



**Interoffice Memorandum**

October 26, 2015

APPROVED  
BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS

NOV 17 2015 CS/BS

**TO:** Mayor Teresa Jacobs  
and Board of County Commissioners

**FROM:** Raymond E. Hanson, P. E., Director  
Utilities Department

A handwritten signature in black ink, appearing to read "R. Hanson", is written over the "FROM:" field.

**SUBJECT: BCC AGENDA ITEM – Consent Agenda  
November 17, 2015 BCC Meeting  
Utility Line Construction Reimbursement Agreement for  
Watermark Phase 2  
Contact Person: Andres Salcedo, P. E., Assistant Director  
Utilities Development Engineering Division  
407-254-9719**

The developer, Meritage Homes of Florida, Inc., as part of their infrastructure improvements for Watermark Phase 2, will be constructing utilities through their development and along Seidel Road.

A 12-inch diameter potable water main would have been sufficient to meet the anticipated potable water demands for the development. Based on Orange County Utilities' Master Plan, Orange County requires a 16-inch diameter potable water main along this route to support the County's regional transmission needs.

To maximize efficiency and coordination, Orange County has requested that the developer increase the potable water main diameter to 16-inches along their proposed construction route.

The construction costs of the Utility improvements to be paid by Orange County under this agreement are limited to a total payment obligation amount of \$62,600.

Orange County Attorney's Office staff has reviewed the agreement and finds it acceptable as to form. Orange County Utilities Department staff recommends approval.

**Action Requested: Approval of Utility Line Construction Reimbursement Agreement for Watermark Phase 2 by and between Orange County and Meritage Homes of Florida, Inc. in an amount not-to-exceed \$62,600.**

**District 1.**

APPROVED  
BY ORANGE COUNTY BOARD  
OF COUNTY COMMISSIONERS  
NOV 17 2015 CS/B

## UTILITY LINE CONSTRUCTION REIMBURSEMENT AGREEMENT FOR WATERMARK PHASE 2

**THIS UTILITY LINE CONSTRUCTION REIMBURSEMENT AGREEMENT FOR WATERMARK PHASE 2** (the "Agreement") is made and entered into as of the date of last execution below (the "Effective Date") by and between ORANGE COUNTY, FLORIDA, a charter county and political subdivision of the State of Florida (the "COUNTY") whose address is 201 South Rosalind Avenue, Orlando, Florida 32801, and **MERITAGE HOMES OF FLORIDA, INC.**, a Florida corporation (the "DEVELOPER") whose address is 5337 Millenia Lakes Blvd, Suite 410, Orlando, Florida 32839. Hereinafter, the COUNTY and the DEVELOPER may be referred to individually as a "Party" or collectively as the "Parties."

### RECITALS

**WHEREAS**, the DEVELOPER is the fee simple owner of certain real property located in Orange County, Florida, as more particularly described in **Exhibit "A"** attached hereto and made a part hereof by this reference (the "Property"); and

**WHEREAS**, the DEVELOPER contemplates the development of a number of improvements for various uses within the Property (collectively, the "Project"); and

**WHEREAS**, in order to proceed with the Project, or any part thereof, it will be necessary to obtain water service to the Property; and

**WHEREAS**, the Project is located entirely within the COUNTY'S water service territory and, therefore, the COUNTY is the appropriate water service provider with jurisdiction over the Project; and

**WHEREAS**, the DEVELOPER, in order to deliver water service to the Project, requires 1,822 linear feet of 12-inch diameter PVC water line (the "Utility Work"); and

**WHEREAS**, the COUNTY, in order to better serve areas within its water service territory, requests that the DEVELOPER construct a 16-inch DIP water line along the same route as depicted in **Exhibit "B"** attached hereto and made a part hereof by this reference, in lieu of

the 12-inch diameter PVC water line DEVELOPER would otherwise construct, with the 16-inch DIP water line hereinafter called the "Oversized Utility Work"; and

**WHEREAS**, the Parties desire to enter into this Agreement for the purpose of setting forth the terms and conditions under which (i) the DEVELOPER shall cause to be constructed the Oversized Utility Work requested by the COUNTY, and (ii) the COUNTY shall reimburse the DEVELOPER for the cost differential between the Oversized Utility Work and the Utility Work, as more particularly set forth below; and

**WHEREAS**, the COUNTY has budgeted, and collected sufficient funds in the Utilities Capital Improvement Program budget for the Oversized Utility Work in the COUNTY's current budget year; and

**WHEREAS**, the COUNTY finds the expenditure of funds in the achievement of the objectives of this Agreement to be in the public interest.

**NOW, THEREFORE**, in consideration of the premises hereof and the mutual covenants set forth herein, the Parties hereby agree as follows:

**SECTION 1. RECITALS INCORPORATED.**

All of the recitals set forth above are true and correct, and are incorporated herein and made a part hereof by this reference.

**SECTION 2. PREPARATION OF CONSTRUCTION PLANS, BIDS, AND CONTRACT.**

**2.1** The DEVELOPER shall cause the preparation of a set of design plans for the Oversized Utility Work based on the preliminary design sketch as depicted in **Exhibit "B."** The design plans shall be subject to the COUNTY's reasonable review and approval in accordance with the COUNTY's biddable standards. The contract for the design plans shall provide that the COUNTY is a third-party beneficiary with regard to insurance against the design professional's errors and omissions. The review and approval under this Agreement by the COUNTY is in its proprietary capacity as a Party to this Agreement and is in addition to any governmental permitting functions the COUNTY may be otherwise obligated to perform. Upon final acceptance of the design plans, the COUNTY shall provide the DEVELOPER with written notification of such acceptance. Once approved by the COUNTY, the design plans shall be referred to as the "Construction Plans."

**2.2** The DEVELOPER shall retain a professional engineering firm to assist the DEVELOPER in obtaining at least two (2) responsive bids from responsible bidders qualified to do utility construction for the Oversized Utility Work based on the Construction Plans approved by the COUNTY. The DEVELOPER shall obtain itemized bids for the Utility Work and the Oversized Utility Work displaying the bid price for each item listed in **Exhibit "C"** attached hereto and made a part hereof by this reference (the "Standard Bid Form and Pay Items").

**2.3** The DEVELOPER shall select the bid of the lowest responsible bidder and notify the COUNTY in writing of the bid selection by providing copies of the itemized bids for the Utility Work and the Oversized Utility Work.

**2.4** The COUNTY shall have fifteen (15) business days following receipt of written notification from the DEVELOPER of the selected bid to review and notify the DEVELOPER, in writing, of the COUNTY'S acceptance or rejection of the selected bid. If the COUNTY rejects the selected bid, the COUNTY must state with specificity the reasons for its decision to reject the selected bid.

A. If the COUNTY rejects the bid for any reason except as set forth in paragraph 2.4B. below, this Agreement shall automatically terminate and neither Party shall be liable for or be entitled to bring any action against the other for damages; provided, however, that in such event, COUNTY agrees that DEVELOPER shall be entitled to modify and submit for COUNTY approval the Construction Plans to reflect only the Utility Work, without regards to the Oversized Utility Work, and may cause the Utility Work to be constructed upon approval of such modifications, which agreement shall survive the termination of this Agreement.

B. If the COUNTY rejects the bid due to deficiencies in itemizing the work depicted on the plans for the Utility Work and/or Oversized Utility Work or failure of the bid to comply with the COUNTY'S Standards and Construction Specifications Manual, Developer shall use its commercially reasonable efforts to cure any defects in the bid documents within sixty (60) days from receipt of notice from the COUNTY rejecting the selected bid. Upon the earlier of (a) the expiration of the period to cure or (b) DEVELOPER'S cure of the defects in the bid documents, the COUNTY shall have five (5) business days to accept the selected bid or this Agreement shall automatically terminate and neither Party shall be liable for or be entitled to bring any action against the other for damages; provided, however, that in such event, COUNTY agrees that DEVELOPER shall be entitled to modify and submit for COUNTY approval the Construction Plans to reflect only the Utility Work, without regards to the Oversized Utility Work, and may cause the Utility Work to be constructed upon approval of such modifications, which agreement shall survive the termination of this Agreement.

**2.5** The DEVELOPER shall ensure that the construction contract(s) for the Oversized Utility Work provide(s) a maintenance guarantee pursuant to Section 7.2 of this Agreement for the work performed. The maintenance guarantee shall be in force and effect for a period of one (1) year from the date on which the COUNTY accepts ownership and maintenance responsibility for the Oversized Utility Work.

**2.6** The DEVELOPER shall ensure that the construction contract(s) for the Oversized Utility Work contain(s) a performance bond and a payment bond pursuant to Section 7 of this Agreement. Each bond shall be in the amount of the value of the construction contract. The performance bond shall ensure that the construction contractor fully, promptly and faithfully performs the contract and all obligations thereunder. The payment bond shall ensure that the construction contractor shall promptly make payment to all persons supplying services, labor, material, or supplies used directly or indirectly by the contractor, or any subcontractor(s) in the prosecution of the work provided for in the contract.

**SECTION 3. PERMITS.**

The DEVELOPER shall apply for and obtain all necessary governmental permits and approvals for the Oversized Utility Work. The COUNTY agrees to cooperate and assist the DEVELOPER in its obtaining of all necessary permits related to the Oversized Utility Work.

**SECTION 4. COMMENCEMENT OF WORK.**

After the execution of this Agreement, issuance of all required permits for the Oversized Utility Work and COUNTY approval of the Construction Plans and the selected bidder, the DEVELOPER will cause the Oversized Utility Work to be constructed, based upon the Construction Plans and permits for the same at the same time the construction of the Utility Work would otherwise have been constructed by or on behalf of the DEVELOPER.

**SECTION 5. PAYMENT OF COSTS.**

The DEVELOPER agrees to pay and the COUNTY agrees to reimburse the DEVELOPER for the Oversized Utility Work as follows:

**5.1** The DEVELOPER shall pay for the design, engineering, surveying, geotechnical engineering, environmental work, permitting, bidding, inspection, construction, construction administration, maintenance guarantee, final testing, certification costs, and fees for the Oversized Utility Work. The COUNTY shall reimburse the DEVELOPER for the cost difference between the final COUNTY approved cost actually incurred for the Oversized Utility Work and the selected bid amount for the Utility Work, with this cost difference being called the "Oversizing Cost." The COUNTY acknowledges that its approval of a bid and/or change order shall be considered its approval of the costs reflected therein to the extent that the costs are incurred. In no case shall the COUNTY's reimbursement obligation to the DEVELOPER exceed an Oversizing Cost of sixty-two thousand and six hundred dollars (\$62,600.00).

**5.2** If the Oversized Utility Work is satisfactorily performed, the COUNTY shall promptly reimburse the DEVELOPER in one lump sum after all of the following events have occurred:

- A. Receipt by the COUNTY of a written reimbursement request from the DEVELOPER;
- B. Inspection, approval, and acceptance by the COUNTY of the completed Oversized Utility Work;
- C. Receipt by the COUNTY of the maintenance guarantee and bill of sale as described in Section 7 of this Agreement;
- D. Receipt by the COUNTY of copies of such contracts, release of liens, and itemized invoices (or other customary documents) evidencing the costs of and payment for the Oversized Utility Work; and

E. Receipt by the COUNTY of any utility easement(s) in favor of the COUNTY required for the Oversized Utility Work as depicted on the Construction Plans.

**5.3** In the event the COUNTY reasonably objects to any fee or cost set forth in the reimbursement request or supporting documentation, the disputed amount will be withheld from payment pending resolution of such dispute and the undisputed amount shall be paid in accordance with this Section.

## **SECTION 6. DISPUTES.**

All claims, disputes and other matters in question between the Parties arising out of, or relating to this Agreement or its performance or breach (a "Dispute") shall be resolved in the following order: (a) good-faith negotiation; (b) non-binding mediation; and then (c) judicial resolution. The good-faith negotiations shall include at least one meeting of representatives of the Parties. The Party representative shall have authority to resolve the Dispute.

## **SECTION 7. PAYMENT AND PERFORMANCE BONDS, MAINTENANCE GUARANTEE AND BILL OF SALE.**

**7.1** Prior to commencing the construction, the DEVELOPER or its general contractor shall obtain and deliver to the COUNTY a payment bond and a performance bond, as referenced in Section 2.6 of this agreement, with respect to the Oversized Utility Work, reasonably acceptable to the COUNTY, pursuant to Section 255.05, Florida Statutes, as it may be amended. The payment and performance bonds shall name the COUNTY as Dual-Obligee and be assignable to the COUNTY following acceptance of the Oversized Utility Work by the COUNTY. The surety company issuing the payment bond and the performance bond shall meet the following qualifications:

- Surety must be licensed to do business in the State of Florida, maintain an A-VI or better rating with AMBest or an equivalent rating agency and shall comply with the provisions of Section 255.05, Florida Statutes.
- Surety must be listed on the most recent version of the U.S. Department of Treasury Fiscal Service, Bureau of Financial Management, Circular 570 entitled: "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies.
- All bonds/surety instruments shall be originals and issued by a producing agent with the authority to issue said bonds/surety instruments on behalf of the surety company. Attorneys-in-fact who sign bonds/surety instruments must attach with each bond/surety instrument a certified and effectively dated copy of their power of attorney. Agents of surety companies must list their name, address, and telephone number on all bonds/surety instruments.

**7.2** The DEVELOPER or its contractor shall provide a maintenance guarantee in the form of a letter of credit, cash escrow, or maintenance bond in favor of the COUNTY in an

amount equal to ten (10%) percent of the Costs of the Oversized Utility Work for a period of one (1) year from the date on which the COUNTY accepts ownership and maintenance responsibility for the Oversized Utility Work. The purpose of the maintenance guarantee is to guarantee the materials, workmanship, structural integrity, functioning, and maintenance of the Oversized Utility Work. The surety company issuing the maintenance bond shall meet the qualifications set forth in Section 7.1 of this Agreement.

**7.3** Prior to the COUNTY'S issuance of the certificate of completion for the Oversized Utility Work, the DEVELOPER shall deliver to the COUNTY a bill of sale in favor of the COUNTY and a maintenance guarantee provided herein for the Oversized Utility Work, at which time the COUNTY shall be deemed to have accepted the dedication of and ownership and operational responsibility for the Oversized Utility Work.

## **SECTION 8. INDEMNIFICATION.**

For value received, which is hereby acknowledged, the DEVELOPER agrees, on behalf of itself, its agents, contractors, successors, and assigns, that it shall, to the fullest extent permitted by law, defend, indemnify, and hold harmless the COUNTY, its officials, agents, and employees from and against any and all liabilities, claims, damages, losses, costs, and expenses (including attorneys' fees) arising out of or resulting from the performance of the construction activities, provided that any such liability, claim, damage, loss, cost or expense:

- Is attributable to bodily injury, sickness, disease or death, or injury to or destruction of tangible property (other than the construction activities themselves), and
- Is caused in whole or part by an act or omission relating to the Oversized Utility Work by the DEVELOPER, its agents or employees, or any contractor employed by the DEVELOPER, or anyone directly or indirectly employed by the DEVELOPER or its contractor(s), their subcontractors, or anyone for whose acts any of them may be liable; excepting those acts or omissions arising out of the negligence of the COUNTY or any of its officials, agents, employees, and contractors.

## **SECTION 9. INSURANCE.**

Prior to commencing any portion of the Oversized Utility Work and throughout the course of construction of the Oversized Utility Work, the DEVELOPER or its agents and contractors, shall procure and maintain insurance limits and terms as follows:

(i) Workers' compensation insurance with statutory workers' compensation limits and no less than One Million and 00/100 Dollars (\$1,000,000.00) for Employer's Liability with a waiver of subrogation in favor of the COUNTY, its consultants, agents, employees, and officials.

(ii) Commercial general liability insurance for all operations including, but not limited to contractual, products and completed operations, and personal injury with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and an aggregate limit of at least twice the per occurrence limit.

(iii) Business automobile liability insurance for all owned, hired, or non-owned vehicles with limits of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence.

(iv) Professional Liability (errors and omissions) for engineering design in amounts not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence, which requirement shall solely be applicable to the professional engineer specified in Section 2.1 herein, and not to the DEVELOPER or any of its other agents or contractors not performing professional engineering services related to the Oversized Utility Work.

The DEVELOPER shall be responsible for ensuring that DEVELOPER or each of its contractors procure and maintain the insurance specified above and shall furnish to the COUNTY evidence of such insurance prior to commencement of construction. The COUNTY shall be named as an additional insured on all policies except for workers' compensation coverage and professional liability coverage.

All coverage shall be primary and not contributory with any insurance or self-insurance maintained by the COUNTY. The DEVELOPER must provide the COUNTY notice of any material change, cancellation, non-renewal of any policy required herein of DEVELOPER at least thirty (30) days prior to the occurrence thereof.

**SECTION 10. EXCUSE FROM PERFORMANCE BY GOVERNMENTAL ACTS.**

If for any reason during the first year of the term of this Agreement, local, regional, or state governments or agencies (other than the COUNTY) shall fail to issue necessary permits or fail to grant necessary approvals for the Oversized Utility Work, after the DEVELOPER has complied with all conditions precedent to receipt of such permits, to the extent that the requirements necessary to obtain such permits or approvals shall affect the ability of the DEVELOPER or the COUNTY to perform any of the terms thereof, this Agreement shall be renegotiated by the Parties hereto to the extent reasonably feasible to cause the Oversized Utility Work to comply with said requirements.

**SECTION 11. TERM; LIMITATION OF LIABILITY.**

**11.1** The term of this Agreement shall be five (5) years from the Effective Date. In the event the DEVELOPER has not, by the second anniversary of the Effective Date of this Agreement, let a contract for the construction of the Oversized Utility Work reasonably acceptable to the COUNTY, the COUNTY may terminate this Agreement if the DEVELOPER does not cure such failure within thirty (30) days following notice from the COUNTY to the DEVELOPER.

**11.2** The COUNTY and the DEVELOPER expressly agree that the consideration, in part, for each of them entering into this Agreement is the willingness of the other to limit the remedies as provided herein. Except as otherwise provided herein, in redress for the failure of either Party to perform its obligations under this Agreement, the Parties shall have only the following remedies available against each other:

- (i) action for specific performance; or



- (ii) action for injunction; or
- (iii) action for declaratory judgment regarding the rights and obligations of the DEVELOPER or the COUNTY; or
- (iv) any combination of the foregoing.

Both Parties hereto expressly waive their respective rights to sue for damages of any type for breach of or default under this Agreement by the other (provided that such waiver shall not constitute a waiver of the DEVELOPER's right to pursue specific performance of the COUNTY's reimbursement obligations set forth in Section 5 herein). Both Parties expressly agree that each shall bear the cost of its own attorney fees for any action arising out of or in connection with this Agreement.

**11.3** Nothing contained in this Agreement shall constitute a waiver by the COUNTY of its sovereign immunity or the provisions of Section 768.28, Florida Statutes.

**SECTION 12. COMPLIANCE WITH LAWS AND REGULATION.**

In performing pursuant to the Agreement, each Party hereto will abide by the respective statutes, ordinances, rules and regulations pertaining to, or regulating, the acts of such Party.

**SECTION 13. NOTICE.**

Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered when (i) hand delivered to the official hereinafter designated, or (ii) three (3) days after the date on which deposited in the United States mail, postage prepaid, certified mail return receipt requested, and addressed to a Party at the address set forth opposite the Party's name below, or such other address as the Party shall have specified by written notice to the other Party delivered in accordance herewith:

**If to the COUNTY:** Orange County Utilities Department  
9150 Curry Ford Road  
Orlando, Florida 32825  
Attn: Director  
Telephone: (407) 254-9804  
Facsimile: (407) 254-9899

With copy to: Orange County Attorney's Office  
Orange County Administration Building  
201 S. Rosalind Avenue, 3rd Floor  
Orlando, Florida 32801  
Attn: County Attorney  
Telephone: (407) 836-7320  
Facsimile: (407) 836-5888

**If to DEVELOPER:** Meritage Homes of Florida, Inc.  
5337 Millenia Lakes Blvd, Suite 410  
Orlando, FL 32839  
Attn: Land Development  
Phone: (407) 571-1817  
Fax: (407) 712-8688

With copy to: Meritage Homes  
17851 N. 85<sup>th</sup> Street, Suite 300  
Scottsdale, Arizona 85255  
Attn: Florida Regional Counsel

**SECTION 14. ENTIRE AGREEMENT.**

This Agreement constitutes the entire agreement of the Parties with respect to the subject matter hereof, and may not be modified or amended except by a written instrument equal in dignity herewith and executed by the Parties to be bound thereby.

**SECTION 15. TIME IS OF THE ESSENCE.**

Time is of the essence as to the lawful performance of all duties and obligations set forth in this Agreement.

**SECTION 16. NON-WAIVER.**

No consent or waiver, expressed or implied, by either Party, to or of any breach or default of the other Party, with regard to the performance by said other Party of its obligations under this Agreement shall be deemed or construed to constitute consent or waiver, to or of, any other breach or default in the performance of that Party, of the same or of any other objection of performance incumbent upon that Party. Failure on the part of either Party to complain of any act or failure to act on the part of the other Party in default, irrespective of how long the failure continues, shall not constitute a waiver by that Party of its rights and any remedies that exist under this Agreement, at law, or in equity.

**SECTION 17. CONSTRUCTION OF AGREEMENT.**

This Agreement shall not be construed against either Party on the basis of it being the drafter of the Agreement. The Parties agree that each played an equal part in negotiating the terms and conditions of this Agreement. Captions and section headings in this Agreement are provided for convenience only and shall not be deemed to explain, modify, amplify or aid in the interpretation, construction or meaning of this Agreement.

**SECTION 18. REASONABLE APPROVAL.**

In those instances in this Agreement in which a Party's approval, consent or satisfaction is required and a time period is not specified, then it shall be implied that such action shall be exercised in a reasonable manner and within a reasonable time frame.

**SECTION 19.**            **PUBLIC RECORDS.**

The DEVELOPER will allow public access to all documents, papers, letters or other materials subject to the provisions of Chapter 119, Florida Statutes, and which have been made or received by the DEVELOPER in conjunction with this Agreement. Nothing contained herein shall require DEVELOPER to allow public access to any financial information not pertaining specifically to the Construction Plans, or to any proprietary information.

**SECTION 20.**            **RECORDS AND AUDITS.**

The DEVELOPER will maintain in its place of business all books, documents, papers and other evidence pertaining in any way to payments made pursuant to this Agreement. Such records shall be available at the DEVELOPER's place of business at all reasonable times prior to and for one (1) year following the date of final payment under this Agreement for audit or inspection by the COUNTY during normal business hours upon five (5) business days' prior written notice.

**SECTION 21.**            **EQUAL OPPORTUNITY EMPLOYMENT.**

The DEVELOPER agrees that it will not discriminate and will provide in all contracts that its contractors will not discriminate against any employee or applicant for employment under this Agreement because of race, color, religion, sex, age or national origin and will take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age or national origin.

**SECTION 22.**            **SEVERABILITY.**

If any part of this Agreement is found invalid or unenforceable by any court, such validity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the Parties contained therein are not materially prejudiced and if the intentions of the Parties can continue to be effectuated. To that end, this Agreement is declared severable.

**SECTION 23.**            **ASSIGNMENT.**

The rights and obligations of the DEVELOPER hereunder are not covenants running with the land and shall only be binding upon and exercisable by the DEVELOPER (and not any successor in title to any portion of the Property), unless this Agreement is expressly assigned by the DEVELOPER as provided in this Section 23.

This Agreement or any of the rights, obligations and responsibilities hereunder, shall in no part be assignable by the DEVELOPER without the consent or approval of such assignment by the COUNTY, provided that the COUNTY'S approval is not unreasonably withheld, and provided the successor to the DEVELOPER is of equal or better economic status and is capable of fulfilling all obligations of the DEVELOPER, including but not limited to, the ability to service and maintain the insurance and indemnification obligations of the DEVELOPER.

Only upon the written acceptance by the COUNTY of the successor owner, will the DEVELOPER be released from any obligations and responsibilities arising under or attributable to this Agreement.

**SECTION 24. DISCLAIMER OF THIRD PARTY BENEFICIARIES.**

No right or cause of action shall accrue upon or by reason of this Agreement, to or for the benefit of any third party not a formal Party hereto. The Parties agree this section shall not be applied to provisions of this Agreement in situations where the Parties have authorized one Party to be a third party beneficiary to the construction, design, or other agreement authorized herein or any assignee under this Agreement.

**SECTION 25. GOVERNING LAW AND VENUE.**

This Agreement shall be governed by and construed in accordance with laws of the State of Florida, without giving effect to any choice of laws or rules thereof which may direct the application of laws of another jurisdiction. The venue for any non-binding mediation or judicial proceedings shall be Orange County, Florida.

**SECTION 26. LAND USE AND OTHER REGULATORY APPROVALS.**

This Agreement shall not be construed as granting or assuring or indicating any further grant of any land use, zoning, subdivision, density or development approvals, permissions or rights with respect to the Project. Nor shall this Agreement be deemed to reduce, eliminate, derogate from, or otherwise adversely affect any such approvals, permissions or rights.

**SECTION 27. NON-APPROPRIATION.**

In accordance with the Florida Constitution and other applicable state and local laws, including but not limited to Section 129.07, Florida Statutes, the obligations of the COUNTY in this Agreement are subject to sufficient budgeted COUNTY funds being available in each COUNTY budget year to achieve the purposes of this Agreement.

**SECTION 28. NO PARTNERSHIP OR JOINT VENTURE.**

Nothing in this Agreement is intended to create a partnership or joint venture between the Parties, and neither Party shall be construed to be the partner or joint venturer of the other Party for any purpose.

**SECTION 29. FURTHER DOCUMENTATION.**

The Parties agree that from time to time and following a request therefore by a Party, each Party

[Remainder of Page Intentionally Left Blank]

shall properly execute and deliver to the other Party such other documents and instruments reasonably necessary to effectuate the obligations of each Party hereunder.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed as of the dates indicated below.

**ORANGE COUNTY, FLORIDA**

By: Board of County Commissioners

By: *Teresa Jacobs*

Teresa Jacobs  
Orange County Mayor

Date: 11.17.15

ATTEST: Martha O. Haynie, County Comptroller  
As Clerk of the Board of County Commissioners

By: *Noelia Perey*  
for Deputy Clerk  
Print: Noelia Perey



[Signatures Continue on Next Page]

**Meritage Homes of Florida, Inc.**

By: [Signature]  
Print Name: Brian Kittle  
Its: Division President

Witnesses:

Date: 10/14/15

[Signature]

Print Name: Jennifer Hamilton

[Signature]

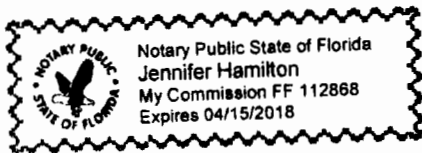
Print Name: Amy Steiger

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of October, 2015, Brian Kittle, as Division President of Meritage Homes of Florida, Inc., a Florida corporation, on behalf of the Corporation. He/she is  personally known to me or [ ] has produced \_\_\_\_\_ as identification.

(NOTARY SEAL)



[Signature]  
Notary Public Signature

Jennifer Hamilton

(Name typed, printed or stamped)

Notary Public, State of Florida

Commission No.: FF112868

My Commission Expires: 4/15/2018

**EXHIBIT A**  
**LEGAL DESCRIPTION – WATERMARK PHASE 2**

COMMENCE AT THE NORTHWEST CORNER OF SAID SECTION 4 FOR A POINT OF REFERENCE THENCE RUN NORTH 89-40-37 EAST ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 4 A DISTANCE OF 1361.39 FEET TO THE POINT OF BEGINNING THENCE RUN NORTH 89-40-37 EAST ALONG SAID NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 4 A DISTANCE OF 1285.03 FEET TO THE NORTH QUARTER CORNER OF SAID SECTION 4 THENCE RUN NORTH 89-44-32 EAST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 4 A DISTANCE OF 1328.05 FEET TO THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 4 THENCE RUN SOUTH 00-06-53 WEST ALONG THE EAST LINE OF THE WEST HALF OF THE NORTHEAST QUARTER OF SAID SECTION 4 A DISTANCE OF 2654.23 FEET TO THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SAID SECTION 4 THENCE RUN SOUTH 89-45-44 WEST ALONG THE SOUTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 4 A DISTANCE OF 840.79 FEET THENCE DEPARTING SAID SOUTH OF THE NORTHEAST QUARTER OF SAID SECTION 4 RUN NORTH 30-08-04 WEST 1108.82 FEET TO THE CENTERLINE OF THE UNRECORDED RIGHT-OF-WAY FOR SEIDEL ROAD AS IT NOW EXIST SAID POINT LYING ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY THENCE RUN SOUTHWESTERLY ALONG SAID CENTERLINE AND SAID NON-TANGENT CURVE HAVING A RADIUS OF 593.56 FEET A CENTRAL ANGLE OF 02-17-23 AN ARC LENGTH OF 23.72 FEET A CHORD LENGTH OF 23.72 FEET AND A CHORD BEARING OF SOUTH 44-11-00 WEST TO THE POINT OF TANGENCY THENCE RUN SOUTH 43-02-18 WEST ALONG SAID CENTERLINE 78.60 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY THENCE DEPARTING SAID CENTERLINE RUN NORTHWESTERLY ALONG SAID NON-TANGENT CURVE HAVING A RADIUS OF 2453.07 FEET A CENTRAL ANGLE OF 26-14-59 AN ARC LENGTH OF 1123.85 FEET A CHORD LENGTH OF 1114.05 FEET AND A CHORD BEARING OF NORTH 54-54-56 WEST THENCE RUN SOUTH 32-26-28 WEST NON TANGENT TO SAID CURVE 1041.74 FEET THENCE RUN NORTH 57-33-32 WEST 550.00 FEET THENCE RUN NORTH 32-26-28 EAST 477.27 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE NORTHWESTERLY THENCE RUN NORTHEASTERLY ALONG SAID CURVE HAVING A RADIUS OF 476.62 FEET A CENTRAL ANGLE OF 31-09-27 AN ARC LENGTH OF 259.19 FEET A CHORD LENGTH OF 256.00 FEET AND A CHORD BEARING OF NORTH 16-51-45 EAST TO THE POINT OF COMPOUND CURVATURE OF A CURVE CONCAVE SOUTHWESTERLY THENCE RUN NORTHWESTERLY ALONG SAID CURVE HAVING A RADIUS OF 13.00 FEET A CENTRAL ANGLE OF 91-36-24 AN ARC LENGTH OF 20.78 FEET A CHORD LENGTH OF 18.64 FEET AND A CHORD BEARING OF NORTH 44-31-11 WEST TO THE POINT OF TANGENCY THENCE RUN SOUTH 89-40-37 WEST 236.82 FEET THENCE RUN NORTH 00-19-23 WEST 630.00 FEET THENCE RUN NORTH 89-40-37 EAST 460.00 FEET THENCE RUN NORTH 00-19-23 WEST 290.00 FEET THENCE RUN NORTH 89-40-37 EAST 260.00 FEET THENCE RUN NORTH 00-19-23 WEST 120.00 FEET TO THE POINT OF BEGINNING. LESS AND EXCEPT: THAT PORTION OF THE ABOVE DESCRIBED TRACT OF LAND LYING WITHIN ANY RECORDED OR UNRECORDED PORTION OF THE ROAD RIGHT- OF- WAY FOR EXISTING SEIDEL ROAD) & (LESS THAT PORTION OF LAND LYING SOUTH OF SEIDEL RD)

ark Blvd

*Meritage  
Homes  
Project*

**CONNECT TO EXISTING 16" WATERMAIN  
BUILT WITH PROJECT 14-E-047**

**PROPOSED 1777'-16" WATERMAIN**

**END PROJECT**

*Seidel Rd*

*Meritage  
Homes  
Project*

*Latham Park North  
Project  
(VF Horizon  
Investments LLC)*

*Latham Park South  
Project*

Watermain

## Watermark Phase 2



October 21, 2013  
P & B Job No.: 12-070

4625 Halder Lane, Suite B  
Orlando, Florida 32814 - 407.487.2594

**POULOS & BENNETT**

www.poulosandbennett.com  
Certificate of Authorization No. 28567

Exhibit B

12-070(13-070) WATERMARK PHASE 2 - CONCEPT PLAN & SUBPROPOSAL PRELIMINARY PLAN 1



EXHIBIT "C"

STANDARD BID FORM AND PAY ITEMS - WATERMARK PHASE 2

<b>"Oversized Utility Work" and "Utility Work" - 16" Water Main</b>				
<b>Description</b>	<b>Quantity</b>	<b>Unit</b>	<b>Unit Price</b>	<b>Total</b>
<b>Oversized Utility Work - 16" Water Main</b>				
Maintenance Guarantee		LS		
P&P Bond		LS		
16" DIP WM		LF		
16" Gate Valve		EA		
16" Pipe Fittings and Restraints		LS		
Connect to Existing 16" GV		EA		
Testing and Chlorination		LS		
<b>Oversized Utility Work - 16" Water Main Total</b>				
<b>Utility Work - 12" Water Main</b>				
Maintenance Guarantee		LS		
12" PVC WM		LF		
12" Gate Valve		EA		
12" Pipe Fittings and Restraints		LS		
Connect to Existing 12" GV		EA		
Testing and Chlorination		LS		
<b>Utility Work - 12" Water Main Total</b>				
<b>Oversized Utility Work - 16" Water Main Total</b> <b>Utility Work - 12" Water Main Total</b> <b>"Oversizing Cost"</b>				