Exhibit D at 6-8 to Exhibit C at Addendum to Claim, Exhibit A.

### **Objection**

14. Section 502 of the Bankruptcy Code provides that “[a] claim or interest, proof of which is filed under section 501 of this title is deemed allowed, unless a party in interest . . . objects.” 11 U.S.C. § 502(a). Section 502 also provides that “if such objection to a claim is made, the court . . . shall determine the amount of such claim . . . and shall allow such claim in such amount, except to the extent that such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law.” 11 U.S.C. § 502(b).

15. As set forth in Bankruptcy Rule 3001(f), “[a] proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.” Fed. R. Bankr. P. 3001(f); *see, e.g., In re Jack Kline Co., Inc.*, 440 B.R. 712, 742 (Bankr.

S.D. Tex. 2010). A proof of claim loses the presumption of prima facie validity under Bankruptcy Rule 3001(f) if an objecting party refutes at least one of the allegations that are essential to the claim's legal sufficiency. *See In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988).

16. Once such an allegation is refuted, the burden reverts to the claimant to prove the validity of its claim by a preponderance of the evidence. *Id.* Despite this shifting burden during the claim objection process, "the ultimate burden of proof always lies with the claimant." *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006) (citing *Raleigh v. Ill. Dep't of Rev.*, 530 U.S. 15 (2000)).

17. Here the Claim should be disallowed because: (A) there is no evidence of gross negligence that would make ZEC liable for damages above the capped Rectification Costs; (B) Fairway Methanol did not notify ZEC of the alleged design defects detailed in the Claim before the Warranty Period expired, and therefore no Rectification Costs are owed by ZEC; (C) even assuming ZEC was properly notified during the Warranty Period, ZEC's liability for Rectification Costs is capped at \$250,000, and ZEC's liability for said Rectification Costs is only triggered after Fairway Methanol pays the first \$250,000 in Rectification Costs; and (D) assuming ZEC has any liability for Rectification Costs, the backup Fairway Methanol attached to its Claim does not demonstrate which alleged costs are valid.

**A. Fairway Methanol's claims for damages in excess of the capped Rectification Costs are barred because it cannot meet the exacting standard for gross negligence.**

18. Fairway Methanol's Claim seeks \$250,000 in Rectification Costs and \$2,137,500 in "additional direct damages." Exhibit C. The Contract precludes Fairway Methanol from recovering damages in excess of the Rectification Costs unless it can demonstrate ZEC's "violation of Law, fraud, willful misconduct or gross negligence." *See* Exhibit B at §§ 12.12.1 and 2.2.4-2.2.5.

19. In the Notice, Fairway Methanol alleged that the \$2,137,500 in “additional direct damages” are a result of ZEC’s “gross negligence.” Exhibit D at 1; Exhibit A at ¶ 5. The Claim does not allege gross negligence, and it is unclear whether Fairway Methanol has abandoned its allegations of gross negligence; nonetheless, Fairway Methanol lists consequential damages that it would only be entitled to in the case of gross negligence. *See* Exhibit C at Addendum, Exhibit A. However, Fairway Methanol has not, and cannot, provide evidence to meet the exacting standard for gross negligence.<sup>5</sup>

20. Tex. Civ. Prac. & Rem. Code § 41.001(11) defines gross negligence:

(11) “Gross negligence” means an act or omission:

(A) which when viewed objectively from the standpoint of the actor at the time of its occurrence involves an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and

(B) of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others.

21. Under the first, objective element, an extreme risk is “not a remote possibility of injury or even a high probability of minor harm, but rather the likelihood of serious injury to the plaintiff.” *Medina v. Zuniga*, 593 S.W.3d 238, 247–48 (Tex. 2019) (citing *Mobil Oil Corp. v. Ellender*, 968 S.W.2d 917, 921 (Tex. 1998)). An act or omission that is merely thoughtless, careless, or not inordinately risky does not rise to an extreme degree of risk; the threshold is significantly higher than the test for ordinary negligence. *See Medina*, 593 S.W.3d at 249.

22. To establish the second, subjective component, “the plaintiff must show that the defendant knew about the peril, but his acts or omissions demonstrate that he did not care.”

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<sup>5</sup> The Court has recognized the high burden of gross negligence in its earlier rulings in these Chapter 11 cases. *See, e.g.* Adv. P. No. 24-03195, at Dkt. Nos. 82-83 (granting Motion to Dismiss and finding “no plausible basis on which FLNG can satisfy the Texas gross negligence standard based on the facts that are pled.”).

*Diamond Shamrock Ref. Co. v. Hall*, 168 S.W.3d 164, 173 (Tex. 2005). The risk should be “examined prospectively from the perspective of the actor, not in hindsight.” *Columbia Med. Ctr. of Las Colinas, Inc. v. Hogue*, 271 S.W.3d 238, 248 (Tex. 2008). To prove the defendant had actual, subjective awareness of the risk but proceeded with conscious indifference, the plaintiff must show the defendant knew about the risk in question — not just any risk — but acted anyway. *See Medina*, 593 S.W.3d at 248 (plaintiff must demonstrate that defendant knew of the peril but demonstrated through its acts or omissions that it did not care).

23. Other than its bare assertion in the Notice, Fairway Methanol has provided zero evidence or supporting facts to meet the significant threshold for gross negligence. Indeed, Fairway Methanol has seemingly abandoned its gross negligence allegations, as they are conspicuously absent from the Claim, despite Fairway Methanol’s inclusion in the Claim of consequential damages only available in the case of gross negligence. *See* Exhibit C at Addendum, Exhibit A. As a result, its damages (if any) are subject to the limitations of the Contract.

24. Further, under Texas law, in any action or arbitration proceeding for damages arising out of the provision of professional services, the claimant must submit a sworn certificate of merit by a licensed professional detailing any allegedly negligent behavior. *See* TEX. CIV. PRAC. & REM. CODE § 150.002. Fairway Methanol has not provided such a certificate or any detail, either to this Court or the Debtors, in support of the allegations of gross negligence or even negligence for that matter. Under Texas law, Fairway Methanol’s claims cannot proceed without the requisite certificate of merit.

25. Because Fairway Methanol cannot demonstrate that ZEC committed gross negligence, violated the law, or committed fraud or willful misconduct, ZEC’s liability under the Contract is limited to capped Rectification Costs for which Fairway Methanol gave written notice

during the Warranty Period. But, as explained in more detail below, Fairway Methanol failed to provide written notice during the Warranty Period.

**B. Fairway Methanol’s claims for Rectification Costs are barred by the expiration of the Warranty Period.**

26. The Contract only requires ZEC to pay valid Rectification Costs if Fairway Methanol “during the period commencing upon performance of the Work and ending eighteen (18) months following completion of all Work . . . has notified [ZEC] in writing of [a failure to meet design standards].” *See* Exhibit B at § 2.2.4.

27. The “Work” is defined in the Contract as the “Detailed Engineering of those systems, processes, equipment, amenities, features and other aspects of the Project and/or Facility as are identified in the Technical Specifications set out in Exhibit A.” *Id.* at § 2.1.1.

28. ZEC completed all items identified on Exhibit A of the Contract, and thus, the entire scope of the Work, no later than October 6, 2022. Exhibit A at ¶ 4.

29. Fairway Methanol’s initial demand to ZEC for “additional costs, including rework, rip and tear, material waste, and delays in construction” was sent on June 3, 2024, over 19 months after ZEC’s completion of Work on the Contract. *See* Exhibit D at 1; *see* Exhibit A at ¶ 9. Further, Fairway Methanol did not provide any specific notice of the alleged design defects until July 8, 2024, over a month later, when it attached an itemized list of “Rectification Costs” in letter correspondence. Exhibit D at 6-8; *see* Exhibit A at ¶ 9. Based on either date, Fairway Methanol’s written notice was untimely, because Fairway Methanol did not notify ZEC of the alleged design defects within the 18-month Warranty Period. *See* Exhibit A at ¶¶ 8-9. Therefore, ZEC is not liable for the items listed in the Claim due to the expiration of the Warranty Period.

**C. ZEC’s liability for Rectification Costs is capped at \$250,000.**

30. The Contract caps ZEC’s liability for Rectification Costs at \$250,000 except in cases of gross negligence, willful misconduct, or fraud, which as detailed above in Section A, Fairway Methanol cannot prove. Exhibit B at § 2.2.4. Therefore, even if any portion of Fairway Methanol’s alleged “Rectification Costs” were validly asserted within the Warranty Period, the Claim’s entire alleged amount of \$2,446,302.55 could not be owed by ZEC under the Contract.

31. The Debtors maintain that ZEC has no liability under the Claim whatsoever. However, in a hypothetical scenario where the Warranty Period did not apply, because no gross negligence occurred, the maximum that ZEC could possibly be liable for under the Claim is \$250,000.<sup>6</sup>

**D. Fairway Methanol’s backup documentation provides insufficient information to determine whether any of the alleged damages are valid Rectification Costs.**

32. Under the Contract, Rectification Costs are defined as the “costs of rip, tear and reconstruction of any completed construction or construction in progress” arising from a deficiency in the original scope of ZEC’s Work. Per Section 12.12.1, consequential damages are not available to Fairway Methanol unless they arise out of “violation of Law, fraud, willful misconduct or gross negligence” of ZEC. Exhibit B at § 12.12.1.

33. ZEC has reviewed Fairway Methanol’s itemized repairs list to determine which charges are related to ZEC’s Work as defined on Exhibit A of the Contract. Exhibit A at ¶ 10.

34. The Claim provides insufficient information to determine whether the itemized costs are valid Rectification Costs arising from deficiencies in the original scope of ZEC’s Work. *Id.* Further, some of the itemized costs are consequential in nature, which would be barred by the

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<sup>6</sup> In the hypothetical situation where the Warranty Period did not apply, ZEC would only be liable for the amount in the Claim that met the definition of Rectification Costs up to a maximum of \$250,000, and only if Fairway Methanol had already paid \$250,000 in Rectification Costs first.

Contract unless they arise out of “violation of Law, fraud, willful misconduct or gross negligence” of ZEC. *See, e.g.*, Exhibit C at 5 (listing months of salary for Fairway Methanol’s construction management team, months of temporary office rental jobs, and unidentified “omissions and other deficiencies” in excess of \$1,000,000).

35. Under the Contract, Fairway Methanol is responsible for the first \$250,000 in Rectification Costs. Exhibit B at § 2.2.4. ZEC may only be liable for any Rectification Costs once Fairway Methanol’s responsibility is fulfilled. It is not clear from the backup Fairway Methanol provided whether ZEC has any liability for Rectification Costs under the Contract.

36. Based on the foregoing, the Debtors respectfully request that the Court enter an Order disallowing the Claim against the Debtors and their estates.

#### **Reservation of Rights**

37. This Objection is limited to the grounds stated herein. It is without prejudice to the rights of the Debtors to object to any claim on any grounds whatsoever. The Debtors expressly reserve all further substantive or procedural objections. Nothing contained herein or any actions taken pursuant to such relief is intended or should be construed as: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors’ right to dispute any prepetition claim on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified in this Objection or any order granting the relief requested by this Objection; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of the Debtors’ rights under the Bankruptcy Code or any other applicable law.



**Notice**

38. The Debtors will provide notice of this Objection to: (a) the United States Trustee for the Southern District of Texas; (b) counsel for the Committee; (c) the Prepetition Agent; (d) the United States Attorney's Office for the Southern District of Texas; (e) the state attorneys general for the states in which the Debtors operate; (f) the Internal Revenue Service; (g) any party that has requested notice pursuant to Bankruptcy Rule 2002 and Bankruptcy Local Rule 9013-1(d); and (h) counsel to Fairway Methanol, LLC. In light of the nature of the relief requested, no other or further notice need be provided.

*[Remainder of Page Intentionally Left Blank]*

The Debtors request that the Court enter the Order granting the relief requested in this Objection and such other and further relief as the Court deems appropriate under the circumstances.

Respectfully submitted,

/s/ D. Ryan Cordell, Jr.

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Counsel for Debtors

**Certificate of Service**

I certify that on March 28, 2025 I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ D. Ryan Cordell, Jr.  
D. Ryan Cordell, Jr.

**EXHIBIT****A**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

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In re:

ZACHRY HOLDINGS, INC., *et al.*<sup>1</sup>

Debtors.

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)  
) Chapter 11  
)  
) Case No. 24-90377 (MI)  
)  
) (Jointly Administered)  
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**DECLARATION OF GARRY KING IN SUPPORT OF THE DEBTORS' OBJECTION  
TO FAIRWAY METHANOL, LLC'S CLAIM [CLAIM NO. 1323]**

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I, Garry King, declare as follows pursuant to 28 U.S.C. § 1746:

1. I am the Senior Vice President of Zachry Engineering Corporation ("**ZEC**"), which is among those above-captioned debtors and debtors in possession (the "**Debtors**"). I have served as Senior Vice President at ZEC for over two years. As a result of my role and experience at ZEC, I have extensive experience and familiarity with ZEC's work and contractual relationships.

2. Contemporaneously with the filing of this Declaration, the Debtors filed the *Objection to Fairway Methanol, LLC's Claim [Claim No. 1323]* (the "**Objection**").<sup>2</sup>

3. The facts set forth in this Declaration are based upon my personal knowledge, personal conversations I have had with the Debtors' management, or upon my review of records kept in the ordinary course of the Debtors' business that were, as appropriate, reviewed by me or others under my supervision and direction, including (i) the Engineering and Procurement Services Agreement (the "**Contract**") by and between Fairway Methanol, LLC ("**Fairway Methanol**") and

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<sup>1</sup> The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' claims and noticing agent at [www.veritaglobal.net/ZHI](http://www.veritaglobal.net/ZHI). The location of the Debtors' service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Objection.

ZEC, attached to the Objection as **Exhibit B**, which is a true and accurate copy of the Contract; and (ii) Fairway Methanol's "Notice of Breach and Claim" (the "**Notice**") and related correspondence, attached to the Objection as **Exhibit D**, which is a true and accurate copy of that correspondence. Further, I or others under my supervision and direction have reviewed and analyzed the Proof of Claim filed by Fairway. If called and sworn as a witness, I could and would testify competently to the matters set forth herein.

4. ZEC completed Work as defined in the Contract on or about October 6, 2022.

5. On June 3, 2024, Fairway Methanol sent the Notice to ZEC. The Notice alleged that ZEC owed Fairway Methanol \$250,000 which Fairway Methanol identified as Rectification Costs, as well as \$2,137,500 in "additional direct damages" due to alleged "gross negligence in meeting the standards of performance" required by the Contract. The Notice did not explain or cite evidence of ZEC's alleged gross negligence, nor did it explain why the eighteen-month limitation in the Warranty Provision of the Contract should not apply.

6. On June 17, 2024, ZEC responded to the Notice, explaining that Fairway Methanol failed to allege any facts supporting their claim for gross negligence, and explaining that ZEC did not owe any amounts to Fairway Methanol under the Contract.

7. On July 8, 2024, Fairway Methanol sent a reply letter, stating that "it would be impractical to set forth all of the facts" demonstrating ZEC's gross negligence, and that it would reserve those details for a later meeting. As of the date of this Declaration, Fairway Methanol has never provided the alleged details of ZEC's alleged gross negligence. Fairway Methanol's reply letter included an itemized breakdown of costs, again entitled "Rectification Costs," which includes various modifications and re-works for which no notice was given to ZEC before the

Warranty Period expired, and which in the aggregate well exceeds ZEC's \$250,000 cap on Rectification Costs in the Contract.

8. I have reviewed the Proof of Claim No. 1323 filed by Fairway Methanol (the "**Claim**"), attached as **Exhibit C** to the Objection. The Claim includes an itemized breakdown of the costs alleged in the Claim, including various modifications and re-works for which no notice was given to ZEC before the Warranty Period in the Contract expired. Most of these costs were explicitly identified in earlier correspondence by Fairway Methanol as "Rectification Costs." The aggregate of these costs is in excess of ZEC's \$250,000.00 cap on Rectification Costs as set forth in the Contract.

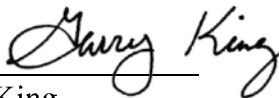
9. Fairway Methanol did not provide notice to ZEC of the alleged design defects reflected in the Claim until ZEC received Fairway Methanol's Notice on June 3, 2024. The itemized breakdown of the costs alleged in the Claim was not provided to ZEC until July 8, 2024.

10. ZEC has evaluated Fairway Methanol's itemized repairs list to determine which charges are related to ZEC's Work as defined in the Contract. Based on the backup information provided with the Claim, there is insufficient information to determine which of the items are related to ZEC's Work as defined in the Contract and are valid Rectification Costs.

11. I have read the Objection and, to the best of my knowledge, information, and belief, the assertions made in the Objection are accurate.

12. As such, I believe that the failure to disallow and expunge the Claim could result in the applicable claimant receiving an unwarranted recovery against the Debtors' estates to the detriment of creditors with valid claims. As such, I believe that the disallowance of the Claim is appropriate.

Dated: March 26, 2025

By:   
Garry King  
Zachry Engineering Corporation

**EXHIBIT**

**B**

*Fairway Contract No. CW2297043*

**ENGINEERING AND PROCUREMENT SERVICES AGREEMENT**

**BY AND BETWEEN**

**FAIRWAY METHANOL LLC**

**AND**

**ZACHRY ENGINEERING CORPORATION**

**DATED APRIL 12, 2021**

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Fairway Contract No. CW2297043

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*Fairway Contract No. CW2297043*

## ENGINEERING SERVICES AGREEMENT

THIS ENGINEERING SERVICES AGREEMENT, consisting of this document and all Exhibits attached hereto or referenced herein (“**Agreement**”) is made and entered into as of April 12, 2021, by and between Fairway Methanol LLC (“**Owner**”) and Zachry Engineering Corporation (“**Engineer**”), with respect to the provision by Engineer of certain design and engineering services in connection with the expansion of Owner’s existing methanol facility (the “**Facility**”) at its plant in Clear Lake, Texas (the “**Project**”). Owner and Engineer are sometimes referred to individually as a “**Party**” and collectively as the “**Parties**.”

### ARTICLE 1 DEFINITIONS

“**Additional Insureds**” shall have the meaning set forth in Section 9.3 of this Agreement.

“**Additional Service**” shall have the meaning set forth in Section 8.1 of this Agreement.

“**Affiliate**” shall mean (i) companies (if any) that own or control, directly or indirectly, at least fifty percent (50%) of a Person, and (ii) any other Person (that is not a natural person) that is at least fifty percent (50%) owned or controlled, directly or indirectly, by a Person or by the companies in sub-section (a).

“**Agreement**” shall mean this Engineering Services Agreement and all Exhibits attached hereto or referenced herein.

“**Change in Scope**” shall have the meaning set forth in Section 8.2 of this Agreement.

“**Claim**” shall mean a demand or assertion by one of the Parties seeking adjustment or interpretation of the terms of this Agreement, payment of money, extension of time or other relief with respect to this Agreement. The term “**Claim**” also includes other disputes and matters in question between Owner and Engineer arising out of or relating to this Agreement. Claims must be made by written notice.

“**Completion Dates**” shall have the meaning set forth in Section 6.1 of this Agreement.

“**Construction Contractors**” shall mean the entities retained by Owner to construct the Work.

“**Day**” shall mean the period of twenty-four (24) consecutive hours commencing at 00:00 hours and ending at 24:00 hours, local time in Clear Lake, Texas. Unless otherwise expressly noted and defined, the term “**Day**” as used in this Agreement, whether capitalized or lower case, shall be a calendar day.

“**Detailed Engineering**” shall mean the detailed engineering and design of the Work by Engineer pursuant to this Agreement, including the specification of materials, systems or other components of the Work, such that the Construction Contractors can properly and fully supply, manufacture, construct and install the Work, including the preparation and finalization of calculations, drawings, specifications, P&IDs and reports, responses to field requests for information and clarifications.

“**Detailed Engineering Documents**” shall have the meaning set forth in Section 2.5.1 of this Agreement.

“**Documents**” shall have the meaning set forth in Section 2.5.1 of this Agreement.

“**Dollars**” or the sign, “\$” shall mean the legal currency of the United States of America.

“**Engineer**” shall mean the Person identified as Engineer in the preamble of this Agreement.

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**“Engineer System”** shall have the meaning set forth in Section 2.5.7 of this Agreement.

**“Engineering Documents”** shall have the meaning set forth in Section 2.1.3 of this Agreement.

**“Facility”** shall have the meaning set forth in the preamble of this Agreement.

**“Fee”** shall have the meaning set forth in Section 7.1.1 of this Agreement.

**“Good Engineering Practice”** means, without limiting or prejudicing any specific criteria or standards set forth in the Technical Specifications (which criteria and standards shall be complied with by Engineer in performing the Detailed Engineering and producing the Engineering Documents), compliance with the Standard of Care, all applicable Requirements, and those professional and industry standards, codes, requirements, procedures and specifications applicable to the design and engineering of facilities similar to the Work, as designed by Persons who have competence and experience in carrying out the design and engineering of work that is of similar nature, size, scope, complexity and value to the Work, under the same or similar circumstances.

**“Initial Engineering Documents”** shall have the meaning set forth in Section 2.3.1 of this Agreement.

**“Invoice for Payment”** shall mean an invoice from Engineer, in such form as is directed and approved by Owner, requesting payment of amounts claimed due under this Agreement.

**“Intellectual Property”** shall mean any and all patents, trademarks, service marks, rights in designs, utility models, get-up, trade, business or domain names, goodwill associated with the foregoing, copyright (including without limitation rights in computer software and databases), topography rights (in each case whether registered or not and any applications to register, or rights to apply for, registration of any of the foregoing), design rights, rights in inventions, know-how, trade secrets and other confidential information, rights in databases and other intellectual property rights of a similar or corresponding character which may now or in the future subsist in any part of the world.

**“Licensors”** shall mean any party which has licensed to Owner Group any information relating to the Facility or the Project.

**“Owner”** shall mean the Person identified as Owner in the Preamble of this Agreement.

**“Owner’s Business Information”** shall have the meaning set forth in Section 2.5.6 of this Agreement.

**“Owner Group”** shall mean any one or more of the following, collectively and individually:

- (a) Owner and its Affiliates;
- (b) Owner and its joint venture partners, if any; and
- (c) all agents, officers, employees, servants, shareholders, representatives, invitees and insurers of those Persons listed in subsections (a) and (b).

**“Owner’s Consultants”** shall mean any consultants retained by Owner in respect of the Project.

**“Owner Information”** shall have the meaning set forth in Section 2.4.3 of this Agreement.

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**Fairway Contract No. CW2297043**

**“Owner’s Representative”** shall mean the Person(s) identified in Section 12.3 of this Agreement.

**“Party”** or **“Parties”** shall have the meaning set forth in the Preamble of this Agreement.

**“Permit”** shall mean any permit, consent, approval, clearance, authorization, certification, agreement, “no objection” certificate, waiver, easement, license, lease or authorization that must be obtained from any Person in order for any part of the Services to be performed.

**“Person”** shall mean any natural person, or any body corporate, company, corporation, general or limited partnership, limited liability company, joint venture, organization, association, trust, agency or other enterprise or entity, whether or not having a separate legal personality.

**“Procurement Services”** shall mean all of the items listed as part of the Services under Procurement in Exhibit A.

**“Project”** shall mean the overall engineering and construction of the expansion of the Facility and all related facilities and infrastructure.

**“Project Budget”** shall mean the budget for the Project set forth in the table in Exhibit B, as may be amended from time to time as detailed in Section 7.1.2.

**“Proprietary Information”** shall have the meaning set forth in Section 4.1 of this Agreement.

**“Reasonable Cause”** shall mean any cause that is beyond the reasonable control of, and cannot be avoided or mitigated by reasonable efforts taken by, Engineer or Engineer’s Consultants.

**“Reasonable Promptness”** shall mean within such times, if any, as are expressly required by the terms of this Agreement for a specific action or decision or otherwise within such time so as to cause no delay in the completion of the Services.

**“Rectification Costs”** shall have the meaning set forth in Section 2.2.4(ii) of this Agreement

**“Requirements”** shall have the meaning set forth in Section 2.2.2 of this Agreement.

**“Services”** shall have the meaning set forth in Section 2.1.1 of this Agreement.

**“Site”** shall mean the physical area where the Facility is to be constructed and any other areas where the Work is to be staged or installed.

**“Standard of Care”** shall have the meaning set forth in Section 2.2.1 of this Agreement.

**“Subconsultant”** or **“Subconsultants”** shall mean any Person who has a direct contract with Engineer to perform a portion of the Services and all other Persons who provide services directly or indirectly to or for the Services through or under the supervision of Engineer and such definition shall apply when used in this Agreement with respect to any obligation for the Services or any other obligation or duty owed to Owner under this Agreement.

**“Technical Specifications”** shall mean the description of the systems, equipment, facilities and processes to be designed and engineered by Engineer and the related technical specifications, performance criteria and

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other requirements for the Services, as set forth or identified in Exhibit A attached hereto or as contained within the Owner Information.

“**Third Party**” shall mean a Person that is not a Party or a Party’s Affiliate, or a member of the Owner Group.

“**Work**” shall have the meaning set forth in Section 2.1.1 of this Agreement.

“**Work Product**” shall mean the Engineering Documents and all other documents or materials prepared or provided by Engineer as part of the Services hereunder, and shall include, as applicable, technical concepts, calculations, computations, plans, flowsheets, charts, electronic models together with their associated databases, and copies thereof which result from Engineer’s performance of the Services and are deliverables or submittals required under this Agreement.

**ARTICLE 2 SCOPE OF WORK****2.1 SCOPE**

2.1.1 Pursuant to this Agreement, Engineer agrees to provide, and as used herein, the “**Services**” shall mean and consist of: (i) the Detailed Engineering of those systems, processes, equipment, amenities, features and other aspects of the Project and/or Facility as are identified in the Technical Specifications as set out in Exhibit A (the “**Work**”) so that the Work as designed and engineered is fully connected, complete, functional and operational and complies with the Standard of Care, Good Engineering Practice and the technical requirements and specifications set forth in the Technical Specifications; and (ii) all other services and obligations required of Engineer under this Agreement. Engineer shall select and retain (and shall be responsible for) all engineers or consultants whose services may be deemed necessary or advantageous by Engineer in connection with the performance of the Services required of Engineer pursuant to this Agreement (all of whom are collectively referred to herein as the “**Subconsultants**”). Engineer shall be responsible and liable for all Services required by this Agreement whether performed directly by Engineer or any Subconsultant to Engineer. Engineer shall not retain any Subconsultant if Owner disapproves such Subconsultant; however, the approval of Owner to such retention shall not relieve, affect or otherwise modify Engineer’s obligations under this Agreement, including Engineer’s responsibility for the technical accuracy, quality and coordination of any Services provided by any of the Subconsultants. All costs associated with the Services rendered by all Subconsultants shall be deemed included in the Fee and shall be paid for by Engineer.

2.1.2 The Services shall be completed in accordance with the Standard of Care and Good Engineering Practice and with all applicable laws, generally accepted industry standards, codes of practice and the terms of this Agreement. Engineer acknowledges that the Technical Specifications set forth desired functions and performance requirements in a general fashion only and is not an exhaustive list of all engineering requirements for the Services. Unless otherwise agreed to by Owner expressly in writing (including in the Technical Specifications) the inclusion of or failure to include any particular item in the Technical Specifications shall not relieve Engineer of the obligation to engineer the entire Work in a complete fashion, consistent with the standards of professional skill, care and diligence established herein. Should any Services be required which are not denoted in this Agreement but which are nevertheless necessary for the proper carrying out of the intent thereof, including the design and engineering of safe, maintainable and operable facilities, it is understood

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and agreed that the same is implied and required, and Engineer shall perform all such Services on behalf of Owner consistent with the foregoing requirements.

- 2.1.3 As used herein, “**Engineering Documents**” shall mean all plans and specifications and all other drawings, designs, models, prints, computations, instructions and other materials prepared by or through Engineer or any of the Subconsultants specifying, describing or relating to the Work or Services, including Initial Engineering Documents and the Detailed Engineering Documents to be prepared by Engineer.
- 2.1.4 All Services required pursuant to this Agreement shall be furnished by Engineer through appropriately-qualified and experienced professionals who, to the extent so required by the Requirements, are licensed in the State of Texas. Engineer shall be responsible for and shall coordinate the performance, sequencing and completion of all Services and shall be responsible for the professional quality, technical accuracy and internal coordination of the Engineering Documents and other Services provided through Subconsultants pursuant to this Agreement and for the acts and omissions of all Subconsultants.
- 2.1.5 The Owner shall have the right, after consultation with the Engineer, to direct the removal of any person employed by the Engineer in the performance of the Services and/or any Additional Services, and the Engineer shall be responsible for appointing replacement personnel of suitable caliber and experience approved in writing by the Owner (such approval not to be unreasonably withheld or delayed).

2.2 **STANDARD OF CARE; REQUIREMENTS**

- 2.2.1 Engineer acknowledges that it has described and represented itself to Owner as possessing experience and knowledge in performing Services of the same type and nature as the Services required by this Agreement and with the design and engineering of systems, equipment, facilities and processes of the same type and nature as the Work. Engineer agrees that the Services shall be performed by Engineer, and the Services shall be procured, directed, supervised, managed and administered by Engineer, in a manner consistent with those standards of professional skill, care and diligence applicable to engineers and similar companies of comparable experience and knowledge in similar circumstances and will be in accordance with Good Engineering Practices and the requirements of the Technical Specifications. (the “**Standard of Care**”).
- 2.2.2 The Services provided by Engineer pursuant to this Agreement, shall comply with all laws, codes, ordinances, rules, regulations and statutes applicable to the Services, the Work or Engineer, including those relating to land and building use, building codes, environmental, health, safety, conservation, green building, dust control, noise mitigation, waste disposal, and engineering, and those promulgated by the United States Department of Justice, the State of Texas, the United States Environmental Protection Agency, the United States Occupational Safety and Health Administration, the Texas Commission on Environmental Quality (collectively, the “**Requirements**”); provided, however, that where any Requirement provides for less stringent standards than those otherwise stated in this Agreement, the standards stated in this Agreement shall govern. If the Requirements change after the Engineering Documents are complete and approved, Engineer shall revise the Detailed Engineering Documents as necessary to reflect such change and shall cooperate with Owner to direct and manage any required modifications to the Work.

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- 2.2.3 If any licenses, Permits or government approvals are required in connection with Engineer's Services, the same shall be furnished by Engineer at Engineer's sole cost and expense. The Engineering Documents shall comply with all Requirements applicable to the Services; provided, however that Engineer shall not be responsible for compliance with changes to Requirements or new Requirements enacted after the Engineering Documents are complete and approved and shall be entitled to rely reasonably on interpretations and approvals given in writing by government officials with responsibility for enforcing the Requirements. If Engineer believes that a Requirement is ambiguous or unclear in any respect and cannot obtain a written interpretation or decision from the applicable government official responsible for enforcing the Requirements, Engineer shall so notify the Owner's Representative and Owner's Representative shall direct Engineer as to how to proceed. In such event, Engineer shall proceed as directed by the Owner's Representative. Following the receipt of Owner's instructions, if Engineer promptly advises Owner in writing that Owner's direction is either (i) inconsistent with the Requirements or (ii) dangerous to people or property, then Engineer shall not be responsible for any damages incurred to the extent caused by the portion of Owner's decision which Engineer objected to based on sub-section (i) or (ii) above.
- 2.2.4 If, during the period commencing upon performance of the Work and ending eighteen (18) months following completion of all Work under this Agreement, the standards of performance required in this Agreement (including without limitation the Standard of Care and Good Engineering Practice) have not been met, and Owner has notified Engineer in writing of such failure, Engineer shall (i) diligently re-perform, at its cost, such corrective Services as may be necessary within the original scope of its Services to remedy such deficiency, and (ii) be responsible for the costs of rip, tear and reconstruction of any completed construction or construction in progress (the costs incurred for corrective work in Section 2.2.4(ii) are "**Rectification Costs**") only to the extent caused by such deficiency. However, Owner will be responsible for all Rectification Costs incurred for the Project up to TWO HUNDRED FIFTY THOUSAND AND 00/100 (\$250,000.00). Engineer will be responsible for one hundred percent (100%) of the Rectification Costs above TWO HUNDRED FIFTY THOUSAND AND 00/100 (\$250,000.00) up to a total maximum aggregate limit of FIVE HUNDRED THOUSAND AND 00/100 (\$500,000.00). By way of example, if the total Rectification Costs for this Project are \$600,000, Owner would ultimately be responsible for \$350,000 (i.e., the first \$250,000 and the final \$100,000) and Engineer would be responsible for \$250,000 (i.e., all costs above \$250,000 up to \$500,000).
- 2.2.5 Without limiting any of Owner's indemnification, termination or other rights in this Agreement, Engineer's remedial obligation as stated in Section 2.2.4 shall constitute Engineer's sole liability to the Owner and shall be Owner's exclusive remedy with respect to the repair or replacement of Services due to defects. Engineer makes no warranty or guaranty with respect to any design, engineering, specifications, information, equipment, materials or services provided by any person or entity, other than if and as set forth under this Agreement. ENGINEER HEREBY DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE.
- 2.3 INITIAL ENGINEERING
- 2.3.1 Engineer acknowledges that prior to the date hereof, Owner has engaged a third party to prepare certain "**Initial Engineering Documents**", which Initial Engineering Documents include detail as to the size and character of the Work and its various systems and essential characteristics. In this

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regard, the Engineer acknowledges that the Initial Engineering Documents are not a completed engineering design for the Work and are neither an exhaustive nor definitive list of all engineering features or requirements for the Work, but are intended to set forth desired physical arrangements and performance characteristics in a general fashion only with the expectation that additional and more detailed features and components for the Work will be specified and engineered in the Detailed Engineering Documents. The Engineer further acknowledges and agrees that the inclusion of or failure to include any particular item in the Initial Engineering Documents shall not relieve the Engineer of its obligations pursuant to this Agreement. Engineer shall, at the request of Owner and as part of the Services, consult with appropriate governmental agencies so that the Initial Engineering Documents comply with all Requirements and shall prepare such supplementary or clarifying drawings or specifications as are necessary in order to obtain all such governmental approvals or authorizations.

**2.4 DETAILED ENGINEERING PHASE**

- 2.4.1 Engineer shall prepare in final form satisfactory to Owner, consistent with the approved Initial Engineering Documents, and any further adjustments authorized by Owner in the Technical Specifications or Detailed Engineering Documents consisting of full plans and specifications and working drawings sufficient to fix and describe, for each component of the Work, details pertaining and relevant to the requirements for construction of the Work in sufficient detail to allow the construction of such Work properly and completely and in compliance with all Requirements.
- 2.4.2 Engineer shall, at the direction of Owner, assist in applying for and obtaining: (i) approval of the Engineering Documents by all applicable governmental agencies; and (ii) all building permits and all other Permits from, certifications by, or approvals of governmental agencies or authorities having jurisdiction over the design, construction, existence or use of the Work. Engineer shall, at the direction of Owner, process the applications for all such permits, certifications and approvals required for the Work. To the extent that, in order to obtain such permits, or any other permits which must be obtained by Engineer for the Work, revisions must be made to the Engineering Documents, Engineer shall make such revisions as part of the Services under this Agreement.
- 2.4.3 In addition to and without limiting Engineer's responsibilities under Section 2.2.3 and 2.2.4, Engineer shall in accordance with the Standard of Care and other requirements of this Agreement be solely responsible for visiting the Site and for identifying and accommodating any physical or other conditions applicable to the Engineering Documents and the installation, construction or connection of the Work to any such existing or under construction buildings or operations, including loading or other structural characteristics and any electrical, mechanical or other requirements needed for the proper and complete installation, construction and operation of the Work, and for surveying existing finishes, confirming availability of electrical services, confirming performance of mechanical systems, confirming critical building dimensions and confirming the location of mechanical, electrical and plumbing services, utilities, columns, fixed equipment and other major fixed building elements as necessary for the proper engineering and construction of the Work. With respect to the connection of the Work to any existing or under construction buildings at or adjacent to the Site and any related structural supports, Engineer will identify the locations within the buildings where the Work will be attached and shall be responsible for determining all required details as to the loading capacity and other relevant structural characteristics in those areas and shall provide any associated calculations and analysis and any stamped or sealed drawings and any structural engineering or other design services necessary for the proper and safe attachment and/or



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connection of the Work to such existing or under construction structures all in accordance with applicable Requirements. Subject to Section 2.3.1 and the other terms of this Agreement, Engineer shall be able to rely on and not be responsible for any Initial Engineering Documents, plans, specifications, estimates, reports, surveys, tests, or other documents or instruments, or any part thereof prepared or provided by Owner or Owner Consultants ("Owner Information"); provided that Engineer shall be responsible: (a) for specifying any criteria required so that the Owner Information can be properly and fully incorporated into and integrated with the Project as set forth in the Detailed Engineering Documents prepared by Engineer and (b) to coordinate the Detailed Engineering Documents prepared by Engineer with the Owner Information so that the Detailed Engineering Documents provided by Engineer properly account for and accommodate the Owner Information and (c) to notify Owner of any defects, error or omissions in the Owner Information discovered by Engineer, or which reasonably should be discoverable by the Engineer in accordance with the Standard of Care and Good Engineering Practices. In this regard, Engineer shall confer and meet with Owner, as and when appropriate, to review and discuss the Owner Information provided by Owner, the integration and incorporation of the necessary criteria relating to the Owner Information into the Detailed Engineering Documents and the coordination of the Owner Information with the Detailed Engineering Documents. Engineer shall promptly notify, and obtain the direction of Owner with respect to, any clarifications or questions required with respect to the Owner Information provided by Owner and/or the resolution of any conflicts, inconsistencies or ambiguities between the Owner Information provided by Owner and the Detailed Engineering Documents. The Engineer shall incorporate and integrate the Owner Information into the Detailed Engineering Documents if and as required under this Agreement or as otherwise agreed by the parties. No changes shall be made by Engineer to the Owner Information without the prior and written approval of Owner.

- 2.4.4 Engineer shall perform surveying, probing and measuring services at the Site reasonably necessary in the professional opinion of Engineer in connection with the Detailed Engineering of the Work and shall review and incorporate such results, consistent with the Standard of Care and good Engineering Practice, in preparing the Detailed Engineering Documents.

2.5 OWNERSHIP AND USE OF ENGINEERING DOCUMENTS

- 2.5.1 All Engineering Documents and Work Product and all plans, details, concepts, specifications, calculations, computerized records and other content and media set forth or contained therein, in whatever form, created, purchased or developed by Engineer as part of the Services (collectively the "**Documents**") shall (except as expressly set out below) be the property of Owner whether the Project is executed or not, and shall not be used by any Person other than Owner unless expressly authorized in writing by Owner, and Owner shall have the full and complete right to use the Documents and the ideas and designs contained therein for any purpose related to the Project, including for information and reference in connection with the design and construction of the Project, Owner's use and operation of the Project, the maintenance and repair of the Project and for additions, alterations or future construction to the Project without paying Engineer any amounts other than those sums actually due and owing under this Agreement for Services provided by Engineer under this Agreement. In this regard Engineer agrees that the Documents shall be property of Owner free of all claims, to use or not use, with or without modification, in all forms now known or hereinafter devised throughout the world, as Owner in Owner's sole discretion may wish, immediately from inception and that Engineer shall have no right to enjoin, prohibit or restrict Owner's ownership or use of the Documents as a result of any Claim or disagreement between

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Owner and Engineer including, but not limited to any payment dispute or termination of this Agreement. Engineer shall execute and deliver, and cause its employees, agents or Affiliates and/or consultants to execute and deliver, such further instruments and do such other acts and things as are necessary to establish and confirm Owner's rights in and ownership of the Documents. Nothing contained in this Section 2.5.1 shall be construed as limiting or depriving Engineer of its right to use its basic knowledge and skill to design or carry out other projects or work for itself or others, whether or not such projects are similar to the Work performed under this Agreement; provided that Engineer shall not be entitled to use Owner's Business Information or Proprietary Information for any purpose other than for purposes of this Project. Notwithstanding the foregoing provisions in this Section 2.5.1 or anything to the contrary in this Agreement, Owner's ownership rights with respect to Documents shall not include the ownership of any intellectual property and proprietary information of Engineer or Subconsultants. All intellectual property, proprietary information, software and processes of Engineer or its subcontractors shall remain the property of the Engineer or its subcontractors, as applicable. Ownership rights to intellectual property developed by Engineer in the performance of the Work shall remain with Engineer, and Engineer may retain a copy of all Documents. However, Engineer hereby grants to Owner (and shall all Subconsultants grant to Owner) a perpetual and royalty free license to use any intellectual property and proprietary information of Engineer and its Subconsultants contained in the Documents. Engineer agrees that the foregoing license is hereby immediately granted to Owner and cannot be revoked or rescinded as a result of any dispute or disagreement between Owner and Engineer, including any termination of this Agreement.

- 2.5.2 Engineer specifically acknowledges that the Documents constitute prototype designs or standards that Owner may elect to implement at other properties or projects that are owned, operated or managed by Owner or its Affiliates or in which Owner or its Affiliates have an interest, and Engineer expressly agrees that Owner (or its Affiliates) may use the Documents for such purposes without paying Engineer any compensation other than such amounts as may be due, pursuant to the terms of this Agreement, for Services provided by Engineer under this Agreement. Owner agrees that Engineer will not be responsible for damages, liabilities, losses and expenses arising from or related to the use by Owner of the Documents for projects other than this Project or any modification of the Documents made by Owner without Engineer's involvement or consent.
- 2.5.3 Engineer represents that the Documents will not infringe any Intellectual Property rights of a Third Party and Engineer agrees to defend and hold Owner harmless against any claim for the infringement of any such third-party rights arising out of Owner's use or ownership of the Documents as permitted by Section 2.5.1 above. IF ANY DESIGN, DEVICE, MATERIAL OR PROCESS COVERED BY PATENT OR COPYRIGHT IS USED BY ENGINEER PURSUANT TO THE PERFORMANCE OF THE SERVICES, ENGINEER SHALL OBTAIN ALL NECESSARY AUTHORIZATIONS AND LICENSES TO USE THE SAME, AND SHALL INDEMNIFY AND HOLD HARMLESS OWNER, ALL ADDITIONAL INSURED, OWNER'S CONSULTANTS, AND AGENTS AND EMPLOYEES OF ANY OF THEM, FROM ANY AND ALL LOSS OR EXPENSE ARISING OUT OF, OR IN CONNECTION WITH, THE USE OF SUCH DESIGN, DEVICE, MATERIAL OR PROCESS.
- 2.5.4 Engineer agrees to provide Owner, promptly upon request, with paper and electronic copies of all Documents (or partially completed portions thereof), provided only that Owner pay any amounts then actually due to Engineer under this Agreement and not disputed by Owner. Engineer agrees that Owner shall have the right to sell, transfer or assign the Documents to any Person upon any sale or other transfer of ownership of the Facility, subject to the applicable provisions of this Section 2.5.

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- 2.5.5 Title and copyright to software purchased or licensed by Engineer to be supplied as part of the Services shall be conveyed to Owner consistent with the licensed agreements provided by the software vendors or other suppliers whose delivery includes software.
- 2.5.6 Engineer acknowledges that the Documents may include and incorporate various engineering details and related information that is the property of Owner and/or the Licensors, including the information identified in and subject to Article 4 below (collectively the “**Owner’s Business Information**”). Engineer agrees that Engineer shall not acquire any rights in any of Owner’s Business Information or any other document, information or technology belonging to Owner or other asset or property of Owner (including any technology, information or data or other items that are subject to the License Agreements) by virtue of this Agreement or the inclusion of Owner’s Business Information in the Documents or Engineer’s association with Owner. Engineer agrees that Engineer shall not infringe on the license or any other ownership rights of Owner. The provisions of Article 4 shall apply to and govern Engineer’s use of all Owner’s Business Information.
- 2.5.7 Owner agrees that, notwithstanding Owner’s full ownership of the Documents, Engineer shall own and have the right to use, without Owner’s prior consent, any generic design concepts or details included within the Documents, and/or any proprietary system, software or programs that comprise or are incorporated into the Documents, such as generic databases, accounting systems, word processing and operating software, CAD backgrounds, browser systems, etc. (collectively the “**Engineer Systems**”). Engineer hereby grants to Owner (and shall require that all Subconsultants grant to Owner) a perpetual and royalty free license to use Engineer Systems (or partially completed portions thereof) in connection with the construction, ownership, maintenance, repair and alternation of the Work and any addition to or expansions of the Facility. Engineer agrees that the foregoing license with respect to Engineer Systems is hereby immediately granted to Owner and cannot be revoked or rescinded as a result of any dispute or disagreement between Owner and Engineer, including any termination of this Agreement.
- 2.5.8 Engineer shall be responsible for the accuracy of any translations and for any conversions from Anglo-American weights and measures to the metric system (and vice versa) necessary for the engineering and design of the Work and for the proper and complete performance of the Services.
- 2.5.9 Additionally, and without limiting any other provisions of this Agreement, Engineer agrees to adhere to the terms applicable with respect to Documents contained in Exhibit D.
- 2.6 RESERVED
- 2.7 REVIEW AND APPROVAL OF ENGINEERING DOCUMENTS
- 2.7.1 Engineer shall meet with Owner, as and when reasonably required by Owner and as appropriate based on the status of completion of the Engineering Documents, to review and discuss the significant aspects of the Engineering Documents as they are in progress. In connection with these meetings, Engineer shall make such modifications to the Engineering Documents as may be directed by Owner, and the Engineering Documents shall not be deemed accepted by Owner unless approved in writing by Owner pursuant to a meeting held as required by this Section. Any review, discussion, observation, inspection, approval or comment by Owner with respect to any Engineering Document or the Services is in reliance upon, and subject to, the performance by Engineer of the Services in accordance with, and pursuant to, the terms of this Agreement and shall not constitute a technical

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approval or acceptance of (or any assumption of liability or responsibility with respect to) such Engineering Documents or Services.

**2.8 CONSTRUCTION ASSISTANCE**

2.8.1 During the period commencing with construction of the Work and terminating on the date of completion of such Work, Engineer shall, as part of the Services, be available to the Owner and the Construction Contractors to answer questions and provide clarification regarding the interpretation and/or application of the Engineering Documents prepared by the Engineer, to review and take appropriate action on requests for information, shop drawings and other submittals from the Construction Contractors and to resolve issues relating thereto that may arise during the construction of the Work. However, Engineer shall be solely an advisor to Owner, and shall not have authority to act on behalf of Owner, except and only to the extent provided in this Agreement, and shall not direct any change in the Work (regardless of the impact on the time or cost of performing the Work) without the prior approval of the Owner's Representative. The Engineer shall review and take the actions described in this Section 2.8.1 promptly and in such fashion as not to delay the performance and/or completion of the Work.

2.8.2 Nothing herein shall be construed to mean that Engineer assumes any of the duties or responsibilities for construction. Accordingly, the following provisions shall apply to Engineer's Services.

Except to the extent set out in this Agreement and without any way limiting Engineer's responsibilities in Exhibit A, Engineer will not have control over nor be in charge of, responsible for, or liable in any way for the methods, means, sequences, procedures, techniques, or schedules associated with construction of the Project, which shall be the sole responsibility of the project contractor(s). Engineer shall have neither the right nor the duty to stop the work of any construction contractor for any reason.

Engineer will not have control over nor be responsible for or liable in any way for developing or managing any of the safety procedures, safety training, safety programs, jobsite safety, or other safety related aspects for construction of the Project.

**2.9 PROCUREMENT ASSISTANCE**

2.9.1 Engineer is responsible for all the Procurement Services in connection with the Project. In addition, Engineer agrees to, as part of the Procurement Services specify all equipment, materials, systems and other items comprising and/or required for the Work so as to allow the construction of such Work properly and completely in compliance with the Technical Specifications and Owner Information. However, for the avoidance of doubt, subject to Section 2.4.3, Engineer is not responsible for any defects in such specifications caused by any errors contained in the Owner Information not reasonably discoverable by Engineer in accordance with the Standard of Care and Good Engineering Practice. Engineer shall within its scope of work for the Procurement Services confirm that all necessary information is included any solicitation proposals and to confirm third party and bid qualification based on the Owner Information. This shall include (i) preparation of appropriate specifications and bid solicitations for equipment, materials, systems and other items, (ii) review and comment with respect to bids (including evaluation of technical offers and specifications) to ensure that the terms set out in the bid meet the Technical Specifications and Owner Information, performance characteristics and warranty terms for such equipment, materials, systems and other items, and (iii) overall coordination of the procurement of equipment, materials, systems and other items for the Project so that the Work may be timely constructed and installed in

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compliance with the Technical Specifications For the avoidance of doubt, all such Services set out in this Section 2.9.1 must be carried out using the Standard of Care and Good Engineering Practices. Owner does not plan to have Engineer procure any Equipment on its behalf. In the event that Owner does instruct Engineer in writing to procure Equipment, ENGINEER MAKES NO WARRANTY OR GUARANTY REGARDING EQUIPMENT PROCURED BY ENGINEER AT OWNER'S INSTRUCTION WHICH ARE. Engineer shall have no liability or responsibility to repair or replace defective equipment or materials procured by Engineer, on Owner's written instruction.

**ARTICLE 3 OWNER****3.1 OWNER'S CONSULTANTS**

- 3.1.1 Engineer acknowledges that Owner may retain certain other consultants to assist Owner in connection with the design and construction of the Project. Engineer agrees to maintain appropriate communication and to coordinate its activities with Owner's Consultants as necessary to facilitate the full, timely and proper performance of the Services under this Agreement. Engineer acknowledges that Owner's Consultants are solely advisors to Owner and do not have authority to act generally as the Owner's agents, or to act otherwise on behalf of Owner in connection with the Services or the Project, unless expressly so stated in this Agreement or later so indicated to Engineer by Owner in writing. Engineer specifically understands and agrees that Owner's Consultants do not have authority to authorize any Additional Services, Change in Scope, increase in the Fee, revision to the Completion Dates, or any additional compensation or payment to Engineer, without the prior and written approval of Owner through the Owner's Representative.

**3.2 INFORMATION AND SERVICES REQUIRED BY OWNER**

- 3.2.1 Information or services under Owner's control which are reasonably necessary for the Services and requested in writing by Engineer shall be furnished by Owner with Reasonable Promptness to avoid delay in orderly progress of the Services. Engineer represents and agrees that all of Engineer's schedules will include reasonable periods for Owner to review and respond to any such requests.
- 3.2.2 Engineer acknowledges and agrees that Owner and Owner's Consultants are under no obligation to inspect the Services or to discover defects or deficiencies in the Services. The discovery of or failure to discover any defects, deficiencies or other problems in the Services by Owner or Owner's Consultants shall not in any way constitute a waiver or acceptance of any such defect, deficiency or other problem or in any way affect or reduce Engineer's responsibilities hereunder. In this regard, Engineer acknowledges and agrees that any review, discussion, observation, inspection, approval or comment by Owner or Owner's Consultants with respect to such matters and any review, approval or comment by Owner or Owner's Consultants with respect to any design detail, specification or engineering calculation shall relate to and reflect only Owner's or any Owner's Consultant's general information as to the nature and status of the Services being performed and shall not constitute a technical approval or acceptance of (or any assumption of liability or responsibility with respect to) any such detail, specification or calculation or any means, methods, techniques, sequences or procedures or safety requirements, programs, measures and precautions, and shall not relieve, affect or diminish in any way Engineer's obligations and responsibilities for such matters as set forth in the Engineering Documents.

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**Fairway Contract No. CW2297043****ARTICLE 4 CONFIDENTIALITY AND PROPRIETARY INFORMATION**

- 4.1 Confidential and proprietary information exchanged in connection with the Project shall be governed by the Confidentiality Agreement between Fairway Methanol LLC and Zachry Engineering Corporation dated January 8, 2021.
- 4.2 Engineer acknowledges and agrees that all public relations matters arising out of or in connection with the Project shall be the responsibility of and handled by Owner. Engineer shall not make any announcement or publication, either internal or external, with respect to or in connection with the Services or the Project, including any public announcement, website mention, advertising, publicity or comment about the Services or Engineer's participation in the Project, without Owner's prior and written approval, except as directly necessary for the performance of the Services or as otherwise permitted above. Engineer shall not permit any of its employees or any of its Subconsultants or their employees to publicize, email, distribute, or otherwise post photographs of the Services or the Site, or any other proprietary information, on the internet, on social media sites (including Facebook, Twitter, Pinterest, etc.), or in any other public or private forum.

**ARTICLE 5 REPRESENTATIONS AND INDEMNIFICATION**

- 5.1 Engineer represents that Engineer:
- 5.1.1 is a legal entity, duly organized, existing and in good standing, that the execution and delivery of this Agreement has been duly authorized by all necessary actions and resolutions;
- 5.1.2 that this Agreement constitutes a valid and binding agreement of Engineer, enforceable in accordance with the terms set forth herein;
- 5.1.3 that Engineer possesses experience and knowledge in projects of the same type and nature as these Services and shall perform all Services required by this Agreement in a manner consistent with those standards of professional skill, care and diligence applicable to a design professional of comparable experience and knowledge in similar circumstances; and
- 5.1.4 that Engineer is currently solvent and has the financial resources and capabilities to perform all obligations, duties and responsibilities pursuant to and in accordance with this Agreement.

Engineer understands that Owner has relied upon these representations without independent investigation as an inducement to enter into this Agreement.

**5.2 INDEMNIFICATION**

- 5.2.1 ENGINEER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS OWNER GROUP FROM AND AGAINST ALL DAMAGES, LOSSES, COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES AND COURT COSTS, ARISING OUT OF (A) THE DEATH, INJURY OR SICKNESS OF THE PERSONNEL OF ENGINEER TO THE EXTENT CAUSED BY ENGINEER'S NEGLIGENCE OR WILLFUL MISCONDUCT (B) THE DEATH, INJURY OR SICKNESS OF OWNER GROUP OR ANY THIRD PARTY AND ANY CLAIM FOR PHYSICAL LOSS OR DAMAGE TO

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PROPERTY OF OWNER GROUP OR ANY THIRD PARTY, TO THE EXTENT CAUSED BY ENGINEER'S OR ANY SUBCONSULTANT'S NEGLIGENCE OR WILLFUL MISCONDUCT.

- 5.5.2 OWNER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS ENGINEER AND ITS PARENTS, AFFILIATES AND SUBSIDIARIES, AND THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS AND AGENTS (THE "ENGINEER GROUP"), FROM AND AGAINST ALL CLAIMS ASSERTED BY THIRD PARTIES, OR SUFFERED BY THE ENGINEER GROUP, FOR BODILY INJURY OR DEATH OR DAMAGE TO OR DESTRUCTION OF PROPERTY, TO THE EXTENT CAUSED BY OWNER'S NEGLIGENCE, WILLFUL MISCONDUCT OR BREACH OF THIS AGREEMENT.

**ARTICLE 6 TIME**

- 6.1 Engineer's Services shall be performed as expeditiously as practicable, consistent with good engineering practice, applicable standards of professional skill, care and diligence and the orderly progress of the Work and shall endeavor to perform the Services in accordance with the following time limits (the "**Completion Dates**"):

<u>Activity</u>	<u>Date</u>
60% of engineering design complete and model review	3.5 months after Owner's notice to commence work ("ARO")
90% of engineering design complete, and additional model review	6.5 months ARO
Completion of Construction Bid Package	8 months ARO
Detailed Engineering Design Complete	8 months ARO

- 6.1.1 The Completion Dates shall not be exceeded by the Engineer, except to the extent of delays due to Reasonable Cause. Used herein, "**Reasonable Cause**" shall mean any cause that is beyond the reasonable control of, and cannot be avoided or mitigated by reasonable efforts taken by, Engineer or Engineer's Consultants. In the event Engineer's Services are delayed by Reasonable Cause, Engineer shall be entitled to an extension of time, equal to the amount of such delay, in order to complete the applicable portions of Engineer's Services.

**ARTICLE 7 PAYMENTS AND COMPLETION****7.1 CONTRACT SUM**

- 7.1.1 Owner shall pay Engineer in current funds for the full and satisfactory performance of the Services in accordance with the rates and the amounts, and subject to the limits, indicated on Exhibit B attached hereto ("**Fee**"). The Fee includes full compensation for Engineer's profit, home office services and supervision, overhead and for any and all other costs or expenses incurred in connection with the performance of the Services (including all Services performed by any Subconsultants), except for Additional Services expressly requested and authorized by Owner pursuant to the applicable provisions of this Agreement.

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- 7.1.2 The initial Project Budget is attached in Exhibit B and sets out (i) the estimated compensation and ancillary cost to be paid by the Owner to the Engineer for its Services to be rendered for the completion of the Project in accordance with the Agreement and (ii) the estimated man hours per worker category needed to complete the Services. Engineer shall use commercially reasonable efforts to complete with the Services within the Project Budget and in accordance with the man hours set out in Exhibit B. Engineer shall promptly notify Owner in the event that Engineer concludes that the actual Fees for the Services may exceed the Project Budget and the parties will thereafter as needed adjust the Project Budget accordingly to reflect any change in estimated Fees.
- 7.1.2 Engineer acknowledges and agrees that it is responsible for the overall quality of the Services. Accordingly, Engineer agrees that it shall not be entitled to reimbursement or payment for costs that are incurred to correct Services that are identified as not being in compliance with this Agreement after acceptance by Owner of the Detailed Engineering Documents, including related to any warranty claim as described in Section 2.2.4. Additionally, Engineer agrees that it shall not be entitled to reimbursement or payment for amounts not notified to Owner as set forth in Section 11.1.
- 7.1.3 The Fee includes, and the Engineer, its Subconsultants and their respective employees, shall pay all federal, state and local taxes and all sales, consumer, use and similar taxes applicable to the Services (or relating to the performance of any services, furnishing of any materials or ownership, use or transfer of any property in connection with the Services) and all taxes shall be measured by the wages of all employees of Engineer or any Subconsultants as required by law. SUBJECT TO SECTION 7.2, ENGINEER SHALL BE SOLELY RESPONSIBLE AND LIABLE FOR PAYMENT OF SAID TAXES, AND SHALL INDEMNIFY AND HOLD OWNER AND ITS AGENTS AND EMPLOYEES HARMLESS ON ACCOUNT OF ANY SUCH TAXES IF ASSESSED AGAINST OWNER UNDER THE AUTHORITY OF ANY LAW.
- 7.1.4 Notwithstanding anything to the contrary contained in the Engineering Documents, Owner may withhold payment to Engineer or any Subconsultant if and for so long as Engineer is in breach of any of the obligations under this Agreement; provided, however, that any such holdback shall be limited to an amount sufficient, in the reasonable opinion of Owner, to cure any such fault or failure of performance by Engineer. The Owner will promptly notify Engineer in the event the Owner decides to withhold any payment(s) to the Engineer or any Subconsultant.
- 7.1.5 At all times during the performance of the Services and for three (3) years following the completion or termination of this Agreement, Engineer agrees (and shall cause its Subconsultants to agree) to keep adequate records and books of account as necessary to accurately reflect the charges incurred and/or billed pursuant to this Agreement and as required to allow Owner and/or Owner's Consultants to verify the validity, correctness and legitimacy of all amounts charged and/or paid pursuant to this Agreement. The system adopted shall be such as is satisfactory to Owner. Owner and Owner's Consultants shall have access to Engineer's and Subconsultant's books and records for the purposes of confirming Engineer's compliance with these requirements and for the purpose of verifying actual costs incurred by Engineer (and the reasonableness thereof) related to any amounts claimed by Engineer and any amounts sought in connection with Additional Services pursuant to this Agreement or other Claim asserted by Engineer. This access shall not apply to the composition of any mark-ups, unit rates, fixed percentages or multipliers. Owner's audit rights with respect to any portion of the Services performed on an agreed lump sum basis shall extend only to verifying that Engineer has paid the actual lump sum amounts and shall not allow Owner to determine (or seek adjustment based on) the actual cost incurred by Engineer to perform such Services. All records, documents and memoranda preserved under this paragraph shall be complete and accurate

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and shall be prepared in accordance with generally accepted accounting practices. Audits will be conducted at Owner's expense during normal business hours at Engineer's offices, on reasonable advance notice by Owner, and in accordance with generally accepted accounting principles.

**7.2 TAX BENEFITS**

- 7.2.1 Engineer acknowledges that the Services that are the subject of this Agreement may qualify to obtain certain tax benefits associated with the procurement of such Services by Owner. In this regard, Engineer agrees that (i) it will coordinate with Owner and will comply with all instructions and directions of Owner related to the procurement of the components of the Services so that Owner can obtain the associated tax benefits related thereto, including preparing and completing related forms for submission to the appropriate tax authorities, itemizing and separating the cost of the Services and the different components thereof (including discrete portions of labor and individual items of material), assisting Owner, upon Owner's request, with identifying the appropriate tax designation for certain portions of the Services (and separately identifying the Services by such designations in each Invoice for Payment) and otherwise maintaining such documentation as may be required for Owner to obtain the applicable tax benefits and (ii) Owner shall have the right, but not the obligation to make any payments directly to any taxing authorities or the appropriate Person with respect to any taxes for which Owner has a direct tax benefit. WHEN REQUESTED BY ENGINEER, FOR PURPOSES OF ANY TAX EXEMPTION, OWNER SHALL TIMELY PROVIDE SUPPLIER WITH A VALID TEXAS DIRECT PAYMENT EXEMPTION CERTIFICATION OR TEXAS SALES AND USE TAX EXEMPTION CERTIFICATE CITING A QUALIFYING EXEMPTION.

**7.3 INVOICE FOR PAYMENT**

- 7.3.1 On or before the fifteenth (15th) Day of each month, Engineer shall submit to Owner an itemized Invoice for Payment with all related schedules completed to reflect the then current status of the Services and the Fee and accounting for all the payments previously made by Owner for the Services during the prior month. Such Invoice for Payment shall be itemized and supported by such data substantiating Engineer's right to payment as Owner may require, such as copies of requisitions from Subconsultants. In addition, each Invoice for Payment submitted by Engineer shall be accompanied by a statement identifying every Subconsultant who is to receive payment of any amounts requested in the Invoice for Payment and listing the amounts requested on behalf of such Subconsultant in the Invoice for Payment. Owner shall not be required to process an Invoice for Payment until all information required by this Agreement with respect to such Invoice for Payment (including any required backup or supporting documentation) has been submitted. An Invoice for Payment shall not include requests for payment of amounts Engineer does not intend to pay to a Subconsultant because of a dispute or other reason. Invoices shall be submitted via email to the following email address: [REDACTED].
- 7.3.2 Within fourteen (14) Days after Owner's receipt of an Invoice for Payment, Owner shall either approve or disapprove the Invoice for Payment in whole or in part as provided in Section 7.4. The foregoing process shall be repeated until Owner has received an Invoice for Payment reflecting only those amounts approved for payment by Owner, at which time payment will be made by Owner within the time required by Section 7.5.1 below. Engineer shall promptly comply with any direction by Owner to revise and resubmit an Invoice for Payment based on Owner's review and disapproval thereof and no payments shall be required under this Agreement until an Invoice for Payment, in

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form and substance as required by this Agreement, and accompanied by all required backup and supporting documentation, has been submitted to and approved by Owner.

- 7.3.3 As a condition to payment, each Invoice for Payment shall be accompanied by a partial, conditional lien waiver (effective upon receipt of payment), executed (with notarized signatures) by each Subconsultant on behalf of whom payment is requested, in the amount of the payment requested by the applicable Invoice for Payment and by a partial, unconditional lien waiver executed (with notarized signatures) by each Subconsultant, reflecting receipt of payment for the portions of the Services performed by such Subconsultant that have actually been paid for by Owner pursuant to any previous Invoice for Payment and for which Engineer should have paid Subconsultant prior to the submission of the Invoice for Payment at issue. Each Invoice for Payment shall also be accompanied by a partial, conditional lien waiver (effective upon receipt of payment), executed (with notarized signatures) by Engineer, for the full amount of the payment requested in the Invoice for Payment and by a partial, unconditional lien waiver executed (with notarized signatures) by Engineer, reflecting receipt of payment for all Services that has actually been paid for by Owner pursuant to all previous Invoices for Payment. All lien waivers shall be in the applicable form attached hereto as Exhibit C. Owner shall not be required to process an Invoice for Payment until all information required by this Agreement with respect to any such Invoice for Payment has been submitted to and accepted by Owner. Engineer's Invoice for Payment may not include requests for payment of amounts relating to alleged Additional Services that have not then been authorized by Owner's Representative in writing.

- 7.3.4 Payments shall be made in US Dollars by ACH to:

Bank Routing Number: [REDACTED]

Account Number: [REDACTED]

Account Name: Zachry Engineering Corporation

On the Day that ACH payment is made Owner shall advise Engineer and supply information as to which invoices are being paid and in what amount(s) by sending an email to [REDACTED] and [REDACTED]

7.4 DECISIONS TO WITHHOLD APPROVAL

- 7.4.1 Owner may decide to withhold approval of an Invoice for Payment and/or may reduce any payment otherwise due to Engineer to the extent reasonably necessary to protect Owner from loss because of: (i) defective Services not remedied pursuant to Section 2.2.4; (ii) Third Party claims filed or reasonable evidence indicating probable filing of such claims with respect to which Engineer, in Owner's reasonable judgment, is liable to Owner pursuant to this Agreement; (iii) failure of Engineer to make payments properly to Subconsultants; or (iv) damage to Owner or another Person with respect to which Engineer, in Owner's reasonable judgment, is liable to Owner pursuant to this Agreement or (v) failure to maintain reasonable progress of the Services due to the actions or inactions of Engineer. When the reasons for withholding approval are removed, payment shall be made for amounts withheld because of them in response to the next filed Invoice for Payment. The Owner will notify Engineer in the event the Owner decides to withhold any payment(s) to the Engineer or any Subconsultant in accordance with the timeframe set out in Section 7.3.2.

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7.4.2 If Engineer disputes any determination by Owner with regard to any proposed Invoice for Payment, Engineer shall nevertheless expeditiously continue to prosecute the Services. In any of the events described in Section 7.4.1, Owner shall have the right to apply any such amounts so withheld in such manner as Owner may deem proper to satisfy such claims, to complete the Services or to compensate Owner for any loss for which Engineer is liable to Owner under this Agreement.

7.5 PROGRESS PAYMENTS

7.5.1 Within thirty (30) Days after Owner's receipt of a correct and undisputed Invoice for Payment, Owner shall make payment to Engineer in the amount so approved by Owner therein. Such payment by Owner shall not constitute approval or acceptance of any item of cost in the Invoice for Payment. No payment made hereunder shall be construed to be final acceptance or approval of that portion of the Services to which such partial payment relates, or relieve Engineer of any of Engineer's obligations hereunder with respect thereto. Owner shall not be required to make any payment until Owner has received a release of liens from Engineer and all Subconsultants for the portion of the Services covered by such payments.

7.5.2 Engineer shall promptly pay each Subconsultant within ten (10) Days after receipt of payment from Owner, out of the amount paid to Engineer pursuant to Engineer's Invoice for Payment, the full amount paid to Engineer by Owner, pursuant to such Invoice for Payment, for Services performed by such Subconsultant. Engineer shall, by appropriate agreement with each Subconsultant, require each Subconsultant to make payments to sub-subconsultants, materialmen and suppliers in similar manner. If required by Owner, Engineer shall send to Owner copies of receipts from the Subconsultants for the payment made to them by Engineer. Engineer shall in no event, however, stop the Services during the pendency of a dispute between Owner and Engineer or any Subconsultant.

7.5.3 Owner may, on request, furnish to a Subconsultant information regarding percentages of completion or amounts applied for by Engineer and action taken thereon by Owner on account of portions of the Services done by such Subconsultant.

7.5.4 Owner shall have no obligation to pay or to see to the payment of money to a Subconsultant except as may otherwise be required by law.

7.5.5 IN THE EVENT A SUBCONSULTANT FILES A MECHANIC'S LIEN OR CLAIM FOR LIEN AGAINST THE PROJECT (AND PROVIDED ONLY THAT OWNER HAS PAID ENGINEER THOSE AMOUNTS THEN REQUIRED BY THIS AGREEMENT FOR THE SERVICES THAT IS THE SUBJECT OF SUCH LIEN OR CLAIM), ENGINEER SHALL CAUSE SUCH LIEN OR CLAIM FOR LIEN TO BE FORMALLY RELEASED, BONDED AGAINST OR SATISFIED, AND SHALL REIMBURSE OWNER FOR ALL COSTS AND EXPENSES, INCLUDING ATTORNEYS' FEES AND BONDING AND TITLE INDEMNITY EXPENSES, INCURRED IN CONTESTING, DISCHARGING, RELEASING OR SATISFYING SUCH LIEN OR CLAIM FOR LIEN OR DEFENDING OR OTHERWISE PARTICIPATING IN SUCH SUIT. UPON THE SETTLEMENT OF SUCH CLAIM, ANY EXCESS MONIES HELD BY OWNER FROM SUCH SECURITY SHALL BE PAID TO ENGINEER. ENGINEER SHALL SIMILARLY INDEMNIFY AND PROTECT AND DEFEND OWNER, ALL ADDITIONAL INSURED, OWNER'S CONSULTANTS AND AGENTS AND EMPLOYEES OF ANY OF THEM, IN RESPECT OF ANY LIEN OR CLAIM FOR LIEN IN FAVOR OF ANY PERSON CLAIMING BY, THROUGH, OR UNDER ENGINEER, INCLUDING, AMONG OTHERS, ANY SUBCONSULTANTS, THAT MAY APPEAR AFTER PAYMENT OF THE FINAL INVOICE FOR PAYMENT HAS BEEN MADE BY OWNER TO ENGINEER IN THE AMOUNTS REQUIRED BY THIS

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AGREEMENT. ENGINEER SHALL HAVE THE RIGHT TO CONTEST ANY LIEN OR CLAIM COVERED BY THIS SECTION, PROVIDED ENGINEER HAS BONDED OVER SUCH LIEN OR CLAIM AND ENGINEER HAS AGREED IN WRITING TO FULLY INDEMNIFY AND DEFEND OWNER, ALL ADDITIONAL INSURED, OWNER'S CONSULTANTS, AND AGENTS AND EMPLOYEES OF ANY OF THEM, WITH RESPECT TO SUCH LIEN OR CLAIM.

**ARTICLE 8 ADDITIONAL SERVICES**

- 8.1 As used in this Agreement, an “**Additional Service**” shall mean any work required of Engineer because of a Change in Scope as defined below. Except and only for such Additional Services, all work required of Engineer pursuant to this Agreement shall be provided by Engineer without increase in the Fee established in Article 7 herein. Notwithstanding any other provision of this Agreement, Engineer shall not be entitled to compensation as Additional Services for any work rendered by Engineer or Engineer's Consultants to the extent such work is or was required due to Engineer's or Subconsultants' errors, omissions, negligence or breach of contract in connection with this Agreement. Additional Services shall be provided only if approved by Owner, and shall be paid for as provided, and subject to the limitations set forth, in this Agreement.
- 8.2 As used in this Agreement, a Change in Scope is a revision in the Technical Specifications that is: (1) (i) initiated or requested by Owner (through the Owner's Representative) or is the result of a condition discovered at the Site, (ii) that requires Engineer to modify an Engineering Document previously approved in writing by Owner (through the Owner's Representative), and (iii) substantially expands, enlarges or diminishes the character, quantity or cost of the Services to be performed by the Engineer; or (2) due to any new Requirements or changes to the Requirements which occur after the effective date of this Agreement and which adversely affects Engineer's costs to perform the Services. The revisions, modifications or changes to drawings, specifications or other Engineering Documents or any other tasks performed by or required of Engineer as a result of any condition which Engineer was reasonably capable of ascertaining pursuant to any tests furnished to Engineer shall not be deemed a Change in Scope and, as such, will not entitle Engineer to any compensation for Additional Services.
- 8.3 If the Owner requests any change in the design of the Work that Engineer believes constitutes a Change in Scope, Engineer shall furnish Owner (with a copy to the Owner's Representative) with written notice of such fact promptly after the change is requested by the Owner (and before any tasks relating thereto are performed by the Engineer). Engineer shall initiate no task with respect to any Change in Scope (and shall not be entitled to any additional compensation based on any alleged Change in Scope) unless Engineer has first given notice as required by this Section and has received written authorization from Owner to proceed with such change. If Engineer gives written notice that Engineer believes a Change in Scope has occurred and the Owner disagrees, Engineer shall, if so directed by the Owner's Representative, nonetheless proceed promptly and diligently to perform the tasks at issue, and Engineer's claim will be determined thereafter pursuant to the applicable provisions of this Agreement.
- 8.4 The compensation payable to Engineer for any Additional Services requested and approved by Owner in connection with any Change in Scope shall be determined in accordance with the applicable rates, if any set forth in Exhibit B hereto, or if no such rates are applicable, in such amounts or rates as are agreed to in writing by the Owner's Representative. In the event a Change in Scope results in a reduction in the scope of Engineer's Services hereunder, Owner shall be entitled

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to a credit to the Fee (and/or any applicable Additional Services compensation payable to Engineer under this Agreement) equal to the reasonable value of the Services deleted from the scope of Engineer's Services.

**ARTICLE 9 INSURANCE**

- 9.1 Engineer shall purchase and maintain, at Engineer's sole cost and expense the insurance indicated below issued by insurance companies licensed to do business in the State of Texas and having a minimum A.M. Best's rating of A-XII. Engineer shall furnish to Owner certificates of such insurance policies. Such insurance will not be canceled or non-renewed without at least thirty (30) Days' written notice by Engineer to Owner.

FORM OF COVERAGE	LIMITS OF LIABILITY
Statutory Workers' Compensation and Employer's Liability	Workers' compensation – jurisdictional limits; Employer's liability – [REDACTED] each accident, each employee, each occupational disease, and in the policy aggregate
Commercial General Liability, including Products and Completed Operations, and contractual liability	Covering bodily injury (including personal injury) and property damage with a combined single limit of [REDACTED] per occurrence, which limits may be provided through umbrella or excess policies
Automobile liability, including non-owned and hired car liability	[REDACTED] per accident combined single limit for bodily injury (including personal injury) and property damage; if Engineer provides transportation for guests, then the combined single limit shall be \$5,000,000 per accident
Errors and omissions/professional liability insurance. This insurance shall continue in force for a period of not less than two (2) years following completion of the Services	[REDACTED]

- 9.2 No Services shall be commenced until Owner has first received, reviewed and approved certificates of insurance evidencing the coverage required by Section 9.1. Certificates of insurance showing such coverages to be in force shall be filed with Owner prior to the commencement of the Services and renewals furnished prior to expiration of any coverage herein. If Engineer shall fail to deliver any required certificates of insurance to Owner within ten (10) business days of demand, Owner may obtain such insurance and Engineer agrees to repay Owner on demand all amounts paid therefor, or Owner may deduct all payments made in procuring such insurance from any money due or to become due to Engineer under this Contract. The limits of insurance required by Section 9.1 may be provided by any combination of base policy coverage and associated excess coverage.
- 9.3 All policies of liability insurance required by Section 9.1 (except for Engineer's professional liability insurance, which may be on a claims made form, but shall be maintained for the period required in Section 9.1 above) shall be on an "occurrence" form, covering the full period when all Services required under this Agreement are to be provided. The Commercial General and Automobile liability policies maintained by Engineer shall name Owner, its directors, officers, shareholders, employees, affiliates, subsidiaries, as their interests may appear, as additional insureds ("Additional Insureds"). Coverage afforded under the policies will not be cancelled nor allowed

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to lapse due to failure to renew without at least thirty (30) Days' prior written notice by Engineer given to Owner. Engineer shall furnish to Owner certificates of such insurance policies prior to the start of performance of the Services.

**ARTICLE 10 TERMINATION OF THE CONTRACT****10.1 TERMINATION BY OWNER FOR CAUSE**

- 10.1.1 Owner may terminate this Agreement with cause because of the negligence, errors, omissions or breach of contract of Engineer or any circumstance in which Engineer is insolvent or bankrupt or is otherwise unable to pay debts as they become due. A termination by Owner for cause must specify the cause involved and will be effective seven (7) Days after Engineer's receipt of Owner's notice of intent to terminate unless the cited cause has then been corrected or it is not reasonably possible to correct the cited cause within such seven (7) Day period, in which event the termination will not be effective if Engineer has commenced the correction of the cited cause within the seven (7) Day period and thereafter continues to diligently pursue such correction to completion within a reasonable time period after receipt of Owner's notice of intent to terminate (which time period shall not exceed fourteen (14) Days from Owner's initial notice of termination); provided, however, that if Engineer fails to commence and/or continue and/or complete the correction of the cited cause within such time periods, then the termination shall become effective immediately upon such failure. In the event Owner terminates this Agreement for cause, Engineer shall be liable to Owner for all costs incurred by Owner for completing Engineer's Services as required by this Agreement), and the cost of additional engineering services required of Owner as a result of Engineer's fault or breach. After all such costs have been paid, Engineer shall be entitled to the amount, if any, remaining due to Engineer (after deducting such damages) for any Services performed by Engineer up to and including the date of such termination (as determined by calculating that portion of the Fee due to Engineer pursuant to this Agreement based on the stage of completion achieved by Engineer, overall and in each category of the Services as applicable, as of the date of termination). If such costs exceed the unpaid balance due to Engineer, Engineer shall be liable to Owner for the difference. A termination by Owner for cause which is later determined to be wrongful shall be considered a termination without cause pursuant to Section 10.2.

**10.2 TERMINATION FOR CONVENIENCE BY OWNER**

- 10.2.1 Owner may terminate this Agreement without cause, upon seven (7) business Days' written notice to Engineer. In the event Owner terminates this Agreement without cause, Engineer shall be entitled to compensation, pursuant to the provisions of and subject to the limitations set forth in this Agreement, only for the Services performed by Engineer and accepted by Owner, up to and including the date of termination.

**10.3 SUSPENSION OF WORK BY OWNER**

- 10.3.1 Owner may, with or without cause, suspend the Services for such period of time (not to exceed one (1) year in any one (1) instance) as Owner may desire. Such period of suspension shall continue until terminated by Owner by further written notice to Engineer. Engineer shall have the right to request in writing that Owner terminate this Agreement after six (6) months if the Services remains suspended for that duration. No action taken by Owner hereunder shall affect any of the other rights or remedies of Owner contained in this Agreement.

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***Fairway Contract No. CW2297043*****10.4 TERMINATION BY ENGINEER**

- 10.4.1 The Services may be suspended and this Agreement may be terminated by Engineer only if Owner fails to make payment to Engineer, in such amounts as are required by this Contract, within ninety (90) Days after such payment is due under the terms of this Agreement. In such event, Engineer may, upon seven (7) Days prior notice to Owner suspend the Services until payment is made and may terminate this Agreement, upon an additional seven (7) Days prior written notice if such payment is not made within thirty (30) Days after the commencement of such suspension. In the event Engineer validly and properly terminates this Agreement, Engineer shall be entitled to compensation, pursuant to the provisions and subject to the limitations of this Agreement, only for the Services performed by Engineer up to and including the date of termination.

**10.5 FURTHER ASSURANCES**

- 10.5.1 If this Agreement is terminated pursuant to any of the foregoing provisions of this Article 10, then Engineer shall (a) execute and deliver all such papers and take all such steps including the legal assignment of its contractual rights as Owner may require for the purpose of fully vesting in Owner the rights and benefits of Engineer under such obligations and commitments and (b) account for and turn over to Owner all correspondence, details, Engineering Documents and such other Engineering Documents, records and materials relating to the Services. Compliance by Engineer with the foregoing shall be a condition precedent to Engineer's right to receive payment for termination in accordance with this Article 10.

**10.6 RESERVATION OF RIGHTS**

- 10.6.1 No termination by Owner under this Article 10 (whether with or without cause) shall constitute a waiver or release of any Claims by Owner relating to events, circumstances or breaches arising prior to such termination, nor shall such termination affect any of the other rights or remedies of Owner granted by this Agreement or by the Requirements, or relieve Engineer from any consequences or liabilities arising from Engineer's acts, omissions or deficiencies in connection with the Services or this Agreement. Neither the right of Owner to terminate as provided in this Article 10 nor the agreement on the part of Owner to pay any cost of the Services (for which Owner would not otherwise be obligated) incurred by reason of events within the control of Engineer (including the negligent and/or willful act and/or omission of and/or default by any Subconsultant employed by Engineer) or incurred by reason of a default by Engineer in the performance of its obligations hereunder, shall impair or limit any rights, remedies and/or Claims of Owner to which Owner may be entitled by reason of any such occurrence or default. Payment by Owner to Engineer of any monies pursuant to this Article 10 shall not constitute a waiver of any remedies which Owner may otherwise have against Engineer for any failure of Engineer to perform in accordance with this Agreement.

**10.7 REMEDIES**

- 10.7.1 Engineer's sole remedy for any termination of this Agreement shall be the compensation allowed in this Article 10, as applicable. Any termination by Owner for cause that is later determined to be unjustified shall be treated as a termination for convenience pursuant to this Article 10. In any such event Engineer's sole and exclusive rights and remedies for any termination shall be limited to those set forth in Section 10.2.1 above, and Engineer shall be entitled to no additional compensation and

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**Fairway Contract No. CW2297043**

shall have no additional or other rights of any kind, type or nature arising out of or under this Agreement by virtue of such termination.

**ARTICLE 11 CLAIMS AND DISPUTE RESOLUTION****11.1 LIMITATION ON CLAIMS**

11.1.1 Engineer shall give Owner written notice of any event, circumstance or occurrence that Engineer believes will affect the performance of the Services or require any increase in the Fee or extension of the Completion Dates within ten (10) business days after Engineer is first able, through the exercise of reasonable diligence, to recognize the condition giving rise to the Claim. Engineer acknowledges that the failure to notify Owner of any such event, circumstance or occurrence within the time required by this Section 11.1.1 will prejudice Owner's ability to respond to such event, circumstance or occurrence and mitigate the cost and schedule impacts resulting from such event, circumstance or occurrence. If Engineer performs any activity affected by any such event, circumstance or occurrence without first giving prior written notice to and obtaining the instructions of Owner with respect to such activity, Engineer shall be liable for any attributable costs incurred by Owner as a result of Engineer's failure to have given such notice, and shall not be entitled to any increase in the Fee or extension of the Completion Dates on account thereof.

11.1.2 [RESERVED]

**11.2 DISPUTE RESOLUTION**

11.2.1 The Parties shall exclusively and finally resolve any Claim arising out of this Agreement using direct negotiations, mediation and then arbitration as set out in this Section 11.2. Engineer may not stop, suspend or otherwise fail to prosecute the Services pending resolution of a Claim.

11.2.2 If a Claim arises, a Party shall initiate the resolution process by giving notice to the other Party setting out, in writing and in detail, the issues and total value of the Claim. The Parties shall attempt to resolve the Claim through direct negotiations in a meeting between the Parties, attended by individuals with decision-making authority, which shall take place within thirty (30) Days, or as otherwise agreed to by the Parties, from the date the notice was sent.

11.2.3 If the Claim cannot be resolved by direct negotiations within fifteen (15) Days of initiation of the resolution process, then the Claim shall be finally resolved by litigation by any court of competent jurisdiction located in Dallas County in the State of Texas. For purposes of this provision, both Owner and Engineer irrevocably submit and consent to the personal jurisdiction of such courts and agree that any claims or disputes arising hereunder may be brought therein and without regard to any forum non conveniens considerations. Any litigation or legal proceeding brought pursuant to this Section 11.2 shall be decided by the Court, and OWNER AND ENGINEER HEREBY WILLINGLY, KNOWINGLY AND VOLUNTARILY WAIVE TO THE FULLEST EXTENT PERMITTED BY LAW ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY SUCH LITIGATION OR LEGAL PROCEEDING. The Parties agree that any litigation or other dispute resolution proceeding agreed to by the Parties shall include, by consolidation, joinder or other appropriate motion, any additional person or entity not a party to this Contract, including any Subconsultants or sub-subconsultants on the Project, provided such person or entity is substantially involved in a common question of fact or law arising out of or relating to the same transaction or subject matter involved in such litigation or proceeding.

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***Fairway Contract No. CW2297043*****ARTICLE 12 MISCELLANEOUS PROVISIONS****12.1 GOVERNING LAW**

- 12.1.1 This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Texas without regard to principles of conflicts of law that would direct the application of the law of another jurisdiction. Texas law shall also govern in the settlement, by arbitration, of any and all disputes which may arise under this Contract.

**12.2 SUCCESSORS AND ASSIGNS**

- 12.2.1 Owner and Engineer respectively bind themselves, their partners, successors, assigns and legal representatives to the other Party hereto and to the partners, successors, assigns and legal representatives of such other Party in respect to all covenants, agreements and obligations contained in the Engineering Documents. However, Engineer shall not assign or transfer any interest in this Agreement without the written consent of Owner. If Engineer attempts to make such an assignment without such consent, Engineer shall nevertheless remain legally responsible to Owner for all obligations under this Agreement. Owner shall have the right, in Owner's discretion, to assign this Agreement to any Person. Upon assumption of this Agreement by such Person, Owner shall have no further liability under this Agreement.

**12.3 OWNER'S REPRESENTATIVE; WRITTEN NOTICE**

- 12.3.1 Owner hereby designates Eric Ford as the Owner's Representative. The Owner's Representative designated in this Section is the only Person authorized to act on the Owner's behalf with respect to the execution of change in the Services or the issuance of other instructions or approvals that require the written approval of Owner under this Agreement. In the event Engineer receives any such instructions or approvals, from any Persons other than the Owner's Representative designated pursuant to this Section, then Engineer shall notify the Owner's Representative of such instructions or approvals and shall not act upon such instructions or approvals until provided with written directions from the Owner's Representative. A new representative may be designated by Owner pursuant to this paragraph by providing Engineer with three (3) business Days' prior, written notice.

**12.4 EXECUTION IN COUNTERPARTS**

- 12.4.1 This Agreement may be executed in any number of counterparts and in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery or execution of this Agreement by electronic transmission in PDF, or by facsimile, electronic signature or other electronic means is as effective as delivery of an originally executed counterpart of this Agreement.

**12.5 RIGHTS AND REMEDIES**

- 12.5.1 Duties and obligations imposed by this Agreement and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

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***Fairway Contract No. CW2297043*****12.6 HEADINGS**

- 12.6.1 The Article and Section headings, and other titles and captions used in this Agreement, are inserted only for convenience of reference and are not intended to and shall in no way define, limit, enlarge or prescribe the rights or obligations of the Parties, or affect the meaning, construction, scope or extent of any provisions of this Agreement.

**12.7 CAPITALIZATION**

- 12.7.1 The terms capitalized in this Agreement are those which are specifically defined in the Engineering Documents or the titles of numbered articles and identified references to Articles and Sections in this Agreement. All terms and phrases defined in this Agreement shall have the respective meanings as are specified in this Agreement. All words that have well known technical or construction industry meanings are used in this Agreement in accordance with such recognized meanings, unless differently defined therein or the context clearly indicates otherwise.

**12.8 INTERPRETATION**

- 12.8.1 In the interest of brevity this Agreement may omit modifying words such as “all” and “any” and articles such as “the” and “an,” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. Any use of the word “including” is not intended to be inclusive and when employed is intended to provide example(s) of the concept to which it refers.

**12.9 NOTICES**

- 12.9.1 Any notice required to be given hereunder shall be given in writing to the Parties at the respective addresses herein below and such notice shall be deemed to have been given (i) when delivered by hand, (ii) when sent by first class registered or certified mail, postage prepaid, return receipt requested or (iii) when sent by a nationally recognized overnight courier with written proof of delivery. For the purpose of any notice permitted or required to be given hereunder such notices shall be addressed as follows:

If to Owner:

Fairway Methanol LLC

9502 Bayport Blvd.  
Pasadena, TX 77507  
Attn: Eric Ford  
Email: [REDACTED]

If to Engineer:

Zachry Engineering Corporation

527 Logwood  
San Antonio, TX 78221  
Attn: Marc Willard

Email: [REDACTED]

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With a copy to:

Zachry Engineering Corporation

527 Logwood

San Antonio, TX 78221

Attn: Assistant General Counsel

Email: [REDACTED]

12.10 NO WAIVER

- 12.10.1 No action or failure to act by Owner or Engineer shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be provided by the Engineering Documents or specifically agreed in writing.

12.11 ENTIRE AGREEMENT; EFFECTIVE DATE

- 12.11.1 This Agreement, together with all the Exhibits attached hereto and incorporated herein represents the entire and integrated agreement between the Parties hereto and supersedes any proposals or requests therefore and all prior or contemporaneous agreements, understandings, representations and statements, oral or written. No modification, waiver, amendment, discharge or change of this Agreement shall be valid unless the same is in writing and signed by the Party against which enforcement of such modification, waiver, amendment, discharge or change is or may be sought. This Agreement is intended to and shall govern the Services, whether initiated or performed prior or subsequent to the date of execution of this Agreement and the effective date of this Agreement shall be deemed to be the first date when any such services was so provided by Engineer.

12.12 LIMITATION OF LIABILITY

- 12.12.1 Neither Party shall be entitled to recover any consequential, incidental, special or indirect damages, including loss of profits, loss of reputation or business opportunity, claims by customers, interest or product or business interruption, however the same may be caused; provided that such limitation shall not apply to liability or damages (a) asserted or recoverable by third parties for which either Party owes an obligation of indemnity pursuant to this Agreement or Law (even if such Third Party claim seeks damages of the type identified in the first sentence of this Section above), or (b) that are recoverable from any insurance covering the Engineer, the Work, the Project or the acts or omissions of the Engineer and/or its Subconsultants or that would have been received by Engineer if Engineer had procured and maintained the insurance required by Article 9 above, (c) related to the Engineer's violation of Law, fraud, willful misconduct or gross negligence, or (d) related to any breach of Article 4 above. For the avoidance of doubt, the terms "consequential, incidental, special or indirect damages" under this Section 12.12.1 shall not include the costs to repair, correct or repair Work affected by Engineer's defective Services pursuant to Section 2.2.4 above.
- 12.12.2 The Engineer's aggregate maximum liability to Owner Group hereunder, whether based in contract (including any actual or claimed failure of essential purpose of any remedies), warranty, tort (including negligence), strict liability or otherwise, for all losses or damages arising out of or resulting from its performance or non-performance under this Agreement, shall not exceed the

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Project Budget provided that this limitation shall not apply to: (a) the costs incurred by the Engineer pursuant to Section 2.2.4; (b) damages asserted or recoverable by third parties with respect to whom the Engineer owes an obligation of indemnity pursuant to this Agreement or Law; or (c) liability related to the Engineer's violation of Law, fraud, willful misconduct, or gross negligence.

12.12.4 **All releases, waivers and limitations of liability contained in this Agreement shall, to the fullest extent permitted by law, survive any expiration or termination of this Agreement and apply to all Claims arising from or relating to this Agreement, whether based on breach of contract or warranty, statute, tort (INCLUDING, WITHOUT LIMIT, SOLE OR CONCURRENT NEGLIGENCE AND STRICT LIABILITY OF ANY CONTRACTOR INDEMNIFIED PARTIES OR SUBCONTRACTORS), or other bases of liability.**

12.13 **FORCE MAJEURE**

Notwithstanding any other right Engineer may have at law or in equity or any other provision in this Agreement, Engineer will be excused from nonperformance of this Agreement (or any Change in Scope), and shall be entitled to an extension of time, to the extent its Work is disrupted or delayed by fire or other casualty, labor disturbance, earthquake, tornadoes, pandemic, and other acts of God, acts or omissions of government, terrorism or threats of terrorism, severe weather and other causes; provided in each such case that the event was not reasonably foreseeable as of the effective date of this Agreement and beyond Engineer's reasonable control. If such disruption or delay will increase Engineer's cost to perform the Work in aggregate by more than five percent (5%), Engineer shall also be entitled to the additional out-of-pocket costs caused solely to the extent caused by the Force Majeure and further provided that Engineer promptly notifies Owner upon becoming aware of such costs and provides reasonable documentation (along with such notification) evidencing the additional costs.

IN WITNESS WHEREOF, this Agreement has been executed as of the Day and date first above written.

**FAIRWAY METHANOL LLC**

DocuSigned by:  
  
 By: BFF784C7150040C...

Florian Kohl, CEO  
 (Printed Name and Title)

20-Apr-2021 | 3:26:58 PM EDT

**ZACHRY ENGINEERING CORPORATION**

DocuSigned by:  
  
 By: 640EDDD1DE3A4D7

Marc Willard, Sr. Vice President  
 (Printed Name and Title)

16-Apr-2021 | 7:53:10 AM CDT

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*Fairway Contract No. CW2297043***EXHIBIT A****SCOPE OF WORK AND TECHNICAL SPECIFICATIONS****I. Engineering Objective**

To complete all detailed engineering for purposes of the Project.

**II. Engineering and Design Basis**

- A. Preliminary Engineering and Design Package and 3D model.
- B. Demolition and revised P&IDs from Owner – provided as Attachment B Revised P&IDs and Attachment B Demolition P&IDs.
- C. Tie-in list – provided as Attachment C.
- D. Line list – provided as Attachment D.
- E. Instrument and input/output (I/O) list – provided as Attachment E.
- F. Equipment list – provided as Attachment F.
- G. Owner BEDD document – provided as Attachment G.

**III. Detailed Engineering****1. ALL DISCIPLINES**

- A. Kick-off meeting.
- B. Bi-weekly update meetings.
- C. Bi-weekly status reports.
- D. Bi-weekly schedule updates.
- E. Internal design reviews.
- F. 60 and 90 percent model reviews.
- G. Issue for approval (IFA) and Issue for construction (IFC) outage packages.
- H. IFA and IFC non-outage packages.
- I. Perform laser scan and create a 3D model point cloud.
- J. Identify/determine project control points and locate all work in accordance with project control points
- K. Coordinate with HVEC. The Piping discipline will have daily coordination meetings while all other disciplines will have two coordination meetings each week.
- L. Comply with all Owner safety requirements, site specific training and follow all permitting and work procedures.
- M. Being knowledgeable of current applicable codes, Owner standards, specifications and procedures before starting any work.
- N. Comply with current State of Texas engineering practices, laws and regulations.

**Deliverables**

- O. Maintain master document list in excel format.

**Fairway Contract No. CW2297043****2. PROCESS SCOPE**

- A. Review vendor documents for PK-9122, CO2 Compressor:
1. Compressor skid.
  2. Lube oil skid.
  3. Recycle line.
  4. Interconnecting piping.
- B. Review technical bid evaluations on bid packages and vendor documents on the following equipment:
1. HE – 9101 – feed effluent exchanger.
  2. HE – 9102 – medium pressure (MP) steam preheater.
  3. HE – 9103 – CO2 water cooler.
  4. P – 9101A – condensate pump.
  5. P – 9109B – condensate pump.
  6. R – 9101-2 absorber.
  7. V – CO2 treatment final separator.
  8. V – 9102 condensate pot for heat exchanger (HE) – 9102.
  9. V – 9104 compressor first stage knock-out (KO) drum.

**Deliverables:**

- A. Process description (provided in front-end engineering design [FEED] documents).
1. Update the FEED process description document to reflect the detailed design engineering development.
- B. Piping and instrumentation diagram (P&ID) for process corresponding to unit 90.
1. Update the Process FEED P&IDs to reflect the detailed design engineering development. Upgrade the redlined Process P&IDs to an electronic CAD version. Redlines of the H2 compressor and associated equipment will be clouded and noted as future. Provide three issues of P&IDs. One issue for IFA, one issue for HAZOP (IFH) and a final issue for IFC.
- C. P&ID for process not corresponding to unit 90.
1. Update the Process FEED P&IDs to reflect the detailed design engineering development. Upgrade the redlined Process P&IDs to an electronic CAD version. Provide two issues of P&IDs. One issue for IFA and a final issue for IFC.
- D. P&ID for demolition.
1. Develop electronic CAD demolition P&IDs and provide two issues of P&IDs. One issue for IFA and a final issue for IFC.
- E. Consumption list of raw materials/feed stocks.
1. Prepare a consumption list of raw materials/feedstocks based upon the heat and material balance data provided by Owner.

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- F. Utility consumption list.
  - 1. Prepare a utility consumption list based upon the heat and material balance data provided by Owner.
- G. Hydraulic calculations (pump and pipeline).
  - 1. Confirm FEED preliminary pipe sizes for the process pumps and compressors with the chosen plant piping layouts in detailed design.
- H. Control valve sizing.
  - 1. Perform the detailed design control valve sizing calculations, including the valve  $C_v$  values.
- I. Equipment vendor package reviews.
  - 1. Review the process design conditions submitted in the equipment vendor packages.
- J. Relief valve folders.
  - 1. Perform the final relief valve sizing, complete the relief valve checklist for alternate scenarios and complete the relief valve folders for each device.
- K. Relief valve sizing – inlet and outlet piping.
  - 1. Perform the detailed design hydraulic piping sizing for the relief valve inlet and outlet piping hydraulics.
- L. Process data for piping line list.
  - 1. Provide/confirm process data for the piping line list IFC.
- M. Process data for instrumentation.
  - 1. Provide/confirm process data for the instrument datasheets IFC.
- N. Vessel/heat exchanger process calculations.
- O. Piping service index.

**3. MECHANICAL SCOPE**

- A. Review vendor documents for PK-9122, CO2 compressor, including:
  - 1. Compressor skid.
  - 2. Lube oil skid.
  - 3. Recycle line.
  - 4. Interconnecting piping.
- B. Prepare and provide bid packages, technical bid evaluations and review vendor documents on the following equipment:
  - 1. HE – 9101 – feed effluent exchanger.
  - 2. HE – 9102 – MP steam preheater.
  - 3. HE – 9103 – CO2 water cooler.
  - 4. P – 9101A – condensate pump.

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5. P – 9109B – condensate pump.
  6. R – 9101-2 absorber.
  7. V – CO2 treatment final separator.
  8. V – 9102 condensate pot for HE – 9102.
  9. V – 9104 compressor first stage KO drum.
- C. Pipe stress checking.
- Deliverables:
- A. Mechanical design criteria, update.
  - B. Mechanical equipment list.
  - C. Datasheet for specialty piping items.
  - D. Lubrication list.
  - E. Engineering data sheet for vessels, heat exchanger, etc.
  - F. Engineering data sheet for rotating machines.
  - G. Material requisition for static equipment (three packages):
    1. Miscellaneous pressure vessels.
    2. Absorbers.
    3. Shell and tube heat exchangers.
  - H. Material requisition for rotating machinery (one package):
    1. Condensate pumps.
  - I. Engineering specification for centrifugal pump (API).
  - J. Engineering specification allowable nozzle loadings on equipment nozzles.
  - K. Engineering specification for shell and tube heat exchangers.
  - L. Engineering specification welding.
  - M. Pipe material specification including classification and grading.
  - N. Engineering specification for piping insulation and heat tracing.
  - O. Engineering specification for coating.
  - P. Fire protection drawings – revise existing.
  - Q. Fire monitors schedule – revise existing.
  - R. Fire hydrant schedule – revise existing.
  - S. Datasheet for fire protection equipment attached to underground firewater system.

**4. PIPING SCOPE**

- A. Design piping in relation to the following equipment:
1. HE – 9101 – feed effluent exchanger.



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2. HE – 9102 – MP steam preheater.
  3. HE – 9103 – CO2 water cooler.
  4. P – 9101A – condensate pump.
  5. P – 9109B – condensate pump.
  6. R – 9101-2 absorber.
  7. V – CO2 treatment final separator.
  8. V – 9102 condensate pot for HE – 9102.
  9. V – 9104 compressor first stage KO drum.
- B. Design required interconnecting piping and tubing with the following equipment, including vendor-provided piping:
1. PK – 9122 – CO2 compressor package.
  2. PK – 9124 – H2 booster compressor (future only). Due to future designation, model will reserve space for equipment and future piping design only.
- C. Design piping to tie-in points.
1. Two tie-ins are designated as requiring hot taps – Owner will be performing these two hot taps. Engineer will pipe up to the flanged connection from the hot tapping.
- D. Stress analysis on pertinent pipe runs.
- E. Design utility piping, including:
1. Utility stations.
  2. Safety showers and eye wash stations.
  3. Instrument air, steam/condensate, cooling water and nitrogen lines to users.
  4. Flare system piping.
- F. Design vents and drains on piping that is open to atmosphere.
- G. Prepare request for quote (RFQ) bid package for piping packages listed in procurement matrix, provide technical and commercial bid evaluations, make bidder recommendations to Owner (Owner will issue PO), and provide technical evaluations on all other bid packages.
- H. Hang tie-in tags.
- I. Create 3D model and facilitate 60 and 90 percent model reviews.
- Deliverables:
- A. Engineered pipe support schedule with detail sheets (spring, etc.)
  - B. Project plot plan drawing.
  - C. Tie-in list.
  - D. Tie-in location plans (sketches).
  - E. Tie-in packages.
  - F. Piping line list.
  - G. Pipe stress calculation.
  - H. Summary of bill of material (BOM)/material take-off (MTO).
  - I. Safety shower/eye-wash plan and details drawing.

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- J. Master plot plans – revise existing.
- K. Piping underground drawings (includes fire protection) – revise existing.
- L. Pipe wall thickness calculations.
- M. Piping design standard details (drain and bleed, venting, orifice taps, etc.).
- N. Piping design support standard details.
- O. Isometric drawings with bill of material – new.
- P. Demolition isometric drawings or demolition photographs.
- Q. 3D model in editable format (including specifications).
- R. Temporary facilities drawings for potable water and sewer.
- S. Firewater distribution layout drawings (piping and appurtenances).
- T. Work release package for piping workshare.
- U. Piping special item list.

**5. INSTRUMENTATION AND CONTROLS (I&C) SCOPE**

- A. The instrumentation scope of work consists of the engineering and design of instrument items as shown on the P&IDs at a minimum.
- B. Zachry will be responsible for the following instrumentation engineering and design as indicated on design documents:
  - 1. Procuring all off-skid instruments (ship-loose and on-skid included in Mechanical).
  - 2. Routing of cable from the field instruments to end device via conduit or cable tray. (Single pair cables will be field routed, standard installation details will be provided/assigned to support construction contractor.)
  - 3. Terminating wiring at the instruments, junction boxes, marshalling panels, safety instrumented system (SIS) and distributed control system (DCS) cabinets.
  - 4. Creating or updating tray, tubing, cable and instrument support diagrams.
  - 5. Wiring of marshalling panels and field junction boxes to the DCS and triconex safety programmable logic controller (PLC), including any necessary power supply distribution.
- C. I&C to design all field instruments according to Owner Specifications and Process Industry Practices (PIP) standards.
- D. I&C to prepare request for quote (RFQ) bid packages, provide technical and commercial bid evaluations, make bidder recommendations to Owner (Owner will issue PO), prepare purchase requisitions, inspect and review vendor documents for the following new instruments:

(Note: the list of instruments has not been revised for the H2 compressor. Instrumentation quantities include H2 compressor instruments that will be removed during detailed engineering.)

- 1. (21) – control valves.
- 2. (6) – on/off valves.
- 3. (3) – emergency isolation valve (EIV) – on/off valves.
- 4. (1) – coriolis flow meter.
- 5. (2) – venturi flow meters.
- 6. (1) – vortex flow meter.
- 7. (2) – annubar flow meters.
- 8. (10) – compact orifice flow meters.
- 9. (3) – restriction orifices.

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10. (1) – rotameter.
11. (1) – analyzer enclosure.
12. (2) – gas chromatographs.
13. (3) – sample bundles.
14. (16) – pressure safety valves.
15. (6) – magnetic level gauges.
16. (5) – guided wave radar (GWR) level transmitters.
17. (11) – differential pressure (D/P) level transmitters with electronic remote sensor (ERS).
18. (2) – D/P transmitters with ERS.
19. (22) – pressure transmitters.
20. (8) – wireless pressure gauges with smart wireless gateways as needed.
21. (12) – pressure gauges.
22. (30) – temperature transmitters with thermocouple (T/C) and thermowell (TW).
23. (4) – multipoint thermocouples with five-T/C each.
24. (4) – multipoint field boxes with five-temperature transmitters each.
25. (12) – bi-metal thermometers with TW.

**E. Additional miscellaneous items:**

1. (4) – safety instrumented systems (SIS) field junction boxes.
2. (1) – analyzer-enclosure's junction box.
3. (4) – multipoint-temperature field junction boxes.
4. (3) – CO2 compressor-package-vendor's field junction boxes.
5. (1) – CO2 compressor-package-vendor's field cabinet.
6. (1) – CO2 compressor-package-vendor's control (with Bently Nevada (BN) and SIS) Panel – to be installed in the remote instrument enclosure (RIE).
7. (2) – DCS field marshalling panels.
8. (1) – network and fiber patch panel cabinet – to be installed in the RIE.

**Deliverables:**

- A. Instrumentation basis of design.
- B. Instrumentation specification for PLC.
- C. Instrumentation safety requirements specification.
- D. Specification for instrumentation piping materials.
- E. Instrumentation specification for analyzers (process analyzers, shelters).
- F. Instrumentation specification for packaged equipment (addendum).

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- G. I&C summary BOM/MTO.
- H. Scope of work for modified/demolition equipment.
- I. Instrument index.
- J. Instrument data sheet (control valves, meters, gauges, pressure safety valves (PSV), etc.)
- K. Technical requisition package for instruments.
- L. Cable and cable tray routing drawing.
- M. Fiber optic connection diagrams.
- N. I/O summary for DCS.
- O. Instrument junction box wiring diagram.
- P. Instrument cable schedule.
- Q. Instrument loop drawing template.
- R. Instrument loop diagrams (non safety instrumented system [SIS] and non compressor package).
- S. Instrument loop diagrams (SIS and compressor package). (Loop drawing will include end devices through I/O terminal.)
- T. DCS wiring diagram.
- U. Marshalling termination drawing.
- V. Process detail drawing.
- W. Instrument electrical hook-up detail.
- X. Instrument pneumatic connection hook-up drawing.
- Y. Level instrument arrangement drawings.
- Z. Instrument location plans.
- AA. RIE equipment layout and analyzer building layout.
- BB. Set point list.
- CC. Gas system block diagram.

1. Information is to be provided by Owner.

- DD. Telecommunications: [See Note]

(Note: Owner is to provide vendor technical information for the following telecommunications documents and Engineer will not be required to perform procurement of this system.)

1. Telecommunications (telecom) basis of design.
2. Telecom summary BOM/MTO.
3. Telecom scope of work for subcontracts.
4. Specifications for local area network (LAN) and private branch exchange (PBX), public address and general alarm (PAGA) and plant radio systems.
5. Telecom equipment datasheets.

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6. Material requisition for telecom.
  7. Drawings for telecom systems.
  8. Telecom location plans.
  9. Telecom block diagrams.
  10. Telecom equipment index.
  11. Telecom cable schedule.
  12. Telecom plant radio interconnect drawings.
- EE. Safety and Risk:
1. Fire alarm system specification.

**6. ELECTRICAL SCOPE**

The electrical scope of work consists of engineering and design of an electrical (MCC/RIE) building, two oil filled transformers, bus ducts, grounding system, lighting system, cable tray/conduit, wiring and cabling, as defined below:

- A. Prepare request for quote (RFQ) bid packages, provide technical and commercial bid evaluation, make bidder recommendations to Owner (Owner will issue PO), prepare purchase requisitions and review vendor documents for the following new electrical equipment and packages:
  1. Electrical building including: medium voltage (MV) and low voltage (LV) switchgears and MCCs, uninterruptible power supply (UPS) system, high-resistance grounding (HRG), power/lighting panels, etc.
  2. Two power transformers:
    - a. 4160V bus duct.
    - b. 480V bus duct.
- B. Demolition of two existing 36" cable trays that run on the west side under the top of the existing pipe rack structure.
- C. Engineer and design two new 36" cable trays on the west side under the top of the existing pipe rack structure.
- D. Engineer and design new 15kV power feeders and cable tray from the interrupter #7 building to the new electrical building.
- E. Engineer and design new electrical grounding system for the new electrical building, transformers and for other major electrical equipment. Connect new grounding systems to existing plant grounding system in the area.
- F. Engineer and design new power and control cables and cable tray from the new electrical building to the C-9122 CO2 compressor motor, lube oil pumps/heaters and resistance temperature detector (RTD) cables.
- G. Engineer and design new power and control cables and cable tray from the new electrical building to the C-9110 N2 start-up blower.
- H. Engineer and design new power and control cables and cable tray from the new electrical building to the two P-9101 condensate pumps A and B.
- I. Engineer and design fiber from the new electrical building to interrupter #7 building.
- J. Engineer and design power and control cables from two transformer control boxes to the new electrical building.

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- K. Engineer and design power cables from the electrical building to the bus duct space heaters.
- L. Engineer and design cable tray(s) under the electrical building.
- M. Engineer and design power cables from electrical building to analyzer distribution cabinet/15 KVA transformer.
- N. Engineer and design normal power from low pressure (LP) panel to Charms cabinet #1 outside north end.
- O. Engineer and design normal power from LP panel to Charms cabinet #2 outside south end.
- P. Engineer and design new lighting and associated wiring on unit structures and in new Project Green plot area.
- Q. Relay settings report (Fairway Methanol will provide 15kV and 5kV relay protection settings from Bleu Co.)
- R. Support mechanical equipment RFQ's (MV and LV motors data sheets).

**Deliverables:**

- A. Electrical design criteria.
- B. Summary BOM/MTO.
- C. Scope of work and deliverables for modified/demo equipment.
- D. Single line diagram (MV and LV).
- E. Electrical equipment list.
- F. Electrical equipment specifications.
- G. Electrical load list and electrical equipment datasheets.
- H. Power distribution center (PDC)/RIE building RFQ for electrical equipment.
- I. Requisitions for electrical materials.
- J. Motor control schematics and wiring diagrams.
- K. Plan layout of PDC/RIE building.
- L. Underground drawings (new).
- M. Cable schedule.
- N. Cable tray plans and sections.
- O. Lighting plans and sections (includes navigation aids).
- P. Power and control cable plans/layouts.
- Q. Grounding plans
- R. Panel schedules/layout (power and lighting).
- S. Electrical installation details.
- T. Relay settings reports includes motor protective relay and variable frequency drive (VFD) configuration settings for 480V systems.
- U. Factory acceptance testing (FAT) for major electrical equipment.

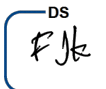
**7. CIVIL/STRUCTURAL/ARCHITECTURAL (CSA) SCOPE****Scope Definition:**

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- A. The civil scope of work consists of the design of foundations for one compressor packages, two absorbers, three heat exchangers, three vertical vessels, MCC/RIE building, two transformers, two pumps, miscellaneous pipes supports (MPS') and miscellaneous electrical supports (MES'); flume modifications and fire water piping modification.
- B. The structural scope of work consists of a battery limit platform, platforms for two absorbers and one compressor, platforms for MCC/RIE building, MPS' and MES'. Owner will be installing supports required on the existing concrete columns of the existing pipe rack steel.
- C. Confirmation through a new geotechnical report of the soil conditions on site – to be purchased by Fairway Methanol, technical requisition by Zachry.
- D. Prepare request for quote (RFQ) bid package for shop fabricated structural steel, provide technical and commercial bid evaluation, make bidder recommendations to Owner (Owner will issue PO), and provide technical evaluations on all other bid packages.
- E. Coordinate the civil/structural work with other disciplines, vendor drawings and Owner specifications.
- F. Foundation design for the following process equipment:
1. C-9110 – start-up N2 blower.
  2. HE-9101 – feed/effluent exchanger.
  3. HE-9102 – MP steam preheater.
  4. HE-9103 – CO2 water cooler.
  5. P-9101A – condensate pump.
  6. P-9109B – condensate pump.
  7. PK-9122 – CO2 compressor package.
  8. R-9101-1 – absorber.
  9. R-9101-2 – absorber.
  10. V-9101 – CO2 treatment final separator.
  11. V-9102 – condensate pot for HE-9102.
  12. V-9104 – compressor first stage knockout (KO) drum.
- G. Foundation design for the following electrical and instrumentation (E&I) equipment:
1. MCC/RIE building and platforms.
  2. Transformer – 10MVA.
  3. Transformer – 1000KVA.
  4. Concrete containment for transformers.
  5. Analyzer.
- H. Foundation design for all MPS' and MES' in Project plot plan.
- I. Provide demolition drawings for existing structures/paving that will be removed prior to construction.
- Deliverables:
- A. Technical requisition package for geotechnical investigation.

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- B. Paving demolition plan.
- C. Foundation location plan.
- D. Piling location plan:
  - 1. SK-91449-CS-02\_C-9122 CO2 compressor piling plan – section and details.
  - 2. SK-91449-CS-11\_R-9101-1 absorber piling plan – section and details.
  - 3. SK-91449-CS-12\_R-9101-2 absorber piling plan – section and details
- E. Anchor bolt schedule and details.
- F. General concrete notes.
- G. Foundation drawings:
  - 1. SK-91449-CS-01\_C-9110 N2 blower.
  - 2. SK-91449-CS-02\_C-9122 CO2 compressor.
  - 3. SK-91449-CS-04\_HE-9101.
  - 4. SK-91449-CS-05\_HE-9102.
  - 5. SK-91449-CS-06\_HE-9103.
  - 6. SK-91449-CS-09\_P-9101A.
  - 7. SK-91449-CS-10\_P-9101B.
  - 8. SK-91449-CS-11\_R-9101-1 absorber.
  - 9. SK-91449-CS-12\_R-9101-2 absorber.
  - 10. SK-91449-CS-13\_V-9101.
  - 11. SK-91449-CS-14\_V-9102.
  - 12. SK-91449-CS-15\_V-9104.
  - 13. SK-91449-CS-16\_MCC building foundation.
  - 14. SK-91449-CS-17\_transformers.
  - 15. SK-91449-CS-22\_MPS-1 thru 16.
  - 16. SK-91449-CS-23\_MPS-17 thru 27.
  - 17. SK-91449-CS-24\_MES.
  - 18. Firewater modifications.
  - 19. Flume modifications.
- H. General steel notes.
- I. Steel location plan.
- J. Miscellaneous electrical location plan.
- K. Steel drawings:
  - 1. SK-91449-CS-05\_HE-9102 steel sections and details.
  - 2. SK-91449-CS-06\_HE-9103 steel sections and details.
  - 3. Miscellaneous pipe supports MPS 01 through MPS 16.
  - 4. Miscellaneous pipe supports MPS 17 through MPS 27.
  - 5. Miscellaneous electrical supports.

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6. Embedment support details.
- L. Steel platform drawings:
1. BL platform framing and grating plan.
  2. BL platform sections and details.
  3. MCC platform framing and grating plan.
  4. MCC platform sections and details.
  5. Vessel platform R-9101-2 framing plan.
  6. Vessel platform R-9101-2 sections and details.
- M. Steel fireproofing drawings:
1. Steel fireproofing details for MPS 17 through 19 and 22 through 27.

**8. FIRE WATER SCOPE**

- A. Included in discipline scope sections above.

**9. PROCUREMENT SCOPE**

- A. Issue project procurement plan.
- B. Receive requisition for materials or equipment and prepare requests for quotation as per the procurement matrix.
- C. Establish material and equipment bidder's list from Owner's approved vendor list (AVL) for each sourcing event.
- D. Issue requests for quotation and coordinate with and obtain vendor quotes and delivery schedules for each sourcing event.
- E. Provide interface with vendors to obtain required information, delivery and pricing.
- F. Receive bids from vendors, prepare, coordinate and review bid tabulation within Engineer and Owner.
- G. Coordinate and track vendor document review between Engineer, Owner and vendors.
- H. Establish and maintain a procurement log of sourcing events.

**Deliverables:**

- A. Project procurement plan.
- B. Bidder's list for each sourcing event.
- C. Bid tabulation for each sourcing event.
- D. Procurement log of sourcing events.

**10. PROJECT MANAGEMENT SCOPE**

- A. Manage the overall detailed design efforts.
- B. Coordinate activities with the Fairway Methanol project manager and project team.
- C. Conduct the Engineer project detailed design kick-off meetings.
- D. Obtain approvals from the Owner project team.
- E. Coordinate project review meetings with Owner.
- F. Participate in the internal design review meetings.
- G. Provide bi-weekly project status and reporting (cost, schedule and progress) to Owner.
- H. Provide clerical, documentation and project controls support.

**Deliverables:**

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- A. Project execution plan.
- B. Engineering plan, due at kickoff.
- C. Workshare execution plan, due at kickoff.
- D. Project procedures (project specific), due at kickoff.
- E. Organizational charts, due at kickoff.
- F. Meeting minutes.
- G. 3D model review comments.
- H. Technical query/request for waiver.
- I. Progress reports (bi-weekly).
- J. Variance register.
- K. Project schedule.
- L. Quality assurance plan.
- M. Quality assessment schedule.
- N. Inspection and verification plan
- O. Technical audit reports
- P. Shop inspection report
- Q. Project quality management plan.
- R. Quality assurance schedule.
- S. Development construction management plan, including material management.
- T. Develop construction bid package.

**11. QUALITY ASSURANCE/QUALITY CONTROL (QA/QC)**

- A. Provide QA/QC audit at 60 and 90 percent completion.
- B. Conduct design reviews.

**12. DOCUMENT CONTROL**

- A. Submit IFA and IFC packages to Owner.

Deliverables:

- A. Maintain master document list in excel format.

**13. SCHEDULING**

- A. Update and maintain the engineering and design schedule.
- B. Develop an overall construction project schedule to a Level 3 detail.

**Engineering and Design Schedule**

Please see *Level 2 Project Schedule*.

**Assumptions and Clarifications****14. GENERAL ASSUMPTIONS AND CLARIFICATIONS**

- A. Process:
  - 1. The FEED process description provided by Fairway Methanol Owner will be used as the basis for developing the detailed design process description.

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2. The FEED process and utility P&IDs provided by Owner will be used as the starting basis for developing the CAD P&IDs during detailed design. Drafting hours are based upon three issues. One drawing issue for IFA, one drawing issue for IFH and one drawing issue for IFC.
  3. The FEED heat and material balance provided by Owner will be used as the basis for developing the consumption list of raw materials/feedstocks and the utility consumption list.
  4. The FEED heat and material balance provided by Owner will be used as the basis for performing the detailed design hydraulic calculations for the process circuits.
  5. The FEED preliminary control valve sizes will be used as a starting point, but the detailed design sizing criteria will be applied and the actual valve  $C_v$  values will be calculated. This could result in a smaller control valve selection for some applications.
- B. Instrumentation and Control:
1. Skid instruments are assumed to be installed and wired to a common junction box, typically located at the edge of the skid.
  2. Standard installation details will be provided by Owner.
  3. Excluded factory acceptance testing support for the analyzer package.
  4. Instrument cable routing to end device via conduit and/or cable tray will be field routed. Standard electrical installation details will be provided. 3D model of cable tray less six inches and conduit less than four inches are not included.
  5. Tubing runs from instrument air/nitrogen manifolds to field instruments will be field routed. Standard air/nitrogen installation details will be provided.
  6. Analyzer tubing bundle trays and support will be 3D modelled to ensure proper slope and bending radius from the sample probe and the analyzer shelter.
  7. Layout of fire detection/alarm system for the analyzer shelter will be by package vendor.
  8. Shop inspection of instrumentation packages are not included, requirement for inspection will be determined during detail engineering.
- C. Electrical:
1. New PDC/RIE building will be supplied by a single (12.47KV) feed from existing Interrupter #7.
  2. 15 KV cable routing is assumed to be captured on two drawings. Location of the existing Interrupter #7 building is unknown.
  3. It is assumed that the Owner will provide existing SKM model from FEED.
- D. Civil/Structural/Architectural:
1. Work hour estimate is based on Project Green - EP RFP Document (Rev 5) dated December 14th, 2020.
  2. Hours have been included for two site visits for the duration of the project.
  3. No hours have been included for site-specific safety training.
  4. Deliverables will be issued for review at the IFA stage.
  5. Engineer assumes a site-specific geotechnical report will be provided by a geotechnical consultant under contract with Owner.
  6. Foundations will be pile-supported for equipment, unless otherwise noted.
  7. Storm water drainage will be surface drainage or based on previous FEL studies.
  8. Engineer assumes AISC steel shapes for all structural steel.
  9. Steel fireproofing will be provided for the MPS per the FEL-3 documentation only.
  10. Engineer assumes no site remediation is necessary for site development.

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11. Hours have been provided for shop drawing review and fabrication support.
12. Time for both a 60 and 90 percent model review are included in the proposal hours.

**E. Procurement:**

1. Predicated on the assumption that sourcing events will be established in accordance with the procurement matrix below and applicable divisions of responsibility for each sourcing event as assigned to the Engineer.

**15. TASKS BY OTHERS**

Engineer assumes that tasks indicated to be by Owner in the Project Green Engineering Matrix included in the RFP package are by Owner or others. The following tasks are by Owner or others:

**A. Mechanical:**

1. Scope of work for modified equipment will be excluded until any changes are defined.
2. Spare parts list will be determined during equipment bid activities in conjunction with Owner's guidelines. Spare parts requirements are anticipated to be required primarily for the major compressor packages, currently not in the mechanical scope.
3. All specification and procurement activities for the C-9122, CO2 compressor and C-9124, hydrogen/tail gas compressor are by Owner. Engineer will provide vendor document review only for C-9122 CO2 compressor. Drawing review of C-9124 hydrogen compressor will be completed by Owner.
4. Owner to provide existing fire protection drawings, hydrant and monitor schedules.
5. Firewater loop pressure and soil bearing strength at the site will be provided by others for Zachry Engineer to run thrust block calculations.
6. There are no inside building or any above ground deluge or foam systems work.
7. Fire alarm system specification will be by others.

**B. Electrical:**

1. Spare parts list. New 15KV circuit breaker added to Interrupter #7.
2. Interrupter #7 modifications.

**C. The following items are shared responsibility between Owner and Engineer. Engineer assumes information requests needed to develop the following will be received within one week of request:**

1. Inspection and verification plan.
2. Technical audit reports.
3. Shop inspection report.

**Exclusions:****A. Mechanical:**

1. C-9124 hydrogen/tail gas compressor, (future) is excluded from the mechanical engineering scope. No material requisition package bid, evaluation or drawing review is included.
2. C-9122 (CO2 compressor) material requisition package and bid evaluation is excluded.

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3. C-9110 start-up nitrogen blower. This existing blower is assumed to be fit for service and any repairs or modifications will be completed by Owner. Engineer excludes any engineering activities for the design or modifications of this equipment.
  4. Professional Engineer stamping of Mechanical deliverables.
  5. Engineering data sheet and specification for package units.
  6. Engineering specification for compressors.
  7. Engineering specification for vibration and temperature monitoring.
  8. Engineering specification for API 614 lubrication system.
  9. Engineering specification special purpose coupling.
  10. Engineering specification positive displacement pump.
  11. Engineering specification mechanical seals.
  12. Engineering specification packaged equipment instrumentation and electrical.
  13. Work release packages for mechanical workshare.
  14. Material requisition for packaged equipment.
  15. Hot tap packages.
  16. Fire system block diagram and fire zone diagrams are excluded.
- B. Instrumentation and Controls – Telecom:
1. DCS and SIS hardware, software and configuration. (Except for deliverable documents indicated above).
  2. Layout of fire detection/alarm system (RIE, analyzer shelter and continuous emissions monitoring system [CEMS]).
- Layout of fire detection/alarm system will by RIE/MCC building and analyzer shelter suppliers as part of the equipment package.
- C. Electrical:
1. Arc flash hazard analysis.
  2. Lightning protection.
  3. Requisition for electrical bulk material.
  4. 3D modelling of equipment inside the new PDC/RIE building.
  5. Temporary power facilities.
  6. Electrical heat tracing.
  7. Cathodic protection.
- D. Procurement:
1. Activities associated with procurement support following Engineer Engineering Detailed Design Completion.

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ATTACHMENT 4: PROJECT GREEN - PROCUREMENT MATRIX									
Celanese		Issue for Bid - EP 2/3/2021		R = Responsible Party S = Signatures and Review Required I = Electronic Copy for Information FO = Follow-On Services					
Tag No.	Description	Requisitioner		Purchaser		Expediting / Vendor Management			
		Celanese	EP Contractor	Celanese	EP Contractor	Celanese	EP Contractor		
4	PIPING								
-	Shop Fabricated Pipe Spools		P	R	R	R	FO		Zachry will provide sourcing services through issuance of a Fairway Methanol PO. Zachry will issue Fairway Methanol PO to successful supplier. Expediting / Vendor Management would be after "Detailed Design Completion" and considered "Follow-On Engineering" with scope to be determined during Detailed Design phase
-	Field Piping								
-	Fire Water Piping		P	R	R	R	FO		Zachry will provide sourcing services through issuance of a Fairway Methanol PO. Zachry will issue Fairway Methanol PO to successful supplier. Expediting / Vendor Management would be after "Detailed Design Completion" and considered "Follow-On Engineering" with scope to be determined during Detailed Design phase
-	Shop Valves		P	R	R	R	FO		Zachry will provide sourcing services through issuance of a Fairway Methanol PO. Zachry will issue Fairway Methanol PO to successful supplier. Expediting / Vendor Management would be after "Detailed Design Completion" and considered "Follow-On Engineering" with scope to be determined during Detailed Design phase
-	Field Valves								
-	Installation Bulk Materials								
-	Field Shorts								
Various	Specialty Items		P	R	R	R	FO		Zachry will provide sourcing services through issuance of a Fairway Methanol PO. Zachry will issue Fairway Methanol PO to successful supplier. Expediting / Vendor Management would be after "Detailed Design Completion" and considered "Follow-On Engineering" with scope to be determined during Detailed Design phase
-	Pipe Insulation		P	R	R	R	FO		Zachry will provide sourcing services through issuance of a Fairway Methanol PO. Zachry will issue Fairway Methanol PO to successful supplier. Expediting / Vendor Management would be after "Detailed Design Completion" and considered "Follow-On Engineering" with scope to be determined during Detailed Design phase
-	Equipment Insulation		P	R	R	R	FO		Zachry will provide sourcing services through issuance of a Fairway Methanol PO. Zachry will issue Fairway Methanol PO to successful supplier. Expediting / Vendor Management would be after "Detailed Design Completion" and considered "Follow-On Engineering" with scope to be determined during Detailed Design phase
-	Painting - Pipe-Shop-Spools								
-	Painting - Pipe-Field								
5	MECHANICAL								
C-9110	Startup N2 Blower		R	R		R	R		Fairway Methanol specifics, regulations, purchases, and expedites. Zachry will issue Fairway Methanol PO to successful supplier. Expediting / Vendor Management would be after "Detailed Design Completion" and considered "Follow-On Engineering" with scope to be determined during Detailed Design phase
C-9122	CO2 Compressor		R	R		R	R		Fairway Methanol specifics, regulations, purchases, and expedites. No Zachry scope for this item.
C-9124	H2 Booster Compressor		R	R		R	R		Zachry Engineering prepares tech req. package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering
HE-9101	Feed / Effluent Exchanger		FEED	P		R	R/O		Zachry Engineering prepares tech req. package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering
HE-9102	MP Steam Preheater		FEED	P		R	R/O		Zachry Engineering prepares tech req. package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering
HE-9103	CO2 Water Cooler		FEED	P		R	R/O		Zachry Engineering prepares tech req. package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering
HE-9108	H2 Compressor-Heatback-Cooler		FEED						
HE-9109	Tail-Gas-Compressor-Interstage-Cooler								
HE-9110	Tail-Gas-Compressor-Aftercooler								

DS  
FJK  
DS  
MAW



ATTACHMENT 4: PROJECT GREEN - PROCUREMENT MATRIX									
 Celanese		Issue for Bid - EP 2/2/2021		R = Responsible Party S = Signature and Review Required I = Electronic Copy for Information FO = Follow-On Services					
Tag No.	Description	Requisitioner		Purchaser		Expediting / Vendor Management		Comments	
		Celanese	EP Contractor	Celanese	EP Contractor	Celanese	EP Contractor		
P-9101A/B	Condensate Pumps	FEED	R	R				Zachry Engineering prepares tech req, package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering	RIFO
R-9101-1/2	Chloride Absorbers & Internals	FEED	R	R				Zachry Engineering prepares tech req, package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering	RIFO
V-9101	CO2 Treatment Final Separator	FEED	R	R				Zachry Engineering prepares tech req, package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering	RIFO
V-9102	Condensate Pot for HE-9102	FEED	R	R				Zachry Engineering prepares tech req, package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering	RIFO
V-9104	Compressor 1st Stage KO Drum	FEED	R	R				Zachry Engineering prepares tech req, package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering	RIFO
6	INSTRUMENTATION AND CONTROL							Sourcing should be on a three-bid basis per conversation with Fairway Methanol. Zachry understands some instrumentation and control items may be sole-sourced at the direction of Fairway Methanol.	
Various	Analyzers		R	R				Zachry Engineering prepares tech req, package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering	RIFO
Various	Amubars		R	R				Zachry Engineering prepares tech req, package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering	RIFO
Various	Control Valves		R	R				Zachry Engineering prepares tech req, package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering	RIFO
Various	Circulis Flow Meters		R	R				Zachry Engineering prepares tech req, package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering	RIFO
Various	Flow Meter - Venturi		R	R				Zachry Engineering prepares tech req, package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering	RIFO
Various	Flow Meter - Vortex		R	R				Zachry Engineering prepares tech req, package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering	RIFO
Various	Level Gauges		R	R				Zachry Engineering prepares tech req, package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering	RIFO
Various	Multi Point Thermocouples		R	R				Zachry Engineering prepares tech req, package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering	RIFO
Various	On-Off Valves - Ball Type		R	R				Zachry Engineering prepares tech req, package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering	RIFO
Various	On-Off Valves - Butterfly Type		R	R				Zachry Engineering prepares tech req, package and completes all sourcing services. Zachry will issue a Fairway Methanol PO to the successful supplier. Zachry Procurement expedites/manages vendor to end of Detailed Design. Additional expediting/vendor management after detailed design is Follow-On Engineering	RIFO

ATTACHMENT 4: PROJECT GREEN - PROCUREMENT MATRIX									
Revision Date		Issue for Bid - EP 2/3/2021		R = Responsible Party S = Signature and Review Required I = Electronic Copy for Information FO = Follow-On Services					
Tag No.	Description	Requisitioner		Purchaser		Expediting / Vendor Management		Celanese	EP Contractor
		Celanese	EP Contractor	Celanese	EP Contractor	Celanese	EP Contractor		
Various	Office		R	R					R/O
Various	Pressure Gauges		R	R					R/O
Various	Pressure Safety Valves		R	R					R/O
Various	Transmitters - DP Flow		R	R					R/O
Various	Transmitters - Level		R	R					R/O
Various	Transmitters - Pressure & Temperature		R	R					R/O
-	Instrument wire, cable, conduit, etc								
-	Instrument tubing and channel								
-	Installation-Built Materials								
7	TELECOM								
Various	PAGA		R	R					R/O
-	Telephone wire, cable, conduit, etc								
-	Telephone tubing and channel								
-	Telephone-Built Materials								
8	ELECTRICAL								
Various	Electrical Building		FEED	R	R				R/O
Various	Transformers		FEED	R	R				R/O
Various	SCS Switch		FEED	R	R				R
Various	Bus Duct		FEED	R	R				R/O
Various	Interruption #8 Modifications		R	I	R				I
-	Cable Tray			R	FO				FO
-	Conduit			R	FO				FO
-	Grounding System			R	FO				FO



Fairway Contract No. CW2297043

ATTACHMENT 4: PROJECT GREEN - PROCUREMENT MATRIX									
Celanese		Issue for Bid - EP 2/3/2021		R = Responsible Party S = Signature and Review Required I = Electronic Copy for Information FO = Follow-On Services					
Tag No.	Description	Requisitioner		Purchaser		Expediting / Vendor Management			
		Celanese	EP Contractor	Celanese	EP Contractor	Celanese	EP Contractor	Celanese	EP Contractor
-	Lighting System		R	FO				FO	
-	Wire & Cable			FO				FO	
-	Installation Bulk Materials								
10	ARCHITECTURE / CIVIL / STRUCTURAL								
-	Demolition, Site Clearing, Excavation								
-	Site Earthmoving								
-	Backfill								
-	Site Improvements								
-	Piling								
-	Concrete								
-	Anchor Bolts/Rebar/Hitch/Etc.								
-	Grout								
-	Structural Steel - Shop Fabricated		R	R		R		FO	
-	Structural Steel - Erection								
-	Galvanized Steel Repairs								
-	Embedment Modifications								

Zachry Engineering prepares tech req. package. Additional procurement and expediting/vendor management after detailed design is Follow-On Engineering.  
Zachry Engineering prepares tech req. package. Additional procurement and expediting/vendor management after detailed design is Follow-On Engineering.  
Per SOW Section 7.2.5 & RFI Question 16

Zachry will provide sourcing services through issuance of a Fairway Methanol P.O. Zachry will issue Fairway Methanol P.O. to successful supplier. Expediting / Vendor Management would be after "Detailed Design Completion" and considered "Follow-On Engineering" with scope to be determined during Detailed Design phase

Not in Zachry scope

DS  
FJK

DS  
MAW

## Fill in this information to identify the case:

Debtor Zachry Engineering Corporation

United States Bankruptcy Court for the: Southern District of Texas  
(State)

Case number 24-90379

**EXHIBIT**

**C**

## Official Form 410

## Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

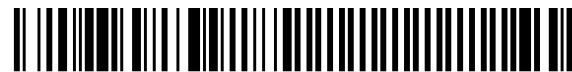
## Part 1: Identify the Claim

1. Who is the current creditor?	<u>Fairway Methanol, LLC</u> Name of the current creditor (the person or entity to be paid for this claim)	
	Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	<b>Where should notices to the creditor be sent?</b>  Fairway Methanol, LLC Attn: Darren Collins 9502 Bayport Blvd. Pasadena, TX 77507  Contact phone <u>972-443-4474</u> Contact email <u>darren.collins@celanese.com</u>	<b>Where should payments to the creditor be sent? (if different)</b>  Fairway Methanol, LLC Attn: Thomas Mattix 9502 Bayport Blvd. Pasadena, TX 77507  Contact phone <u>972-443-3930</u> Contact email <u>thomas.mattix@celanese.com</u>
	Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)  Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



**Part 2: Give Information About the Claim as of the Date the Case Was Filed**

6.	Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____	
7.	How much is the claim? \$ <u>At least 2,446,302.55</u>	Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).	
8.	What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information.  <u>See attached addendum</u>	
9.	Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. <b>Nature or property:</b> <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____  <b>Basis for perfection:</b> _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)  <b>Value of property:</b> \$ _____ <b>Amount of the claim that is secured:</b> \$ _____ <b>Amount of the claim that is unsecured:</b> \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)  <b>Amount necessary to cure any default as of the date of the petition:</b> \$ _____  <b>Annual Interest Rate</b> (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable	
10.	Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____	
11.	Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____	



## 12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☒ No☐ Yes. Check all that apply:☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ \_\_\_\_\_

☐ Up to \$3,350\* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ \_\_\_\_\_

☐ Wages, salaries, or commissions (up to \$15,150\*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ \_\_\_\_\_

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ \_\_\_\_\_

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ \_\_\_\_\_

☐ Other. Specify subsection of 11 U.S.C. § 507(a)( ) that applies.

\$ \_\_\_\_\_

\* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

## 13. Is all or part of the claim entitled to administrative priority pursuant to 11 U.S.C. 503(b)(9)?

☒ No☐ Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ \_\_\_\_\_

## Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☒ I am the creditor.☐ I am the creditor's attorney or authorized agent.☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 09/16/2024  
MM / DD / YYYY

/s//s/ Thomas Mattix  
Signature

Print the name of the person who is completing and signing this claim:

Name /s/ Thomas Mattix  
First name Middle name Last name

Title Chief Executive Officer

Company Fairway Methanol, LLC

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 9502 Bayport Blvd., Pasadena, TX, 77507

Contact phone 972-443-3930

Email thomas.mattix@celanese.com



For phone assistance: Domestic (866) 479-8211 | International (781) 575-2037

<b>Debtor:</b> 24-90379 - Zachry Engineering Corporation <b>District:</b> Southern District of Texas, Houston Division		
<b>Creditor:</b> Fairway Methanol, LLC Attn: Darren Collins 9502 Bayport Blvd.  Pasadena, TX, 77507  <b>Phone:</b> 972-443-4474 <b>Phone 2:</b>  <b>Fax:</b>  <b>Email:</b> darren.collins@celanese.com	<b>Has Supporting Documentation:</b> Yes, supporting documentation successfully uploaded <b>Related Document Statement:</b>	
	<b>Has Related Claim:</b> No <b>Related Claim Filed By:</b>	
	<b>Filing Party:</b> Creditor	
<b>Disbursement/Notice Parties:</b> Fairway Methanol, LLC Attn: Thomas Mattix 9502 Bayport Blvd.  Pasadena, TX, 77507  <b>Phone:</b> 972-443-3930 <b>Phone 2:</b>  <b>Fax:</b>  <b>E-mail:</b> thomas.mattix@celanese.com <b>DISBURSEMENT ADDRESS</b>		
<b>Other Names Used with Debtor:</b>	<b>Amends Claim:</b> No <b>Acquired Claim:</b> No	
<b>Basis of Claim:</b> See attached addendum	<b>Last 4 Digits:</b> No	<b>Uniform Claim Identifier:</b>
<b>Total Amount of Claim:</b> At least 2,446,302.55	<b>Includes Interest or Charges:</b> No	
<b>Has Priority Claim:</b> No	<b>Priority Under:</b>	
<b>Has Secured Claim:</b> No <b>Amount of 503(b)(9):</b> No <b>Based on Lease:</b> No <b>Subject to Right of Setoff:</b> No	<b>Nature of Secured Amount:</b> <b>Value of Property:</b> <b>Annual Interest Rate:</b> <b>Arrearage Amount:</b> <b>Basis for Perfection:</b> <b>Amount Unsecured:</b>	

**Submitted By:**

/s/ Thomas Mattix on 16-Sep-2024 9:34:20 a.m. Eastern Time

**Title:**

Chief Executive Officer

**Company:**

Fairway Methanol, LLC

**Optional Signature Address:**

9502 Bayport Blvd.

Pasadena, TX, 77507

**Telephone Number:**

972-443-3930

**Email:**

thomas.mattix@celanese.com

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>In re:</b>  <b>ZACHRY HOLDINGS, INC., <i>et al.</i>,</b>  <b>Debtors.<sup>1</sup></b>	§ § § § §	<b>(Chapter 11)</b>  <b>Case No. 24-90377 (MI)</b>  <b>(Jointly Administered)</b>
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**ADDENDUM TO PROOF OF CLAIM**

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1.     Claimant. Fairway Methanol, LLC (the “*Claimant*”) hereby files this proof of claim (the “*Proof of Claim*”) against the applicable debtor entity, Zachry Engineering Corporation, (“*Zachry*” or the “*Debtor*”), pursuant to section 501 of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rules 3001, 3002, and 3003 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), to assert and preserve its claims against the Debtor as stated herein.

2.     On May 21, 2024 (the “*Petition Date*”), the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code.

3.     Basis of Claim. This Proof of Claim is on account of amounts owed relating to services provided by Debtor to Claimant pursuant to the Engineering and Procurement Services Agreement dated April 12, 2021 (the “*Contract*”) between the Claimant and Debtor. As of the Petition Date, Claimant has a claim against Debtor for any and all outstanding obligations, claims, and rights arising under or related to the services provided by Debtor, the Contract, and any ancillary document executed in connection therewith or under applicable law, including, without

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<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://veritaglobal.net/ZHI>. The Debtors’ service address in these chapter 11 cases is: 222 N. Pacific Coast Hwy., Ste 300 El Segundo, CA 90245.

limitation, claims relating to Rectification Costs (as defined in the Contract), additional amounts owed to Claimant in connection with the Contract and services provided, and any or all other claims that are or may be asserted by Claimant. An itemized breakdown of Claimant's minimum claim amount is set forth in **Exhibit A** attached hereto, and as of the date of filing this Proof of Claim, an aggregate amount of at least \$2,446,302.55 is owed by Debtor to Claimant. Claimant reserves all rights with respect to any additional claims it may have against Debtor and any such claims that may arise in the future.

4. Supporting Documents. Documents or explanation necessary to support this Proof of Claim (including the Contract) are available upon request subject to all defenses of Claimant and appropriate confidentiality protections. Without limiting the generality of the foregoing, Claimant expressly reserves all rights in connection with all documents supporting its Proof of Claim, whether or not attached or referenced herein.

5. No Judgment. To the best of Claimant's knowledge, no judgment has been rendered on the claims set forth in this Proof of Claim.

6. Notices. All notices regarding this Claim shall be directed to:

Fairway Methanol, LLC  
9502 Bayport Blvd.  
Pasadena, TX 77507  
Attn: Darren Collins  
Email: darren.collins@celanese.com

7. Payments. All payments in connection with this Claim shall be mailed to:

Fairway Methanol, LLC  
9502 Bayport Blvd.  
Pasadena, TX 77507  
Attn: Thomas Mattix  
Email: thomas.mattix@celanese.com



8. Amendments. Claimant reserves the right to amend and supplement this Proof of Claim for any purpose, including but not limited to: (i) specifying and quantifying costs, expenses, and other charges or claims incurred or owed, (ii) fixing or liquidating any claims stated herein or under the applicable agreement(s), (iii) specifying claims for ongoing obligations of the Debtor that are not expressly described herein, and (iv) asserting any additional claims.

9. Setoff. This Proof of Claim is filed without waiver and with express reservation of any and all setoff or recoupment rights that may exist at contract, law, or in equity. No effort is made to violate the automatic stay or to take any action contrary to applicable law but every reservation of rights is asserted herein with respect to setoff or recoupment rights.

10. Reservation of Rights. Claimant reserves its rights under the applicable Contract. Nothing in this Proof of Claim shall be deemed a waiver of any claims Claimant may have against Debtor.

11. Filing of this Proof of Claim is not and shall not be deemed or construed as: (a) an election of remedies; (b) a consent by Claimant to the jurisdiction of this Court or any other court with respect to proceedings, if any, commenced in any case against or otherwise involving Claimant; (c) a consent by Claimant to a jury trial in this Court or any other court in any proceeding as to any and all matters so triable herein or in any case, controversy or proceeding related hereto, pursuant to 28 U.S.C. §157(e) or otherwise; (d) a waiver of the right of Claimant to a trial by jury in any proceeding so triable herein or in any case, controversy or proceeding related hereto, notwithstanding the designation or not of such matters as “core proceedings” pursuant to 28 U.S.C. §157(b)(2), and whether such jury trial is pursuant to statute or the United States Constitution; (e) a waiver of the right of Claimant to have final orders in non-core matters entered only after de novo review by a District Court judgment; (f) a waiver of the right of Claimant to have the

reference withdrawn by the District Court in any matter subject to mandatory or discretionary withdrawal; (g) a waiver of any past, present or future event of default; or (h) a waiver or limitation of any rights of Claimant, including, without limitation, a waiver of rights, claims, actions, defenses, set-offs, or recoupments to which Claimant is or may be entitled under agreements or in law or in equity, all of which rights, claims, actions, defenses, set-offs, and recoupments are expressly reserved by Claimant.

*[Remainder of Page Intentionally Left Blank]*

**EXHIBIT A**

<b>CR No.</b>	<b>Reason for Change</b>	<b>Description</b>	<b>Minimum Amount \$</b>
N/A	Detailed Design Issue	Three months of Owner's (Fairway Methanol LLC) project and construction management team to support the extended construction schedule. This cost represents eight full-time equivalent personnel.	\$ 375,000.00
N/A	Detailed Design Issue	Three months of additional temporary office rental at \$5,428.75 per month to support the contractor and owner's field teams to support the extended construction schedule.	\$ 16,286.25
N/A	Detailed Design Issue	5% of total pipe fabrication PO 4502495981 ([VENDOR REDACTED]) related to piping that was scrapped.	\$114,614.50
N/A	Detailed Design Issue	10% of total steel fabrication PO 4502488657 ([VENDOR REDACTED]) related to cable tray supports that were scrapped.	\$ 33,013.82
N/A	Detailed Design Issue	Two (2) 16" 316SS Swing Check Valves at \$38,633.00 each PO 4502492048 Lines 00750 & 00760 ([VENDOR REDACTED]) less scrap value received of \$4,588.08 each.	\$ 68,089.84
N/A	Detailed Design Issue	Omissions and other deficiencies related to the detailed design issues not included in the construction change order costs.	\$ 1,018,868.00
004	Detailed Design Issue	Structural steel issues - RFI-004.	\$ 7,184.86
008	Detailed Design Issue	Pipe modification per RFI-029 response 1.12.2023.	\$ 10,840.35
009	Detailed Design Issue	MPS-023 elevation bust and stiffener plate addition per RFI#31.	\$ 2,420.00
010	Detailed Design Issue	Helical pile rebar additions and material.	\$ 7,081.00
015	Detailed Design Issue	RFI-021/22 piping modifications.	\$ 25,646.55
017	Detailed Design Issue	Modify 12" flare line per RFI#036.	\$ 1,575.49
018	Detailed Design Issue	Modify 8" hydrogen line per RFI#037.	\$ 4,101.80
020	Detailed Design Issue	Modify 10" syngas line per RFI#040.	\$ 4,000.94
024	Detailed Design Issue	Modify 16" CO line due to conduit clash per RFI#035.	\$ 18,991.69

<b>025</b>	Detailed Design Issue	Modify 8" hydrogen line 909958 per RFI#048.	\$ 7,685.55
<b>027</b>	Detailed Design Issue	Install new beam and demo old steel due to clash on line 909997-02 PER RFI#051.	\$ 5,335.42
<b>028</b>	Detailed Design Issue	Modify 16" CO2 Line 909997-02&03 due to clash with existing steam line per RFI#052.	\$ 10,739.58
<b>029</b>	Detailed Design Issue	Install missing drain line on line 909997-02 per RFI#050.	\$ 1,686.58
<b>030</b>	Detailed Design Issue	C-9110 foundation to shift north by 8' to keep PDC Bldg. as general purpose.	\$ 4,746.89
<b>031</b>	Detailed Design Issue	Lower absorber area containment elevations and modify sump.	\$ 5,248.97
<b>032</b>	Detailed Design Issue	Added 2" field welds on lines 909944-05&06.	\$ 2,410.69
<b>033</b>	Detailed Design Issue	Modify 10" Syngas line 909978 per RFI#060 REV.1 per RFI#060.	\$ 6,749.33
<b>034</b>	Detailed Design Issue	Install two [VENDOR REDACTED] supports to support line 909967-02 per RFI#062.	\$ 664.50
<b>038</b>	Detailed Design Issue	Modify 10" Syngas line clashing with cable tray per RFI#063.	\$ 790.90
<b>040</b>	Detailed Design Issue	Modify 2" service water line and trapeze due to clash per RFI#065.	\$ 3,182.70
<b>041</b>	Detailed Design Issue	Modify 2" process condensate line due to elevation bust per RFI#066.	\$ 857.27
<b>042</b>	Detailed Design Issue	Purchase and install extra ladder cage rung at both absorbers per RFI#067.	\$ 1,027.41
<b>044</b>	Detailed Design Issue	Extra field welds and pipe modification due to PSV discharge per RFI#068.	\$ 22,179.64
<b>045</b>	Detailed Design Issue	Fabricate and install new slide plate for HE-9101 and swap HE-9103 slide plates per RFI#069.	\$ 1,008.98
<b>047</b>	Detailed Design Issue	PDC Building access platforms per RFI#072 and field instruction CEFI-005.	\$ 6,627.83
<b>050</b>	Detailed Design Issue	Modify 3"-SM-9090966-02/03 & 2"-PC-909944-04 Due to 5" elevation bust at N/S rack per RFI#073.	\$ 5,316.48
<b>051</b>	Detailed Design Issue	Shift transformer pad 5" north to align with PDC Building and modify cable tray support steel per RFI#071.	\$ 1,289.23

<b>052</b>	Detailed Design Issue	Field directive to demo forms and re-install at absorber containment ramp.	\$ 1,711.94
<b>056</b>	Detailed Design Issue	Purchase and fabricate two PS-21-PNFS0370 per RFI#074.	\$ 5,279.46
<b>057</b>	Detailed Design Issue	Filed instruction - CEFI-008 relocate C-9110 isometrics.	\$ 12,092.95
<b>058</b>	Detailed Design Issue	Additional chipping and bushing at new to existing area paving interface RFI#075.	\$ 5,064.78
<b>063</b>	Detailed Design Issue	Anchor bolt projection on V-9109 per RFI#077.	\$ 946.18
<b>064</b>	Detailed Design Issue	Install battery limit ladder access pad per RFI#078.	\$ 1,476.24
<b>065</b>	Detailed Design Issue	Modify line 3-SA-9010081-01 due to clash with insulation per RFI#079.	\$ 1,147.78
<b>066</b>	Detailed Design Issue	Modify line 2-NI-9010089-01 and install pipe supports per RFI#080.	\$ 1,829.43
<b>067</b>	Detailed Design Issue	Install pup piece on line 3-FL-9010007-01 per RFI#081.	\$ 1,257.43
<b>069</b>	Detailed Design Issue	Modify nitrogen header line 2-NI-9010089-05 per REF#082.	\$ 4,928.94
<b>070</b>	Detailed Design Issue	Filed instruction -CEFI-014 analyzer foundation revision.	\$ 8,155.36
<b>071</b>	Detailed Design Issue	Paint exposed uninsulated pipe on absorber downcomers per RFI#085.	\$ 8,380.29
<b>073</b>	Detailed Design Issue	Transformer elevation re-work per RFI#105.	\$ 17,123.53
<b>074</b>	Detailed Design Issue	Elevation re-work on pipe risers along N/S pipe rack per RFI#090.	\$ 34,837.91
<b>075</b>	Detailed Design Issue	Fabricate spool NI-9010093-01 per RFI#083.	\$ 8,137.21
<b>076</b>	Detailed Design Issue	Modify handrail on V-9109 clashing with MPS support per RFI#100.	\$ 2,774.10
<b>080</b>	Detailed Design Issue	Field instruction - CEFI-018 instrument air header replacement.	\$ 54,110.87
<b>081</b>	Detailed Design Issue	Filed instruction - CEFI-020 DCS JB fiber routing modification.	\$ 4,437.39

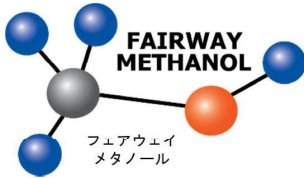
<b>084</b>	Detailed Design Issue	Re-drill holes on HE-9102 frame base plate per RFI#089.	\$ 1,213.41
<b>085</b>	Detailed Design Issue	Modify blower piping 8" NI-909984-03 per RFI#092.	\$ 65,445.14
<b>086</b>	Detailed Design Issue	Modify 30"-CO2-9010000-01 trunnion per RFI#093.	\$ 5,645.34
<b>087</b>	Detailed Design Issue	Epoxy grout for P-9101A/B foundation extension and base plate per RFI#097.	\$ 2,741.73
<b>088</b>	Detailed Design Issue	Epoxy grout for C-9110 foundation extension per RFI#101.	\$ 4,002.66
<b>090</b>	Detailed Design Issue	Field Instruction - CEFI-022 add flanges to CL ABS vent purge.	\$ 1,813.30
<b>091</b>	Detailed Design Issue	Install 30" trunnion support plate and gussets per RFI#088.	\$ 8,239.69
<b>093</b>	Detailed Design Issue	Cut in pup piece on line 8-CO2-909971-04 per RFI#107.	\$ 3,087.34
<b>095</b>	Detailed Design Issue	Modify desuperheater platform ladder and install landing pad per RFI#104.	\$ 1,533.07
<b>097</b>	Detailed Design Issue	Field instruction - CEFI-023 drain additions to flume.	\$ 19,453.89
<b>102</b>	Detailed Design Issue	Absorber downcomer spool trunnion swap per RFI#111..	\$ 3,930.03
<b>105</b>	Detailed Design Issue	Remove 4" conduit and replace with 12" cable tray.	\$ 31,814.63
<b>108</b>	Detailed Design Issue	Modify HE-9102 frame per RFI#110.	\$ 5,006.89
<b>109</b>	Detailed Design Issue	Field instruction - CEFI-027 condensate flange rating changes.	\$ 1,988.64
<b>112</b>	Detailed Design Issue	Modify mudsuct support coming out of PDC due to elevation bust.	\$ 1,236.06
<b>118</b>	Detailed Design Issue	Install civil concrete pads to account for pipe dummy legs elevation bust.	\$ 29,475.87
<b>121</b>	Detailed Design Issue	Swap 4" conduit for 12" cable tray at compressor motor.	\$ 7,969.77
<b>123</b>	Detailed Design Issue	Fabricate and install new pipe supports at P-9101A/B.	\$ 3,737.21

<b>124</b>	Detailed Design Issue	Modify line HG-909958 offset at the linde tie-in.	\$ 9,135.84
<b>127</b>	Detailed Design Issue	Shift transformer west to compensate busduct designed too long.	\$ 2,547.29
<b>129</b>	Detailed Design Issue	Field instruction - CEFI-016 DCS grounding changes.	\$ 11,437.57
<b>130</b>	Detailed Design Issue	Modify south charm panel support.	\$ 917.69
<b>131</b>	Detailed Design Issue	Shorten SM expansion loop due to existing structure off coordinates.	\$ 2,033.49
<b>132</b>	Detailed Design Issue	Fabricate and install additional 4" conduit support on north end.	\$ 3,692.56
<b>133</b>	Detailed Design Issue	Shorten SCM line 909965-08 due to TP-102 off coordinates.	\$ 1,245.01
<b>134</b>	Detailed Design Issue	Install SW valves on line 2-USM-9010077-03.	\$ 2,826.80
<b>138</b>	Detailed Design Issue	Absorber valve access platform modification.	\$ 1,018.43
<b>140</b>	Detailed Design Issue	Re-install analyzer building and run temp power/grounding to new location.	\$ 3,966.99
<b>142</b>	Detailed Design Issue	Fabricate and install cable tray support for both transformer 90 tray fittings and add ground.	\$ 12,323.30
<b>143</b>	Detailed Design Issue	Modify CO2 line 901002-01.	\$ 9,875.53
<b>144</b>	Detailed Design Issue	Purchase and install SS tubing for PDC drains.	\$ 7,486.35
<b>145</b>	Detailed Design Issue	Cut in flanges for steam TP-116&145.	\$ 5,157.60
<b>146</b>	Detailed Design Issue	Modify filter pot piping IA-9010200&9010199.	\$ 8,010.25
<b>155</b>	Detailed Design Issue	Install handrails at absorber ramp.	\$ 5,442.38
<b>158</b>	Detailed Design Issue	Field instruction - CEFI-034 piping changes due to analyzer shelter relocation.	\$ 5,824.80
<b>176</b>	Detailed Design Issue	Relocate five (5) 3/4" instrument air manifolds from west side of unit to east. Direction was provided by Celanese to reduce the tubing route from field instruments to instrument air header.	\$ 17,653.88

<b>179</b>	Detailed Design Issue	RFI-117 - FE-94694 & FE-94697 flange sizing discrepancy.	\$ 4,412.44
<b>180</b>	Detailed Design Issue	Transmittal CELG-T-0024 - revised piping isometrics.	\$ 37,338.52
<b>182</b>	Detailed Design Issue	Modify instrument air header from column line 16E to column line 16 W - back to original location from previously modified (per shaffer - CO-176).	\$ 3,144.58
<b>183</b>	Detailed Design Issue	Extending instrument air line from header (9010200-04) to compressor per [VENDOR REDACTED]. This is to provide IA to the compressor.	\$ 10,304.40
<b>184</b>	Detailed Design Issue	Add new 1-1/2" Instrument air line to tie into new header (9010200-04) and service the analyzer building.	\$ 3,540.75
<b>185</b>	Detailed Design Issue	Add two (2) new 3/4" spare instrument air sources (9010200-03 - Tie Into).	\$ 2,509.44
<b>186</b>	Detailed Design Issue	2"-3SA0S01A(40S)-PC-909986-FP pipe supports (FS-1-A-2") are at the incorrect elevation. They will need to be cut off the pipe and a 3 new shoes will be fabricated and installed.	\$ 2,917.02
<b>187</b>	Detailed Design Issue	Add 1-1/2" Nitrogen drop to the analyzer building.	\$ 3,985.88
<b>188</b>	Detailed Design Issue	Modify 3/4" line 9010188 to fit nozzle: Y61012 - at PK-9122-Co2-compressor.	\$ 3,131.37
<b>189</b>	Detailed Design Issue	Modify 2in nitrogen and flare bypass line.	\$ 1,161.43
<b>190</b>	Detailed Design Issue	Modify 3/4" line NI-9010189-01 Rev 1 and supports to make connection at nozzle Y66011.	\$ 3,126.66
<b>191</b>	Detailed Design Issue	Modify three (3) each pipe supports on line NI-909972-01 & FL-9010037-01.	\$ 5,793.44
<b>192</b>	Detailed Design Issue	4" conduit in the unit with live cable continues to fall as it is inadequately supported.	\$ 3,736.74
<b>193</b>	Detailed Design Issue	Field instruction CEFI-035 - instrument and electrical changes due to analyzer shelter relocation.	\$ 7,447.77
<b>195</b>	Detailed Design Issue	Grading extension/modification at the absorber platform steel.	\$ 13,974.09
<b>196</b>	Detailed Design Issue	Adding grounding at JB-9267.	\$ 5,060.71
<b>197</b>	Detailed Design Issue	Installing JB's for fiber.	\$ 9,548.86
<b>207</b>	Detailed Design Issue	Extend guardrail and install 2 bollards at west road.	\$ 2,466.91



<b>209</b>	Detailed Design Issue	Labor and material to modify compressor platform.	\$ 5,817.86
<b>212</b>	Detailed Design Issue	Labor to fabricate and install two (2) supports at the top of the absorber towers.	\$ 9,282.60
<b>213</b>	Detailed Design Issue	Labor and material identified on updated ISO's in transmittal CELG-T-0026.	\$ 5,715.33
<b>214</b>	Detailed Design Issue	Labor and material to swap out B7 studs for B16 per RFI-118.	\$ 3,699.26
<b>216</b>	Detailed Design Issue	Labor and material to perform work associated with CEFI-050 - nitrogen line to C-9110 seal panels.	\$ 12,606.56
<b>220</b>	Detailed Design Issue	Labor fabricate and install handrails at the absorber deck.	\$ 7,694.67
<b>Total</b>			At least \$ 2,446,302.55



**EXHIBIT**

**D**

**FAIRWAY METHANOL**  
9502 Bayport Blvd.  
Pasadena, Texas 77507

ZACHRY ENGINEERING CORPORATION  
Attn: Marc Willard  
527 Logwood  
San Antonio, Texas 77507

June 3, 2024

**RE: Notice of Breach and Claim regarding that certain Engineering and Procurement Services Agreement, by and between FAIRWAY METHANOL LLC ("Fairway Methanol" or "Fairway") and ZACHRY ENGINEERING CORPORATION ("Zachry Engineering" or "Zachry"), dated April 12, 2021 (Contract No. CW2297043 ) (the "Engineering Agreement")**

Dear Mr. Willard,

This letter serves as formal, written notice by Fairway Methanol to Zachry Engineering that Fairway Methanol incurred significant additional costs, including rework, rip and tear, material waste, and delays in construction as a direct result of the gross negligence, errors, omissions, and other deficiencies resulting from the detailed engineering services performed by Zachry Engineering for Project Green under the Engineering Agreement.

Fairway Methanol is demanding \$2,387,500 in direct damages from Zachry Engineering; \$250,000 for the Rectification Costs that Fairway is entitled to under section 2.2.4 of the Agreement and \$2,137,500 in additional direct damages due to Zachry's gross negligence in meeting the standards of performance required in the Engineering Agreement including, without limitation, the Standard of Care and Good Engineering Practice. The following items represent the additional direct costs incurred by Fairway:

- Construction costs (direct labor, indirect labor and bulk material) associated with errors, omissions, and other deficiencies related to detailed engineering performed by Zachry Engineering in the amount of \$1,842,562 as further detailed below. This amount was determined based on a review of change orders from Fairway Methanol's construction contractor and categorizing them based on the specific reasons for the change.
  - \$823,694 in additional construction costs directly associated with errors, omissions, and other deficiencies related to the detailed engineering performed by Zachry.
  - \$1,018,868 in additional construction overhead associated with schedule delays and lost productivity due to errors, omissions, and other deficiencies related to the detailed engineering performed by Zachry.
- Materials purchased based on design documents provided by Zachry Engineering were later discovered as not needed or incorrect. Fairway Methanol incurred losses totaling more than \$150,000 due to materials

having to be scrapped and repurchased. This included steel supports for cable tray, pre-fabricated piping, conduit, large-bore stainless steel check valves, etc.

- Costs of Fairway Methanol project and construction management team for an additional three months totaling \$375,000. This cost represents eight full-time equivalent personnel.
- Three months of additional temporary office rental totaling \$20,000 to support the extended construction schedule.

Pursuant to 11.2.2 of the Agreement, the Parties shall attempt to resolve this Claim through direct negotiations in a meeting between the Parties, attended by individuals with decision-making authority, which shall take place within thirty (30) Days, or as otherwise agreed to by the Parties, from the date of this notice.

Fairway is requesting Zachry's initial response to this claim within ten (10) business days from the date of this notice and the name/title of Zachry representative(s) who would participate in a meeting at the Celanese Clear Lake, TX site. We will work with you or your designee to agree on the date/time for the meeting. Despite all of the challenges we faced throughout this project, we're hopeful we can find an amicable solution to this Claim in a relatively expeditious manner.

Sincerely,

DocuSigned by:  
*Jenny Koeppen*  
A7EA7DA1E256430...

---

Jenny Koeppen  
Senior Manager, Global CapEx Procurement  
on behalf of Fairway Methanol  
Mobile +1-281-229-5145  
[Jenny.Koeppen@celanese.com](mailto:Jenny.Koeppen@celanese.com)



**Via certified mail and e-mail**

Fairway Methanol LLC  
9502 Bayport Blvd.  
Pasadena, TX 77507  
Attn: Mrs. Jenny Koeppen  
Senior Manager, Global CapEx Procurement  
[Jenny.Koeppen@celanese.com](mailto:Jenny.Koeppen@celanese.com)

June 17, 2024

**Re: June 3, 2024 Notice of Breach and Claim**

Dear Mrs. Koeppen,

Zachry Engineering Corporation ("ZEC") is in receipt of your June 3, 2024 Notice of Breach and Claim ("Notice of Claim"). ZEC denies all allegations asserted in the Notice of Claim and denies it owes any amounts to Fairway Methanol relating to the work performed by ZEC under the April 12, 2021 Engineering and Procurement Services Agreement (Contract No. CW2297043) (the "Agreement").

Fairway Methanol's demand for \$2,837,500 in damages is not supported by fact or the contractual terms of the Agreement, and Fairway Methanol has provided no backup documentation to substantiate any of its claims. First, section 12.12.1 expressly disclaims any claim for consequential damages, incidental, special or indirect damages, including the type described in Fairway Methanol's Notice of Claim for damages related to schedule delays, lost productivity, office support and rentals, and "additional construction costs" - all such damages being the type expressly excluded and disclaimed by the parties pursuant to Section 12.12.1.

Second, though ZEC denies any liability whatsoever, Section 2.2.4 caps ZEC's liability for Rectification Costs at \$250,000. Per Section 2.2.5, ZEC's re-performance, at its cost, of corrective Services to remedy alleged deficiencies and/or responsibility for Rectification Costs not to exceed \$250,000 is Fairway Methanol's sole and exclusive remedy with respect to repair or replacement of Services due to alleged defects.

ZEC reminds Fairway Methanol that it has already performed, at ZEC's expense, engineering design rework for Project Green in order to satisfy Fairway Methanol's claims of deficiencies. ZEC further reduced rates on procurement support and offered other discounted work, all to Fairway Methanol's benefit. Given this, and the amount of time that has lapsed since ZEC's last IFCs were delivered, it is disappointing Fairway Methanol has taken the position it has in its Notice of Claim.

To the extent Fairway Methanol alleges gross negligence operates to bust the clearly defined and negotiated limitations of liability in the Agreement, Fairway Methanol in no way alleges any facts rising to the level of gross negligence in its Notice of Claim, nor can it. Gross negligence under Texas law requires a higher burden of proof, including the alleged actor's conscious indifference to the rights, safety, or welfare of others, of which there is absolutely no evidence here.

ZEC welcomes a meeting to discuss this Notice of Claim, but Fairway Methanol should understand ZEC's position at this time is that it does not owe any amounts whatsoever for reasons including but not necessarily limited to those set forth in this response. ZEC believes a Zoom or Teams meeting would be sufficient to initially discuss Fairway Methanol's Notice of Claim and looks forward to further supporting its position in this matter.

Mrs. Jenny Koeppen  
Re: June 3, 2024 Notice of Breach and Claim  
June 17, 2024  
Page 2

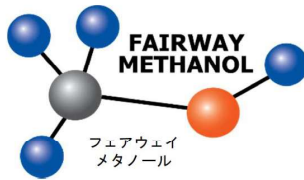
ZEC further notes that to the extent Fairway Methanol is not aware, ZEC filed for Chapter 11 protection in the United States Bankruptcy Court for the Southern District of Texas in Case No. 24-90337 on May 21, 2024 and, therefore, the automatic stay pursuant to section 362(a) of the Bankruptcy Code operates as a stay of the commencement or continuation of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the Chapter 11 proceeding.

This response in no way waives or limits any rights, claims, or defenses ZEC may assert in this matter and ZEC expressly reserves all such rights. ZEC looks forward to Fairway Methanol's reply.

Sincerely,

A handwritten signature in blue ink, appearing to read 'M. Czuba', with a long horizontal flourish extending to the right.

Matthew J. Czuba  
President, Zachry Engineering Corporation



**FAIRWAY METHANOL**  
9502 Bayport Blvd.  
Pasadena, Texas 77507

ZACHRY ENGINEERING CORPORATION

Attn: Matthew Czuba  
527 Logwood  
San Antonio, Texas 77507  
July 8, 2024

**RE: Notice of Breach and Claim regarding that certain Engineering and Procurement Services Agreement, by and between FAIRWAY METHANOL LLC ("Fairway Methanol" or "Fairway") and ZACHRY ENGINEERING CORPORATION ("Zachry Engineering" or "Zachry"), dated April 12, 2021 (Contract No. CW2297043 ) (the "Engineering Agreement")**

Dear Mr. Czuba,

This letter is in response to Zachry's letter dated June 17, 2024 (the "Zachry Response Letter"). Based on your response, it is clear Fairway and Zachry disagree on both Zachry's degree of non-compliance with the terms of the Engineering Agreement and Zachry's liability for such non-compliance. Your bold response, essentially denying any wrongdoing or liability, was surprising given the number of conversations between the parties regarding the Zachry's engineering failures that caused the cost of the related project to increase by over \$8 million.

As it would be impractical to set forth all of the facts that we believe demonstrate Zachry's grossly negligent behavior with respect its provision of services under the Engineering Agreement, Fairway will reserve those details for our meeting at a later date. However, I will address Zachry's liability for Rectification Costs set forth in Section 2.2.4(ii) of the Engineering Agreement.

Section 2.2.4(ii) clearly states Zachry is responsible for 100% of the costs of rip, tear and reconstruction of any completed construction or construction in progress above \$250,000 and up to a total of \$500,000. This liability is over and above any additional cost incurred by Zachry related to such deficiencies. To facilitate a productive conversation in the future, I have attached a draft spend report documenting well over \$500,000 of Rectification Costs paid for by Fairway, of which Fairway is owed \$250,000 by Zachry.

I look forward to discussing our claims for Rectification Costs and Zachry's grossly negligent provision of engineering services in the near future. Notwithstanding anything else set forth in this letter, Fairway continues to reserve it's rights, claims and defenses available to it under the Engineering Agreement and applicable law until this matter is otherwise settled between the parties.

Sincerely,

DocuSigned by:  
*Jenny Koeppen*  
A7FA7DA1E256430

Jenny Koeppen  
Senior Manager, Global CapEx Procurement  
on behalf of Fairway Methanol

**Fairway Rectification Costs**

CR No.	Reason for Change	Description	Total \$
004	Detailed Design Issue	Structural Steel Issues - RFI-004	\$ 7,184.86
008	Detailed Design Issue	Pipe Modification Per RFI-029 response 1.12.2023	\$ 10,840.35
009	Detailed Design Issue	MPS-023 Elevation Bust and Stiffener Plate Addition Per RFI#31	\$ 2,420.00
010	Detailed Design Issue	Helical Pile Rebar Additions and Material	\$ 7,081.00
015	Detailed Design Issue	RFI-021/22 Piping modifications	\$ 25,646.55
017	Detailed Design Issue	Modify 12" Flare Line Per RFI#036	\$ 1,575.49
018	Detailed Design Issue	Modify 8" Hydrogen Line Per RFI#037	\$ 4,101.80
020	Detailed Design Issue	Modify 10" Syngas Line Per RFI#040	\$ 4,000.94
024	Detailed Design Issue	Modify 16" CO Line Due to Conduit Clash Per RFI#035	\$ 18,991.69
025	Detailed Design Issue	Modify 8" Hydrogen Line 909958 PER RFI#048	\$ 7,685.55
027	Detailed Design Issue	Install new beam and demo old steel due to clash on line 909997-02 PER RFI#051	\$ 5,335.42
028	Detailed Design Issue	Modify 16" CO2 Line 909997-02&03 due to clash with existing steam line Per RFI#052	\$ 10,739.58
029	Detailed Design Issue	Install missing drain line on line 909997-02 Per RFI#050	\$ 1,686.58
030	Detailed Design Issue	C-9110 Foundation to Shift North by 8' to Keep PDC Bldg. as General Purpose	\$ 4,746.89
031	Detailed Design Issue	Lower Absorber Area Containment Elevations and Modify Sump	\$ 5,248.97
032	Detailed Design Issue	Added 2" Field Welds on lines 909944-05&06	\$ 2,410.69
033	Detailed Design Issue	Modify 10" Syngas Line 909978 Per RFI#060 REV.1 PER RFI#060	\$ 6,749.33
034	Detailed Design Issue	Install Two Bernecker Supports to Support Line 909967-02 PER RFI#062	\$ 664.50
038	Detailed Design Issue	Modify 10" Syngas line clashing with cable tray per RFI#063	\$ 790.90
040	Detailed Design Issue	Modify 2" Service Water Line and Trapeze Due to Clash Per RFI#065	\$ 3,182.70
041	Detailed Design Issue	Modify 2" Process Condensate Line Due to Elevation Bust Per RFI#066	\$ 857.27
042	Detailed Design Issue	Purchase and Install Extra Ladder Cage Rung at Both Absorbers RFI#067	\$ 1,027.41
044	Detailed Design Issue	Extra Field Welds and Pipe Modification Due to PSV Discharge Per RFI#068	\$ 22,179.64
045	Detailed Design Issue	Fabricate and Install New Slide Plate for HE-9101 and Swap HE-9103 Slide Plates Per RFI#069	\$ 1,008.98
047	Detailed Design Issue	PDC Building Access Platforms PER RFI#072 and FIELD INSTRUCTION CEFI-005	\$ 6,627.83
050	Detailed Design Issue	Modify 3"-SM-9090966-02/03 & 2"-PC-909944-04 Due to 5" Elevation Bust at N/S Rack PER RFI#073	\$ 5,316.48
051	Detailed Design Issue	Shift Transformer Pad 5" North to Align with PDC Building and Modify Cable Tray Support Steel PER RFI#071	\$ 1,289.23
052	Detailed Design Issue	Field Directive to Demo Forms and Re-Install at Absorber Containment Ramp	\$ 1,711.94
056	Detailed Design Issue	Purchase and Fabricate Two PS-21-PNFS0370 Per RFI#074	\$ 5,279.46
057	Detailed Design Issue	FIELD INSTRUCTION - CEFI-008 Relocate C-9110 Isometrics	\$ 12,092.95
058	Detailed Design Issue	Additional Chipping and Bushing at New to Existing Area Paving Interface RFI#075	\$ 5,064.78
063	Detailed Design Issue	Anchor Bolt Projection on V-9109 per RFI#077	\$ 946.18
064	Detailed Design Issue	Install Battery Limit Ladder Access Pad Per RFI#078	\$ 1,476.24
065	Detailed Design Issue	Modify Line 3-SA-9010081-01 Due to Clash with Insulation Per RFI#079	\$ 1,147.78
066	Detailed Design Issue	Modify Line 2-NI-9010089-01 and Install Pipe Supports Per RFI#080.	\$ 1,829.43

067	Detailed Design Issue	Install Pup Piece on Line 3-FL-9010007-01 Per RFI#081	\$ 1,257.43
069	Detailed Design Issue	Modify Nitrogen Header Line 2-NI-9010089-05 PER REF#082	\$ 4,928.94
070	Detailed Design Issue	FIELD INSTRUCTION -CEFI-014 Analyzer Foundation Revision	\$ 8,155.36
071	Detailed Design Issue	Paint Exposed Uninsulated Pipe on Absorber Downcomers PER RFI#085	\$ 8,380.29
073	Detailed Design Issue	Transformer Elevation Re-Work PER RFI#105	\$ 17,123.53
074	Detailed Design Issue	Elevation Re-Work on Pipe risers along N/S Pipe Rack PER RFI#090	\$ 34,837.91
075	Detailed Design Issue	Fabricate Spool NI-9010093-01 PER RFI#083	\$ 8,137.21
076	Detailed Design Issue	Modify Handrail on V-9109 clashing with MPS support PER RFI#100	\$ 2,774.10
080	Detailed Design Issue	FIELD INSTRUCTION - CEFI-018 Instrument Air Header Replacement	\$ 54,110.87
081	Detailed Design Issue	FIELD INSTRUCTION - CEFI-020 DCS JB Fiber Routing Modification	\$ 4,437.39
084	Detailed Design Issue	Re-Drill Holes on HE-9102 Frame Base Plate PER RFI#089	\$ 1,213.41
085	Detailed Design Issue	Modify Blower Piping 8" NI-909984-03 PER RFI#092	\$ 65,445.14
086	Detailed Design Issue	Modify 30"-CO2-9010000-01 Trunnion PER RFI#093	\$ 5,645.34
087	Detailed Design Issue	Epoxy Grout for P-9101A/B Foundation Extension and Base Plate Per RFI#097	\$ 2,741.73
088	Detailed Design Issue	Epoxy Grout for C-9110 Foundation Extension Per RFI#101	\$ 4,002.66
090	Detailed Design Issue	FIELD INSTRUCTION - CEFI-022 Add Flanges to CL ABS Vent Purge	\$ 1,813.30
091	Detailed Design Issue	Install 30" Trunnion Support Plate and Gussets PER RFI#088	\$ 8,239.69
093	Detailed Design Issue	Cut in Pup Piece on line 8-CO2-909971-04 PER RFI#107	\$ 3,087.34
095	Detailed Design Issue	Modify Desuperheater Platform Ladder and Install Landing Pad PER RFI#104	\$ 1,533.07
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105	Detailed Design Issue	Remove 4" Conduit and Replace with 12" Cable Tray	\$ 31,814.63
108	Detailed Design Issue	Modify HE-9102 Frame Per RFI#110	\$ 5,006.89
109	Detailed Design Issue	FIELD INSTRUCTION - CEFI-027 Condensate Flange Rating Changes	\$ 1,988.64
112	Detailed Design Issue	Modify Busduct support coming out of PDC due to elevation bust	\$ 1,236.06
118	Detailed Design Issue	Install Civil Concrete Pads to Account for Pipe Dummy Legs Elevation Bust	\$ 29,475.87
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133	Detailed Design Issue	Shorten SCM Line 909965-08 due to TP-102 Off coordinates	\$ 1,245.01
134	Detailed Design Issue	Install SW Valves on Line 2-USM-9010077-03	\$ 2,826.80
138	Detailed Design Issue	Absorber Valve Access Platform Modification	\$ 1,018.43
140	Detailed Design Issue	Re-Install Analyzer Building and Run Temp Power/Grounding to New Location	\$ 3,966.99
142	Detailed Design Issue	Fabricate and Install Cable Tray Support for Both Transformer 90 Tray Fittings and Add Ground	\$ 12,323.30
143	Detailed Design Issue	Modify CO2 Line 901002-01	\$ 9,875.53



144	Detailed Design Issue	Purchase and Install SS Tubing for PDC Drains	\$ 7,486.35
145	Detailed Design Issue	Cut In Flanges for Steam TP-116&145	\$ 5,157.60
146	Detailed Design Issue	Modify Filter Pot Piping IA-9010200&9010199	\$ 8,010.25
155	Detailed Design Issue	Install Handrails at Absorber Ramp	\$ 5,442.38
158	Detailed Design Issue	FIELD INSTUCTION CEFI-034 Piping Changes Due to Analyzer Shelter Relocation	\$ 5,824.80
176	Detailed Design Issue	Relocate five (5) 3/4" instrument air manifolds from west side of unit to east. Direction was provided by Celanese to reduce the tubing route from field instruments to instrument air header.	\$ 17,653.88
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180	Detailed Design Issue	TRANSMITTAL CELG-T-0024 - Revised Piping Isometrics	\$ 37,338.52
182	Detailed Design Issue	Modify Instrument Air Header from Column line 16E to Column Line 16 W - back to original location from previously modified (Per Shaffer - CO-176)	\$ 3,144.58
183	Detailed Design Issue	Extending instrument air line from header (9010200-04) to compressor per Joe Duncan. This is to provide IA to the compressor.	\$ 10,304.40
184	Detailed Design Issue	Add new 1-1/2" Instrument Air line to tie into new header (9010200-04) and service the analyzer building.	\$ 3,540.75
185	Detailed Design Issue	Add two (2) new 3/4" spare instrument air sources (9010200-03 - Tie Into)	\$ 2,509.44
186	Detailed Design Issue	2"-3SAOS01A(40S)-PC-909986-FP pipe supports (FS-1-A-2") are at the incorrect elevation. They will need to be cut off the pipe and a 3 new shoes will be fabricated and installed.	\$ 2,917.02
187	Detailed Design Issue	Add 1-1/2" Nitrogen drop to the analyzer building.	\$ 3,985.88
188	Detailed Design Issue	Modify 3/4" line 9010188 to fit Nozzle: Y61012 - at PK-9122-Co2-Compressor	\$ 3,131.37
189	Detailed Design Issue	Modify 2in Nitrogen and Flare Bypass Line	\$ 1,161.43
190	Detailed Design Issue	Modify 3/4" line NI-9010189-01 Rev 1 and supports to make connection at Nozzle Y66011	\$ 3,126.66
191	Detailed Design Issue	Modify Three (3) ea pipe supports on line NI-909972-01 & FL-9010037-01	\$ 5,793.44
192	Detailed Design Issue	4" Conduit in the unit with live cable continues to fall as it is inadequately supported	\$ 3,736.74
193	Detailed Design Issue	FIELD INSTRUCTION CEFI-035 - Instrument and Electrical Changes Due to Analyzer Shelter Relocation	\$ 7,447.77
195	Detailed Design Issue	Grading extension/modification at the absorber platform steel	\$ 13,974.09
196	Detailed Design Issue	Adding Grounding at JB-9267	\$ 5,060.71
197	Detailed Design Issue	Installing JB's for Fiber	\$ 9,548.86
207	Detailed Design Issue	Extend Guardrail and Install 2 Bollards at West Road	\$ 2,466.91
209	Detailed Design Issue	labor and material to modify compressor platform	\$ 5,817.86
212	Detailed Design Issue	labor to fabricate and install two (2) supports at the top of the absorber towers	\$ 9,282.60
213	Detailed Design Issue	labor and material identified on updated ISO's in transmittal CELG-T-0026	\$ 5,715.33
214	Detailed Design Issue	labor and material to swap out B7 Studs for B16 per RFI-118	\$ 3,699.26
216	Detailed Design Issue	labor and material to perform work associated with CEFI-050 - Nitrogen Line to C-9110 Seal Panels	\$ 12,606.56
220	Detailed Design Issue	labor fabricate and install handrails at the absorber deck	\$ 7,694.67
<b>Total</b>			<b>\$ 820,430.14</b>



October 4, 2024

***Via Email***

Fairway Methanol  
Attn.: Jenny Koeppen  
Senior Manager, Global CapEx Procurement  
[Jenny.Koeppen@celanese.com](mailto:Jenny.Koeppen@celanese.com)

**Re: June 3, 2024 Notice of Breach and Claim**

Dear Ms. Koeppen,

As a follow up to your July 8, 2024 correspondence, Zachry Engineering Corporation (“ZEC”) submits the following reply:

First, ZEC continues to review the RFI information you provided on July 8, 2024. Once the review is concluded, ZEC will respond accordingly.

Second, your July 8 letter notes that it would be “impractical” to set forth all the facts that support your claim of Zachry’s grossly negligence behavior with respect to the services it provided under the Agreement; however, as you know, under Texas law (which governs the Agreement), a sworn certificate of merit by a licensed professional engineering detailing the specific omissions and allegedly negligent behavior is a statutory requirement for any action or arbitration proceeding for damages arising out of the provision of professional services by a licensed or registered professional such as ZEC. *See* TEX. CIV. PRAC. & REM. CODE § 150.002. The certificate of merit must set forth “specifically for each theory of recovery for which damages are sought, the negligence, if any, or other action, error, or omission of the licensed or registered professional in providing the professional service, including any error or omission in providing advice, judgment, opinion, or a similar professional skill claimed to exist and the factual basis for each such claim.” *Id.* Though we have engaged in informal negotiations related to this claim, as outlined in ZEC’s initial response to your demand letter, ZEC vehemently denies any liability whatsoever. Because it would be a statutory requirement for any action Fairway Methanol pursues against ZEC, ZEC requests that you provide a copy of the certificate of merit that supports your allegations.

Finally, please confirm you agree that, absent any grossly negligent conduct, ZEC’s exposure for any claims asserted by Fairway Methanol is capped at a total \$250,000 in rectification costs per Section 2.2.4(ii) of the Engineering and Procurement Services Agreement. Furthermore, please confirm you agree that the warranty period through which ZEC may be responsible for

Ms. Jenny Koeppen  
Re: June 3, 2024 Notice of Breach and Claim  
October 4, 2024  
Page 2

reperformance of work and rectification costs expired eighteen (18) months following completion of the work in September 2022.

This response in no way waives or limits any rights, claims, or defenses ZEC may assert in this matter and ZEC expressly reserves all such rights. ZEC looks forward to Fairway Methanol's reply.

Sincerely,



Matthew J. Czuba  
President, Zachry Engineering Corporation  
Office: (832) 942-5743  
Cell: (281) 687-0103  
[czubam@zachrygroup.com](mailto:czubam@zachrygroup.com)

cc: Zachry Engineering Corporation  
Attn.: Garry King  
Jason Diefenderfer

Zachry Legal Department  
Attn.: Garrett Notzon  
Rode' Moore

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS**

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In re:

ZACHRY HOLDINGS, INC., *et al.*<sup>1</sup>

Debtors.

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)  
) Chapter 11  
)  
) Case No. 24-90377 (MI)  
)  
) (Jointly Administered)  
) **Re: Docket No. \_\_\_\_**

**ORDER SUSTAINING DEBTORS' OBJECTION  
TO FAIRWAY METHANOL, LLC'S CLAIM [CLAIM NO. 1323]**

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Upon the objection (the “**Objection**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (this “**Order**”) disallowing the Fairway Methanol Claim, all as more fully set forth in the Objection; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Objection in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Objection is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found support for this Objection in the Czuba Declaration; and this Court having found that the Debtors’ notice of the Objection and opportunity for a hearing on the Objection were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Objection; and this Court having determined that the legal and factual bases set forth

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<sup>1</sup> The last four digits of Zachry Holdings, Inc.’s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors’ proposed claims and noticing agent at [www.veritaglobal.net/ZHI](http://www.veritaglobal.net/ZHI). The location of the Debtors’ service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Objection.

in the Objection establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. The Fairway Methanol Claim (Claim No. 1323) is disallowed in its entirety.
2. Kurtzman Carson Consultants, LLC (doing business as Verita Global), as claims, noticing and solicitation agent, is authorized and directed to update the claims register maintained in these chapter 11 cases to reflect the relief granted in this Order.
3. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order, the Objection, or the Objection Procedures shall be deemed: (a) an admission as to the validity of any prepetition claim against a Debtor entity; (b) a waiver of any right of any Debtor, or any other party in interest to dispute any prepetition claims on any grounds; (c) a promise or requirement to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Objection or any order granting the relief requested by the Objection; (e) a request or authorization to assume any prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver of any right of any Debtor, or any other party in interest under the Bankruptcy Code or any other applicable law.
4. The Debtors are authorized, but not directed, to execute and deliver such documents and to take and perform all actions necessary to implement and effectuate the relief granted in this Order in accordance with the Objection.
5. Notice of the Objection as provided therein shall be deemed good and sufficient notice of such Objection and the requirements of the Bankruptcy Rules and the Bankruptcy Local Rules are satisfied by such notice.

6. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

Dated: \_\_\_\_\_, 2025  
Houston, Texas

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THE HON. MARVIN P. ISGUR  
UNITED STATES BANKRUPTCY JUDGE