IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

US TRINITY ENERGY SERVICES, LLC	§	
	§	
Petitioner,	§	
	§	
V.	§	**Civil Action No. _____**
	§	
MOOSEHEAD HARVESTING, INC.	§	
	§	
Respondent.	§	
	§	

PETITION TO CONFIRM ARBITRATION AWARD AND
NOTICE OF APPLICATION FOR ORDER TO CONFIRM ARBITRATION AWARD

Petitioner US Trinity Energy Services, LLC ("Trinity") files this Petition to Confirm Arbitration Award against Respondent Moosehead Harvesting, Inc. ("Moosehead") pursuant to 9 U.S.C § 9 and Notice of Application for Order to Confirm Arbitration Award.

INTRODUCTION

1. Trinity requests confirmation of an arbitration award issued on November 25, 2020 and subsequently modified on January 11, 2021, in American Arbitration Association Case No. 01-19-001-6957, *Moosehead Harvesting, Inc. v. US Trinity Energy Services, LLC* (the "Arbitration"). A true and correct copy of the "Original Final Award" is attached hereto as Exhibit A, and a true and correct copy of the "Modified Final Award" is attached hereto as Exhibit B. Arbitrator Steven K. Yungblut, Esq. (the "Arbitrator") entered a monetary award of $700,700.11 in favor of Trinity and against Moosehead. Exhibit B, Modified Final Award. Additionally, the Arbitrator ordered that interest on the monetary award shall be payable by Moosehead to Trinity at the legal rate provided by the laws of State of Texas and shall begin to accrue on the thirtieth business day after the date of the Original Final Award (December 25,

2020), until paid in full. Exhibit A, at 8. Trinity seeks a judgment from this court confirming the Modified Final Award.

PARTIES

2. Trinity is a limited liability company organized under the laws of the State of Texas and with its principal place of business in Denton County, Texas. Its sole member is a citizen of the State of Texas.

3. Moosehead is a corporation organized under the laws of the State of New Hampshire with its principal place of business in Lincoln, New Hampshire. Pursuant to 9 U.S.C § 9 and the Federal Rules of Civil Procedure, Moosehead may be served with this Petition to Confirm Arbitration Award and Notice of Application for Order to Confirm Arbitration Award by serving its registered agent, Kathleen A. Reed, in person at 78 Main Street, #5, Lincoln, New Hampshire, 03251, and by mail at PO Box 159, Lincoln, New Hampshire, 03251.

JURISDICTION AND VENUE

4. This Court has jurisdiction to confirm the arbitration award at issue pursuant to 28 U.S.C. § 1332 because complete diversity exists between the parties and the amount sought in the arbitration proceeding exceeded $75,000. Moreover, the amount awarded by the Arbitrator in his Modified Final Award exceeds $75,000.

5. This Court has personal jurisdiction over Moosehead because Moosehead purposefully availed itself of the benefits of the laws of the State of Texas when it agreed by contract to apply Texas law to this dispute. Moosehead also chose a Texas forum to resolve all disputes arising out of or relating to the parties' agreement. Moosehead consented to Dallas, Texas as the situs of the Arbitration. Moosehead has established minimum contacts with Texas

and the exercise of jurisdiction by the courts of this state comports with traditional notions of fair play and substantial justice.

6. Venue is proper for this confirmation proceeding pursuant to 9 U.S.C. § 9 because the Original Final Award and Modified Final Award were issued by the Arbitrator in Dallas, Texas.

FACTUAL BACKGROUND

7. On May 31, 2019, Moosehead filed a Demand for Arbitration with the American Arbitration Association ("AAA") against Trinity, seeking damages in excess of $12 million for breach of contract, quantum meruit, and breach of the covenant of good faith and fair dealing. A true and correct copy of Moosehead's Initial Demand for Arbitration is attached hereto as Exhibit C. Moosehead's claims arose out of a subcontract with Trinity in which Moosehead agreed to perform clearing work for the construction of a pipeline located in West Virginia (the "Subcontract"). A true and correct copy of the Subcontract is attached hereto as Exhibit D. Moosehead sought payment for alleged increased costs as a result of what it called lost productivity, standby, and certain discrete claims and sought damages under theories of breach of contract, quantum meruit, and breach of the covenant of good faith and fair dealing.

8. The Subcontract requires arbitration of "all claims, disputes, and controversies arising out of or relating [thereto]" in accordance with the AAA's Construction Industry Arbitration Rules. *See* Exhibit D, at 14 (Section 9.01). The Subcontract designated Fort Worth, Texas as the location of the Arbitration, and Moosehead properly designated Fort Worth as the location of the Arbitration in its initial Demand. *Id.* However, the parties consented in their first scheduling order ("Scheduling Order No. 1") to change the location of the Arbitration to Dallas, Texas. A true and correct copy of Scheduling Order No. 1 is attached hereto as Exhibit E.

Moosehead filed a First Amended Demand for Arbitration on September 11, 2019. A true and correct copy of Moosehead's First Amended Demand for Arbitration is attached hereto as Exhibit F. In response thereto, Trinity filed its Answering Statement and Counterclaim on September 30, 2019, in which Trinity asserted its own claim for breach of contract related to a failure by Moosehead to pay certain union dues required by law. A true and correct copy of Trinity's Answering Statement and Counterclaim is attached hereto as Exhibit G. Trinity submitted an Amended Answering Statement and Counterclaim on December 20, 2019, a copy of which is attached hereto as Exhibit H. Both parties sought their respective attorneys' fees and costs, as authorized by the Subcontract. *See* Exhibit D, at 16 (Section 11.03). Neither party has challenged the arbitrability of any issue in this dispute, nor has either party challenged the jurisdiction of the Arbitrator.

9. The Subcontract provides that the AAA shall administer arbitrations. Exhibit D, at 14 (Section 9.01). Steven K. Yungblut, Esq. was appointed as the Arbitrator for this dispute. Moosehead did not object to the selection of the Arbitrator at any time during the pendency of the Arbitration.

10. Due to the COVID-19 pandemic, the parties mutually consented to hold the evidentiary hearing remotely by videoconference. The Arbitrator held such evidentiary hearings on Moosehead's claims and Trinity's defenses and counterclaims from September 9, 2020 through September 16, 2020.

11. Following the evidentiary hearings, the Arbitrator entered the Original Final Award attached as Exhibit A on November 25, 2020.

12. In the Original Final Award, the Arbitrator found that "Moosehead's claims for breach of contract, quantum meruit, [and] breach of the covenant of good faith and fair dealing,

are denied," and that "[t]herefore, Moosehead is awarded $0.00." Exhibit A, at 7. The Arbitrator further found that Trinity was the prevailing party in both the defense of Moosehead's claims and in the prosecution of Trinity's counterclaim and was therefore entitled to its reasonable attorneys' fees and costs.

13. In the Original Final Award, the Arbitrator awarded Trinity $725,496.00 in attorney's fees and $25,653.67 in related costs, offset by one payment of statutory interest to Moosehead in the amount of $49,880.58, for a total award of $701,269.09. Exhibit A, at 7-8. The Original Final Award further provided that Moosehead was required to make payment within 30 days (by December 25, 2020), and that after that date post-judgment interest would begin to accrue at the rate established under Texas law. *Id.* at 8.

14. On December 14, 2020, Moosehead filed a Motion pursuant to Rule 51 of the AAA Rules to Correct the Original Final Award, alleging a computational error in the amount of $568.98 and an "evident mistake in the description of prevailing party." The latter part of Moosehead's Motion sought to have the Arbitrator substantively change his ruling and declare Moosehead the prevailing party. True and correct copies of Moosehead's Motion to Correct the Award—and Trinity's opposition thereto—are attached as Exhibits I and J, respectively. Trinity did not dispute the correction of the computational error, but opposed all of Moosehead's other requested relief.

15. On January 11, 2021 the Arbitrator issued the Modified Final Award. As agreed by Trinity, the Arbitrator increased the amount of Moosehead's offset to $50,449.56, resulting in a reduced total award to Trinity of $700,700.11, but denied all other relief. *See* Exhibit B. The Modified Final Award specifically provides that, apart from the limited recalculation therein, the Original Final Award "is reaffirmed and remains in full force and effect." *Id.*

16. Trinity does not dispute the Arbitrator's authority to make the limited modification set forth in the Modified Final Award.

MOTION TO CONFIRM ARBITRATION AWARD AND ENTER JUDGMENT

17. The Federal Arbitration Act ("FAA") is applicable to all "commerce among the several States." 9 U.S.C. §§ 1, 2. The Subcontract is between Moosehead, a New Hampshire corporation, and Trinity, a Texas limited liability company, for clearing work on a portion of an oil and gas pipeline located in Virginia and West Virginia. Accordingly, the Subcontract reflects commerce among multiple states, and the FAA governs.

18. The FAA states, in relevant part:

> If the parties in their agreement have agreed that a judgment of the court shall be entered upon the award made pursuant to the arbitration, and shall specify the court, then at any time within one year after the award is made any party to the arbitration may apply to the court so specified for an order confirming the award, and thereupon the court must grant such an order unless the award is vacated, modified, or corrected as prescribed in sections 10 and 11 of this title. If no court is specified in the agreement of the parties, then such application may be made to the United States court in and for the district within which such award was made.

9 U.S.C. § 9. This case meets all of the requirements for confirmation of the award.

First, Section 9.01 of the Subcontract satisfies the first requirement of the FAA because it authorizes judgment to be entered upon any arbitration award:

> The award rendered by the arbitration shall be final, and judgment may be entered upon the award in accordance with the Texas Arbitration Act and/or the Federal Arbitration Act.

Exhibit C, at 14 (Section 9.01).

Second, Trinity makes this application within one year after delivery of the Modified Final Award. The Modified Final Award is dated January 11, 2021, and the deadline within which Trinity may bring this Petition runs through January 10, 2022. Moreover, as the Original

Final Award and Modified Final Award were made from Dallas, Texas, this Court has jurisdiction to grant Trinity's Petition.

Third, no grounds exist for modification, correction, or vacatur of the Modified Final Award. The limited, *exclusive* statutory grounds for vacatur of an award include situations where:

> (1) the award was procured by corruption, fraud, or undue means;
>
> (2) there was evident partiality or corruption in the arbitrators, or either of them;
>
> (3) the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior by which the rights of any party have been prejudiced; or
>
> (4) the arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

9 U.S.C. § 10. *See also Hall Street Associates, L.L.C. v. Mattel, Inc.*, 552 U.S. 576 (2008) (holding that no grounds outside the statutory framework may be considered for vacating or modifying an arbitration award). Similarly, the exclusive grounds for modification of an award include:

> (a) Where there was an evident material miscalculation of figures or an evident material mistake in the description of any person, thing, or property referred to in the award.
>
> (b) Where the arbitrators have awarded upon a matter not submitted to them, unless it is a matter not affecting the merits of the decision upon the matter submitted; or
>
> (c) Where the award is imperfect in matter of form not affecting the merits of the controversy.

None of the circumstances under Sections 10 or 11 of the FAA exist in this case. The Arbitrator previously corrected a miscalculation of figures at Moosehead's request, and with Trinity's agreement. There are no further miscalculations, nor have any been alleged by the parties.

Section 13 of the FAA requires that any party moving for an order confirming an arbitration to award to attach the following documents:

(a) The agreement; the selection or appointment, if any, of an additional arbitrator or umpire; and each written extension of the time, if any, within which to make the award. The agreement to arbitrate is contained in the Subcontract at Exhibit D, Section 9.01. No additional arbitrators were appointed or selected for this matter, and no extensions of time for the Arbitrator to render his award was given.

(b) The award. The "award" in this matter consists of the Original Final Award and the Modified Final Award, attached hereto as Exhibits A and B.

(c) Each notice, affidavit, or other paper used upon an application to confirm, modify, or correct the award. Moosehead filed a Motion to Modify the Original Final Award, which is attached hereto as Exhibit I. Trinity filed a response in opposition to Moosehead's Motion, which is attached hereto as Exhibit J.

All requirements for confirmation have been met. Accordingly, pursuant to 9 U.S.C. § 9, Trinity seeks confirmation of the Modified Final Award and a judgment in conformity with the Modified Final Award against Moosehead.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Trinity respectfully requests judgment as follows:

1. Confirmation of the Modified Final Award as a Judgment of this Court against Moosehead in the amount of $700,700.11;

2. Interest at the statutory rate of 5% per annum on the amount of $700,700.11, accruing from December 25, 2020 until paid, as set forth in the Final Award; and

3. Any and all further relief this Court deems just and proper.

Dated: January 13, 2021

Respectfully submitted,

/s/ Jonna N. Summers
Jonna N. Summers
State Bar No. 24060649
Amy K. Wolfshohl
State Bar No. 24055880
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ATTORNEY FOR PETITIONER
US TRINITY ENERGY SERVICES, LLC

American Arbitration Association
Construction Industry Arbitration Tribunal

IN THE MATTER OF THE ARBITRATION BETWEEN:

Re: 01-19-0001-6957
Moosehead Harvesting, Inc.
v.
US Trinity Energy Services, Inc.

Arbitration Award

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the parties' agreement to arbitrate, dated the 7th day of February 2018, having been duly sworn, having heard the proofs and allegations of the parties, and having reviewed the written submission filed by the parties, find and award as follows:

Procedural Issues

Quantum Meruit

Claimant asserted a claim for Quantum Meruit. On February 7, 2018 the parties entered into a valid subcontract for clearing of the right of way for project (the "Subcontract"). Since there is a valid contract that governs the parties' performance of the work, the laws of the State of Texas do not recognize a cause of action for Quantum Meruit under these circumstances.

Good Faith and Fair Dealing

The Contract involved the relationship between general contractor and subcontractor. Texas does not recognize a special relationship between general contractor and subcontractor so as to create a duty of good faith and fair dealing.

Finding and Conclusions

EXHIBIT A

The Project

Mountain Valley Pipeline, LLC ("MVP") contracted with US Trinity Energy Services, Inc. ("Trinity") for clearing, grading, trenching, stringing, bending, welding, coating, lowering in, backfilling, tie-in, NDT restoration, hydrotesting, and cleanup for approximately 40 miles of a 42-inch natural gas pipeline located in West Virginia. The approximate contract value for the prime contract was $365,000,000.00. On February 7, 2018, Trinity subcontracted the clearing work to Moosehead Harvesting, Inc. ("Moosehead"). The approximate value of the Subcontract was $9,000,000.00.

The Subcontract

The Subcontract was a unit price contract. The Subcontract Price was determined by the total sum of the extensions of the unit prices contained in the unit price schedule. Moosehead would only be paid for clearing work that it actually performed. Moosehead agreed to perform Clearing and Stump @ $42.50 per foot and Hand Felling @ $3.50 per foot.

Trinity's obligation to pay Moosehead was expressly contingent upon MVP's acceptance of the Subcontract Work and Trinity's receipt of payment from MVP for the Subcontract Work. Receipt of payment by Trinity from MVP was a condition precedent to Trinity's obligation to pay Moosehead.

MVP's decisions regarding change orders were final. If Trinity could not get additional compensation from MVP, then Moosehead waived its right to additional compensation. However, the Subcontract did provide for a pass-through claim, provided that Moosehead confirmed in writing, that Moosehead would pay for any expenses and attorneys' fees incurred in connection with the claims asserted at Moosehead's request.

Hand Felling Claim Bat Tree Window

Moosehead submitted a change order for additional hand felling during the bat tree window in the amount of $871,751.00. The claim centered around acceleration and an objection to the unit price of $3.50 per foot. First, Moosehead was aware of the compressed window when it signed the Subcontract. Moosehead claimed that it is entitled to more money for hand felling

because Trinity received $31.36 from MVP for hand felling. Moosehead claimed that the discrepancy is the result of Trinity including too much markup on Moosehead's hand felling work. That is not the case. In an arms-length transaction months before the Subcontract was signed, Trinity's bid to MVP included a unit price for hand felling at the rate of $31.36. In February of 2018, Moosehead entered into the Subcontract where it agreed to perform hand felling at the unit rate of $3.50 per foot. The Subcontract was an arms-length transaction. Moosehead's expert, Pratt, was unable to substantiate the change order for additional hand felling during the bat tree window. He agreed that Moosehead had been paid at the unit price for all hand felling during the bat tree window. Moosehead's claim for additional hand felling during the bat tree window is denied.

Additional Hand Felling

Moosehead submitted a request for additional hand felling in the amount of $86,555.00. Monte Pratt did not provide a number for additional hand felling. Trinity's expert, Kenrich, credited Moosehead for 7,468 linear feet that had not been invoiced. When the proper unit price of $3.50 per foot is applied, this resulted in a payment of $26,138.00. This amount has been paid by Trinity, so no additional payment is due.

Productivity / Disruption

Moosehead submitted a change order for loss of productivity and disruption in the amount of $6,095,275. A large portion of the claim involved Moosehead's alleged increase in cost as a result of burning rather than chipping. MVP denied the burning portion of the claim in that burning was in Moosehead's scope of work and MVP did not believe that burning increased the cost over chipping. Trinity's expert confirmed that there was no additional cost for burning when it did a comparison of the correct bid estimate compared to actual daily rates. In addition, the claim was overstated in that it did not take into account the averted costs of chipping. Moosehead asserted additional items related to productivity with regard to stacking timber within the ROW, lack of access roads, compressed timeline, lack of access to the ROW, and post-nationwide permit revocation. These claims were not developed during the arbitration hearing.

Rather, they were included in the total cost claim. The original productivity change order in the amount of $6,095,275 is denied in that it is a total cost claim that was not properly supported. Texas courts do not favor total cost claims. If an arbitration tribunal were to consider a total cost claim, the total cost claim would have to comply with the following four requirements:

a. The claim could not be priced under any other method;

b. Moosehead's estimate was reasonable;

c. Moosehead's actual costs were reasonable and accurately recorded;

d. Moosehead was not responsible for the overruns.

Moosehead failed to present any evidence regarding the above-referenced requirements. Trinity's expert opined that the productivity and disruption claim had zero value. Moosehead's expert was never able to place a value on the productivity and disruption claim. He left it in the TBD column. Moosehead's productivity and disruption claim is denied.

Standby Claims (other than J)

Moosehead submitted standby change orders in the amount of $3,175,596.00. MVP approved the standby change orders in the amount of $1,499,500.00. The payment was based on one crew at $32,000.00 per day per crew. Moosehead's request was based on receiving $96,000.00 per day for standby. Moosehead's expert and Trinity's expert agreed that the correct number was $1,499,500.00. Moosehead has been paid this amount and no additional compensation is due.

Standby Claim J

Moosehead submitted standby claim J in the amount of $902,607.00. MVP applied the correct daily rate and approved $293,333.00. Moosehead's expert and Trinity's expert both agreed that the correct number was $293,333.00. Moosehead has been paid this amount and no additional compensation is due.

Clearing Work Not Performed

When the Project shut down for the winter, it did not restart in the spring. Moosehead submitted a change order for clearing work not performed in the amount of $2,600,575.00. This was a total revenue

claim. It billed for the unit prices to be paid based on the quantities of work remaining, but failed to deduct the savings for not performing the work. Trinity's expert could not validate this claim. Pratt calculated a number based on Moosehead earning a 35% profit on the work. Pratt never obtained a report indicating that Moosehead had earned a profit on any portion of the prior work. His profit number was not based on cost records. There was no showing that his profit assumption was reasonable. However, none of the above is decisive of the issue. Under the unit price contract, Moosehead is only paid for work actually performed and accepted by the Owner. Moosehead's claim for clearing work not performed is denied.

Discrete Change Orders Recognized by Trinity's Expert

In performing its analysis, Trinity's expert recognized two discrete change orders that had been overlooked by Moosehead's expert. One change order was for moving wood for the landowner in the amount of $22,775.00 and creation of an access road in the amount of $17,434.00. These sums were paid by Trinity so no additional compensation is due.

Moosehead's Claim of Being Excluded from Change Order Negotiations

Moosehead claimed that it was unaware that negotiations were taking place in early 2019 regarding Moosehead's change orders. Trinity submitted Moosehead's change orders to MVP exactly as submitted to Trinity. On January 10, 2019, Trinity informed Mr. Reed with Trinity, that MVP would be paying approximately 1.3 million dollars for Moosehead's change orders. Mr. Reed then submitted an invoice for retainage and he preserved a number of change order claims on the face of the document. Trinity informed Reed that he had to sign a clean waiver in order to obtain payment for the retainage from MVP. Reed knew that if MVP refused to pay, his path to obtaining money was a pass-through claim. Reed made the decision that he wanted the retainage. On February 28, 2019, Reed executed a lien waiver and release that released all claims for services and work performed and material furnished prior to February 28, 2019. The lien release and waiver precluded a pass-through claim. Moosehead did not perform any work after February 28, 2019.

Trinity's Counterclaim Union Payment

On January 29, 2020, Trinity paid IUOE Local 132 Trust Funds the sum of $75,710.00. Moosehead was obligated to pay these funds to the union. When Moosehead failed to make the payment, it became the obligation of Trinity to make the payment. In addition to the payment, Trinity incurred legal fees in the amount of $20,236.00. Moosehead did not contest these payments during the arbitration hearing. On its counterclaim for the union payment, Trinity is awarded the sum of $95,946.00. This amount was taken as a credit in Trinity's calculation of damages. Therefore, no payment is due.

Moosehead's Delayed Payment Interest Claim

On August 26, 2020, Trinity tendered to Moosehead the sum of $192,90.00. Trinity had received this money from MVP on March 13, 2019. Moosehead is entitled to prompt pay interest for 526 days (March 13, 2019 to August 20, 2020) in the amount of $49,880.58 (calculated as follows $192,290.00 x 18% = $34,612.20 ÷ 365 = $94.83 x 526 = $49,880.58) On its delayed payment claim, Moosehead is awarded the sum of $49,880.58. This amount is offset against the award of attorneys' fees to Trinity.

Summary of Claims Awarded

Bat Tree Window Hand Felling Change Order	$	0
Not Invoiced Hand Felling	$	26,138
Productivity/Disruption		0
Standby Claims (other than J)	$	1,499,500
Standby Claim J	$	293,333
Moving Wood for Landowner	$	22,775
Access Road Work	$	17,434
Total Claims Awarded:	$	1,859,180

Summary of Amounts Paid Against Claims

Advance on Change Orders	$300,000
SF-1077 Payment	1,270,945
SF-1077 Payment	192,290
Union Settlement	75,710
Legal Fees for Union Lawsuit	20,235
Total Payments Made for Claims:	$1,859,180

Amount Due: $0.00

Attorneys' Fees

Moosehead did not prevail on its claim. The Subcontract provided that if Trinity is required to defend against any cause of action or claim brought by Moosehead on which Moosehead did not prevail, then Trinity is entitled to recover its reasonable and necessary attorneys' fees and costs incurred. Based on the amount claimed against Trinity, $11,667,708 and the "lodestar" analysis performed by Amy K. Wolfshohl in her affidavit, Trinity is awarded its reasonable and necessary attorneys' fees in defending against Moosehead's claims and in presenting its counterclaim in the amount of $725,496.00. In addition, Trinity is awarded its reasonable and necessary costs in the amount of $25,653.67 for a total of $751,149.67. When the offset for interest is deducted in the amount of $49,880.58, the total amount of the award is $701,269.09.

Award

Moosehead's claims for breach of contract, quantum meruit, a breach of the covenant of good faith and fair dealing are denied. Therefore, Moosehead is awarded $0.00. The interest payment awarded to Moosehead in the amount of $49,880.58 is an offset to Trinity's attorneys fee's and costs award.

Trinity is awarded its counterclaim in the amount $95,946.00 which was credited as a payment to Moosehead in Trinity's damage model

After Moosehead's offset of $49,880.58, Trinity is awarded its reasonable and necessary attorneys' fees in defending against Moosehead's claims and presenting its counterclaim in the

amount of $725,496.00 plus reasonable and necessary costs in the amount of $25,653.67, which results in Moosehead paying Trinity the sum of $701,269.09.

The administrative fees and expenses of the American Arbitration Association ("Association") totaling $20,900.00 and the compensation and expenses of the arbitrator totaling $30,100.00 shall be borne by the party incurring the same.

The above sums are to be paid on or before 30 days from the date of this Award. If the Award is not paid within 30 days, it shall draw post-judgment interest as allowed by the laws of the State of Texas.

This award is in full settlement of all claims related to the Project and the Subcontract. All claims not expressly granted herein are, hereby, DENIED.

Dated: November 25, 2020

Stephen K, Yungblut - Arbitrator

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between:

Case Number: 01-19-0001-6957

Moosehead Harvesting Inc.
-vs-
US Trinity Energy Services, LLC

DISPOSITION FOR APPLICATION OF MODIFICATIONAND CORRECTION OF AWARD

I, THE UNDERSIGNED Arbitrator, having been designated in accordance with the arbitration agreement entered into between the above-named parties and dated February 7, 2018, and having been duly sworn, and having duly heard the proofs and allegations of the Parties, and having previously rendered an Award dated November 25, 2020 and Moosehead Harvesting, Inc. having filed an application for Modification and Correction of Award dated December 14, 2020, and US Trinity Energy Services, LLC having responded by letter dated December 28, 2020 do hereby, DECIDE, as follows:

!. The Arbitration Award dated November 25, 2020 calculated the days between March 13, 2019 and August 26, 2020 as being 526 days. The correct number of days is 532 days. As a result of this mathematical computation error, the following modifications and corrections are made to the Arbitration Award dated November 25, 2020.

2. On Page 6 of the Award, Moosehead Delayed Payment Claim, 526 days is modified to 532 days and the amount of interest is increased from $49,880.58 to $50,449.56.

3. On Page 7 of the Award, Attorneys' Fees, the offset for interest is increased $49,880.59 is increased to $50,449.56 and the total amount of the award is reduced from $701,269.09 to $700,700.11.

4. On Page 7 of the Award, the Award section, paragraph one, the interest awarded Moosehead is increased from $49,880.58 to $50,449.56.

5. On Page 7 and 8 of the Award, the Award section, paragraph 3, Moosehead's offset is increased from $49,880.58 to $50,449.56 and the amount of payment to Trinity is reduced from $701,269.09 to the sum of $700,700.11.

In all other respects, the Award dated November 25, 2020, is reaffirmed and remains in full force and effect.

January 11, 2021
Date

Stephen K Yungblut
Stephen K. Yungblut - Arbitrator

EXHIBIT B

AMERICAN ARBITRATION ASSOCIATION®

CONSTRUCTION ARBITRATION RULES
DEMAND FOR ARBITRATION

Mediation: If you would like the AAA to contact the other parties and attempt to arrange a mediation, please check this box ☐ There is no additional administrative fee for this service.

Name of Respondent: US Trinity Energy Services, LLC

Address: 200 Highland Circle

City: Argyle	State: Texas	Zip Code: 76226
Phone No.: (940) 240-5800	Fax No.: (940) 240-5805	

Email Address: jim@ustrinity.com

Name of Representative (if known): Brian G. Corgan, Esq.

Name of Firm (if applicable): Kilpatrick Townsend

Representative's Address: 1100 Peachtree Street NE

City: Atlanta	State: Georgia	Zip Code: 30309
Phone No.: (404) 815-6217	Fax No.: (404) 541-3163	

Email Address: bcorgan@kilpatricktownsend.com

The named claimant, a party to an arbitration agreement dated 02/07/2018, which provides for arbitration under the Construction Industry Rules of the American Arbitration Association, hereby demands arbitration.

Arbitration Clause: Please indicate whether the contract containing the dispute resolution clause governing this dispute is a standard industry form contract (such as AIA, ConsensusDOCS or AGC) or a customized contract for the specific project.

Contract Form: Custom

The Nature of the Dispute:

Claimant is owed a substantial amount of money from the Respondent under a Subcontract Agreement for work performed by the Claimant on a pipeline project in West Virginia. Claimant's work under the Subcontract involved timber clearing within a right of way for a pipeline, and included hand felling and mechanical work.

Dollar Amount of Claim: $ Approximately $8,000,000.00

Other Relief Sought: ☑ Attorneys Fees ☑ Interest ☑ Arbitration Costs ☐ Punitive/Exemplary ☐ Other:

Amount Enclosed: $ 7,000.00

In accordance with Fee Schedule: ☐ Flexible Fee Schedule ☑ Standard Fee Schedule

Please describe appropriate qualifications for arbitrator(s) to be appointed to hear this dispute:

The arbitrator should be pipeline knowledgeable, particularly with northeast pipeline construction. The arbitrator also should have experience in construction litigation and/or litigation.

Hearing Locale Requested: Fort Worth, Texas

Project Site: West Virgina

Please visit our website at www.adr.org if you would like to file this case online.
AAA Case Filing Services can be reached at 877-495-4185.

EXHIBIT C

AMERICAN ARBITRATION ASSOCIATION

CONSTRUCTION ARBITRATION RULES
DEMAND FOR ARBITRATION

Estimated Time Needed for Hearings Overall:	hours or 2-3	days
Specify Type of Business:		
Claimant: Moosehead Harvesting Inc.	Respondent: US Trinity Energy Services, LLC	
You are hereby notified that a copy of our arbitration agreement and this demand are being filed with the American Arbitration Association with a request that it commence administration of the arbitration. The AAA will provide notice of your opportunity to file an answering statement.		
Signature (may be signed by a representative):	Date: 05/31/2019	
Name of Claimant: Moosehead Harvesting Inc.		
Address (to be used in connection with this case): P.O. Box 159		
City: Lincoln	State: New Hampshire	Zip Code: 03251
Phone No.: (800) 445-4530	Fax No.: (860) 668-0509	
Email Address: robreed@MooseheadHarvesting.com		
Name of Representative: Jennifer R. Rossi, Esq.		
Name of Firm (if applicable): Law Office of Jennifer Rossi LLC		
Representative's Address: 104 Pioneer Drive		
City: West Hartford	State: Connecticut	Zip Code: 06117
Phone No.: (860) 593-1783	Fax No.: (860) 570-1580	
Email Address: jrossi@jrossilaw.com		
To begin proceedings, please send a copy of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to: American Arbitration Association, Case Filing Services, 1101 Laurel Oak Road, Suite 100, Voorhees, NJ 08043. Send the original Demand to the Respondent.		

Please visit our website at www.adr.org if you would like to file this case online.
AAA Case Filing Services can be reached at 877-495-4185.

US TRINITY ENERGY SERVICES, LLC

STANDARD SUBCONTRACT AGREEMENT
AGREEMENT NUMBER 60-6002-02

CONTRACTOR:
US TRINITY ENERGY SERVICES, LLC
200 HIGHLAND CIRCLE
ARGYLE, TEXAS 76226
TELEPHONE: (940) 240-5800
FAX: (940) 240-5805
EMAIL: jim@ustrinity.com

SUBCONTRACOR:
MOOSEHEAD HARVESTING INC.
P.O Box 159
Lincoln, NH 03251
800-445-4530
info@MooseheadHarvesting.com

* *

This Subcontract Agreement (herein called "Agreement") is made and entered into as of this 7th day of February, 2018, by and between Contractor and Subcontractor to perform part of the Work on the following Project:

PROJECT: **EQT MVP**
194 Southern Industrial Dr.
Beaver, W Virginia 25813

OWNER: Mountain Valley Pipeline LLC
EQT Plaza
625 Liberty Avenue, Suite 1700
Pittsburgh, PA 15222-3111

ENGINEER: _____

ARTICLE 1.
SCOPE OF WORK

1.01 Subcontract Work. Subcontractor shall furnish and pay for all labor, materials, fuel, equipment, tools, machinery, and supplies; perform all work; obtain and pay for all necessary permits, licenses and fees; pay all state sales taxes, state and federal unemployment taxes, and all other taxes and fees associated with the subcontract labor or materials; provide all required construction layout and surveying; and do all things necessary to complete the following work, together with all appurtenant and related work, in strict compliance with the Contract Documents described in the following paragraph 1.02, for the following work:

See attached Moosehead Harvesting Rate Schedule and scope

Such work shall be herein called the "Subcontract Work."

1.02 Contract Documents.

a. The Contract Documents shall include, in addition to this Agreement, all documents reflecting the agreement between the Owner and Contractor for the construction of the Project, including, but not limited to, the plans, specifications, general conditions, special conditions, addenda, performance bond, and payment bond (the "Prime Agreement"). The Prime Agreement will be on file at the office of Contractor, and available for Subcontractor's review during normal business hours.

b. Subcontractor agrees that prior to acceptance of this Agreement, as evidenced by the signatures of both Contractor and Subcontractor hereon or by Subcontractor's commencement of the Subcontract Work, Subcontractor has read the Contract Documents and be familiar with each and every part thereof affecting the Subcontract Work together with all related drawings,

EXHIBIT D

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plans, specifications, and all general conditions and special conditions incidental thereto. Subcontractor further agrees that (i) this Agreement contains the entire agreement of the parties; (ii) no representations or warranties of any kind have been made by Contractor or its employees, nor relied upon by Subcontractor, other than those expressed in this Agreement; and (iii) the terms and conditions of this Agreement are not in any way amended or modified by any prior negotiations, offers, bids, proposals, exclusions, and/or agreements, whether written or oral, respecting the subject matter of the Subcontract Work or this Agreement, and any such prior negotiations, offers, bids, proposals, exclusions, and/or agreements are no longer of any force or effect. All modifications to this Agreement shall be in writing signed by the parties.

c. Subcontractor agrees that prior to acceptance of this Agreement, as evidenced by the signatures of both Contractor and Subcontractor hereon or by Subcontractor's commencement of the Subcontract Work, Subcontractor will be satisfied by examination as to the nature and location of the work specified herein; the character, quantity, and kinds of materials necessary; the adequacy of any surface or subsurface conditions necessary to assure proper performance of the Subcontract Work; the kinds and quantity of equipment needed; and other local conditions or matters affecting compliance with the Contract Documents. Subcontractor accepts these existing conditions for the performance of the Subcontract Work at the Subcontract Price.

d. Subcontractor agrees that prior to acceptance of this Agreement, as evidenced by the signatures of both Contractor and Subcontractor hereon or by Subcontractor's commencement of the Subcontract Work, Subcontractor will review the Owner's Financial Information provided by Contractor and will accept the risks associated with the Owner's failure to make payment. Further, Subcontractor's acceptance of this Agreement, or initiation of the Subcontract Work, shall constitute Subcontractor's representation to Contractor and confirmation that prior to such acceptance of this Agreement or initiation of the Subcontract Work: (i) Subcontractor received from Contractor and reviewed the Owner's Financial Information; (ii) such information was adequate for Subcontractor to evaluate and understand the risks of the Owner's non-payment; and (iii) Subcontractor accepted the risk of the Owner's payment as a condition precedent to Contractor's obligation to pay Subcontractor.

e. Subcontractor represents to Contractor that Subcontractor is knowledgeable and familiar with all statutes, codes, ordinances, rules and regulations applicable to the Subcontract Work. Subcontractor further agrees that Subcontractor will not proceed with any portion of the Subcontract Work that is in violation or variance with any such statute, code, ordinance, rule or regulation, and will promptly notify Contractor in writing of any such violation or variance before commencing with the Subcontract Work.

f. Any questions arising with respect to interpretation of the Contract Documents, or any related drawings, plans, or specifications, or any other communication related to the performance of the Subcontract Work, shall be submitted through Contractor for submission to the Owner or the Owner's representative. Subcontractor shall follow the directions of the Owner or the Owner's representative, as conveyed by Contractor, with respect to any such matters. Subcontractor agrees that the Owner's (or Owner's representative's) interpretation of the requirements of the Contract Documents shall be final, as long as such interpretation and/or decision is not in conflict with the terms of the Contract Documents.

g. Subcontractor agrees to become familiar with the respective rights, powers, benefits and liabilities of Contractor and the Owner under the Prime Agreement and hereby agrees to comply with and perform all provisions thereof which are applicable to the Subcontract Work. Subcontractor agrees to be bound to Contractor under this Agreement according to the same terms and conditions as Contractor is bound to the Owner under the Prime Agreement. Subcontractor shall assume and perform all of the obligations and responsibilities of Contractor under the Prime Agreement which pertain or relate to the Subcontract Work as described in Paragraph 1.01.

ARTICLE 2.
PERFORMANCE

AND PROSECUTION OF WORK

2.01. Independent Contractor. Subcontractor agrees that it is an independent contractor under this Agreement. Subcontractor is exclusively and solely responsible for, and has control over, all construction means, methods, techniques, procedures, and/or supervision of the Subcontract Work including any means, methods, techniques, procedures, and/or supervision related to the safety of Subcontractor's employees and any other persons working in the area of the Subcontract Work.

2.02. Storage of Materials. Subcontractor shall examine all equipment and materials furnished in connection with the Subcontract Work for compliance with the applicable Contract Documents. Subcontractor shall then unload and properly store all such equipment and materials to prevent damage or loss. Contractor may deduct all costs for such damage or loss resulting from improperly stored materials from payments due to Subcontractor. If such costs exceed the unpaid Subcontract Price, Subcontractor shall pay Contractor the balance of such excess upon demand.

2.03 Surface and Subsurface Conditions. Subcontractor shall inspect surface and/or subsurface conditions affecting the Subcontract Work to assure that the Subcontract Work will be properly performed in accordance with the applicable Contract Documents. If any remedial work is required to the surface or subsurface, Subcontractor shall immediately notify Contractor in writing. IF SUBCONTRACTOR PERFORMS SUBCONTRACT WORK WITHOUT PROVIDING NOTICE THAT SUCH REMEDIAL WORK IS REQUIRED, SUBCONTRACTOR ACCEPTS ALL SURFACE AND SUBSURFACE CONDITIONS AND WAIVES ANY CLAIMS FOR EXTRA COMPENSATION TO REPAIR OR REMEDY SUCH CONDITIONS OR FOR REPLACEMENT OF THE SUBCONTRACT WORK ARISING OR RESULTING FROM DEFECTS IN THE SURFACE OR SUBSURFACE.

2.04 Protection of Work. Subcontractor shall take necessary precautions to properly protect the Subcontract Work and the work of Contractor and other subcontractors. Subcontractor shall promptly repair any damage caused to the work of Contractor or other subcontractors by Subcontractor or its sub-subcontractors or materialmen at any tier. If Subcontractor fails to promptly repair such damage, then Contractor may deduct the costs of such repairs from payments due Subcontractor. If such costs exceed the unpaid Subcontract Price, Subcontractor shall pay Contractor the balance of such excess upon demand.

2.05 Inspection of Work. Subcontractor shall provide sufficient, safe, and proper facilities at all times for the inspection of the Subcontract Work by the Owner, Contractor, or their authorized representatives. Subcontract Work not meeting the specifications or intent of the applicable Contract Documents, including, but not limited to, the drawings, plans and specifications, shall be removed, rebuilt, and retested to conform to the requirements of the Contract Documents, all at Subcontractor's expense.

2.06 Cleanup. In the course of performing all Subcontract Work, Subcontractor shall keep the construction site and work areas clean at all times of debris associated with the Subcontract Work and/or employees of Subcontractor and its sub-subcontractors and materialmen at any tier. Subcontractor shall remove from the Project site all wastes and excess materials related to the Subcontract Work. If Subcontractor shall fail to remove construction wastes and/or excess materials, Contractor may proceed to perform such duties, and may deduct all costs incurred in performing such duties from payments otherwise due Subcontractor. If such costs exceed the unpaid Subcontract Price, Subcontractor shall pay Contractor the balance of such excess upon demand.

2.07 DBE Participation. If Subcontractor is to perform as a Disadvantaged, Small, Minority, or Female-Owned Business Enterprise ("DBE"), Subcontractor (i) agrees that all work required by this Agreement will be performed, managed and supervised by Subcontractor's own forces, except for work sub-subcontracted to others with Contractor's prior written consent, and (ii) shall do all things necessary to comply with all applicable federal, state, and municipal laws, rules, regulations, and ordinances governing Subcontractor's performance and continuing certification as a DBE so that its performance will count toward Contractor's DBE requirements in the Prime Agreement.

ARTICLE 3.
TIME, SCHEDULES, AND DELAYS

3.01 Time. Time is of the essence to this Agreement. Subcontractor shall begin the Subcontract Work as soon as instructed by Contractor and shall prosecute the Subcontract Work promptly, efficiently, and in a manner that will not cause delay in the progress of Contractor's work or other work performed on the Project by other subcontractors. ALL SUBCONTRACT WORK SHALL BE PERFORMED IN THE NUMBER OF DAYS SHOWN ON THE PROJECT SCHEDULE, NOT TO EXCEED _____ CALENDAR DAYS.

3.02 Project Schedule. Contractor from time to time may issue a Project Schedule applicable to the Subcontract Work. Subcontractor shall perform all the Subcontract Work as scheduled by Contractor, unless Subcontractor notifies Contractor within three (3) calendar days after receipt of schedule requirements that the Subcontract Work cannot be performed within the time scheduled by Contractor. Contractor may, from time to time, reschedule the order of the Subcontract Work or otherwise revise Subcontractor's schedule. Subcontractor agrees to comply with such schedule revisions without any increase to the Subcontract Price for acceleration or delays.

3.03 Performance Reports. Subcontractor shall furnish periodic progress reports of the Subcontract Work as may be required by Contractor; and shall attend periodic conferences at the Project site to discuss progress.

3.04 Damages for Delay to Contractor. Subcontractor shall be liable for any damages for delay sustained by Contractor caused directly or indirectly by Subcontractor; including, but not limited to, damages, liquidated or otherwise, for which Contractor is liable to Owner. Any such damages shall be deducted from payments due Subcontractor, and, if such damages exceed the amount of payments due, Subcontractor shall pay Contractor upon demand such excess damages due.

3.05 Time Extensions, Claims, and Damages for Delay to Subcontractor. CONTRACTOR SHALL NOT BE LIABLE TO SUBCONTRACTOR FOR DELAYS, HINDRANCES, OR INTERRUPTIONS TO THE SUBCONTRACT WORK CAUSED BY THE ACT, NEGLECT, OR DEFAULT OF THE OWNER OR OWNER'S REPRESENTATIVE, OR BY REASON OF FIRE OR OTHER CASUALTY, OR ON ACCOUNT OF RIOTS OR STRIKES, OR ON ACCOUNT OF ANY ACTS OF GOD, OR ANY OTHER CAUSES BEYOND CONTRACTOR'S CONTROL, OR ANY CIRCUMSTANCES CAUSED OR CONTRIBUTED TO BY ANY OTHER PARTY PERFORMING A PART OF THE WORK; but, Contractor will cooperate with Subcontractor to enforce any just claim against the Owner or Owner's representative for delay as may be allowed under the Prime Agreement. Contractor shall be reimbursed by Subcontractor for any expense, including attorney's fees, incurred in connection with any claims asserted at the request of Subcontractor. SHOULD SUBCONTRACTOR BE DELAYED IN THE SUBCONTRACT WORK BY CONTRACTOR, THEN SUBCONTRACTOR'S SOLE AND EXCLUSIVE REMEDY AGAINST CONTRACTOR SHALL BE AN EXTENSION OF TIME FOR COMPLETION EQUAL TO THE DELAY CAUSED, AND THEN ONLY IF WRITTEN CLAIM FOR DELAY IS MADE TO CONTRACTOR PRIOR TO INTERFERENCE WITH THE SUBCONTRACT COMPLETION TIME. SUBCONTRACTOR WAIVES AND RELEASES CONTRACTOR FROM ALL CLAIMS AND CAUSES OF ACTION AGAINST CONTRACTOR FOR DAMAGES ARISING OUT OF ANY SUCH DELAYS, HINDRANCES, OR INTERRUPTIONS.

ARTICLE 4.
PRICE AND PAYMENTS

4.01 Subcontract Price.

(Check and complete one)

[ ] Lump Sum — The Subcontract Price shall be the lump sum of _____ ($_____), which sum shall be subject to adjustment only as provided in this Agreement.

[X] Unit Price — The Subcontract Price shall be the total sum of the extensions of the unit prices (as contained on the unit price schedule attached hereto), multiplied by the units approved by the Owner under the basis for measurement provided by the terms of the Prime Agreement (i.e. in-place quantities vs. excavated quantities, weight vs. volume, plan quantities vs. actual quantities, etc.) which sum shall be subject to adjustment only as provided in this Agreement.

4.02 Progress Payments.

a. Subcontractor shall submit to Contractor weekly applications for payment and receive payment on a 15 day schedule. Completed, notarized applications may be faxed or e-mailed with hard copies to follow by mail or hand delivery. The amounts of progress payments requested shall be based on Contractor's valuations of work performed by Subcontractor, considering the schedule of values submitted by Subcontractor of the various parts of the Subcontract Work aggregating the total price therefore. In applying for payment, Subcontractor shall submit a statement based upon this schedule. Payments shall be made on account of materials not incorporated in the Subcontract Work, but delivered and suitably stored at the site, only upon submission of evidence of payment from suppliers and only in accordance with the terms and conditions of the applicable Contract Documents. No applications for payment will be processed and no payments will be made unless Subcontractor has submitted a sworn statement certifying the name of all Subcontractor's unpaid materialmen and sub-subcontractors. Contingent upon Contractor's receipt of payment for that month by the Owner, payments for such applications shall be due after the expiration of the statutory period in which a laborer, materialman, or sub-subcontractor of Subcontractor can perfect a valid lien or bond claim. Contractor may pre-pay any payment without waiving any of Contractor's rights under this Agreement. Applications for payment shall be accompanied by completed lien waivers and/or bills paid affidavit forms as may be required by Contractor or Owner.

b. Retainage of ten percent (10%) of the sums due hereunder shall be withheld until completion and acceptance of all Subcontract Work to be performed under this Agreement. Ten (10) days after all conditions precedent to Contractor's obligation to make payment listed below have been completed and satisfied, Contractor's payment of retainage shall be due if:

(i) Subcontractor has fulfilled the contract requirements for the Subcontract Work of both the Prime Agreement and this Agreement, including the submittal of all information required thereby;

(ii) Subcontractor has completed all Subcontract Work and the Subcontract Work has been inspected, approved, and fully paid for by the Owner; and

(iii) Subcontractor has submitted to Contractor a Bills Paid Affidavit for the Subcontract Work and has a lien and/or bond claim release contingent only upon payment of the retainage amount.

c. In the event Contractor believes any of the conditions listed below warrant such action, Contractor may withhold from any payments due hereunder, the sums deemed necessary to protect Contractor and/or Owner from any losses on account of: (i) Defects in the Subcontract Work not remedied; (ii) Failure of Subcontractor to pay bills for labor and/or materials furnished in connection with the Subcontract Work; (iii) Inability of Subcontractor to complete the Subcontract Work for the unpaid balance of the Subcontract Price; (iv) Failure of Subcontractor to diligently prosecute the Subcontract Work such that damages for delay are likely; (v) Damages to another subcontractor; (vi) Breach by Subcontractor of any provision or obligation of this Agreement or of the Prime Agreement applicable to such Subcontract Work; or (vii) Breach by Subcontractor of any provision or obligation of another subcontract agreement or Work Order with Contractor.

d. Subcontractor agrees that Contractor may in its sole discretion make any payments due hereunder by means of checks jointly payable to Subcontractor and any of Subcontractor's materialmen or sub-subcontractors. Subcontractor agrees that any such joint check payments made shall constitute payment to Subcontractor under this Agreement for the full amount of such joint check.

e. In the event Contractor receives notice of a lien claim or bond claim from Subcontractor's materialmen, sub-subcontractors or laborers, at any tier,

Contractor may, at Contractor's option, directly pay any such claimant. Any such direct payment to a claimant and any expenses in processing such claim and payment shall be deducted from payments otherwise due Subcontractor, and if such payments and expenses exceed the amount of payments due, Subcontractor shall pay Contractor upon demand such excess amount. Subcontractor and Contractor further agree that Contractor will incur substantial additional costs and expenses in administration of claims when a notice is received, that such costs would be difficult to ascertain, that the sum of $350.00 would be a reasonable and just compensation to Contractor for each notice received, and that $350.00 for each notice should be deducted from any money then due or thereafter to become due to Subcontractor under this Agreement, as liquidated damages for such administration.

f. If Contractor fails to make payments to Subcontractor which are due pursuant to the terms of this Agreement, after receipt of payment by the Owner for the Subcontract Work, then Subcontractor may, upon seven (7) days written notice to Contractor, stop work without prejudice to any other remedy Subcontractor may have, but only if Contractor fails to cure after receipt of notice.

4.03 Final Payment. Contractor's obligation to make final payment to Subcontractor under this Agreement is specifically contingent upon the following conditions, which are conditions precedent to final payment: (a) Submittal by Subcontractor of an affidavit that all payrolls, bills for material and equipment, and other indebtedness connected with the Subcontract Work, have been paid except for bills, invoices and/or indebtedness specifically listed and identified in the affidavit; (b) submittal by Subcontractor of lien releases, or bond claim releases on bonded projects, indicating that all of Subcontractor's materialmen, laborers, and sub-subcontractors have been fully paid and are releasing all statutory lien rights and releasing all bond claims, except claims specifically listed and identified in the releases; (c) consent of Surety to final payment, if required; (d) approval by the Owner, Architect/Engineer, and Contractor of the Subcontract Work and final verification of the quantities of the Subcontract Work performed; and (e) receipt by Contractor of all payments related to the Subcontract Work, including any retainage withheld by the Owner from Contractor. SUBCONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT SHALL CONSTITUTE A WAIVER OF ALL CLAIMS BY SUBCONTRACTOR RELATING TO THE SUBCONTRACT WORK OR TO CONTRACTOR'S WORK CONNECTED WITH THE APPLICABLE PROJECT OR TO THE CONTRACT DOCUMENTS, BUT SHALL IN NO WAY RELIEVE SUBCONTRACTOR OF LIABILITY FOR THE OBLIGATIONS FOR REPLACING FAULTY OR DEFECTIVE WORK APPEARING AFTER FINAL PAYMENT.

4.04 Contingent Payment Obligation. Contractor's obligation to make progress payments and final payment to Subcontractor under this Agreement is expressly contingent upon and subject to Owner's acceptance of the Subcontract Work and Contractor's receipt of payment from Owner for the Subcontract Work. It is expressly understood and agreed to by Subcontractor that such receipt of payment by Contractor from the Owner is a condition precedent to Contractor's obligation to pay Subcontractor under this Agreement.

ARTICLE 5.
CHANGES AND
ADDITIONAL COMPENSATION

5.01 Changes. Contractor, from time to time, without invalidating this Agreement, may order changes in the Subcontract Work within the general scope thereof consisting of additions, deletions or other revisions to the Subcontract Work. Subcontractor, prior to the commencement of such changed or revised work, shall promptly submit to Contractor any claim for adjustment to the Subcontract Price or Project Schedule because of such changed or revised work. All Change Orders, Modifications, Claims for Adjustments, and Notices provided in this Agreement shall be in writing.

5.02 Notice Required. AS A CONDITION PRECEDENT TO CONTRACTOR'S OBLIGATION TO PAY SUBCONTRACTOR FOR ANY CHANGED OR EXTRA WORK, OR TO EXTEND SUBCONTRACTOR'S PERFORMANCE TIME, SUBCONTRACTOR MUST GIVE WRITTEN NOTICE PRIOR TO BEGINNING THE CHANGED OR EXTRA WORK TO CONTRACTOR (i) THAT THE SUBCONTRACTOR BELIEVES IT IS ENTITLED TO

EXTRA PAYMENT FOR THE CHANGED OR EXTRA WORK and (ii) THE AMOUNT THAT SUBCONTRACTOR ESTIMATES THE EXTRA WORK WILL COST; OTHERWISE, SUCH CLAIM SHALL BE WAIVED. Subcontractor shall not perform any changed, or extra work unless prior to the performance of such work, either: (i) Contractor and Subcontractor enter into a modification changing the Subcontract Price and/or extending the performance time for such changed Subcontract Work; or (ii) Contractor, after receiving Subcontractor's written notice of the expected extra payment, provides Subcontractor written notice to proceed with the changed, or extra Subcontract Work without such modification. Such written notice to proceed with work shall not constitute Contractor's consent or agreement to Subcontractor's claim that the work is extra, or to the amount that Subcontractor estimates for the extra work to cost, and Subcontractor shall proceed pursuant to paragraph 5.05.

5.03 Finality of Owner's Decision. Notwithstanding anything contained herein to the contrary, IF THE WORK FOR WHICH SUBCONTRACTOR CLAIMS EXTRA COMPENSATION TO BE DUE IS DETERMINED BY THE OWNER, OR THE OWNER'S REPRESENTATIVE, TO BE SUCH THAT CONTRACTOR IS NOT ENTITLED TO ADDITIONAL COMPENSATION FOR SUCH WORK FROM THE OWNER, THEN SUBCONTRACTOR WAIVES ITS RIGHT TO EXTRA COMPENSATION FOR SUCH WORK AND RELEASES CONTRACTOR FOR ANY LIABILITY OF PAYMENT THEREFOR, EXCEPT TO THE EXTENT CONTRACTOR RECOVERS FROM OWNER ON A CLAIM PURSUED AT SUBCONTRACTOR'S REQUEST AND EXPENSE. Subject to Subcontractor's right to participate in a proceeding disputing such a decision as provided in the Prime Agreement, the decision of the Owner, or the Architect/Engineer as the Owner's representative, shall be final with regard to whether extra compensation is due and with regard to the amount of such extra compensation.

5.04 Claims Against Owner. Contractor will cooperate with Subcontractor to submit any valid and enforceable claim against the Owner for extra compensation or other relief allowed under the applicable Prime Agreement. As a condition precedent to Contractor's agreement to cooperate in the submittal of Subcontractor's claim against the Owner, Subcontractor agrees to pay, and will confirm in writing, Subcontractor's agreement to pay for any expense, including attorney's fees, incurred in connection with claims asserted at the request of Subcontractor, including the pre-payment of any retainage fee that may be requested, prior to Contractor's submission of Subcontractor's claim to Owner. The intended result of this Agreement is to permit pass-through claims as authorized by Texas law, with the express understanding that Contractor's liability to Subcontractor on said claims is limited to the funds collected from Owner on claims which Contractor asserts on behalf of Subcontractor, after deduction of Contractor's actual cost (such as expert witness fees, attorneys' fees, Court costs, etc.) incurred in pursuing Subcontractor's claims.

5.05 Proceeding with Work. If Subcontractor and Contractor do not agree upon either (i) whether or not Subcontractor's written notice requesting extra compensation constitutes changed work or additional work beyond the original scope of the Subcontract Work, or (ii) the reasonable amount of extra compensation due for the changed or extra work, then Subcontractor shall proceed with the work in accordance with the instructions of Contractor. In such event, Subcontractor shall maintain and present to Contractor, in such form as Contractor may prescribe, an itemized accounting of costs, together with appropriate supporting data, for all extra labor, materials, and equipment expended at the Project site by Subcontractor for the changed or additional work. For changed or additional work beyond the scope of the original Subcontract Work, Subcontractor shall be entitled to recover, subject to the requirements for notice, all actual costs for labor, material, and equipment, expended at the Project site for the changed or additional work, minus the costs for any deleted work, plus a sum equal to the percentage amount allowed in the Prime Agreement for Subcontractor's overhead and profit. If the Prime Agreement does not specify a percentage or limitation for Subcontractor's overhead and profit, then the maximum amount of Subcontractor's overhead and profit shall be fifteen percent (15%) of its actual labor, material, and equipment costs. In the event that Subcontractor's costs include second and third tier subcontractors, the aggregate sum of Subcontractor's overhead and profit, together with all its lower tier

subcontractors' overhead and profit, shall not exceed the lesser of the percentage amount allowed by the Prime Agreement or twenty percent (20%) of Subcontractor's and its sub-subcontractors' labor, material and equipment costs incurred by Subcontractor and all its sub-subcontractors at the Project site.

ARTICLE 6.
INSURANCE AND INDEMNIFICATION

6.01 Insurance.

a. PRIOR TO PERFORMING ANY SUBCONTRACT WORK Subcontractor shall obtain and maintain during the term of this Agreement and until the expiration of any warranty period, or for the period set forth below that is longer, the minimum limits of insurance and requirements set forth in the Contract Documents, including without limitation the Prime Agreement.

b. Qualified Insurers. All Subcontractor insurance policies shall be written by insurers reasonably acceptable to Owner, Contractor and that are rated "A-" or higher by A.M. Best's Key Rating Guide, or as may be approved in writing by Owner or Contractor from time to time (a "Qualified Insurer"); and

c. Requirements of Contractor's Insurance. The Commercial General Liability, Automobile Liability, Pollution Liability and Excess Liability policies shall name Owner, Contractor and their parent, subsidiaries and member entities and their respective Affiliates, and the financing parties and any other person designated by Owner and/or the Contractor as Additional Insureds. Additional Insured status under the Commercial General Liability, Pollution Liability and Excess Liability policies shall include coverage for "bodily injury" or "property damage" arising out of ongoing operations, "your work" and "your product" included in the "products completed operations hazard" as required by written contract and shall afford said coverage for all completed operations, products and work, completed while the policy is in effect, until the expiration of any warranty period.

d. All policies of insurance required to be maintained by Subcontractor hereunder shall: (i) be endorsed to specify that they are primary to and not excess to or on a contributing basis with any insurance or self-insurance maintained by Owner, Subcontractor or their parent, subsidiaries and member entities and their respective affiliates, and financing parties or any subcontractors in respect of losses arising out of or in connection with the Subcontract Work; (ii) provide a severability of interests or cross liability clause; (iii) provide for waivers of subrogation (or the equivalent thereof) from Subcontractor and its respective officers and other employees and agents in favor of Owner, Contractor and their parent, subsidiaries and member entities and their respective affiliates, and financing parties and such other persons as may be
requested by Owner or Contractor; (iv) provide that Owner, Contactor and any other additional insured shall be provided thirty (30) days' prior written notice of cancellations; and (v) provide that Owner, Contractor and financed parties shall have the right, but not the obligation, to pay premiums if Subcontractor shall fail to do so. In the event that any policy furnished by Subcontractor provides for coverage on a "claims made" basis, the retroactive date of the policy shall be no later than the effective date of the Agreement, or such other date, as to protect the interest of Owner, Contractor and any indemnified parties. Furthermore, for all policies furnished on a "claims made" basis, Subcontractor's providing of such coverage shall survive the termination of the Contract Documents and the expiration of any warranty period until the expiration of the maximum statutory period of limitations in the Commonwealth of Pennsylvania for actions based in contract or in tort. If coverage is on "occurrence" basis, Subcontractor shall maintain such insurance until the expiration of any warranty period, or for any specific period set forth in this Agreement that is longer. The limits of insurance required under this Agreement are minimums. To the extent Subcontractor procures insurance with limits greater than the required minimums, additional insured coverage required under this Agreement shall not be limited to such minimum limits.

e. Insurance Certificates, Endorsements. Prior to performing any Subcontract Work at the Work site and at each subsequent renewal, Subcontractor shall provide Owner and Contractor with Certificates of Insurance specifically evidencing the coverages required herein, stating the policy numbers and the inception and expiration dates of all policies and copies of the additional

insured endorsements, the waiver of subrogation endorsements and the primary/non-contributory endorsements required herein.

f. **Right to Insure.** Should Subcontractor fail to provide or maintain any of the insurance coverage required pursuant to this Agreement, Contractor shall have the right to provide or maintain such insurance coverage at Subcontractor's expense, either by direct charge or set-off.

g. **Payment of Deductibles.** Subcontractor shall be solely responsible for the payment of any deductible or self-insured retention under any insurance coverage required pursuant to this Agreement.

h. **No Limitation on Liability.** Nothing in this Agreement shall be deemed to limit Contractor or Subcontractor's liability under the Agreement or other Contract Documents regardless of the insurance coverages required by this Agreement. No limitation of liability provided to Contractor or Subcontractor under the Agreement or other Contract Documents is intended nor shall run to the benefit of any insurance company or in any way prejudice, alter, diminish, abridge or reduce, in any respect, the amount of proceeds of insurance otherwise payable to Contractor or Subcontractor under coverage required to be carried by other party under the Agreement or other Contract Documents, it being the intent of the parties that the full amount of insurance coverage bargained for be actually available notwithstanding any limitation of liability contained in the Agreement or other Contract Documents, if any.

i. **Distinct Obligation**. The requirements of this Agreement are intended to be a separate and distinct obligation of Subcontractor. Therefore, the provisions of this Agreement shall be enforceable and Subcontractor shall be bound thereby regardless of whether the indemnity provisions of the Agreement are determined to be enforceable in the jurisdiction where the Subcontract Work is being performed.

j. SUBCONTRACTOR WAIVES ANY CLAIM AGAINST CONTRACTOR, OWNER OR THEIR EMPLOYEES AND OFFICERS, FOR ANY AND ALL LOSSES, INJURIES, DAMAGES OR EXPENSES WHICH ARE COVERED BY POLICIES OF INSURANCE, EXCEPT SUCH RIGHTS AS SUBCONTRACTOR MAY HAVE TO THE PROCEEDS OF SUCH INSURANCE.

6.02 **INDEMNIFICATION.**

a. ONLY TO THE EXTENT AND UNDER THE CONDITIONS ALLOWED BY LAW, SUBCONTRACTOR AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS CONTRACTOR, THE OWNER, AND THEIR PARENT AND AFFILIATE COMPANIES, PARTNERS, LIMITED PARTNERSHIPS IN WHICH THEIR PARENT AND/OR AFFILIATED COMPANIES ACT AS GENERAL PARTNER, SUCCESSORS, ASSIGNS, LEGAL REPRESENTATIVES, OFFICERS, , SHAREHOLDERS, INSURERS, AGENTS, REPRESENTATIVES, AND EMPLOYEES (THE "INDEMNIFIED PARTIES") FROM AND AGAINST ALL CLAIMS, DEMANDS, DAMAGES, LOSSES, CAUSES OF ACTION, SUITS AND LIABILITIES OF ANY KIND, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY TO OR DEATH OF ANY PERSON, OR FOR LOSS OF DAMAGES (EXCLUDING PUNITIVE AND EXEMPLARY) TO ANY PROPERTY (INCLUDING WITHOUT LIMITATION, CLAIMS FOR POLLUTION AND ENVIRONMENTAL DAMAGE), PRODUCT LIABILITY AND STRICT LIABILITY AND CIVIL OR CRIMINAL FINES OR PENALTIES, DISCOVERED OR UNDISCOVERED, DIRECTLY OR INDIRECTLY ARISING OR ALLEGED TO ARISE OUT OF, RELATED TO, OR CONNECTED WITH, THE BREACH OR NON-COMPLIANCE WITH ANY TERMS OF THIS AGREEMENT, BY SUBCONTRACTOR, ITS EMPLOYEES, SUBCONTRACTORS, VENDORS, AGENTS, REPRESENTATIVES, ASSIGNS, SUCCESSORS, AFFILIATED COMPANIES, OR ANY OTHER PERSON FOR WHOM THE SUBCONTRACTOR IS RESPONSIBLE IN THE LAW, RELATED TO THIS AGREEMENT OR THE PERFORMANCE, OR NON-PERFORMANCE, OF THE SUBCONTRACT WORK UNDER THIS AGREEMENT

(COLLECTIVELY "SUBCONTRACTOR'S LIABILITIES"). THIS INDEMNITY INCLUDES SUBCONTRACTOR'S AGREEMENT TO PAY ALL COSTS AND EXPENSES OF DEFENSE, INCLUDING WITHOUT LIMITATION REASONABLE ATTORNEY'S FEES INCURRED BY ANY INDEMNIFIED PARTIES. THIS INDEMNITY SHALL APPLY WITHOUT LIMITATION TO ANY "CONTRACTOR LIABILITY" IMPOSED ON ANY PARTY INDEMNIFIED HEREUNDER AS A RESULT OF ANY STATUTE, RULE, REGULATION, OR THEORY OF STRICT LIABILITY INCLUDING BUT NOT LIMITED TO STRICT PRODUCTS LIABILITY AND STRICT STATUTORY LIABILITY. SUBCONTRACTOR EXPRESSLY ASSUMES, TO THE EXTENT OF ITS RELATIVE FAULT, ANY AND ALL "CONTRACTOR LIABILITIES" ARISING IN FAVOR OF ANY THIRD PARTY OR GOVERNMENTAL AGENCY OR ENTITY, THE PARTIES HERETO, THEIR EMPLOYEES AND THEIR EMPLOYEES' REPRESENTATIVES AND BENEFICIARIES. THIS INDEMNIFICATION SHALL NOT BE LIMITED TO DAMAGES, COMPENSATION, OR BENEFITS PAYABLE UNDER INSURANCE POLICIES, WORKERS' COMPENSATION ACTS, DISABILITY BENEFITS ACTS OR OTHER EMPLOYEES' BENEFITS ACTS. ALTHOUGH SUBCONTRACTOR HAS CAUSED THE INDEMNITEES TO BE NAMED AS ADDITIONAL INSURED UNDER THE SUBCONTRACTOR'S POLICIES OF INSURANCE, CONTRACTOR'S LIABILITY UNDER THIS INDEMNIFICATION SHALL NOT BE LIMITED TO THE LIABILITIES LIMITS SET FORTH IN SUCH POLICIES. SUBCONTRACTOR SHALL BE LIABLE ONLY TO THE EXTENT OF ITS PERCENT OF CAUSATION. If the Subcontract Work of any kind is performed in Ohio, CONTRACTOR EXPRESSLY AND SPECIFICALLY WAIVES ITS STATUTORY AND CONSTITUTIONAL WORKERS' COMPENSATION IMMUNITY UNDER OHIO LAW AND INCLUDING ANY AMENDMENTS TO THIS CONTRACT. This Section shall survive termination or cancellation of this Agreement. SUBCONTRACTOR FURTHER AGREES, EXCEPT AS MAY BE OTHERWISE SPECIFICALLY PROVIDED HEREIN, THAT THE OBLIGATIONS OF INDEMNIFICATION HEREUNDER SHALL INCLUDE, BUT NOT BE LIMITED TO THE FOLLOWING:

a. LIENS BY THIRD PERSONS AGAINST THE OWNER, CONTRACTOR AND THEIR PARENT AND AFFILIATED COMPANIES AND THEIR PROPERTY, BECAUSE OF LABOR, SERVICES, MATERIALS, OR ANY OTHER TYPE OF LIEN, FURNISHED TO THE SUBCONTRACTOR, ITS ASSIGNS OR SUBCONTRACTORS, IN CONNECTION WITH THE WORK PERFORMED BY SUBCONTRACTOR HEREUNDER AND SUBCONTRACTOR SHALL REQUIRE ALL SUBCONTRACTORS OR VENDORS PROVIDING LABOR, SERVICES OR MATERIALS IN CONNECTION WITH THE WORK TO EXECUTE A LIEN WAIVER PRIOR TO SUBCONTRACTOR'S PAYMENT TO SAID SUBCONTRACTOR OR VENDOR. SAID LIEN WAIVER SHALL EXPLICITLY SET FORTH THE SUBCONTRACTOR'S RELEASE AND WAIVER OF ANY AND ALL MECHANIC'S LIEN OR RIGHT OF LIEN WHICH ACCRUES OR MAY ACCRUE TO SAID SUBCONTRACTOR OR VENDOR AND PROPERLY SETTING FORTH OWNER AS THE OWNER OF THE WORK. SUBCONTRACTOR SHALL PROVIDE CONTRACTOR AND OWNER COPIES OF ALL EXECUTED SUBCONTRACTOR OR VENDOR LIEN WAIVERS.

b. EXPENSES, CLAIMS, FINES, AND PENALTIES OR OTHER ENFORCEMENT CHARGES, RESULTING FROM THE FAILURE OF SUBCONTRACTOR TO ABIDE BY ANY AND ALL VALID APPLICABLE LAWS, RULES OR REGULATIONS OF ANY GOVERNMENTAL OR REGULATORY AUTHORITY WITH JURISDICTION.

SUBCONTRACTOR SHALL WAIVE AND RELEASE AND DOES HEREBY WAIVE AND RELEASE ANY AND EVERY MECHANIC'S LIEN OR RIGHT OF LIEN WHICH ACCRUES TO IT AT ANY TIME UPON ANY REAL ESTATE, BUILDINGS, OR STRUCTURE OF THE OWNER, ITS PARENT OR AFFILIATED COMPANIES OR IF WORK IS TO BE PERFORMED ON PROPERTY OF THIRD PARTIES, EVERY MECHANIC'S LIEN

OR RIGHT OF LIEN WHICH ACCRUES TO IT UPON ANY REAL ESTATE BUILDING OR STRUCTURE OF SUCH THIRD PARTIES, AS A RESULT OF THE PERFORMANCE OF THE WORK.

SUBCONTRACTOR SHALL ASSUME ALL RESPONSIBILITY FOR, INCLUDING CONTROL AND REMOVAL OF, AND PROTECT, DEFEND, AND SAVE HARMLESS CONTRACTOR AND OWNER FROM AND AGAINST ALL CLAIMS CAUSED BY SUBCONTRACTOR OR SUBCONTRACTOR'S EMPLOYEES, AGENTS REPRESENTATIVES, INVITEES OR SUBCONTRACTORS, ARISING FROM POLLUTION OR CONTAMINATION, WHICH MAY BE IMPOSED UPON OR INCURRED BY OR ASSERTED AGAINST CONTRACTOR OR OWNER BY ANY OTHER PARTY OR PARTIES (INCLUDING GOVERNMENTAL ENTITIES), IN CONNECTION WITH ANY ENVIRONMENTAL CONDITIONS INCLUDING ANY ALLEGED EXPOSURE OF ANY PERSON TO ENVIRONMENTAL CONDITIONS) OR THE REMEDIATION OF ANY ENVIRONMENTAL CONDITIONS (WHETHER NOW KNOWN OR HEREAFTER DISCOVERED) OR ANY ENVIRONMENTAL NONCOMPLIANCE ARISING OUT OF, RESULTING FROM OR ATTRIBUTABLE TO THE PERFORMANCE OF OR FAILURE TO PERFORM THE WORK OR THE PROVISIONS OF THIS CONTRACT.

THE EXPRESSED INTENTION OF THE PARTIES IS THAT SUBCONTRACTOR'S INDEMNITY HEREIN WILL SURVIVE THE TERMINATION OF THIS AGREEMENT AND WILL INDEMNIFY AND PROTECT THE INDEMNIFIED PARTIES FROM THE CONSEQUENCES OF THEIR OWN NEGLIGENCE, BUT ONLY TO THE EXTENT AND UNDER THE CONDITIONS ALLOWED BY LAW.

b. In any and all claims against any of the Indemnified Parties by an employee of Subcontractor, or anyone directly or indirectly employed by him or anyone for whose acts he may be liable, the indemnification obligation under this Paragraph 6.02 shall not be limited in any way by any limitation or bar under the Texas Workers' Compensation Act, or other employee benefit acts.

ARTICLE 7.
BONDS AND WARRANTIES

7.01 Performance/Payment Bonds. ~~If required by Contractor, a Performance Bond and a Payment Bond in a form satisfactory to Contractor shall be furnished by Subcontractor in the full amount of the price of the Subcontract Work as set forth herein.~~ If Contractor requires such Bonds after this Agreement is issued, the cost thereof shall be paid by Contractor as a change to the Subcontract Work; otherwise it shall be included in the Subcontract Price. This obligation shall continue throughout the term of this Agreement and may be required at any time during the performance of the Subcontract Work. These bonds shall be furnished by a certified company on the Department of the Treasury's Listing of Approved Sureties (Department Circular 570), current as of the date the bonds are requested, with sufficient underwriting limitations published therein to cover the penal sum (face amount) of the bonds.

7.02 Subcontractor Warranty.

(a) Warranty of Work. In consideration of Contractor's agreement for payment of the Subcontract Price, and for other good and valuable consideration now paid to Subcontractor, the receipt and sufficiency of which is hereby acknowledged by Subcontractor, Subcontractor hereby guarantees to Contractor and Owner the full performance of Subcontractor's obligations under this Agreement and the other Contract Documents in all respects in accordance with all specifications and requirements of the Agreement, the other Contract Documents, and industry-recognized professional standards, systems, and procedures. Contractor warrants that the Subcontract Work, whether performed by Subcontractor or its subcontractor(s), (i) will be performed in a good and workmanlike manner, meeting the highest standard of care and diligence, in accordance with good engineering and construction practices and in compliance with all applicable laws and (ii) will be constructed to operate, and shall be capable of being operated, safely, normally, and continuously in accordance with the requirements of all applicable laws and applicable permits, and shall conform to the requirements set forth in the Contract Documents. If

permitted by the applicable manufacturer, any manufacturer's warranties shall be assigned to the Owner or, if applicable, the financing parties or their designee(s). If such assignment is not permitted by a manufacturer, Subcontractor shall require such manufacturer to comply with all warranty obligations granted to Subcontractor for the benefit of Owner or, if applicable, the financing parties or their designee(s).

7.03 Equipment Warranty.

(A) Subcontractor represents and warrants that the equipment to be installed by Subcontractor as part of the Subcontract Work:

(i) Shall be new, unused and undamaged when installed;

(ii) Shall be of good quality and free from deficiencies and defects in materials and/or workmanship;

(iii) Shall be suitable for the particular Subcontract Work and/or transportation required and fit for any special requirements related to the specific Subcontract Work or materials transported;

(iv) Shall be maintained and used in accordance with manufacturer's specifications and recommendations and good engineering and operational practices, and Subcontractor shall make maintenance records available to Contractor or Owner upon request;

(B) Subcontractor represents and warrants that the machinery used by it or its subcontractors in the performance of the Work:

(i) Complies with specifications for machinery for such Subcontract Work and/or transportation prescribed by any applicable laws, including those of the Federal Motor Carrier Safety Administration and OSHA. All trailers or cargo compartments shall be equipped so as to be capable of being placarded with placards identifying the materials being delivered, where required by applicable laws or other Owner requirements. The placards shall be of the size and dimensions specified by the facility where the materials are loaded, or by applicable law;

(ii) Shall be maintained and used in accordance with the manufacturer's specifications and recommendations, and good construction practices, and Subcontractor shall make maintenance records available to Owner or Contractor upon request;

(iii) Shall be uncontaminated, clean, and in good appearance on the exterior. The interior of bulk trailers shall be free of incompatible materials or materials which would contaminate the materials and leak proof; and cargo compartments for packaged goods shall be clean, dry, leak proof, and odor free; and

(iv) Shall be fully inspected with machinery certifications available to Owner or Contractor upon request.

7.04 Warranty Period. Except as expressly stated herein to the contrary, Subcontractor agrees to remedy any defects or breach of any warranty set forth in this Agreement that appear within a period of twelve (12) months following the final completion date of the affected Work (the "**Warranty Period**"); provided, however, that if any portion of the Subcontract Work is remedied pursuant to this Section, then the warranty period with respect to such Subcontract Work shall be continued until the later of (i) the expiration of the warranty period and (ii) twelve (12) months from the date of completion of such remedying Subcontract Work ("**Extended Warranty Period**"). Subcontractor shall bear all costs and expenses associated with remedying any defect or breach of warranty ,including, without limitation, necessary disassembly, removal, replacement, transportation, reassembly and retesting, as well as reworking, repair or replacement of such Subcontract Work and any portion of the Subcontract Work affected by such the defect or breach of warranty, disassembly and reassembly of piping, ducts, structures, electrical work, instrumentation, insulation, machinery, equipment, any obstruction or other work as necessary to give access to the defect or the affected Subcontract Work and correction, removal or repair of any damage to other work or property that arises from the defect or breach of warranty. If Subcontractor is obligated to repair, replace or renew any equipment, item or portion of the

Subcontract Work hereunder, Subcontractor will, at its sole costs and expenses, undertake a technical analysis of the problem and correct the "root eause" unless Subcontractor can demonstrate to Contractor's satisfaction that there is not a risk of the reoecurrence of such problem.

7.05 Correction of Deficiencies and Defects. Subcontractor shall, at its own cost and expense, correct or replace any Subcontract Work that contains a defect, or is not otherwise in compliance with the terms and requirements of the Contract Documents. Equipment that has been replaced, if situated on the Work site, shall be removed by Subcontractor from the Work site at Subcontractor's own cost and expense. If Subcontractor fails within a reasonable period of time (as reasonably determined by Owner or Contractor) after it knows or should have known of such defect or noncomplianee to commence correction of such defect or noncompliance, or fails
to continue correction of such defect or noncompliance with diligence and promptness, Owner or Contractor may, without prejudice to other remedies Owner or Contractor may have under the Contract Documents, correct such defect or noncompliance. In such event, an appropriate Change Order shall be issued deducting from payments then or thereafter due to Subcontractor the cost of correcting such defect or noncompliance,
including compensation for the costs to enforce this provision (including attorneys' fees) and any consultant's additional services and expenses made neeessary by such neglect or failure. If payments then or thereafter due to Subcontractor are not sufficient to cover such amounts, Subcontractor shall pay the difference to Contractor within three (3) days from Contractor's request therefor. Subcontractor shall correct any and all defects and noncompliance as required by this Agreement notwithstanding any actual or possible legal obligation or duty of a Subcontractor concerning same and nothing contained in this Section shall modify Subcontractor's obligations under the Contract Documents. Contractor, as permitted by Owner, shall provide Contractor with reasonable access to the work in order to perform its obligations under this Article, and the parties shall schedule such remedying work as necessary so as to minimize disruption to the operation of the Project.

No such remedying work shall be considered complete until Owner and Contractor shall have reviewed and accepted such work in writing.

7.06 Payments of Laborers and Materialmen. Subcontractor warrants that all laborers, materialmen and sub-subeontractors, at any tier, providing labor, equipment, or materials for the Subcontract Work will be paid such that neither the Owner, nor Contractor, nor Owner's property, nor Contractor's Surety will be subject to any claims, liens, or encumbrances.

ARTICLE 8.
SUPPLEMENTATION
OF WORK AND TERMINATION

8.01 Supplementation by Contractor. Should Subcontractor fail at any time to supply a sufficient number of properly skilled workmen and/or sufficient materials and/or equipment of the proper quantity and/or quality, as determined by Contractor in its sole discretion, or fail in any respect to prosecute the Subeontract Work with promptness and diligence, or fail to promptly correct defective Subcontract Work or fail in the performance of any of the obligations contained in the applicable Contract Documents, Contractor may, at its option without notice, provide such labor, materials and/or equipment and deduct the cost thereof, together with all loss or damage occasioned thereby, from any money then due or thereafter to become due to Subcontractor under this Agreement. If such eost, loss, and damage exceed the unpaid Subcontract Price, Subcontractor shall pay Contractor the balance of such excess upon demand.

8.02 Termination of Subcontract for Default. If Subcontractor at any time shall refuse or neglect to supply sufficient properly skilled workmen, or materials or equipment of the proper quality and/or quantity, or fail in any respect to prosecute the Subcontract Work with promptness and diligence, or cause by any action or omission the stoppage or interference with the work of Contractor or other subcontractors, or fail in performance of any of the covenants contained in the applicable Contract Documents, or be unable to meet its debts as they mature, Contractor may, at its option, at any time terminate the Subcontract Work for Subcontractor's default by delivering written notice of termination to Subcontractor. Thereafter, Contractor may take

possession of the materials and equipment of Subcontractor at the Project site, and through itself or others provide labor, equipment and materials to prosecute and complete the Subcontract Work on such terms and conditions as shall be deemed necessary. Contractor shall deduct the cost thereof, including without restriction all charges, expenses, losses, costs, damages, and attorneys' fees, incurred as a result of Subcontractor's failure to perform, from any money then due or thereafter to become due to Subcontractor under this Agreement. If such completion cost exceeds the unpaid Subcontract Price, Subcontractor shall pay Contractor the balance of such excess upon demand.

8.03 Termination for Convenience. Contractor may, at its option, at any time, terminate without Subcontractor's default the whole or any part of the Subcontract Work under this Agreement for the convenience of Contractor. Subcontractor agrees that upon any such termination, Subcontractor's sole remedy shall be payment of the lesser of: (i) the appropriate share of the amount which Contractor is paid under the Prime Agreement for the Subcontract Work properly completed by Subcontractor as of the date of such termination; or (ii) the value of all work properly performed by Subcontractor, less all payments Subcontractor has previously received for the Subcontract Work performed. The value shall not exceed Subcontractor's actual costs for labor, materials, and equipment, plus fifteen percent (15%) for profit and overhead. Subcontractor waives all other claims for damages, including lost or anticipated profits, arising from or related to any such termination by Contractor.

8.04 Payments After Termination. If Contractor terminates the Subcontract Work under this Agreement pursuant to paragraph 8.02 above, then Subcontractor shall not be entitled to any further payments under this Agreement until the Subcontract Work has been completed and accepted by the Owner, and payment therefor has been received by Contractor from the Owner for any money then due or thereafter to become due to Subcontractor under this Agreement. If the cost to complete the Subcontract Work (plus all charges, expenses, losses, costs, and attorneys' fees recoverable under this Agreement) exceeds the unpaid Subcontract Price, Subcontractor shall pay Contractor the balance of such excess upon demand. In the event Contractor terminates the Subcontract Work under this Agreement for default, as provided in paragraph 8.02, and Subcontractor is subsequently found not to be in default, then Contractor's termination for default shall be deemed for all purposes to be a termination for convenience as provided in paragraph 8.03.

ARTICLE 9.
DISPUTE RESOLUTION

9.01 Arbitration. Except as provided herein, all claims, disputes, and controversies arising out of or relating to this Agreement, including claims for extra work or changed conditions to or related to the Construction Work, shall be decided by arbitration in accordance with Texas law and pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association ("AAA"), except to the extent such rules are modified herein. Discovery shall be allowed and shall be conducted in accordance with the TEXAS RULES OF CIVIL PROCEDURE. The claimant, whether the Contractor or the Subcontractor, shall give the other party written notice of arbitration by certified mail, specifying the amount of the claim and the basis for the claim. The claimant may shall have the arbitration administered by the AAA, by notifying AAA of the arbitration and paying all AAA administration fees. The Arbitrator shall be an arbitrator approved by the AAA for conducting arbitrations in Texas, and shall be selected by the Contractor within fifteen (15) business days after receipt of the written notice of arbitration by the respondent. After selection of the Arbitrator, the Contractor and the Subcontractor shall each tender to the AAA, one-half of the Arbitrator's fee for the arbitration, as determined by the Arbitrator. The arbitration proceeding shall be commenced, and the arbitration hearing shall be scheduled, only after the claimant giving notice of the arbitration, has tendered its one-half of the Arbitrator's fee to the Arbitrator. The arbitration hearing shall be in Fort Worth, Texas. The award rendered by the arbitration shall be final, and judgment may be entered upon the award in accordance with the Texas Arbitration Act and/or the Federal Arbitration Act. Provided, however, the Contractor may elect at any time not to arbitrate a claim for contribution or indemnity being asserted by the Contractor in a suit against a party with whom the

Contractor does not have an enforceable arbitration agreement. If the arbitrability of this Agreement is contested by either party, the issue of arbitrability shall be submitted to a court of competent jurisdiction in Fort Worth, Texas, and the arbitration shall be stayed until the determination by the court.

9.02 Claims under Prime Agreement. In the event Contractor and Owner or others arbitrate or litigate matters relating to the Subcontract Work, it shall be the responsibility of Subcontractor to prepare and present Contractor's case, to the extent the proceedings are related to the Subcontract Work under this Agreement, and Subcontractor shall be bound by the result of such arbitration or litigation to the same degree as Contractor.

9.03 Continued Performance Pending Dispute Resolution. Subcontractor shall carry on the Subcontract Work and maintain Subcontractor's progress during any arbitration or litigation proceedings.

9.04 Statute of Repose. Subcontractor and Contractor agree that for purposes of this Agreement the statute of repose shall commence to run thirty (30) days after the final completion of the entire Project, unless Contractor has agreed to a shorter period in the Prime Agreement, in which case the period provided in the Prime Agreement shall control.

ARTICLE 10.
ADDITIONAL OBLIGATIONS

10.01 Additional Obligations of Subcontractor. In addition to the other engagements of Subcontractor hereunder, Subcontractor hereby agrees that with regard to this Agreement Subcontractor shall:

a. Not discriminate against any employee or applicant for employment because of race, creed, color, age, sex, national origin, or disability.

b. Not assign rights under this Agreement or any amounts due or to become due hereunder without the written consent of Contractor; nor subcontract the whole of any Subcontract Work without the written consent of Contractor; nor further subcontract portions of any Subcontract Work without written notification to Contractor.

c. Promptly submit shop drawings and samples as requested by Contractor in order to carry on the Subcontract Work efficiently without delay in the progress of the Project. Subcontractor shall resubmit, within three (3) working days, any shop drawings or submittals returned for correction. All shop drawings, submittals, and samples are to be checked, signed, and dated by a duly authorized representative of Subcontractor, certifying that the same meets all requirements of the Contract Documents and is in accordance with the construction plans and specifications.

d. Comply with all Federal, State, and local laws and ordinances relating to construction of buildings, or structures, or improvements and give adequate notices relating to the Subcontract Work to the proper authorities, and secure and pay for all necessary licenses or permits to carry on the Subcontract Work as described in the applicable Contract Documents.

e. Comply with Federal and State laws relating to reporting and payment of (i) wages (including but not limited to, the Davis Bacon Act if applicable), (ii) federal and state payroll taxes on wages, including but not limited to, Federal Income Tax withholding provisions of the Internal Revenue Code, Federal Insurance Contribution Act (FICA) payments, and Federal Unemployment Tax Act (FUTA) payments, and (iii) applicable state unemployment tax payments. Comply with all prevailing wage rates as required in the Contract Documents.

f. Comply with all Federal, State, and local laws, including, but not limited to, the rules and regulations promulgated pursuant to statute related to the Texas Workers' Compensation Act; Consolidated Omnibus Budget Reconciliation Act (COBRA); Immigration Reform and Control Act of 1986; Consumer Credit Protection Act; Title 3, Title 7 of the 1964 Civil Rights Act; Age Discrimination Employment Act; Employees Retirement Income Security Act (ERISA); and Occupational Safety and Health Act of 1970 (OSHA), the Construction Safety Act of 1969, and the Clean Water Act, with all regulations promulgated by the Environmental Protection Agency including Storm Water Pollution Prevention Plan requirements. Subcontractor shall defend and be responsible for all citations, fines, and penalties and shall indemnify and hold Contractor and all

other subcontractors harmless from any loss sustained by reason of any failure to so comply. As an independent contractor, Subcontractor is exclusively responsible for compliance with these regulations and laws and for the safety of Subcontractor's employees.

g. Maintain a qualified person approved by Contractor on the job at all times.

h. Adopt a Drug Free Workplace Program equal to or exceeding Contractor's Drug Free Workplace Program, including Subcontractor's pre-employment and post-accident testing of employees and Subcontractor's permanent removal of employees failing tests or refusing to submit to tests.

i. Exercise every precaution necessary to eliminate asbestos and/or lead-containing materials from any of the materials incorporated in the Subcontract Work. If asbestos fibers or lead contaminants are found in materials associated with the Subcontract Work, Subcontractor shall be responsible for determining the source of and removing all materials containing asbestos fiber or lead contaminants.

j. Promptly provide Contractor notice of any condition which could increase Contractor's cost of the Subcontract Work or Contractor's liability for claims or damages, to allow Contractor to confirm the condition and mitigate damages arising from the condition. SUBCONTRACTOR WAIVES ALL CLAIMS AND DAMAGES AND FULLY RELEASES CONTRACTOR FROM LIABILITY FOR ANY CLAIMS OR DAMAGES WHICH ARISE PRIOR TO SUBCONTRACTOR'S NOTICE TO CONTRACTOR OF ANY SUCH CONDITION.

ARTICLE 11.
MISCELLANEOUS

11.01 Notices. All notices required to be given under this Agreement shall be deemed delivered when deposited in the United States mail, first class postage prepaid, addressed to the recipient at the following address, provided the notice is also transmitted via facsimile or e-mail on the same day during normal business hours to the following facsimile number or e-mail address:

CONTRACTOR:
US TRINITY ENERGY SERVICES, LLC
200 HIGHLAND CIRCLE
ARGYLE, TEXAS 76226
TELEPHONE: (940) 240-5800
FAX: (940) 240-5805
EMAIL: jim@ustrinity.com

SUBCONTRACTOR:
MOOSEHEAD HARVESTING INC.
P.O Box 159
Lincoln, NH 03251
800-445-4530
info@MooseheadHarvesting.com

Notices transmitted via facsimile or e-mail after normal business hours shall be deemed delivered the following business day.

11.02 Conflicts in Terms. In the event there is a conflict between the terms of this Agreement and the other Contract Documents, the terms of this Agreement shall control over the other Contract Documents, unless the terms of the Prime Agreement impose a more stringent requirements upon Contractor with regard to the Subcontract Work, in which case the more stringent terms shall control.

11.03 Attorneys' Fees. In the event that Contractor is required to retain the services of an attorney to enforce this Agreement and/or the Unconditional Guaranty, or to defend against any cause of action, claim, or counterclaim brought by Subcontractor on which Subcontractor does not prevail, then Contractor shall be entitled to recover the attorneys' fees and costs incurred, in addition to other remedies to which Contractor is entitled under Texas law. In the event that Subcontractor is required to retain the services of an attorney to enforce this Agreement and Subcontractor prevails in asserting a valid claim under this Agreement, then Subcontractor shall be entitled to recover attorneys' fees and costs incurred, in addition to other remedies to which Subcontractor is entitled under Texas law.

11.04 No Waiver. Contractor's waiver of any right hereunder in one or more instances shall not constitute a waiver as to future enforcement of such right (by way of example and without limitation, waiver of right to receive releases with one or more payment applications shall not constitute a waiver of the right to receive releases with future payment applications).

11.05 Unconditional Guaranty. To induce Contractor to enter into this Agreement with Subcontractor and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned Guarantor hereby unconditionally, irrevocably and absolutely, jointly and severally guaranties the performance of each and every obligation of Subcontractor, including warranties, under this Agreement and/or any modifications or Change Orders issued pursuant to the terms of this Agreement. The obligation of the Guarantor shall be performable upon demand by Contractor and shall be unconditional, irrespective of any alleged irregularity or equitable discharge of any Surety. Guarantor hereby waives all diligence, presentment, demand, and protest, and agrees to fully and faithfully perform Subcontractor's obligations under this Agreement upon demand by Contractor. Guarantor further agrees that Contractor may demand performance of the obligations under this Agreement without any obligation by Contractor to first: (a) proceed against Subcontractor; (b) proceed against any surety bond or exhaust any collateral held by Contractor as security for performance of Subcontractor's obligations guaranteed hereby; or (c) pursue any remedy it may now have or hereafter have against Subcontractor. Guarantor further agrees that at any time, without notice to Guarantor, Contractor and Subcontractor may agree to: (a) extend the time for Subcontractor's performance or compliance within any covenant, agreement, or warranty under this Agreement; (b) amend or change the scope of any Subcontract Work by Change Order; or (c) alter or amend any time for payment or amounts of payment, whether such payments are partial payments or final payment; all without affecting the liability and obligation of Guarantor. Guarantor hereby acknowledges that the withdrawal from, termination of, or restructuring of, any ownership interest that Guarantor may have in Subcontractor, shall not alter, affect, or in any way limit the obligations of the Guarantor hereunder. Guarantor further consents and agrees that this guaranty agreement shall be subject to and governed by the terms of the dispute resolution provisions in this Agreement and that any claims by either Guarantor or Contractor arising out of or relating to the obligations of this guaranty agreement shall be subject to the dispute resolution clause in this Agreement. Guarantor hereby agrees that in the event of the termination, liquidation, or dissolution of Subcontractor, this unconditional guaranty shall continue in full force and effect. The obligations of Guarantor shall not terminate until Subcontractor has fully performed all obligations under this Agreement, including any and all modifications thereof.

11.06 Factoring Company. In the event Subcontractor assign its interest in this Agreement to a factoring company, such assignment must assign all Subcontractor's interest in this Agreement. Partial assignments are not permitted. Subcontractor must furnish Contractor with a copy of the written assignment prior to Contractor communicating with the factoring company.

11.07 Daily Footage. Subcontractor's pricing is based on clearing 3000' a day. Should subcontract fail to meet this amount for a period not to exceed 3 continuous days, Contractor has the option to bring in additional contractor(s) to assist in preventing any schedule delays. If additional contractor(s) are used, Subcontractor will only be paid for work actually cleared.

EXECUTED in Denton County, Texas effective as of the date stated above.

CONTRACTOR:
US TRINITY ENERGY SERVICES, LLC

By: _____
Jim Halton, President

SUBCONTRACTOR:
MOOSEHEAD HARVESTING INC.

By: _____
[SUBCONTRACTOR'S OFFICER, [TITLE]
Robert E. Reed Jr, Vice-President

MOOSEHEAD HARVESTING INC

Moosehead Harvesting Inc.

Affirmative Action/Equal Opportunity Employer or AA/EOE

December 21, 2017

U.S. Trinity Energy Services, LLC

Attn: Estimating

RE: EQT – Mountain Valley Pass – Spread 7 and Spread 8

We are pleased to submit the following pricing for the above referenced project:

Scope of work is as follows: Cut all timber within right of way. Stack all timber on edge of Right of Way. Chip/grind or windrow brush and tops, material to remain on site, or broadcast off edge of Right of Way. Grind all stumps in place/on site, material to remain on Right of Way.

~~**Spread 7&8 Option 1**~~
Mobilization — ~~@ $100,000.00 lump sum~~
Clearing and Stump 151,874 LF of Right of Way — ~~@ $ 44.00 per ft.~~
Clearing and Stump 66,948 LF of Right of Way. — ~~@ $ 44.00 per ft.~~

Spread 7&8 Option 2 ✓ $100,000
Mobilization — @ ~~$250,000.00~~ lump sum
Clearing and Stump 151,874 LF of Right of Way — @ $ 42.50 per ft.
Clearing and Stump 66,948 LF of Right of Way — @ $ 42.50 per ft.

Hand Felling — @ $3.50 per ft.

Unit Prices for additional work not in scope:
Haul and install wetland mats up to 24' — @ $45.00 per mat
Haul and Install Timber Mats greater than 24' — @ $90.00 per mat
Unanticipated Crew Move Around — @ $20,000.00 ea.

P.O. Box 159
Lincoln, NH 03251

P.O. Box 400
Southwick, MA 01077

123 Austin St.
Suffield, CT 06078

P: 800-445-4530 || F: 860-668-0509
info@MooseheadHarvesting.com
www.mooseheadharvesting.com

MOOSEHEAD HARVESTING INC

Moosehead Harvesting Inc.

Affirmative Action/Equal Opportunity Employer or AA/EOE

Erosion Control Installation Unit Pricing :

Scope of work is as follows: Includes all labor and equipment for installation. General Contractor to provide all materials to yard/line.

Unit Pricing:

24" Silt Sock	**@ $12.00 per ft.**
18" Silt Sock	**@ $10.50 per ft.**
12" Silt Sock	**@ $9.00 per ft.**
Standard Silt Fence	**@ $8.00 per ft.**
Priority One Silt Fence	**@ $10.00 per ft.**
Super Silt Fence	**@ $15.00 per ft.**
Temporary Waterbar	**@ $2.80 per ft.**
Straw Bails	**@ $2.00 ea**
Crushed Limestone, placed by equipment	**@ $110.00 per ton**
Crushed Limestone, by tailgating and grading	**@ $90.00 per ton**
Haul and Install < 23' mats	**@ $45.00 ea.**
Haul and Install <24' mats	**@ $90.00 ea.**
Geotextile Fabric	**@ $0.25 per sq. ft.**
18" Flume Pipe Installation	**@ $15.00 per ft.**

Please Note:
General Contractor is responsible for all permit, fees and layout for clearing limits.
General Contractor is responsible for supplying timber mats within 25 road miles. $5.00 Additional per extra 10 miles.
General Contractor is responsible for providing access to site.
All Timber/Timber products hauled off become property of Moosehead Harvesting, Inc.

Thank you for the opportunity to bid on this project. Please call 860-803-1616 if you have any questions.

Respectfully submitted,

/s/ Robert Reed Jr.

Robert E. Reed Jr.
General Manager
Moosehead Harvesting Inc.

P.O. Box 159
Lincoln, NH 03251

P.O. Box 400
Southwick, MA 01077

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AMERICAN ARBITRATION ASSOCIATION

MOOSEHEAD HARVESTING, INC. ***Claimant,*** **v.** **US TRINITY ENERGY SERVICES, LLC,** ***Respondent.***	**AAA CASE NO.:** **01-19-0001-6957**

[*PROPOSED*] SCHEDULING ORDER NO. 1

Pursuant to the American Arbitration Association ("AAA") Construction Arbitration Rules, a preliminary hearing was held on Monday, August 12, 2019 at 2:00 p.m. CDT, before Arbitrator Stephen K. Yungblut, Esq. In attendance at the hearing, via telephone, were: Jennifer R. Rossi, Esq. on behalf of the Claimant, Moosehead Harvesting, Inc. ("Moosehead"), and Brian G. Corgan, Esq. and Hayley R. Ambler, Esq. on behalf of US Trinity Energy Services, LLC ("US Trinity") (collectively, the "Parties").

By Order of the Arbitrator, the following now is in effect:

1. **Rules:** The 2015 AAA Construction Arbitration Rules will govern this case.

2. **Parties**: Request to join additional parties shall be filed by September 20, 2019.

3. **Detailed Statement of Claims And Defenses:** Each party shall provide a more detailed statement of each of their claims and defenses in accordance with the deadlines set forth in paragraph 4 below.

4. **Demand for Arbitration and Answering Statement:** Any amendments to the Demand for Arbitration and Moosehead's Detailed Statement of Claims shall be exchanged and submitted to the Arbitrator on or before September 11, 2019. Any amendments to the Answering Statement and US Trinity's Detailed Statement of Defenses and Counterclaims shall be exchanged and submitted to the Arbitrator on or before September 30, 2019.

EXHIBIT E

5. **Discovery/Experts:** All fact discovery will be completed by January 10, 2020.

a. **Written Discovery Between Parties:**

i. **Requests for Production:** On or before October 4, 2019, the Parties will exchange initial document requests. The Parties shall produce all responsive, non-privileged, documents within thirty (30) days of any request. Any documents withheld on the basis of privilege shall be set forth in a privilege log containing sufficient information for the opposing party, and the Arbitrator, if necessary, to assess the claim of privilege. Except with the express approval and direction of the Arbitrator, no request for production of documents may be made after December 10, 2019.

ii. **Meet & Confer:** The Parties shall meet and confer in good faith about any disagreements regarding the exchange of documents before submitting any discovery dispute to the Arbitrator.

iii. **Interrogatories and Requests for Admission:** Interrogatories and Requests for Admission will not be allowed.

iv. **Subpoenas:** The Parties shall confer about the necessity for subpoenas *ad testificandum* or *duces tecum* to non-parties and shall submit any requests to the Arbitrator in sufficient time for the subpoenas to be served and enforced in advance of the evidentiary hearings.

While the Parties agree to the above, they have not reached consensus on the following:

Moosehead's Proposal: The Parties may seek a subpoena of Equitrans, and such will be allowed. The Arbitrator will determine any objections as to the scope of any subpoena of Equitrans.

US Trinity's Proposal: Equitrans should be treated no differently than any other third-party. US Trinity cannot agree in advance to a subpoena to Equitrans that it has not seen and that may be overly broad or otherwise unreasonable.

v. **Depositions:** The Parties may conduct a deposition of one another. Each deposition shall not exceed seven (7) hours; however, any party may apply to the Arbitrator for a shorter or longer time for good cause shown. Each party shall produce one or more witnesses most knowledgeable about the project, and this shall constitute one deposition. All experts may be deposed. Corporate representatives shall be deposed in Dallas, Texas. The parties shall confer on the location of other depositions. If the parties cannot agree, the arbitrator will select the location.

vi. **Experts:** On or before October 21, 2019, Moosehead shall identify any expert witnesses and shall serve its expert report(s) setting forth the expert's qualifications (CV), opinions, the basis for the opinions, and documents supporting the expert's opinion ("Expert Identification & Report"). On or before November 29, 2019, US Trinity shall serve its Expert Identification & Report.

vii. The discovery set forth above is without prejudice to the Parties' right to seek leave for additional discovery upon good cause shown.

6. **Confidential Information:** The parties shall forthwith confer about the necessity for a protective order and will submit a mutually acceptable order to the Arbitrator for entry in these proceedings.

7. **Dispositive Motions:** Any party wishing to file a dispositive motion shall request leave of the Arbitrator on or before December 1, 2019. The request shall be in letter form, limited to 3 pages, and shall explain why the motion is likely to be granted and to save time and expense. Any response to the request may be filed within 7 business days from the notice of filing, and also shall be limited to 3 pages. Copies of authorities cited in the letters shall be supplied to the Arbitrator with the letters. If the request is granted, the Arbitrator will establish a schedule for the filing and disposition of the motion(s).

8. **Exchange of Witness Information:** On or before September 30, 2019, each Party shall provide to the other Party a tentative list of its anticipated witnesses. On or before January 24, 2020, the Parties shall exchange witness lists setting forth the identity of all witnesses they reasonably expect to call. The Parties shall arrange to schedule witnesses so that the case can proceed expeditiously and without undue delay. Each Party presenting evidence shall give notice to the other party the day before of the names of the witnesses who will be called to testify the next day and the order in which the witnesses will be called. The duty to update this information shall continue through the date that the hearings in this matter terminate.

9. **Exhibits**: On or before January 24, 2020, the Parties shall exchange a list and copies of all exhibits to be offered or used (in whatever form) at the hearing. The Parties shall agree upon and submit to the Arbitrator a consolidated and comprehensive set of exhibit binders, with a table of contents (noting any disputed exhibits) on or before January 31, 2020. Uncontested exhibits shall be deemed in evidence for all purposes, without the need for authentication or accompanying witness testimony. Contested exhibits shall be ruled upon in context at the hearing, unless the parties require an earlier ruling. Electronic copies of the exhibits also shall be supplied to the Arbitrator, if possible and economical.

10. **Pre-Hearing Briefs**: Pre-hearing briefs shall be served on each Party and provided to the Arbitrator on or before February 3, 2020. Pre-hearing briefs shall not exceed twenty (20) double—spaced pages. The pre-hearing briefs shall include all significant disputed

issues, setting forth briefly the party's position and the supporting arguments and authorities.

11. **Evidentiary Hearing:** Hearings in this matter will commence before the Arbitrator at 9:30 a.m. CDT on Monday, February 10, 2020 at _____(location to be discussed)_____, in Dallas, Texas, and will continue through February 21, 2020, if needed.

12. **Stenographic Record:** The Parties will confer about the retention of a court reporter.

13. **Post-Hearing Briefs:** If requested by any party or the Arbitrator, the parties may submit post-hearing briefs, the precise timing, scope, content and length of which shall be determined by the Arbitrator.

14. **Form of Award:** There shall be a reasoned award issued by the Arbitrator.

15. **Communications With the AAA and/or Arbitrator**:

    a. There will be no *ex-parte* communications with the Arbitrator.

    b. If either party desires to convene a conference with the Arbitrator, that party shall make arrangements for a conference call through the AAA.

    c. Any and all documents to be filed with or submitted to the Arbitrator outside the hearing shall be emailed to the Arbitrator and to the AAA. **SAID DOCUMENTS SHALL BE SENT VIA ELECTRONIC MAIL (EMAIL) SIMULTANEOUSLY TO ALL COUNSEL APPEARING IN THIS MATTER. ALL COUNSEL APPEARING IN THIS MATTER WILL BE COPIED (VIA CC) ON ANY AND ALL COMMUNICATIONS WITH THE ARBITRATOR AND/OR THE AAA.**

    d. There shall be no direct oral communication between the Parties or their counsel, and the Arbitrator, except at oral hearing or during a conference call, with counsel for all Parties in attendance.

    e. For voluminous filings (*in excess of 50 pages*) the electronic transmittal should be followed by a hard copy to the opposing party's counsel and the Arbitrator. Note that the AAA does not require hard copies of your submissions.

16. All deadlines stated herein will be strictly enforced, provided the parties may, upon mutual agreement, alter a deadline if there will be no material impact on the schedule or the hearing dates. Motions to extend or modify scheduling order deadlines may be granted for good cause shown.

17. This order shall continue in effect unless and until amended by subsequent order of the Arbitrator.

Dated: August 21st, 2019

Arbitrator Stephen K. Yungblut, Esq.

AMERICAN ARBITRATION ASSOCIATION

MOOSEHEAD HARVESTING, INC.	:	
Claimant,	:	**AAA CASE NO.: 01-19-0001-6957**
v.	:	
US TRINITY ENERGY SERVICES, LLC,	:	
Respondent.	:	**SEPTEMBER 11, 2019**

CLAIMANT'S AMENDED DEMAND FOR ARBITRATION AND DETAILED STATEMENT OF CLAIMS

Claimant, Moosehead Harvesting, Inc. hereby files this Amended Demand for Arbitration and Detailed Statement of Claims in accordance with paragraph 4 to Scheduling Order No. 1, and alleges as follows:

FIRST COUNT (BREACH OF CONTRACT)

The Parties

1. Claimant, Moosehead Harvesting, Inc. ("Moosehead") is a corporation organized and existing under the laws of the State of New Hampshire with places of business in Lincoln, NH; Southwick, MA; and Suffield, CT.

2. Upon information and belief, Respondent, US Trinity Energy Services, LLC ("US Trinity") is a limited liability company organized and existing under the laws of the State of Texas with a place of business at 200 Highland Circle, Argyle, TX 76226.

EXHIBIT F

The Project, The Pricing, and The Subcontract

3. In December 2017, and in response to a request for pricing from US Trinity, Moosehead submitted estimated pricing ("the Pricing") to US Trinity for a project referred to as the "EQT – Mountain Valley Pass" ("the Project").

4. The Project involved clearing all vegetative debris from a right of way spanning approximately 42 miles across West Virginia by Moosehead, and the placement of pipeline along that right of way by US Trinity.

5. US Trinity accepted the Pricing submitted by Moosehead, which included Pricing for Spread 7&8 and, modifying the mobilization lump sum under Option 2, US Trinity accepted Option 2, and accepted the rates for additional work outside the scope of work defined in the Pricing.

6. Moosehead and US Trinity entered into a Subcontract Agreement, Agreement Number 60-6002-02 on February 7, 2018 ("the Subcontract").

7. A true, accurate, and complete copy of the Subcontract is attached hereto as Exhibit 1.

8. The Pricing is included within Exhibit 1 as an attachment and is referred to as Moosehead's "Rate Schedule and scope" in Article 1. Scope of Work, ¶ 1.01 to the Subcontract.

9. The Subcontract Work is defined under Article 1. Scope of Work, ¶ 1.01 to the Subcontract.

10. The Subcontract contains an arbitration provision under Article 9.

11. US Trinity drafted the Subcontract.

12. The Subcontract Work included mechanical felling, processing all tops via chipping or windrowing, and stump grinding of approximately 42 miles of right of way at a rate of $42.50 per foot, plus mobilization at a lump sum of $100,000.00.

13. Pursuant to the terms of the Subcontract, Moosehead was to be paid $9,399,935.00 for work related to clearing and stump grinding alone.

14. The Subcontract Work also included hand felling at a rate of $3.50 per foot that was within the original scope of hand felling.

15. The Subcontract Work also included unit prices for additional work not within the original scope, including hauling and installing wetland mats up to 24 feet, hauling and installing timber mats greater than 24 feet, unanticipated crew move arounds, and labor and equipment for the installation of various control materials.

Delays and Work Stoppages

16. The Subcontract Work initially was scheduled to start in early January 2018.

17. The lack of sufficient permitting delayed the start of the Project until February 22, 2018.

18. Hand felling did not commence until February 27, 2018 due to the Project owner's request for unusual regulatory items, including one-call tickets for non-ground disturbance activities.

19. Moosehead did not begin mechanical clearing until April 5, 2018.

20. After Moosehead commenced the Subcontract Work, and after four months of Subcontract Work, permitting was pulled on the Project on June 22, 2018.

21. In June 2018, a federal court in the Fourth District stayed the Army Corps Nationwide Permit on the Project ("the Stay").

22. The pulling of permitting in June 2018 and the Stay resulted in Moosehead being unable to cross any wetlands or streams on the Project, leaving its equipment stuck in the right of way and unable to move, resulting in an increase to Moosehead's equipment, labor, and overhead costs.

23. The pulling of permitting in June 2018 and the Stay resulted in Moosehead being put on standby, resulted in Moosehead paying its workers full rate to be on standby for 10 hours per day, and resulted in increased equipment, labor, and overhead costs.

24. The Stay was lifted on June 28, 2019, and Moosehead was allowed to cross wetland bodies previously installed.

25. In order to cross wetland bodies after the Stay was lifted, Moosehead was required to move the entire spread to other work areas at significant costs in order to continue working without impacting the wetland bodies.

26. The Federal Energy Regulatory Commission issued a *Stop Work Order* in August 4, 2018 related to the Project ("the Stop Work Order").

27. The Stop Work Order resulted in Moosehead again being put on standby, resulted in Moosehead paying its workers full rate to be on standby for 10 hours per day, and resulted in increased equipment, labor, and overhead costs.

28. Work on the Project also was stopped in September 2018 due to Hurricane Florence, which resulted in Moosehead paying its workers full rate to be on standby for 10 hours per day and resulted in increased equipment, labor, and overhead costs.

29. On September 26, 2018, Moosehead was requested to demobilize all non-essential equipment and to stop paying standby.

30. Moosehead completely was demobilized in October 2018.

31. In the Fall of 2018, Moosehead was advised to return to the Project in the Spring of 2019 once permits were obtained to enter wetland areas; instead, however, US Trinity chose, on its own volition, to complete Moosehead's Subcontract Work itself, thereby depriving Moosehead of this expected and contracted work.

Changes To Moosehead's Scope of Work

32. The Pricing submitted by Moosehead did not include the burning of brush.

33. The Pricing submitted by Moosehead was following a scope of windrowing brush along the edge of the right of way, or chipping.

34. At no time during contract negotiations was the burning of brush part of the scope of work.

35. The burning of brush was not allowed per communications between US Trinity and the owner of the Project, which communications were forwarded to Moosehead when US Trinity asked for pricing from Moosehead.

36. Nonetheless, the scope of work under the Subcontract Work changed from chipping/windrowing to burning, which resulted in changes to: production, permitting relating to burning, the use of different equipment, the number of workers required, and extra work hours to enable 10 hours of working/burning time.

37. The delays on the Project further pushed the burn period into a heightened burn restrictions timeframe due to the time of year, further slowing progress.

38. The scope of work under the Subcontract Work changed related to the stacking of timber, which resulted in changes to: the time incurred to double-handle timber in order to stack timber, stump grinding under piles, stump grinding locations, moving the wood, and splitting.

39. The scope of work under the Subcontract Work changed related to hand felling with respect to the felling of Bat Trees and Avian Trees, and Moosehead was required to add more hand fellers to meet deadlines.

40. The scope of work under the Subcontract Work changed from hand felling to mechanical felling in certain areas, which resulted in move arounds, changes to production and equipment use, and delays.

41. Moosehead performed a significant amount of hand felling outside of its original scope of work due to incorrect permitting, and the cutting of brush and non-Bat species of trees, slowing its progress and increasing its costs.

42. Moosehead was on an accelerated schedule due to the delayed start of the Project, delays during the Project, and changes in scope delays during the Project, which forced an increase in manpower and costs.

43. The scope of work changes resulted in substantial increases to Moosehead's time and materials costs related to the Project.

44. Despite all of the changes set forth above, Moosehead conducted all work on the Project without any delays caused by Moosehead.

45. At no time did Moosehead hold up US Trinity's production.

46. Moosehead supplied US Trinity with detailed documentation concerning and supporting its work, and the change orders related to Moosehead's work, on the Project.

47. Changes to Moosehead's scope of work related to clearing and stump grinding resulted in change orders totaling $10,213,686.43.

48. Changes to Moosehead's scope of work related to hand felling resulted in change orders totaling $871,750.91.

US Trinity's Breaches of the Subcontract

49. Moosehead commenced the services and work contemplated under the Subcontract on or about February 27, 2018.

50. Moosehead completed approximately 30 miles of the services and work contemplated under the Subcontract as of October 24, 2018.

51. The services and work performed by Moosehead under the Subcontract provided a substantial benefit to US Trinity.

52. The services and work performed by Moosehead under the Subcontract significantly helped and/or assisted US Trinity.

53. At all relevant times, Moosehead complied with its obligations under the Subcontract.

54. Moosehead continuously was in contact with US Trinity concerning its Subcontract Work and changes to its original scope of work and delay costs.

55. Moosehead undertook the performance of its obligations under the Subcontract in strict and full accordance with the terms as stated therein, and in accordance with any directed changes.

56. Moosehead submitted invoices and change orders to US Trinity for payment for the work that it performed on the Project.

57. Moosehead invoiced US Trinity in the total amount of $7,987,680.60 for the Subcontract Work under the base pricing of the Subcontract. Of this total amount, $6,799,360.00 was for clearing and mobilization; $426,212.50 was for hand felling; and $762,108.10 was for unit priced items.

58. Moosehead was unable to invoice $2,600,575.00 of Subcontract Work due to US Trinity's breach of the Subcontract in self-performing that work.

59. Moosehead submitted scope of work and delay change orders to US Trinity in the total amount of $10,213,686.43 for its work actually performed under the Subcontract related to change orders.

60. Moosehead submitted hand felling change orders to US Trinity in the total amount of $871,750.91 for its work actually performed under the Subcontract related to change orders.

61. To date, Moosehead has been paid $7,987,680.54 for its work invoiced under the base terms of the Subcontract.

62. To date, Moosehead only has been paid $1,270,945.00 for its work invoiced under the Subcontract related to clearing and delay change orders.

63. To date, and to the best of Moosehead's knowledge, Moosehead only has been paid $300,000.00 for its work under the Subcontract related to hand felling change orders.

64. Moosehead is owed $2,600,575.00 for lost work under the base terms of the Subcontract as the result of US Trinity not allowing Moosehead to complete all 42 miles of the Subcontract Work.

65. In addition, Moosehead is owed $9,514,492.31 for its work under the Subcontract related to clearing scope, delays, and hand felling change orders.

66. US Trinity also owes Moosehead for 6,969 feet of hand felling work completed on the Project in October 2018 in the amount of $86,554.98.

67. Despite not being fully paid for its Subcontract Work as set forth above, Moosehead paid all of its workers' payrolls, bills for material and equipment, and other indebtedness related to the Subcontract Work, except for certain rental fees for equipment, some taxes, and some union fees.

68. Although US Trinity agreed to pay Moosehead for all of its work on the Project under the Subcontract, US Trinity failed and refused to pay Moosehead for all of the work performed by Moosehead on the Project under the Subcontract.

69. Under the Subcontract, US Trinity agreed to make payments to Moosehead within fifteen (15) days of applications for payment being submitted to US Trinity by Moosehead.

70. US Trinity did not make payments to Moosehead within fifteen (15) days of Moosehead's submission of applications for payment to US Trinity.

71. Upon information and belief, US Trinity settled with the Project owner in January 2019 and, despite that, failed to notify Moosehead of such settlement and failed to pay Moosehead for its work on the Project.

72. Upon information and belief, the Project owner never stated, or made any determination, that Moosehead should not be fully paid for its work on the Project.

73. Upon information and belief, no one ever has asserted or claimed that Moosehead did not properly perform its work on the Project.

74. Moosehead never has waived its right to payment for its work on the Project.

75. Moosehead never has released US Trinity from its obligation and/or liability to fully pay Moosehead for its work on the Project.

76. Although Moosehead made repeated demands for payment to US Trinity, US Trinity has failed and refused to pay Moosehead for the work it performed on the Project.

77. US Trinity had duties and obligations to Moosehead under the Subcontract, as described above.

78. US Trinity's actions, as described above, constitute breaches of the Subcontract.

79. US Trinity's breaches of the Subcontract include, but are not limited to:

(a) preventing Moosehead from completing all 42 miles of the Subcontract Work;

(b) failing to pay Moosehead within fifteen (15) days of applications for payment being submitted;

(c) failing to pay Moosehead all monies owed to it under the Subcontract, including the change orders;

(d) settling with the Project owner and, despite that, failing to notify Moosehead of such settlement and failing to pay Moosehead for its Subcontract Work; and

(e) preventing Moosehead from communicating with the Project owner concerning its unpaid work.

80. As a direct result of US Trinity's breaches of the Subcontract, Moosehead has been significantly damaged.

81. Moosehead's damages exceed $12,000,000.00 as the result of US Trinity's breaches.

Wherefore, Moosehead respectfully requests that an award issue in its favor on Count One in an amount to be determined after evidentiary hearings, plus interest, costs, and attorney fees.

COUNT TWO
(Quantum Meruit)

82. Moosehead repeats and realleges its allegations in paragraphs 1 through 2 above, as if fully restated in their entirety here in this paragraph 82 of Count Two.

83. Moosehead fully performed the work on the Project for eight months based on the representation of payment by US Trinity and with the reasonable expectation of payment by US Trinity to Moosehead.

84. Moosehead provided valuable services to US Trinity for its work on the Project.

85. US Trinity accepted, used, and enjoyed Moosehead's work on the Project.

86. US Trinity received a measurable benefit by virtue of Moosehead's work on the Project.

87. US Trinity would not have been able to lay pipeline on the Project were it not for Moosehead's substantial work on the Project.

88. US Trinity accepted Moosehead's work on the Project without fully compensating Moosehead.

89. Moosehead reasonably expected to receive full compensation for the work that it performed on the Project.

90. Moosehead reasonably notified US Trinity that it expected to be paid by US Trinity for its work on the Project.

91. US Trinity has not paid Moosehead for the benefits that Moosehead conferred upon US Trinity related to the Project.

92. Moosehead is entitled to receive the reasonable value of its work performed on the Project.

93. Moosehead is entitled to receive the reasonable value of its labor and equipment costs associated with its work performed on the Project.

94. Moosehead is entitled to receive the reasonable value of its labor and equipment costs associated with the numerous delays and work stoppages associated with the Project.

95. US Trinity has been unjustly enriched to Moosehead's detriment.

Wherefore, Moosehead respectfully requests that an award issue in its favor on Count Two in an amount to be determined after evidentiary hearings, plus interest, costs, and attorney fees.

COUNT THREE
(Breach of the Covenant of Good Faith and Fair Dealing)

96. Moosehead repeats and realleges paragraphs 1 through 81 above, as if fully restated in their entirety here in this paragraph 96 of Count Three.

97. The Subcontract includes an implied covenant of good faith and fair dealing.

98. The Subcontract imposes an obligation of good faith in its performance and enforcement.

99. US Trinity breached the implied covenant of good faith and fair dealing by, among other things, refusing to pay Moosehead significant amounts due and owing to Moosehead under the Subcontract.

100. US Trinity's breach of the covenant of good faith and fair dealing directly and proximately caused Moosehead to suffer significant damages.

Wherefore, Moosehead respectfully requests that an award issue in its favor on Count Three in an amount to be determined after evidentiary hearings, plus interest, costs, and attorney fees.

Wherefore, and in light of all of the above, Moosehead respectfully requests that an award enter in its favor on all counts set forth above, in an amount to be determined after evidentiary hearings, plus interest, costs, and attorney fees, and that such award include the following:

A. Monetary damages;

B. Prejudgment and post judgment interest;

C. Attorney Fees;

D. Expenses and Costs; and

E. Any other relief in law or in equity that the Arbitrator deems proper.

Dated: September 11, 2019

RESPECTFULLY SUBMITTED,
MOOSEHEAD HARVESTING, INC.,
By Its' Attorney,

By:____/s/Jennifer R. Rossi_____

Jennifer R. Rossi, Esq.
Law Office of Jennifer Rossi LLC
104 Pioneer Drive
West Hartford, CT 06117
Tel. No.: (860) 593-1783
Fax No.: (860) 570-1580
Email: jrossi@jrossilaw.com
Website: www.jrossilaw.com

CERTIFICATE OF SERVICE

I, Jennifer R. Rossi, Esq. hereby certify that a copy of the above Claimant's Amended Demand for Arbitration and Detailed Statement of Claims was or will immediately be delivered electronically on September 11, 2019 to all counsel of record as follows:

Brian G. Corgan, Esq.
Hayley R. Ambler, Esq.
Kilpatrick Townsend & Stockton LLP
1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309
bcorgan@kilpatricktownsend.com
hambler@kilpatricktownsend.com

___/s/Jennifer R. Rossi_____
Jennifer R. Rossi, Esq.

BEFORE THE
AMERICAN ARBITRATION ASSOCIATION

MOOSEHEAD HARVESTING, INC.	)	
	)	
Claimant,	)	
	)	
- and -	)	**Case No. 01-19-0001-6957**
	)	
US TRINITY ENERGY SERVICES, LLC,	)	
	)	
	)	
Respondent.	)	
	)	

US TRINITY ENERGY SERVICES, LLC'S RESPONSE TO MOOSEHEAD HARVESTING, INC.'S AMENDED DEMAND FOR ARBITRATION AND DETAILED STATEMENT OF CLAIMS

-AND-

US TRINITY ENERGY SERVICES, LLC'S COUNTERCLAIM

Pursuant to Scheduling Order No. 1, Respondent US Trinity Energy Services, LLC ("US Trinity") hereby submits its Response to Respondent Claimant Moosehead Harvesting, Inc.'s ("Moosehead") Amended Demand for Arbitration and Detailed Statement of Claims, and hereby submits its Counterclaim against Moosehead, as follows.

INTRODUCTION AND PRELIMINARY STATEMENT

US Trinity and Moosehead are parties to a unit price subcontract ("Subcontract") pursuant to which Moosehead was to provide clearing services to US Trinity on the EQT MVP pipeline project ("Project") owned by Mountain Valley Pipeline LLC ("Owner"). First, US Trinity has paid all of Moosehead's invoices for mobilization, mechanical clearing work, hand-felling work and other unit price work, including retainage. US Trinity owes nothing to

EXHIBIT G

Moosehead on this scope of work, with the exception of $24,391.50 for hand-felling work that Moosehead performed but did not invoice. As discussed below, this amount will be set-off against US Trinity's Counterclaim against Moosehead.

Second, Moosehead claims that it was entitled to perform mechanical clearing on the entire amount of linear feet in its estimate, but because it cleared less footage than estimated, it is owed the difference of $2,600,575 on the unperformed work. Presumably, the claim amount is the Subcontract unit price for clearing multiplied by an unperformed linear footage or forestry cleared by others due to Moosehead's inability to perform timely. This claim is so nonsensical as to constitute bad faith. US Trinity owes nothing for the unperformed work. The claim is beyond frivolous.

Third, Moosehead has alleged that certain delays and scope changes occurred on the Project due to the Owner. As agreed in the Subcontract, US Trinity passed through Moosehead's claims to the Owner for review, consideration and payment. In accordance with the Subcontract, Moosehead is only entitled to recover from US Trinity that which US Trinity recovers from the Owner after deduction of US Trinity's actual costs incurred in pursuing Moosehead's claims, and US Trinity's markup. The Owner's decision is final, and Moosehead has released US Trinity for any liability on these claims.

Fourth, Moosehead claims it is entitled to $571,750.91 in hand-felling change orders. This claim is simply Moosehead's attempt to obtain $12.42 per linear foot of hand-felling despite its Subcontract unit price of $3.50 per linear foot. As stated above, US Trinity paid Moosehead for all hand-felling work at the Subcontract unit price of $3.50 per foot, with the exception of $24,391.50, subject to set-off.

Fifth, Moosehead has accepted final payment from US Trinity when US Trinity paid the retainage due to Moosehead. Pursuant to the Subcontract, by accepting final payment, Moosehead waives all claims against US Trinity.

Moosehead in fact owes to US Trinity $114,825.67 for Moosehead's failure to pay its union dues, plus costs and attorneys' fees. Moosehead breached the Subcontract by failing to pay the union and by failing and refusing to indemnify US Trinity. Furthermore, US Trinity is entitled to its actual costs in pursuing Moosehead's change orders against the Owner, for which Moosehead has not yet made payment.

SPECIFIC RESPONSES TO MOOSEHEAD'S DETAILED STATEMENT OF CLAIMS AND AMENDED DEMAND

1. Moosehead Is Owed Nothing On Its Base Scope of Work or on Unperformed Work.

Pursuant to the Subcontract, Moosehead was to provide clearing services on the Project. The Subcontract is a unit price agreement. Paragraph 4 of the Subcontract unequivocally states:

> Unit Price – The Subcontract Price shall be the total sum of the extensions of the unit prices (as contained on the unit price schedule attached hereto), multiplied by the units approved by the Owner under the basis for measurement provided by the terms of the Prime Agreement (i.e. in-place quantities vs. excavated quantities, weight vs. volume, plan quantities vs. actual quantities, etc.) which sum shall be subject to adjustment only as provided in this Agreement.

Ex. 1, ¶ 4. Although Moosehead estimated the amount of linear feet of pipeline right-of-way to be cleared, there is no guarantee of the amount of linear feet, minimum, maximum, or otherwise, that Moosehead was to clear under the Subcontract, and US Trinity denies all statements by Moosehead to that effect.

Moosehead's price for mechanical clearing services on the Project is $42.50 per foot, plus mobilization at a lump sum of $100,000. Moosehead invoiced US Trinity in the amount of $7,198,912.49 for its mobilization, mechanical clearing, hand-felling, and other unit price work, not including retainage. **US Trinity paid all of Moosehead's invoices for this work.** US Trinity also paid Moosehead's retainage of $788,768.06. The total amount paid to Moosehead for its mobilization, mechanical clearing, hand-felling and other unit price work is $7,987,6850.55. Moosehead is owed nothing on this scope of work, with the exception of $24,391.50 for hand-felling work performed in October 2018 discussed below, and subject to set-off.

With regard to the mechanical clearing portion of its work, Moosehead apparently claims that it is entitled to the difference in the amount estimated to be mechanically cleared and the amount it actually mechanically cleared. Moosehead's estimate of mechanical clearing work is apparently 218,822 linear feet. The Subcontract unit price for mechanical clearing is $42.50 per linear foot. Had Moosehead cleared 218,822 linear feet of right-of-way, it would have been able to invoice $9,299,935. Apparently, because Moosehead claims it mechanically cleared only 157,683.35 linear feet at $42.50 per foot for a total of $6,699,360, it may demand the difference of $2,600,575, as if it had cleared over 61,000 feet (over 11.5 miles) that it did not clear. Moosehead has no basis for its claim based on its unit price Subcontract, and its claim belies the concept and precepts of unit price contracting. In fact, under no reasonable contract payment mechanism or formula would Moosehead be entitled to payment for unperformed work. Moosehead is owed nothing more for its mechanical clearing work. The claim is fantasy.

Even if the Subcontract were terminated for convenience by US Trinity, Moosehead is only entitled to **the lesser of**: (1) the appropriate share of the amount which US Trinity is paid under the Prime Agreement for the Subcontract Work properly completed by Subcontractor as of the date of such termination; or (2) the value of all work properly performed by Subcontractor, less all payments Subcontractor has previously received for the Subcontract Work performed. Ex. 1, ¶ 8.03. Paragraph 8.03 further provides that the value shall not exceed Subcontractor's actual costs for labor, materials, and equipment, plus fifteen (15%) for profit and overhead, and that Subcontractor waives all other claims for damages, including lost or anticipated profits. *Id.* Moosehead has already been paid for all mechanical clearing work properly performed. Moosehead is not entitled to any further payments on this work, and is certainly not entitled to the recover for unperformed work. US Trinity does not owe Moosehead any amounts for mechanical clearing work.

2. Moosehead Is Only Entitled to Recover on the Delay and Scope Change Orders the Amount US Trinity Recovers from the Owner After Deduction of US Trinity's Cost.

Moosehead submitted a global change order to US Trinity on October 12, 2018, in the amount of $10,213,686.43, for all of the alleged Owner-caused delays and scope changes Moosehead claims impacted its work. All of the alleged delays and scope changes are attributable to the Owner due to delays in obtaining the Nationwide Permit, stop work orders by FERC, and Hurricane Florence. US Trinity passed Moosehead's claims through to the Owner in accordance with the Subcontract.

The Subcontract provides that the Owner must approve additional compensation for changes. If the Owner does not approve additional compensation or the amount, then

Moosehead waives its right to extra compensation and releases Trinity for any liability of payment therefor. The Owner's decision is final. Paragraph 5.03 provides:

> **Finality of Owner's Decision.** Notwithstanding anything contained herein to the contrary, IF THE WORK FOR WHICH SUBCONTRACTOR CLAIMS EXTRA COMPENSATION TO BE DUE IS DETERMINED BY THE OWNER, OR THE OWNER'S REPRESENTATIVE, TO BE SUCH THAT CONTRACTOR IS NOT ENTITLED TO ADDITIONAL COMPENSATION FOR SUCH WORK FROM THE OWNER, THEN SUBCONTRACTOR WAIVES ITS RIGHT TO EXTRA COMPENSATION FOR SUCH WORK AND RELEASES CONTRACTOR FOR ANY LIABILITY OF PAYMENT THEREFOR, EXCEPT TO THE EXTENT CONTRACTOR RECOVERS FROM OWNER ON A CLAIM PURSUED AT SUBCONTRACTOR'S REQUEST AND EXPENSE. Subject to Subcontractor's right to participate in a proceeding disputing such a decision as provided in the Prime Agreement, the decision of the Owner, or the Architect/Engineer as the Owner's representative, shall be final with regard to whether extra compensation is due and with regard to the amount of such extra compensation.

Id., ¶ 5.03. Paragraph 5.04 of the Subcontract provides:

> **Claims Against Owner.** Contractor will cooperate with Subcontractor to submit any valid and enforceable claim against the Owner for extra compensation or other relief allowed under the applicable Prime Agreement. As a condition precedent to Contractor's agreement to cooperate in the submittal of Subcontractor's claim against the Owner, Subcontractor agrees to pay, and will confirm in writing, Subcontractor's agreement to pay for any expense, including attorney's fees, incurred in connection with claims asserted at the request of Subcontractor, including the pre-payment of any retainage fee that may be requested prior to Contractor's submission of Subcontractor's claim to Owner. The intended result of this Agreement is to permit pass-through claims as authorized by Texas law, with the express understanding that **Contractor's liability to Subcontractor on said claims is limited to the funds collected from Owner on claims which Contractor asserts on behalf of Subcontractor, after deduction of Contractor's actual cost (such as expert witness fees, attorneys' fees, Court costs, etc.) incurred in pursuing Subcontractor's claims**.

Id., §5.04 (emphasis added).

Despite Moosehead's claim of $10,213,686.43 that US Trinity passed through to the Owner, the Owner did not approve the total amount of this claim. First, and significantly, US

Trinity advanced $300,000 to Moosehead in anticipation of the Owner's approval of Moosehead's change order because Moosehead represented that it desperately needed funds. After the Owner partially approved Moosehead's claims in the amount of $1,499,500, US Trinity paid Moosehead an additional $1,270,945 for its global change order, for which Moosehead signed a Waiver and Release of Lien. Moosehead has been paid $1,570,945, including the $300,000 advance, on its global change order for delays and scope changes, which is actually an overpayment of $71,445 from what the Owner approved. Moosehead has released the Owner, and consequently US Trinity, from all claims.

In reviewing its records, US Trinity realized that it failed to account for Moosehead's portion of the Owner's approval of a change order related to all crews for the FERC Stop Work Order, which is $293,333.30. Because Moosehead has already been overpaid by $71,445, Moosehead may be owed an additional $221,88 for its portion of the FERC change order, subject to US Trinity's Counterclaim set forth below and US Trinity's cost to pursue Moosehead's claims against the Owner.

The Owner's decision on the claims is final in accordance with Paragraph 5.03 of the Subcontract. Because US Trinity's liability is limited to what it recovers from the Owner on Moosehead's claims, less its costs and expenses, Moosehead has no further claim against US Trinity, and US Trinity has no liability to Moosehead for such claims. Moosehead has waived and released its claims against both the Owner and US Trinity.

3. US Trinity Owes Nothing for Hand-Felling.

Moosehead alleges that changes to its scope of work related to hand felling from February to March 2018 resulted in change orders totaling $871,750.91, in addition to its

contractual rate of $3.50 per foot adder for hand-felling. Moosehead alleges it has been paid $300,000 for its hand-felling change orders, which US Trinity denies. As discussed above, US Trinity advanced $300,000 to Moosehead on its global change order related to delays and scope changes attributable to the Owner. The $300,000 advance has nothing to do with Moosehead's hand-felling change order.

In fact, Moosehead invoiced US Trinity $426,212.50 for hand-felling 121,775 linear feet at the Subcontract rate of $3.50 per foot, including a $10,000 change order for hand-felling in its invoice No. 5R, for hand-felling performed from February through June. US Trinity paid this entire amount.

Moosehead is attempting to extort another $871,750.91 from US Trinity through a so-called change order, which is really just a request to be paid its claimed costs plus 20% for hand-felling, which is $12.42 per foot, instead of the unit price of $3.50 in the Subcontract. US Trinity paid Moosehead's invoices for hand felling at the Subcontract rates, and Moosehead is not entitled to anything more.

US Trinity does agree that Moosehead performed 6,969 linear feet of hand-felling work in October 2018, for which Moosehead never invoiced. Based on the Subcontract unit rate of $3.50 per foot, US Trinity owes Moosehead $24,391.50. However, this amount will be set-off against US Trinity's Counterclaim against Moosehead as set forth below.

4. Final Payment

US Trinity made final payment to Moosehead when it paid Moosehead its retainage. Paragraph 4.03 of the Subcontract provides in relevant part:

> SUBCONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT SHALL CONSTITUTE A WAIVER OF ALL CLAIMS BY SUBCONTRACTOR

> RELATING TO THE SUBCONTRACT WORK OR TO CONTRACTOR'S WORK, CONNECTED WITH THE APPLICABLE PROJECT OR TO THE CONTRACT DOCUMENTS, BUT SHALL IN NO WAY RELIEVE SUBCONTRACTOR OF LIABILITY FOR THE OBLIGATIONS FOR REPLACING FAULTY OR DEFECTIVE WORK APPEARING AFTER FINAL PAYMENT.

Ex. 1, ¶ 4.03 (capitalization in original). Moosehead has waived any claims against US Trinity relating to the Subcontract Work and the Project.

5. US Trinity's Specific Denials.

Specifically, US Trinity denies the allegations contained in paragraphs 13, 31, 44, 45, 48, 51, 52, 53, 54, 55, 56, 58, 60, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 99, and 100 of Moosehead's Statement of Claims.

Regarding the allegations contained in paragraphs 16-30, 32-43, 46-47, and 59 of Moosehead's Statement of Claims, US Trinity states that these allegations relate to claims by Moosehead of alleged delays and changes to its work that were caused by the Owner. Moosehead submitted certain change orders for the delays and changes caused by the Owner. US Trinity does not admit that these change orders were supported with detailed documentation. They speak for themselves. US Trinity passed-through these claims to the Owner. Moosehead accepted the amount tendered by the Owner for resolution of these claims and thus released the Owner and US Trinity for any further liability for such claims. US Trinity is without knowledge or information regarding Moosehead's actual costs, other than what Moosehead provided to US Trinity for pass-through to the Owner. In accordance with the Subcontract, US Trinity's liability to Moosehead is limited to the amount US Trinity recovers

from the Owner on Moosehead's change orders, after deduction of US Trinity's cost to pass-through Moosehead's change orders to the Owner.

ADDITIONAL FACTUAL AND LEGAL DEFENSES TO MOOSEHEAD'S DETAILED STATEMENT OF CLAIMS AND AMENDED DEMAND

6. US Trinity denies that it breached the provisions of the Subcontract, and US Trinity denies that Moosehead's alleged increased costs resulted from US Trinity's conduct, either in whole or in part. Moosehead's allegations are inconsistent with its contemporaneous contentions made during the course of performance that the Project delays and alleged costs suffered by Moosehead were Owner-caused and Owner-responsible.

7. US Trinity denies that Moosehead can recover from US Trinity in *quantum meruit*.

8. US Trinity denies that it has breached the covenant of good faith and fair dealing.

9. Moosehead has waived its alleged claims against US Trinity in accordance with Paragraphs 4.03, 5.03, and 5.04 of the Subcontract.

9. Moosehead has released its claims against US Trinity in accordance with Paragraphs 5.03 and 5.04 of the Subcontract and otherwise.

10. Moosehead's alleged damages, if any, were caused by the actions or omissions of Moosehead itself or by third parties for whom US Trinity is not responsible, or third parties whom Moosehead has expressly released.

11. US Trinity's liability is limited to the amount US Trinity recovers from the Owner on Moosehead's claims passed-through to the Owner, after deduction of US Trinity's cost incurred in pursuing Moosehead's claims.

US TRINITY ENERGY SERVICES, LLC'S COUNTERCLAIM AGAINST MOOSEHEAD HARVESTING, INC.

1. US Trinity and Moosehead entered into the Subcontract dated February 7, 2018, pursuant to which Moosehead was to perform certain clearing services for US Trinity on the EQT MVP pipeline project ("Project") owned by Mountain Valley Pipeline LLC ("Owner").

2. Pursuant to Paragraph 10.01 of the Subcontract, Moosehead was to comply with Federal and State laws relating to reporting and payment of wages, federal and state payroll taxes on wages, and applicable state unemployment tax payments.

3. Moosehead failed to pay required contributions to the International Union of Operating Engineers, Local 132 ("Union"), in the amount of $114,825.67. See Exhibit 2.

4. By failing to pay the required contributions to the Union, Moosehead is in breach of Federal and State laws.

5. By failing to pay the required contributions to the Union, Moosehead is in breach of the Subcontract.

6. Further, pursuant to Paragraph 6.02 of the Subcontract, Moosehead is to defend, indemnify, and hold harmless US Trinity from all claims, demands, damages, losses, causes of action, suits and liabilities of any kind for civil or criminal fines or penalties as a result of Moosehead's breach of the Subcontract. Moosehead's indemnification obligations apply, without limitation, to any liability imposed on US Trinity as a result of any statute, rule, regulation, or theory of strict liability. Moosehead expressly assumed any and all liability of US Trinity arising in favor of any third party or governmental agency or entity, Moosehead's employees and their representatives and beneficiaries.

7. US Trinity demanded that Moosehead indemnify, defend and hold harmless US Trinity from the claims made by the Union. Moosehead refused to do so. Moosehead is in breach of the Subcontract.

8. Moosehead breached the Subcontract by failing to pay US Trinity's actual costs in pursuing Moosehead's claims against the Owner.

WHEREFORE, US Trinity respectfully requests that an award be entered in its favor against Moosehead in an amount to be determined by the Arbitrator, plus costs and attorneys' fees, and any other relief in law or in equity that the Arbitrator deems proper.

RELIEF REQUESTED

US Trinity is entitled to the following relief:

(a) An Award against Moosehead and in favor of US Trinity;

(b) attorneys' fees and all costs and expenses of this Arbitration; and,

(c) such other and further relief as may appear just and proper to the Arbitrator.

Brian G. Corgan
Hayley R. Ambler
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1100 Peachtree Street, Suite 2800
Atlanta, Georgia 30309
Telephone: 404-815-6217
Facsimile: 404-815-6555
E-mail: bcorgan@kilpatricktownsend.com

Dated: September 30, 2019

BEFORE THE
AMERICAN ARBITRATION ASSOCIATION

MOOSEHEAD HARVESTING, INC.	)	
	)	
Claimant,	)	
- and -	)	**Case No. 01-19-0001-6957**
	)	
US TRINITY ENERGY SERVICES, LLC,	)	
	)	
	)	
Respondent	)	

US TRINITY ENERGY SERVICES, LLC'S AMENDED RESPONSE TO MOOSEHEAD HARVESTING, INC.'S AMENDED DEMAND FOR ARBITRATION AND DETAILED STATEMENT OF CLAIMS

-AND-

US TRINITY ENERGY SERVICES, LLC'S COUNTERCLAIM

Pursuant to Scheduling Order No. 2, Respondent US Trinity Energy Services, LLC ("US Trinity") submits its: (i) Amended Response to Respondent Claimant Moosehead Harvesting, Inc.'s ("Moosehead") Amended Demand for Arbitration and Detailed Statement of Claims, and (ii) Counterclaim against Moosehead.

INTRODUCTION AND PRELIMINARY STATEMENT

US Trinity and Moosehead are parties to a unit price subcontract ("Subcontract") pursuant to which Moosehead was to provide clearing services to US Trinity on the EQT MVP pipeline project ("Project") owned by Mountain Valley Pipeline LLC ("Owner"). First, US Trinity has paid all of Moosehead's invoices for mobilization, mechanical clearing work, hand-felling work and other unit price work, including retainage. US Trinity owes nothing to Moosehead on this scope of work, with the exception of $24,391.50 for hand-felling work that Moosehead performed but

EXHIBIT H

did not invoice. As discussed below, this amount will be set-off against US Trinity's Counterclaim against Moosehead.

Second, Moosehead claims that it was entitled to perform mechanical clearing on the entire amount of linear feet in its estimate, but because it cleared less footage than estimated, it is owed the difference of $2,600,575.00 on the unperformed work. Presumably, the claim amount is the Subcontract unit price for clearing multiplied by an unperformed linear footage or forestry cleared by others due to Moosehead's inability to perform timely. This claim is objectively baseless—US Trinity owes nothing for the unperformed work.

Third, Moosehead has alleged that certain delays and scope changes occurred on the Project due to the Owner. As agreed in the Subcontract, US Trinity passed through Moosehead's claims to the Owner for review, consideration and payment. In accordance with the Subcontract, Moosehead is only entitled to recover from US Trinity that which US Trinity recovered from the Owner after deduction of US Trinity's actual costs incurred in pursuing Moosehead's claims, and US Trinity's markup. The Owner's decision is final, and Moosehead has released US Trinity for any liability on these claims. Despite the Owner's denial of Moosehead's claims, Moosehead continues to seek compensation above the amount the Owner approved in contravention of the Subcontract.

Fourth, Moosehead claims it is entitled to $571,750.91 in hand-felling change orders. This claim is simply Moosehead's attempt to obtain $12.42 per linear foot of hand-felling despite its Subcontract unit price of $3.50 per linear foot. As stated above, US Trinity paid Moosehead for all hand-felling work at the Subcontract unit price of $3.50 per foot, with the exception of $24,391.50, subject to set-off.

Fifth, Moosehead claims entitlement to $436,617.82 in standby and time and materials costs related to Hurricane Florence. The Subcontract states that US Trinity shall not be liable to Moosehead for delays, hindrance, or interruptions to the Subcontract Work on account of Acts of God, or any other causes beyond US Trinity's control. Accordingly, Moosehead is not contractually entitled to seek any compensation related to Hurricane Florence or other weather-related delays.

Sixth, Moosehead has accepted final payment from US Trinity when US Trinity paid the retainage due to Moosehead. Pursuant to the Subcontract, by accepting final payment, Moosehead waives all claims against US Trinity.

Moosehead in fact owes to US Trinity at least $116,096.24 for Moosehead's failure to pay its union dues, plus costs and attorneys' fees. Moosehead breached the Subcontract by failing to pay the union and by failing and refusing to indemnify US Trinity. Furthermore, US Trinity is entitled to its actual costs in pursuing Moosehead's change orders against the Owner, for which Moosehead has not yet made payment.

SPECIFIC RESPONSES TO MOOSEHEAD'S DETAILED STATEMENT OF CLAIMS AND AMENDED DEMAND

1. Moosehead Is Owed Nothing On Its Base Scope of Work or on Unperformed Work.

Pursuant to the Subcontract, Moosehead was to provide clearing services on the Project. The Subcontract is a unit price agreement. Paragraph 4 of the Subcontract unequivocally states:

> Unit Price — The Subcontract Price shall be the total sum of the extensions of the unit prices (as contained on the unit price schedule attached hereto), multiplied by the units approved by the Owner under the basis for measurement provided by the terms of the Prime Agreement (i.e. in-place quantities vs. excavated quantities, weight vs. volume, plan quantities vs. actual quantities, etc.) which sum shall be subject to adjustment only as provided in this Agreement.

Ex. 1, ¶ 4. Although Moosehead estimated the amount of linear feet of pipeline right-of-way to be cleared, there is no guarantee of the amount of linear feet, minimum, maximum, or otherwise, that Moosehead was to clear under the Subcontract, and US Trinity denies all statements by Moosehead to that effect.

Moosehead's price for mechanical clearing services on the Project is $42.50 per foot, plus mobilization at a lump sum of $100,000.00. Moosehead invoiced US Trinity in the amount of $7,198,912.49 for its mobilization, mechanical clearing, hand-felling, and other unit price work, not including retainage. **US Trinity paid all of Moosehead's invoices for this work**. US Trinity also paid Moosehead's retainage of $788,768.06. The total amount paid to Moosehead for its mobilization, mechanical clearing, hand-felling and other unit price work is $7,987,685.55. Moosehead is owed nothing on this scope of work, with the exception of $24,391.50 for hand-felling work performed in October 2018 discussed below, and subject to set-off.

With regard to the mechanical clearing portion of its work, Moosehead apparently claims that it is entitled to the difference in the amount estimated to be mechanically cleared and the amount it actually mechanically cleared. Moosehead's estimate of mechanical clearing work is apparently 218,822 linear feet. The Subcontract unit price for mechanical clearing is $42.50 per linear foot. Had Moosehead cleared 218,822 linear feet of right-of-way, it would have been able to invoice $9,299,935.00. Apparently, because Moosehead claims it mechanically cleared only 157,683.35 linear feet at $42.50 per foot for a total of $6,699,360.00, it may demand the difference of $2,600,575.00, as if it had cleared over 61,000 feet (over 11.5 miles) that it did not clear. Moosehead has no basis for its claim based on its unit price Subcontract, and its claim belies the concept and precepts of unit price contracting. In fact, under no reasonable contract payment

mechanism or formula would Moosehead be entitled to payment for unperformed work. Moosehead is owed nothing more for its mechanical clearing work. The claim is fantasy.

Even if the Subcontract were terminated for convenience by US Trinity, Moosehead is only entitled to the lesser of: (1) the appropriate share of the amount which US Trinity is paid under the Prime Agreement for the Subcontract Work properly completed by Subcontractor as of the date of such termination; or (2) the value of all work properly performed by Subcontractor, less all payments Subcontractor has previously received for the Subcontract Work performed. Ex. 1, ¶ 8.03. Paragraph 8.03 further provides that the value shall not exceed Subcontractor's actual costs for labor, materials, and equipment, plus fifteen (15%) for profit and overhead, and that Subcontractor waives all other claims for damages, including lost or anticipated profits. *Id*. Moosehead has already been paid for all mechanical clearing work properly performed. Moosehead is not entitled to any further payments on this work, and is certainly not entitled to the recover for unperformed work. US Trinity does not owe Moosehead any amounts for mechanical clearing work.

2. Moosehead Is Only Entitled to Recover on the Delay and Scope Change Orders the Amount US Trinity Recovers from the Owner After Deduction of US Trinity's Cost.

Moosehead submitted a global change order to US Trinity on October 12, 2018, in the amount of $10,213,686.43, for all of the alleged Owner-caused delays and scope changes Moosehead claims impacted its work. All of the alleged delays and scope changes are attributable to the Owner due to delays in obtaining the Nationwide Permit, stop work orders by FERC, and Hurricane Florence. US Trinity passed Moosehead's claims through to the Owner in accordance with the Subcontract.

The Subcontract provides that the Owner must approve additional compensation for changes. If the Owner does not approve additional compensation or the amount, then Moosehead waives its right to extra compensation and releases Trinity for any liability of payment therefor. The Owner's decision is final. Paragraph 5.03 provides:

> **Finality of Owner's Decision**. Notwithstanding anything contained herein to the contrary, IF THE WORK FOR WHICH SUBCONTRACTOR CLAIMS EXTRA COMPENSATION TO BE DUE IS DETERMINED BY THE OWNER, OR THE OWNER'S REPRESENTATIVE, TO BE SUCH THAT CONTRACTOR IS NOT ENTITLED TO ADDITIONAL COMPENSATION FOR SUCH WORK FROM THE OWNER, THEN SUBCONTRACTOR WAIVES ITS RIGHT TO EXTRA COMPENSATION FOR SUCH WORK AND RELEASES CONTRACTOR FOR ANY LIABILITY OF PAYMENT THEREFOR, EXCEPT TO THE EXTENT CONTRACTOR RECOVERS FROM OWNER ON A CLAIM PURSUED AT SUBCONTRACTOR'S REQUEST AND EXPENSE. Subject to Subcontractor's right to participate in a proceeding disputing such a decision as provided in the Prime Agreement, the decision of the Owner, or the Architect/Engineer as the Owner's representative, shall be final with regard to whether extra compensation is due and with regard to the amount of such extra compensation.

Id., ¶ 5.03. Paragraph 5.04 of the Subcontract provides:

> **Claims Against Owner**. Contractor will cooperate with Subcontractor to submit any valid and enforceable claim against the Owner for extra compensation or other relief allowed under the applicable Prime Agreement. As a condition precedent to Contractor's agreement to cooperate in the submittal of Subcontractor's claim against the Owner, Subcontractor agrees to pay, and will confirm in writing, Subcontractor's agreement to pay for any expense, including attorney's fees, incurred in connection with claims asserted at the request of Subcontractor, including the pre-payment of any retainage fee that may be requested prior to Contractor's submission of Subcontractor's claim to Owner. The intended result of this Agreement is to permit pass-through claims as authorized by Texas law, with the express understanding that **Contractor's liability to Subcontractor on said claims is limited to the funds collected from Owner on claims which Contractor asserts on behalf of Subcontractor, after deduction of Contractor's actual cost (such as expert witness fees, attorneys' fees, Court costs, etc.) incurred in pursuing Subcontractor's claims**.

Id., §5.04 (emphasis added).

Despite Moosehead's claim of $10,213,686.43 that US Trinity passed through to the Owner, the Owner did not approve the total amount of this claim. First, and significantly, US

Trinity advanced $300,000.00 to Moosehead in anticipation of the Owner's approval of Moosehead's change order because Moosehead represented that it desperately needed funds. After the Owner partially approved Moosehead's claims in the amount of $1,499,500.00, US Trinity paid Moosehead an additional $1,270,945.00 for its global change order, for which Moosehead signed a Waiver and Release of Lien. Moosehead has been paid $1,570,945.00, including the $300,000.00 advance, on its global change order for delays and scope changes, which is actually an overpayment of $71,445.00 from what the Owner approved. Moosehead has released the Owner, and consequently US Trinity, from all claims.

In reviewing its records, US Trinity realized that it failed to account for Moosehead's portion of the Owner's approval of a change order related to all crews for the FERC Stop Work Order, which is $293,333.30. Because Moosehead has already been overpaid by $71,445.00, Moosehead may be owed an additional $221,888.30 for its portion of the FERC change order, subject to US Trinity's Counterclaim set forth below and US Trinity's cost to pursue Moosehead's claims against the Owner.

The Owner's decision on the claims is final in accordance with Paragraph 5.03 of the Subcontract. Because US Trinity's liability is limited to what it recovers from the Owner on Moosehead's claims, less its costs and expenses, Moosehead has no further claim against US Trinity, and US Trinity has no liability to Moosehead for such claims. Moosehead has waived and released its claims against both the Owner and US Trinity.

3. US Trinity Owes Nothing for Hand-Felling or Move Arounds.

Moosehead alleges that changes to its scope of work related to hand felling from February to March 2018 resulted in change orders totaling $871,750.91, in addition to its contractual rate of $3.50 per foot adder for hand-felling. Moosehead alleges it has been paid $300,000.00 for its hand-

felling change orders, which US Trinity denies. As discussed above, US Trinity advanced $300,000.00 to Moosehead on its global change order related to delays and scope changes attributable to the Owner. The $300,000.00 advance has nothing to do with Moosehead's hand-felling change order.

In fact, Moosehead invoiced US Trinity $426,212.50 for hand-felling 121,775 linear feet at the Subcontract rate of $3.50 per foot, including a $10,000.00 change order for hand-felling in its invoice No. 5R, for hand-felling performed from February through June. US Trinity paid this entire amount.

Moosehead is attempting to extort another $871,750.91 from US Trinity through a so-called change order, which is really just a request to be paid its claimed costs plus 20% for hand-felling, which is $12.42 per foot, instead of the unit price of $3.50 in the Subcontract. US Trinity paid Moosehead's invoices for hand felling at the Subcontract rates, and Moosehead is not entitled to anything more.

US Trinity does agree that Moosehead performed 6,969 linear feet of hand-felling work in October 2018, for which Moosehead never invoiced. Based on the Subcontract unit rate of $3.50 per foot, US Trinity owes Moosehead $24,391.50. However, this amount will be set-off against US Trinity's Counterclaim against Moosehead as set forth below.

Moosehead's claim also includes extra contractual costs for move-arounds—which were addressed in the Subcontract. Moosehead cannot recover for this claim because it was already compensated for move-arounds at the contractually agreed rate.

4. US Trinity Owes Nothing for Acts of God

Moosehead alleges that it is entitled to $436,617.82 in time and materials and standby costs related to Hurricane Florence, which affected the project site in September 2018. Moosehead

claims it is entitled to payment for its labor force to be on standby for 10 hours per day, as well as associated increased equipment, labor, and overhead costs.

Section 3.05 of the Subcontract prohibits Moosehead's recovery of these costs. Specifically, Section 3.05 provides:

> CONTRACTOR SHALL NOT BE LIABLE TO SUBCONTRACTOR FOR DELAYS, HINDRANCES, OR INTERRUPTIONS TO THE SUBCONTRACTOR WORK CAUSED BY THE ACT, NEGLECT, OR DEFAULT OF THE OWNER OR OWNER'S REPRESENTATIVE, ***OR BY REASON OF FIRE OR CASUALTY, OR ON ACCOUNT OF RIOTS OR STRIKES, OR ON ACCOUNT OF ANY ACTS OF GOD, OR ANY OTHER CAUSES BEYOND CONTRACTOR'S CONTROL,*** OR ANY CIRCUMSTANCES CAUSED OR CONTRIBUTED TO BY ANY OTHER PARTY PERFORMING A PART OF THE WORK . . . .

US Trinity is not liable for costs relating to Hurricane Florence because such costs are Acts of God and outside Trinity's control.[1]

5. Final Payment

US Trinity made final payment to Moosehead when it paid Moosehead its retainage. Paragraph 4.03 of the Subcontract provides in relevant part:

> SUBCONTRACTOR'S ACCEPTANCE OF FINAL PAYMENT SHALL CONSTITUTE A WAIVER OF ALL CLAIMS BY SUBCONTRACTOR RELATING TO THE SUBCONTRACT WORK OR TO CONTRACTOR'S WORK, CONNECTED WITH THE APPLICABLE PROJECT OR TO THE CONTRACT DOCUMENTS, BUT SHALL IN NO WAY RELIEVE SUBCONTRACTOR OF LIABILITY FOR THE OBLIGATIONS FOR REPLACING FAULTY OR DEFECTIVE WORK APPEARING AFTER FINAL PAYMENT.

Ex. 1, ¶ 4.03 (capitalization in original). Moosehead has waived any claims against US Trinity relating to the Subcontract Work and the Project.

[1] Under Section 4.6.2 of the Prime Agreement, natural disasters such as hurricanes (defined as "Force Majeure Events") only entitle US Trinity, and therefore Moosehead, to seek extensions to the Schedule of Work, and does not entitle US Trinity to "any compensation, reimbursement of costs or any additions to the Contract Price".

6. US Trinity's Specific Denials.

Specifically, US Trinity denies the allegations contained in paragraphs 13, 31, 44, 45, 48, 51, 52, 53, 54, 55, 56, 58, 60, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 99, and 100 of Moosehead's Statement of Claims.

Regarding the allegations contained in paragraphs 16-30, 32-43, 46-47, and 59 of Moosehead's Statement of Claims, US Trinity states that these allegations relate to claims by Moosehead of alleged delays and changes to its work that were caused by the Owner. Moosehead submitted certain change orders for the delays and changes caused by the Owner. US Trinity does not admit that these change orders were supported with detailed documentation. They speak for themselves. US Trinity passed-through these claims to the Owner. Moosehead accepted the amount tendered by the Owner for resolution of these claims and thus released the Owner and US Trinity for any further liability for such claims. US Trinity is without knowledge or information regarding Moosehead's actual costs, other than what Moosehead provided to US Trinity for pass-through to the Owner. In accordance with the Subcontract, US Trinity's liability to Moosehead is limited to the amount US Trinity recovers from the Owner on Moosehead's change orders, after deduction of US Trinity's cost to pass-through Moosehead's change orders to the Owner.

ADDITIONAL FACTUAL AND LEGAL DEFENSES TO MOOSEHEAD'S DETAILED STATEMENT OF CLAIMS AND AMENDED DEMAND

6. US Trinity denies that it breached the provisions of the Subcontract, and US Trinity denies that Moosehead's alleged increased costs resulted from US Trinity's conduct, either in whole or in part. Moosehead's allegations are inconsistent with its contemporaneous contentions made during the course of performance that the Project delays and alleged costs suffered by Moosehead were Owner-caused and Owner-responsible.

7. US Trinity denies that Moosehead can recover from US Trinity in quantum meruit. Trinity has an express contract with Moosehead. Therefore, Moosehead's quantum meruit claim is barred as a matter of law.

8. US Trinity denies that it has breached the covenant of good faith and fair dealing. Additionally, there is no such covenant under Texas law. Accordingly, this claim is barred as a matter of law.

9. Moosehead failed to provide contractually required notice pursuant to paragraph 5.02 of the Subcontract. Therefore its claims are waived.

10. Moosehead has waived its alleged claims against US Trinity in accordance with Paragraphs 4.03, 5.03, and 5.04 of the Subcontract.

11. Moosehead is not entitled to payment of its claims because the Owner's payment to Trinity is a condition precedent to Trinity's obligations to Moosehead pursuant to Paragraph 4.04 of the Subcontract.

9. Moosehead has released its claims against US Trinity in accordance with Paragraphs 5.03 and 5.04 of the Subcontract and otherwise.

10. Moosehead's alleged damages, if any, were caused by the actions or omissions of Moosehead itself or by third parties for whom US Trinity is not responsible, or third parties whom Moosehead has expressly released.

11. US Trinity is entitled to offset or set off of Moosehead's claims due to costs incurred as a direct result of Moosehead's work on the Project, including but not limited to reduced productivity of US Trinity's crews, costs for borrowed equipment, and other actions resulting in increased costs to US Trinity.

12. US Trinity's liability is limited to the amount US Trinity recovers from the Owner on Moosehead's claims passed-through to the Owner, after deduction of US Trinity's cost incurred in pursuing Moosehead's claims.

US TRINITY ENERGY SERVICES, LLC'S COUNTERCLAIM AGAINST MOOSEHEAD HARVESTING, INC.

1. US Trinity and Moosehead entered into the Subcontract dated February 7, 2018, pursuant to which Moosehead was to perform certain clearing services for US Trinity on the EQT MVP pipeline project ("Project") owned by Mountain Valley Pipeline LLC ("Owner").

2. Pursuant to Paragraph 10.01 of the Subcontract, Moosehead was to comply with Federal and State laws relating to reporting and payment of wages, federal and state payroll taxes on wages, and applicable state unemployment tax payments.

3. Moosehead failed to pay required contributions to the International Union of Operating Engineers, Local 132 ("Union") during the months of September, October, and November 2018, in the amount of $114,825.67. See Exhibit 2.

4. By failing to pay the required contributions to the Union, Moosehead is in breach of Federal and State laws.

5. By failing to pay the required contributions to the Union, Moosehead is in breach of the Subcontract.

6. As a result of Moosehead's failure to pay its required contributions to the Union, the Union filed a lawsuit against both Moosehead and US Trinity on October 10, 2019, styled *Int'l Union of Operating Engineers, et al v. Moosehead Harvesting, Inc. and US Trinity Energy Services, LLC*, Case No. 2:19-CV-11111 in the United States District Court for the Southern District of West Virginia, Huntington Division ("Lawsuit"). *See* Exhibit 3.

7. The Lawsuit, which states that Moosehead (and Moosehead alone) "has failed to pay the required contributions to the [Union] and the administrative duties to the [Union]," seeks $116,096.24 from both Moosehead and US Trinity in unpaid contributions, liquidated damages, and interest, not including attorneys' fees.

8. Pursuant to Paragraph 6.02 of the Subcontract, Moosehead is to defend, indemnify, and hold harmless US Trinity from all claims, demands, damages, losses, causes of action, suits and liabilities of any kind for civil or criminal fines or penalties as a result of Moosehead's breach of the Subcontract. Moosehead's indemnification obligations apply, without limitation, to any liability imposed on US Trinity as a result of any statute, rule, regulation, or theory of strict liability. Moosehead expressly assumed any and all liability of US Trinity arising in favor of any third party or governmental agency or entity, Moosehead's employees and their representatives and beneficiaries.

9. US Trinity demanded that Moosehead indemnify, defend and hold harmless US Trinity from the claims made by the Union, including but not limited to the Lawsuit. Moosehead refused to do so. Moosehead is in breach of the Subcontract.

10. Moosehead breached the Subcontract by failing to pay US Trinity's actual costs in pursuing Moosehead's claims against the Owner.

WHEREFORE, US Trinity respectfully requests that an award be entered in its favor against Moosehead in an amount to be determined by the Arbitrator, plus costs and attorneys' fees, and any other relief in law or in equity that the Arbitrator deems proper.

RELIEF REQUESTED

US Trinity is entitled to the following relief:

(a) An Award against Moosehead and in favor of US Trinity;

(b) attorneys' fees and all costs and expenses of this Arbitration; and,

(c) such other and further relief as may appear just and proper to the Arbitrator.

/s/ Amy K. Wolfshohl

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jbyrom@porterhedges.com

Dated: December 20, 2019.

AMERICAN ARBITRATION ASSOCIATION

MOOSEHEAD HARVESTING, INC.,	)	
Claimant,	)	
v.	)	**Case No. 01-19-0001-6957**
US TRINITY ENERGY SERVICES, LLC,	)	
Respondent.	)	**DECEMBER 14, 2020**

REQUEST/APPLICATION FOR MODIFICATION AND CORRECTION OF ARBITRATION AWARD DATED NOVEMBER 25, 2020

Claimant, Moosehead Harvesting, Inc. ("Claimant" or "Moosehead") hereby submits this Request/Application for Modification and Correction of Arbitration Award dated November 25, 2020 ("this Request").[1] In support hereof, Moosehead states as follows:

I. Procedural Authority

Pursuant to the American Arbitration Association ("AAA") Construction Industry Arbitration Rules, R-51, any party may request that the arbitrator correct any clerical, typographical, technical, or computational errors in the award within 20 calendar days after the transmittal of the award. *See*, AAA Construction Industry Arbitration Rules, R-51(a).[2]

[1] While Moosehead submits this Request in accordance with the procedural authority set forth herein, this Request is not meant to address all grounds upon which Moosehead may seek to challenge the Award, including the grounds listed under the Texas Civil Practice & Remedy Code and the grounds listed under §§ 171.088 and 171.091.

[2] Pursuant to Rule 51(b), Respondent shall respond to this Request within 10 calendar days, and the arbitrator shall dispose of this Request within 20 calendar days after the transmittal by the AAA to the arbitrator of this Request and any response thereto. *See*, AAA Construction Industry Arbitration Rule, Rule R-51(b).

EXHIBIT I

Pursuant to the Texas Civil Practice & Remedy Code § 171.054, titled "Modification or Correction to Award", the arbitrator may modify or correct an award: (1) on the grounds stated in Section 171.091;[3] or (2) to clarify the award. *See*, Tex. Civ. Prac. & Rem. Code § 171.054(a). A request or application to an arbitrator to modify or correct an award under § 171.054 may be made upon application of a party not later than the 20th day after the date the award is delivered to the applicant. *See*, Tex. Civ. Prac. & Rem. Code § 171.054(b) & (c).

The Arbitration Award was transmitted to the parties electronically on November 25, 2020 ("the Award"). Twenty calendar days after November 25, 2020 is December 15, 2020. Thus, this Request is timely made and submitted by Claimant.

For reasons explained below, the Award contains clerical, technical, and/or computational errors, evident miscalculations of numbers, and an evident mistake in the description of the "prevailing party".

II. Argument

A. First Point of Error

Under "Moosehead's Delayed Payment Interest Claim,"[4] the arbitrator states that Trinity tendered to Moosehead the sum of $192,[2]90.00 on August 26, 2020; yet, the calculation of prompt payment interest only calculates interest from March 13, 2019 to August 20, 2020 (526 days). Six days of interest erroneously are not included in this calculation. There are 532 days between March 13, 2019 and August 26, 2020. Thus, the

[3] Section 171.091 calls for modification or correction of an award if: (1) the award contains: (A) an evident miscalculation of numbers; or (B) an evident mistake in the description of a person, thing, or property referred to in the award; (2) the arbitrator has made an award with respect to a matter not submitted to him and the award may be corrected without affecting the merits of the decision made with respect to the issues that were submitted; or (3) the form of the award is imperfect in a manner not affecting the merits of the controversy. *See*, Tex. Civ. Prac. & Rem. Code § 171.091.

[4] *See*, the Award, p. 6.

Award must be modified and corrected to calculate prompt payment interest in the amount of **$50,449.56** ($192,290.00 x 18% = $34,612.20 ÷ 365 = $94.83 x 532 = $50,449.56).

B. Second Point of Error

The Award states that "Moosehead is awarded the sum of $49,880.58;"[5] yet, the Award fails to include that amount in the "Summary of Claims Awarded"[6], resulting in an erroneously stated "**Amount Due**" of "**$0.00**."[7] Because the arbitrator failed to include the $50,449.56 in the Summary of Claims Awarded, the Amount Due is incorrect. The Amount Due should be modified and corrected to state, "**Amount Due: $50,449.56**."

Setting aside the fact that the *de minimis* Award of $50,449.56 in Moosehead's favor is farcical and completely contrary to the evidence presented and applicable Texas law showing that Respondent owes Moosehead millions of dollars, the arbitrator does not even account for this sum in his Summary of Claims Awarded. Not only does the arbitrator not account for the $50,449.56 awarded to Moosehead, the arbitrator turns around and, without any discretion to do so in light of unaccounted-for the award in Moosehead's favor, declares Respondent the prevailing party and awards Respondent its attorney fees and costs.

Moosehead prevailed on its claims against Respondent in the amount of $50,449.56; thus, the arbitrator has no discretion – the arbitrator *must* award Moosehead its attorney fees and costs in accordance with the terms of the Subcontract. The arbitrator cannot award Respondent its attorney fees and costs in this circumstance, and the arbitrator

[5] *See*, Award, p. 6. This amount should be $50,449.56 as explained in A. above.
[6] *See*, Award, pp. 6 & 7.
[7] *See*, Award, p. 7.

clearly has exceeded his powers in doing so. Thus, the Award *must* be modified and corrected per the Subcontract and per Texas law.

The Subcontract, paragraph 11.03 states that "[i]n the event that Subcontractor is required to retain the services of an attorney to enforce this Agreement and Subcontractor prevails in asserting a valid claim under this Agreement, then Subcontractor shall be entitled to recover attorneys' fees and costs incurred, in addition to other remedies to which Subcontractor is entitled under Texas law." Moosehead prevailed on its claims against Respondent in the amount of **$50,449.56**; thus, the arbitrator has no discretion and must award Moosehead its attorney fees and costs, totaling **$412,475.97**.[8]

Notably, since submission of the post-hearing briefs, Moosehead incurred an additional **$8,418.18** for court reporting fees associated with the evidentiary hearings ($7,780.08 from Continental Court Reporters and $638.10 for fees associated with the court reporting service in Florida). Thus, Moosehead's costs alone now total **$126,369.15**. *See*, Exhibit A.

In light of the above, the Award *must* be modified and corrected to reflect the following Award to Moosehead:

Amount Due to Moosehead:	**$ 50,449.56**
Attorney Fees + Costs:	**$420,894.15**[9]
Total Award to Moosehead:	**$471,343.71**

[8] *See*, Claimant's Post-Hearing Brief, pp. 11 & 33. *See also*, Affidavit of Jennifer R. Rossi and Affidavit of Moosehead submitted contemporaneously therewith.
[9] Attorney Fees of $294,525.00 + Total Costs of $126,369.15 = $420,894.15.

C. Third Point of Error

The Subcontract does not require that the prevailing party prevail in any certain or minimum amount, and neither does Texas law. Texas holds that a "prevailing party" is a legal term of art and defined as "a party in whose favor a judgment is rendered, *regardless of the amount of damages awarded*." *Morris v. Grecon, Inc.*, 388 F. Supp. 3 711, 714 – 15 (E.D. Tex. 2019) (*emphasis added*) (*citing, Buckhannon Bd. & Care Home, Inc. v. W. Va. Dep't of Health & Human Res.*, 532 U.S. 598, 603 (2001) (*citing*, Prevailing Party, Black's Law Dictionary (7th ed. 1999) (internal quotations omitted)). The *Morris* Court further noted that Federal Rule of Civil Procedure 54(d)(1) "unambiguously limits the number of prevailing parties in a given case to one because the operative term, 'prevailing party,' is singular.'" *See, Id.* (*citing, Shum v. Intel Corp.*, 629 F.3d 1360, 1367 (Fed. Cir. 2010); *Mobile Telecomm. Tech., LLC v. Samsung Telecomm. Am., LLC*, 2015 U.S. Dist. LEXIS 129679, *3 (E.D. Tex. 2015) ("For purposes of costs and fees, there can be only one winner.").

As explained above, the arbitrator failed to account for the award in Moosehead's favor in the amount of $50,449.56 in his Summary of Claims Awarded; thus, Moosehead is the prevailing party, not Respondent. Even under the arbitrator's erroneous calculation of the "Amount Due: $0.00," Moosehead still was the prevailing party under Texas law. The Court in *Morris* rejected the argument that a party who takes nothing as a result of settlement credits, for example, is not a prevailing party. *See, Id.* at 716.

Here, Respondent made a last-minute partial payment to Moosehead in the amount of $192,290.00. Had it not been for that payment by Respondent to Moosehead of $192,290.00, made on August 26, 2020 (a mere 12 days before the evidentiary hearings began), the total award in favor of Moosehead would have been **$242,739.56** ($192,290.00

+ $50,449.56 = $242,739.56). Of course, Moosehead already had incurred substantial attorney fees and costs by August 26, 2020.

In light of the above, the Award *must* be modified and corrected to reflect that Moosehead is the prevailing party. Because Moosehead is the prevailing party, no award of attorney fees or costs to Respondent can be made. Thus, pages 7 and 8 of the Award must be modified and corrected to reflect the award in favor of Moosehead as set forth in A. and B. above and must be modified and corrected to not allow for any award of attorney fees and costs in favor of Respondent.

III. Conclusion

For the reasons explained above, the arbitrator *must* modify and/or correct the Award in the manners explained above. Should the arbitrator not so modify and/or correct the Award in the manners explained above, the arbitrator will have indisputably exceeded his powers *on the bases enumerated herein alone* which is grounds *in and of itself* to vacate the Award under Texas law.

Dated: December 14, 2020

RESPECTFULLY SUBMITTED,
MOOSEHEAD HARVESTING, INC.,
By Its Attorney,

By:___/s/Jennifer R. Rossi_____

Jennifer R. Rossi, Esq.
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CERTIFICATE OF SERVICE

I, Jennifer R. Rossi, Esq. hereby certify that a copy of the above was or will immediately be delivered electronically on December 14, 2020 to all counsel of record as follows:

Jack E. Byrom, Esq. – JByrom@porterhedges.com
Amy K. Wolfshohl, Esq. – awolfshohl@porterhedges.com
David D. Peden, Esq. – dpeden@porterhedges.com
Laura C. Folk – LFolk@porterhedges.com

___/s/Jennifer R. Rossi_____
Jennifer R. Rossi, Esq.

EXHIBIT A

From: **Jennifer White** JWhite@TexasDepos.com
Subject: RE: Hearing - Remote: Moosehead Harvesting, Inc. v. US Trinity Elf nergy Services, LLC
Date: December 2, 2020 at 3:26 PM
To: Robert Reed Jr. robreed@mooseheadharvesting.com, Jennifer Rossi jrossi@jrossilaw.com
Cc: katereed@mooseheadharvesting.com, Accounting accounting@moosehead.us

JW

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Sent: Wednesday, December 2, 2020 2:18 PM
To: Robert Reed Jr. <robreed@mooseheadharvesting.com>; 'Jennifer Rossi' <jrossi@jrossilaw.com>
Cc: katereed@mooseheadharvesting.com; 'Accounting' <accounting@moosehead.us>
Subject: RE: Hearing - Remote: Moosehead Harvesting, Inc. v. US Trinity Elf nergy Services, LLC

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Jennifer

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Rossi Law
104 Pioneer Drive
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IN THE AMERICAN ARBITRATION ASSOCIATION

MOOSEHEAD HARVESTING, INC.,	§	
	§	AAA CASE NO. 01-19-001-6957
Claimant,	§	
	§	
v.	§	
	§	
US TRINITY ENERGY SERVICES, LLC,	§	
	§	
Respondent.	§	

US TRINITY ENERGY SERVICES, LLC'S RESPONSE TO MOOSEHEAD HARVESTING, INC.'S MOTION FOR MODIFICATION AND CORRECTION OF ARBITRATION AWARD DATED NOVEMBER 25, 2020

Respondent US Trinity Energy Services, LLC ("Trinity") files this Response to the Moosehead Harvesting, Inc.'s ("Moosehead") Motion for Modification and Correction of Arbitration Award dated November 25, 2020 ("Motion") and respectfully submits as follows:

I. INTRODUCTION

The Arbitrator in this matter issued a Final Award on November 25, 2020 in which he declared Trinity to be the prevailing party and awarded Trinity $725,496.00 in attorneys' fees plus reasonable and necessary costs in the amount of $25,653.67, offset by interest awarded to Moosehead in the amount of $49,880.58, for a total recovery by Trinity of $701,269.09. Moosehead has asked the Arbitrator to modify this award on two bases. The first is the result of an apparent typographical/computational error that would increase the amount Moosehead's offset from $49,880.58 to $50,449.56. Trinity agrees that the amount Moosehead is required to pay under the Final Award is $700,700.11, which reflects Trinity's attorney's fees ($725,496.00), costs ($25,653.67) and the Moosehead's corrected offset in the amount of $50,449.56. Accordingly, Trinity does not dispute that limited portion of Moosehead's requested relief and stipulates that Moosehead's offset amount should be $50,449.56.

EXHIBIT J

Moosehead's second request, however, is based upon what Moosehead calls an "evident mistake in the description of 'prevailing party.'" It seeks to have the Arbitrator substantively change his award to name Moosehead the prevailing party and award Moosehead its attorneys' fees and costs, which Moosehead claims have increased through the submittal of new evidence after close of the arbitration proceeding. This the Arbitrator cannot do because such relief would constitute a redetermination of the merits outside the bounds of the AAA Rules and applicable law. Moreover, the Arbitrator was well within his authority under AAA Rules and prevailing law to award Trinity its attorneys' fees incurred in pursuit of its counterclaim and defense of Moosehead's $12 million claim because both parties submitted the issue of fees to the Arbitrator. For these reasons and as further explained below, Trinity requests the Arbitrator deny Moosehead's Motion.

II. THE ARBITRATOR HAS NO AUTHORITY TO CHANGE THE DETERMINATION OF PREVAILING PARTY

The Arbitrator awarded attorneys' fees to Trinity in the amount of $701,269.09 after naming Trinity the prevailing party in its defense of Moosehead's claims and its pursuit of its own counterclaim. The Arbitrator further provided that his award was "in full settlement of all claims related to the Project and the Subcontract" and that "all other claims not expressly granted herein are, hereby, DENIED." *See* Final Award, at 8. AAA Construction Rule R-51 provides that, "within 20 calendar days after the transmittal of an award, the arbitrator on his or her initiative, or any party, upon notice to the other parties, may request that the arbitrator correct any **clerical, typographical, technical, or computational errors in the award**." (emphasis added). However, "**the arbitrator is not empowered to redetermine the merits of any claim**

already decided." *Id.* (emphasis added). To the extent Moosehead relies on Texas law,[1] the Texas Civil Practice and Remedies Code only allows an arbitrator to modify his or her award within 20 days if:

> (1) the award contains:
>
> (A) an evident miscalculation of numbers; or
> (B) an evident mistake in the description of a person, thing, or property referred to in the award;
>
> (2) the arbitrators have made an award with respect to a matter not submitted to them and the award may be corrected without affecting the merits of the decision made with respect to the issues that were submitted; or
>
> (3) the form of the award is imperfect in a manner not affecting the merits of the controversy.

TEX. CIV. PRAC. & REM. CODE §§ 171.054, 171.091. Under either standard, the Arbitrator cannot award Moosehead the relief it seeks.

Texas courts have held that an arbitrator, when granting the exact type of relief sought by Moosehead, exceeds his authority under the law. *Sydow v. Verner, Liipfert, Bernhard, McPhereson and Hand, Chartered*, 218 S.W.3d 162 (Tex. App.—Houston [14th Dist.] 2007, no pet.); *Barsness v. Scott*, 126 S.W.3d 232, 240-42 (Tex. App.—San Antonio 2003, no pet.). In *Sydow*, the arbitrator modified his original award to include an award of expenses in favor of one of the parties. *Id.* at 169. The court held that the arbitrator, in doing so, "made a substantive change to the merits" that was not permissible under Texas law. *Id.* at 169. Similarly, in *Barsness*, the court vacated a modified arbitration award because, after determining in the original award that no party was the "prevailing party," the arbitration panel issued a revised

[1] This arbitration arises out of a contract in interstate commerce and therefore is also subject to the Federal Arbitration Act, 9 U.S.C. § 1, *et seq.* The FAA, however, is substantively identical to the Texas statute. *See* 9 U.S.C. § 11 (providing the same grounds for modification set forth in Texas Civil Practice & Remedies Code § 171.091).

award naming one party as the prevailing party and awarding him attorneys' fees. *Id.* at 232. The panel, in its original order, issued a directive that "all relief not hereby granted is expressly denied." *Id.* at 241. The court held that, under these facts, the panel exceeded its authority in modifying its original award with respect to fees, and that "none of the requirements for modification under sections 171.054 and 171.091 were present." *Id.* at 241-42.

The same facts are present here, and the same result is appropriate. The Arbitrator made a final determination on the merits of the arbitration between Moosehead and Trinity, and in doing so awarded Trinity its reasonable attorneys' fees and costs. The Arbitrator further provided that his award was "in full settlement of all claims related to the Project and the Subcontract" and that "all other claims not expressly granted herein are, hereby, DENIED." Moosehead now seeks to have the Arbitrator modify his award to change the prevailing party from Trinity to Moosehead, and to award Moosehead its fees. This is a fundamental change in the substance of the award and does not address a clerical, typographical, technical, or computational issue. Moosehead attempts to circumvent this issue by describing its request as one involving an "evident mistake." The "evident mistake" ground for modification only permits modification if it relates to a "description of a person, thing, or property referred to in the award," unrelated to the actual merits of the dispute. TEX. CIV. PRAC. & REM. CODE § 171.091. In truth, Moosehead's is complaining of an alleged "legal error made by the [arbitrator] in failing to award [it] attorney's fees," for which Texas law does not permit modification. *Barnsess,* 126 S.W.3d at 240. For the avoidance of doubt, the Arbitrator made no such error. *See Rohrmoos Venture v. UTSW DVA Healthcare, LLP*, 578 S.W.3d 469 (Tex. 2019) (party who successfully defends a breach of contract claim can be named the prevailing party; *Mohican Oil & Gas LLC v. Scorpion Exploration & Production, Inc.*, 337 S.W.3d 310 (Tex. App.—Corpus Christi 2011,

no pet.) (holding that party that brings a successful counterclaim can be a "prevailing party," and that more than one party can prevail in a proceeding). But more fundamentally, when applying the AAA Rules, Texas law, and the *Sydow* and *Barsness* cases, the Arbitrator simply lacks the authority to grant Moosehead its requested relief.

This rule makes sense at both law and equity. The parties in this case agreed to submit the issue of entitlement and quantum of attorneys' fees to the arbitrator in their respective post-hearing briefs. Trinity substantially briefed the issue of prevailing parties under Texas law, including the fact that Texas law allows for multiple parties to prevail. In that briefing, Trinity submitted law and argument on why it should be named the prevailing party both in defense of Moosehead's claims *and* in pursuit of Trinity's counterclaim. Moosehead briefed the issue of attorneys' fees, but chose not to brief the issue of prevailing parties under the parties' Subcontract, and made no attempt to seek leave for additional briefing before the Arbitrator closed the proceedings. Now, after Moosehead has received an adverse Final Award, it seeks a redetermination on the merits with additional legal briefing and, more egregiously, new evidence it wishes to submit on its attorneys' fees after the hearings have closed.[2] The new law Moosehead purports to cite relates to the definition of "prevailing party" under the Federal Rules of Civil Procedure, not under Texas law, and has no bearing on this dispute, rendering Moosehead's last-minute attempt an exercise in futility. But it is of no moment—the Arbitrator cannot revisit his decision.

[2] Trinity objects to any new evidence related to attorneys' fees and costs submitted by Moosehead and requests the Arbitrator exclude them from consideration with respect to this proceeding.

III. THE ARBITRATOR WAS AUTHORIZED TO AWARD ATTORNEYS' FEES UNDER AAA RULES AND APPLICABLE LAW

Moosehead finally argues, in a clear attempt to invoke the specter of vacatur and reversal to persuade the Arbitrator to reverse his prior rulings, that failing to render an award in Moosehead's favor "exceeds the Arbitrator's powers." Both parties in this proceeding submitted claims for attorneys' fees and costs on the basis that they were "prevailing parties" under their Subcontract. AAA Construction Rules provide that a final award may include "an award of attorneys' fees if all parties have requested such an award or it is authorized by law or their arbitration agreement." AAA Construction Rule R-48(d). Texas law similarly provides that an award of attorneys' fees is properly before the arbitrator when both parties submit a request for fees. *Kosty v. South Shore Harbour Community Ass'n, Inc.*, 226 S.W.3d 459 (Tex. App.—Houston [1st Dist.] 2006, no pet.).

The issue of who the prevailing parties are, or the amount of fees either party should recover, was properly submitted to the arbitrator. The Arbitrator decided that issue after finding that Trinity owed Moosehead nothing on its claims related to its productivity claims, standby claims, discrete claims, claims for work not performed under every theory Moosehead promulgated, including breach of contract, quantum meruit, and breach of the covenant of good faith and fair dealing. Trinity prevailed on each of these claims, in addition to its counterclaim. The Arbitrator could no more "exceed his powers" in deciding the issue of prevailing parties and attorneys' fees than in his decision with respect to any other claim brought forth in this arbitration proceeding. Moosehead's quarrel is not that the Arbitrator decided this issue "in excess of his powers," but that he decided it in Trinity's favor. This is not an appropriate basis for modification, and in fact it is foreclosed by Texas law. *See Kosty*, 226 S.W.3d at 465 ("If a

matter is submitted to the arbitrator, a trial court is without authority to modify the arbitrator's award."). Moosehead's request should be denied.

IV. CONCLUSION

For the reasons stated herein, Trinity respectfully requests the Arbitrator, except for the limited change to Moosehead's offset amount to $50,449.56, deny Moosehead's Motion and that the Arbitrator leave the Final Award undisturbed.

Dated: December 28, 2020

Respectfully submitted,

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