

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

	)				
In re:	)	Chapter 11	)		
ZACHRY HOLDINGS, INC., <i>et al.</i> <sup>1</sup>	)	Case No. 24-90377 (MI)	)		
Debtors.	)	(Joint Administration Requested)	)		
	)	(Emergency Hearing Requested)	)		

**DEBTORS' EMERGENCY MOTION FOR ENTRY  
OF INTERIM AND FINAL ORDERS (I) AUTHORIZING  
THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF  
(A) CRITICAL VENDORS, (B) LIEN CLAIMANTS, (C) FOREIGN CLAIMANTS,  
AND (D) 503(B)(9) CLAIMANTS, (II) CONFIRMING ADMINISTRATIVE EXPENSE  
PRIORITY OF OUTSTANDING ORDERS AND AUTHORIZING THE DEBTORS  
TO SATISFY SUCH OBLIGATIONS, AND (III) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than 4:15 p.m. (prevailing Central Time) on May 21, 2024.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on May 21, 2024 at 4:15 p.m. (prevailing Central Time) in Courtroom 404, 4th floor, 515 Rusk, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Isgur's conference room number is 954554. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Isgur's home page. The meeting code is "JudgeIsgur." Click the settings icon in the upper right corner and enter your name under the personal information setting.

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

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



The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) state as follows in support of this motion (this “**Motion**”):

**Relief Requested**

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto (respectively, the “**Interim Order**” and the “**Final Order**”), (a) authorizing the Debtors to pay in the ordinary course of business certain prepetition claims held by (i) certain essential vendors and service providers (each, a “**Critical Vendor**”), (ii) shippers, warehousemen, and other lien claimants (each, a “**Lien Claimant**”), (iii) certain foreign claimants (each, a “**Foreign Claimant**”), and (iv) vendors whose claims may be entitled to statutory priority under section 503(b)(9) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”) (each, a “**503(b)(9) Claimant**” and, collectively with the Critical Vendors, the Lien Claimants, and the Foreign Claimants, the “**Trade Claimants**”), (b) confirming the administrative expense priority status of the outstanding orders with the Critical Vendors and authorizing the Debtors to satisfy such obligations in the ordinary course of business; and (c) granting related relief.<sup>2</sup>

2. In addition, the Debtors request that the Court (as defined herein) schedule a final hearing approximately twenty-one (21) days after the commencement of these chapter 11 cases, or as soon thereafter as practicable, to consider approval of this Motion on a final basis.

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<sup>2</sup> By this Motion, the Debtors seek authorization to pay in the ordinary course of business certain prepetition claims of vendors that provide goods, services, and software required to operate the Debtors’ businesses, as further described below. Contemporaneously with the filing of this Motion, the Debtors have filed certain other First Day Pleadings seeking authority to satisfy additional prepetition claims. This Motion is not duplicative of any other First Day Pleading. As used herein, the term “Trade Claims” includes no obligation the Debtors seek to pay under separate motion. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors or a waiver of the Debtors’ rights to dispute any asserted claim.

3. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Mohsin Y. Meghji in Support of the Debtors' Chapter 11 Petitions and First Day Relief* (the “**First Day Declaration**”),<sup>3</sup> filed contemporaneously herewith.

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

4. The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding under 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The predicates for the relief requested herein are sections 105(a), 363, 503(b), 1107(a), 1108, and 1129 of title 11 of the United States Code (the “**Bankruptcy Code**”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”).

### **Background**

#### **I. Overview of Chapter 11 Cases**

6. On May 21, 2024 (the “**Petition Date**”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the Court. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors are requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

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<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

7. The Company is a leading provider of turnkey engineering, construction, maintenance, turnaround, and fabrication services. Headquartered in San Antonio, Texas, the Company has approximately 20,000 employees and has worked on some of the largest industrial projects in the United States. The Company was founded 100 years ago, in 1924, by H.B. Zachry. His first construction project was a series of four concrete-reinforced bridges in Laredo, Texas, which he built using mule-drawn wagons. Throughout the twentieth century, the Company completed high profile projects across the United States and the rest of the world, including the dredging of the Colorado River in Austin, Texas to increase the river's depth and width, the engineering and construction of the Hilton Palacio del Rio Hotel in San Antonio, and on the other side of the globe, the completion of the U.S. Embassy in Moscow in the wake of the Cold War. In 1998, a third generation of Zachrys—brothers David Zachry and John Zachry—took over the business. A decade later, in 2008, the brothers split the business into two independent and separately run organizations: (1) Zachry Group, led by John Zachry and comprised of entities that include the Debtors in these chapter 11 cases, which focuses on industrial projects, and (2) Zachry Construction Corporation, led by David Zachry, which focuses on heavy civil and building construction work. The two organizations have operated independently since. No entities related to Zachry Construction Corporation's business are included in these chapter 11 cases.

8. Today, Zachry Group, including the Debtors in these chapter 11 cases, is known for providing top-notch engineering and construction services to clients in the energy, chemicals, power, manufacturing, and industrial sectors across North America, all with an attention to detail and client service that customers have learned comes standard with the Zachry name. The Company had approximately \$5.4 billion in operating revenues in 2023. Debtor Zachry Industrial, Inc. (“ZII”) is currently engaged in the construction of 5 major projects with an aggregate contract

value of approximately \$25.1 billion, approximately \$13.8 billion of which constitutes ZII's share of the contract value (as opposed to its joint venture partners). In addition, the Debtors are engaged in over 700 hundred smaller maintenance, warranty, or site-support projects.

9. Additional factual background and information regarding the Debtors, including their business operations, their corporate and capital structure, and the events leading to the commencement of these chapter 11 cases, is set forth in detail in the First Day Declaration.

## **II. Overview of the Trade Claims**

10. In the ordinary course of business, the Debtors rely on a network of third-party subcontractors, vendors, and suppliers that provide goods and services that are essential to keeping their projects running smoothly, safely, and on schedule. The Debtors could not provide their customary high level of service on the projects without these vendors. The goods and services provided include, among others, subcontracting services, fuel, heavy equipment rentals, and specialized tools and parts. Maintaining vendor and supplier relationships is critical to the Debtors' ability to carefully calibrate and manage project timelines and budgets and avoid health, safety, and environmental incidents.

11. It is crucial that the Debtors avoid interruptions to their operations and supply chain during these chapter 11 cases. Because of the nature of the Debtors' businesses, the Debtors believe that many Trade Claimants will, unless they promptly receive payments on account of their prepetition claims, cease to supply the Debtors with the goods and services necessary for the Debtors to continue their operations. Without the relief requested in this motion, there would be a great disruption to the Debtors' businesses, a corresponding loss of revenue, and loss of estate value, all to the detriment of the Debtors and their stakeholders.

12. The Debtors therefore request authorization to pay, in their discretion and subject to and in accordance with any interim and final orders approving the Debtors' use of cash collateral

(any such order, including, for the avoidance of doubt, the approved cash collateral budget, a “**Cash Collateral Order**”), certain undisputed and outstanding prepetition claims of the Critical Vendors, Lien Claimants, Foreign Claimants, and 503(b)(9) Claimants (the “**Trade Claims**”) as such claims become due and payable in the ordinary course of business. This relief will minimize any disruption to the Debtors’ businesses during these chapter 11 cases. The Debtors seek authority to pay (a) \$4,500,000 million Trade Claims on an interim basis (the “**Interim Amount,**”) and (b) an aggregate of \$69,362,483 million on a final basis (together with the Interim Amount, the “**Authorized Amounts**”).

13. The following table summarizes the categories of Trade Claims that the Debtors request authority to pay pursuant to this Motion:<sup>4</sup>

Category	Description of Claims	Estimated Amount to Be Paid During Interim Period	Estimated Amount to Be Paid Under Final Order <sup>5</sup>
Critical Vendor Claims	Claims related to products or services that the Debtors require in order to generate revenue in the ordinary course of business, perform under customer contracts, and maintain customer relationships.	\$3,617,045	\$55,752,723
Lien Claims	Claims that may give rise to shippers, warehouseman, mechanic’s, or other liens against the Debtors’ property or customer projects if unpaid.	\$161,434	\$2,488,325
Foreign Vendor Claims	Claims held by suppliers of goods or services based outside of the United States.	\$106,981	\$1,648,990

<sup>4</sup> More detailed descriptions of each category of Trade Claims are set forth in the sections that follow.

<sup>5</sup> The amounts listed in this column include amounts approved under the Interim Order.

Category	Description of Claims	Estimated Amount to Be Paid During Interim Period	Estimated Amount to Be Paid Under Final Order <sup>5</sup>
503(b)(9) Claims	Claims entitled to statutory priority under section 503(b)(9) of the Bankruptcy Code.	\$614,540	\$9,472,445
<b>TOTAL:</b>		\$4,500,000	\$69,362,483

**A. The Critical Vendors**

14. The Debtors have identified certain highly specialized “Critical Vendors” that supply products and services in the ordinary course of business that are vital to the Debtors’ operations. The Debtors rely on the Critical Vendors to provide a wide range of goods and services at competitive prices. Not only do the Debtors rely heavily on the Critical Vendors to deliver current orders, but they also rely on their relationships with Critical Vendors for future supply. The Debtors are not able to easily switch suppliers or subcontractors on short notice and would face significant risks to their supply chain if certain prepetition amounts owed to the Critical Vendors (the “**Critical Vendor Claims**”) cannot be paid and Critical Vendors refuse to ship products or provide services. Even where alternative vendors may exist, the time and costs associated with switching from one vendor to another would likely be significant and detrimental to the Debtors’ operations. Any interruption to the supply of products and services by the Critical Vendors could jeopardize the Debtors’ ability to complete current projects, cause material harm to the Debtors’ business, and significantly risk the Debtors’ ability to reorganize their estates.

15. The Debtors’ Critical Vendors generally fall into, but are not limited to, the following main categories:

- (a) Subcontractors. The Debtors engage subcontractors (the “**Subcontractors**”) to perform all non-core services essential to completing projects. The Subcontractors include, but are not limited to, vendors with specialized electrical skillsets and specialized local knowledge as well as advisory groups

with equipment-specific expertise. Subcontractors with specialized or local expertise would be particularly challenging and costly for the Debtors to replace. Additionally, many or most Subcontractors are also Lien Claimants.<sup>6</sup> Further, because Subcontractors operate on project sites with direct access to the Debtors' customers, failure to pay Subcontractors working on key projects could jeopardize the Debtors' relationships with those customers, and, in turn, the value of the Debtors' go-forward business and the success of these chapter 11 cases.

- (b) Fuel Suppliers. Certain suppliers (“**Fuel Suppliers**”) provide fuel directly to project sites in bulk, which the Debtors use to fuel their equipment. On some projects, the Debtors' demand for fuel is so large that it can only be met by one or two suppliers capable of servicing the relevant area. Additionally, certain Fuel Suppliers own and maintain fuel tanks on site, making changing vendors time consuming and costly. Several of the Debtors' projects are in remote areas, making it difficult or impossible to replace fuel suppliers on short notice. Any delay due to lack of fuel could have ramifications to the Debtors' ability to keep their projects running on schedule. Without dependable Fuel Suppliers, the Debtors could not operate the equipment essential to completing projects and all operations would be materially impaired.
- (c) Tagged Equipment Suppliers. Certain suppliers (the “**Tagged Equipment Suppliers**”) provide tools used in the Debtors' daily operations. Unlike more commoditized bulk materials, certain Tagged Equipment Suppliers provide tools that are specialized to the given project's need—making them critical to that project and difficult to replace. Like Subcontractors, certain of the Tagged Equipment Suppliers may be Lien Claimants and some may also be 503(b)(9) Claimants. Absent payment, certain Tagged Equipment Suppliers may place the Debtors' accounts on hold, impose burdensome trade terms, or refuse to do business with the Debtors going forward. Any disruption to the Debtors' supply from Tagged Equipment Suppliers could halt operations or prevent the Debtors from beginning work on new projects.
- (d) Equipment Rental Vendors. Certain vendors (“**Equipment Rental Vendors**”) rent heavy equipment, such as cranes, for use on project sites. The equipment provided by Equipment Rental Vendors is large and stationary, making it especially costly and time-consuming to remove and replace. The delays that

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<sup>6</sup> Nothing in this Motion is intended to or shall be taken as an admission that the liens asserted by any particular Subcontractor or Lien Claimant are, or are deemed to be valid, and the Debtors reserve the right to challenge the priority, validity, extent, and enforceability of any asserted liens.



would ensue if the Debtors were forced to replace key Equipment Rental Vendors would impact their ability to keep projects running. In the event of nonpayment, Equipment Rental Vendors may threaten to collect equipment currently in use on projects, causing field operations to come to a halt.

- (e) Turnaround Services Vendors. Certain vendors (“**Turnaround Services Vendors**”) provide goods and services related to the Debtors’ turnaround business offered through debtors J.V. Industrial Companies Inc. and Madison Industrial Services Team, LLC. The Debtors’ turnaround services demand timely performance of their duties on tight schedules so that the Debtors’ customers can get their facilities back to operating as soon as the turnaround service is complete. Any delay caused by the need to replace vendors on these jobs directly translates into lost revenue for the Debtors customers, who have come to depend on the Debtors’ timeliness on turnaround jobs. Any disruption to the products and services from the Turnaround Services Vendors could prevent the Debtors from being able to deliver on ongoing turnaround commitments and harm customer relationships.

16. The Debtors seek authority to pay Critical Vendors only to the extent necessary to avoid detrimental disruption to the Debtors’ business, as determined in the Debtors’ discretion and in the exercise of the Debtors’ business judgment. In light of the limited funds the Debtors have available for payment to Critical Vendors, not all vendors that fall into the categories described above will be deemed Critical Vendors by the Debtors and Critical Vendors’ prepetition claims will not necessarily be paid in full pursuant to this motion.

17. In order to identify the universe of Critical Vendors, the Debtors spent significant time reviewing and analyzing their books and records, consulting operations managers and purchasing personnel, reviewing contracts, and analyzing applicable law, regulations, and historical practice to identify the suppliers providing products and services that, if lost, would immediately and irreparably harm the Debtors’ businesses. In this process, the Debtors considered a variety of factors, including:

- whether certain specifications or contract requirements prevent, directly or indirectly, the Debtors from obtaining goods or services from alternate sources;

- whether a vendor is a sole-source, limited-source, or high-volume supplier of goods or services critical to the Debtors' business operations;
- whether an agreement exists by which the Debtors could compel a vendor to continue performing on prepetition terms;
- whether alternate vendors are available that can provide requisite volumes of similar goods or services on equal (or better) terms and, if so, whether the Debtors would be able to continue operating while transitioning business thereto;
- the degree to which replacement costs (including pricing, transition expenses, professional fees, and lost sales or future revenue) exceed the amount of a vendor's prepetition claim;
- whether the Debtors' inability to pay all or part of the vendor's prepetition claim could trigger financial distress for the applicable vendor;
- the likelihood that a temporary break in the vendor's relationship with the Debtors could be remedied through use of the tools available in these chapter 11 cases;
- whether failure to pay all or part of a particular vendor's claim could cause the vendor to hold goods or property owned by the Debtors, or refuse to ship inventory or to provide critical services on a postpetition basis; and
- whether failure to pay a particular vendor could result in contraction of trade terms as a matter of applicable non-bankruptcy law or regulation.

18. In light of the potential for immediate irreparable consequences to the Debtors' go-forward businesses, goodwill, employees, customer base, and market share if the Critical Vendors do not continue to provide uninterrupted and timely deliveries of products and services, the Debtors seek entry of the Interim and Final Orders granting them authority pay Trade Claims, in their sole discretion and business judgment on account of the Critical Vendor Claims not to exceed the aggregate Authorized Amounts, and subject to and in accordance with the Cash Collateral Order. These amounts represent the Debtors' best estimate as to what amounts must and can be paid to the Critical Vendors to continue an uninterrupted supply of critical goods and services so that the Debtors can continue to perform and preserve the value of their estates during these chapter 11 cases.

19. The Debtors further request that the Court grant the Debtors the authority to allocate the foregoing amounts at their discretion, without prejudice to seek additional relief, and subject to a Trade Agreement (as defined below) subject to terms consistent with Customary Trade Terms (as defined below) from the Critical Vendors.

**B. Lien Claimants**

20. In the ordinary course of business, the Debtors incur obligations to certain third-party suppliers whose claims are potentially secured by liens against assets owned and/or operated by the Debtors (the “**Lien Claims**”). Such Lien Claimants are often not subject to long-term executory contracts under which they could be compelled to perform. In other cases, the time and expense to enforce such contracts against a Lien Claimant would risk the successful completion of projects because the attendant delay and enforcement costs would outweigh the cost of simply paying their claims. The Lien Claims also include amounts incurred to purchase parts and equipment utilized by the Debtors on construction projects, as well as amounts payable for services provided by Subcontractors. Likely to a greater extent than in other industries, the goods and services provided by the Lien Claimants are of fundamental importance to the reliability and safety of the Debtors’ operations, and timely delivery of the Debtors’ engineering, procurement, and construction services to customers.

21. Under non-bankruptcy law, the Lien Claimants may be able to assert liens on the goods in their possession or on the property they improved (*i.e.*, the customer projects) to secure payment of the charges or expenses incurred in connection with these prepetition obligations. In the event these claims remain unpaid, the Lien Claimants could attempt to assert such liens or refuse to deliver or release goods in their possession or otherwise impede the Debtors’ use of property or work on a project until their claims are satisfied and their liens redeemed. When liens

are asserted against a project, it hampers the Debtors' relationships with their customers—the project owners—and impedes the Debtors' ability to deliver finished projects on time. Such customers may seek self-help and pay such lien claimants themselves, and in turn seek to set-off or recoup such payments from the progress payments owed to the Debtors. This could have drastic consequences for the Debtors ability to finish a project.

22. Dealing with liens is a costly distraction that takes away from the job at hand. An influx of lien claims being filed as the Debtors search for their footing in these chapter 11 cases would be detrimental to their operations. In many instances, the cost of such disruption to the Debtors' estates would likely be greater than the applicable Lien Claims themselves. Moreover, because Lien Claimants will likely be paid in full under any chapter 11 plan, granting authority to pay them through this motion is only a matter of timing.

23. The Debtors request authority to allocate a portion of the Authorized Amounts to payment of Lien Claimants, as determined in the Debtors' discretion, and subject to and in accordance with the Cash Collateral Order.

**C. Foreign Claimants**

24. Foreign Claimants supply goods and services to the Debtors that are crucial to the Debtors' ongoing operations and for the continuation of their businesses in the ordinary course during these chapter 11 cases. Failure to pay prepetition claims held by certain Foreign Claimants and accrued in the ordinary course of business (the "**Foreign Claims**") could cause such Foreign Claimants to refuse to provide the goods and services necessary for the Debtors to continue business operations.

25. Certain Foreign Claimants lack meaningful contacts with the United States. Thus, the Foreign Claimants may consider themselves beyond the jurisdiction of the Court and disregard

the automatic stay, notwithstanding the automatic stay's global effect. Lawsuits in non-U.S. courts and efforts to exercise other remedies in non-U.S. jurisdictions, including the assertion of liens by the Foreign Claimants, could result from a failure to make payment to such parties in the ordinary course, including on account of prepetition claims. In many instances, it would be unduly time-consuming and burdensome for the Debtors to seek to enforce an order of the Court in the Foreign Claimant's home country, thereby compounding the loss and disruption in services.

26. The Debtors request authority to allocate a portion of the Authorized Amounts to payment of Foreign Claimants, as determined in the Debtors' discretion, and subject to and in accordance with the Cash Collateral Order.

**D. 503(b)(9) Claimants**

27. The Debtors may have received certain goods and products from various vendors within the twenty-day period immediately preceding the Petition Date, thereby giving rise to claims that are accorded administrative priority under section 503(b)(9) of the Bankruptcy Code (the "**503(b)(9) Claims**"). The Debtors believe certain 503(b)(9) Claimants could reduce the Debtors' existing trade credit—or demand payment in cash on delivery—further exacerbating the Debtors' limited liquidity, if they are not paid in the ordinary course during the cases.

28. Certain of the 503(b)(9) Claimants supply goods and products that are critical to the Debtors' ongoing operations. If they are not paid outstanding amounts, the 503(b)(9) Claimants may refuse to ship goods or products. Any interruption in the flow of these goods and products would be highly disruptive to the Debtors' operations and would be value-destructive for the Debtors' businesses. In light of these consequences, the Debtors believe that payment of the 503(b)(9) Claimants is essential to avoid disruptions to the Debtors' operations. Moreover, many of the 503(b)(9) Claims would independently qualify as Critical Vendor Claims, Lien Claims, or

Foreign Claims. The Debtors have removed the 503(b)(9) Claims from those separate categories for purposes of calculating the amounts authorized to be paid to the Critical Vendors, Lien Claimants, and Foreign Claimants pursuant to the authority requested through this Motion. Finally, because 503(b)(9) Claimants must be paid in full in order for the Debtors to confirm a chapter 11 plan, granting authority to pay them through this motion is only a matter of timing.

29. The Debtors request authority to use a portion of the Authorized Amounts to pay 503(b)(9) Claimants in the Debtors' discretion, and subject to and in accordance with the Cash Collateral Order.<sup>7</sup>

### **III. The Outstanding Orders**

30. Before the Petition Date and in the ordinary course of business, the Debtors may have ordered goods that will not be delivered until after the Petition Date (collectively, the “**Outstanding Orders**”). To avoid the risk of becoming general unsecured creditors with respect to such goods, certain vendors may refuse to ship or transport such goods (or may recall certain shipments) with respect to such Outstanding Orders unless the Debtors issue substitute purchase orders postpetition. To prevent any disruption to the Debtors' business operations, and given that goods delivered after the Petition Date are afforded administrative expense priority under section 503(b) of the Bankruptcy Code, the Debtors seek an order (a) granting administrative expense priority under section 503(b) of the Bankruptcy Code to all undisputed obligations of the Debtors arising from the acceptance of goods subject to the Outstanding Orders, *provided* that any such administrative expense status claim shall be junior and subordinate to the carve out and approved superpriority administrative expense claims provided for in any order, including a Cash Collateral

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<sup>7</sup> To the extent a portion of the Authorized Amounts are allocated to 503(b)(9) Claimants, the Debtors would pay such amounts in the ordinary course, and not accelerate or modify existing payment terms with respect to the 503(b)(9) Claims.

Order; and (b) authorizing the Debtors to satisfy such obligations in the ordinary course of business, subject to and in accordance with the Cash Collateral Order.

#### **IV. Conditions on Authority to Pay Trade Claims in Ordinary Course**

31. Through this Motion, the Debtors only intend to pay prepetition Trade Claims to the extent necessary to preserve their businesses. Accordingly, the Debtors seek authority to condition payment of a Trade Claim on the Trade Claimant's written agreement (a "**Trade Agreement**") to continue supplying goods and services to the Debtors on terms that are acceptable to the Debtors in light of customary industry and historical practices and at least as favorable to the Debtors as the most favorable terms in place during the twelve months prior to the Petition Date (the "**Customary Trade Terms**"). The Debtors reserve the right to require, at their discretion, that the Trade Agreement be made in writing (an email being sufficient). The Debtors reserve the right to require additional favorable trade terms with any Trade Claimant as a condition to payment of any Trade Claim. The Trade Agreement will be a legally binding contractual agreement between the parties governing the commercial trade relationship on the terms provided therein.

32. The Debtors also propose that if a Trade Claimant accepts and receives payment on account of its Trade Claim pursuant to the relief requested by this Motion and subsequently does not maintain Customary Trade Terms with the Debtors or fails to honor the Trade Agreement, then: (a) the Debtors may take any and all appropriate steps to cause such Trade Claimant to repay any payments made to it pursuant to this Motion to the extent that such payments exceed the postpetition amounts then owing to such Trade Claimant, including as unauthorized postpetition transfers recoverable under section 549 of the Bankruptcy Code; (b) upon recovery by the Debtors, any prepetition claim held by such Trade Claimant shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such

Trade Claimant, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested in this Motion to such outstanding postpetition balance and such Trade Claimant shall be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

### **BASIS FOR RELIEF**

#### **I. Payment of Trade Claims is Warranted Pursuant to Sections 105(a) and 363(b)(1) of the Bankruptcy Code and is an Appropriate Exercise of Business Judgment**

33. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“Cases cited by Debtors that refer to necessity of payment to preserve going concern value imply such a rule, and this Court is prepared to apply the Doctrine of Necessity to authorize payment of prepetition claims in appropriate cases.”); *see also In re Scotia Dev., LLC*, No. 07-20027, 2007 WL 2788840, at \*2 (Bankr. S.D. Tex. Sept. 21, 2007) (outlining the factors for when a critical vendor payment is necessary); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (“The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.”). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a), 363(b), and 1107(a) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

34. Section 363(b) of the Bankruptcy Code permits a debtor, subject to court approval, to pay prepetition obligations where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification). Under



section 1107(a) of the Bankruptcy Code, a debtor in possession is given the same rights and powers as a trustee appointed in a bankruptcy case, including the “implied duty of the debtor-in-possession to ‘protect and preserve the estate, including an operating business’ going-concern value.” *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ*, 273 B.R. at 497); *see also* 11 U.S.C. § 1108 (“[T]he trustee may operate the debtor’s business.”). And, under section 105(a) of the Bankruptcy Code, “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

35. Further, there are instances in which debtors in possession can fulfill their fiduciary duties “only . . . by the preplan satisfaction of a prepetition claim.” *In re CoServ*, 273 B.R. at 497–98. The *CoServ* court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate,” and also when the payment was to “sole suppliers of a given product.” *Id.* at 498. Courts in the Fifth Circuit, including the Bankruptcy Court for the Southern District of Texas, have followed the *CoServ* court’s three-part test to determine whether a prepetition claim of a “critical vendor” may be paid outside of the plan process on a postpetition basis:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

*In re CoServ*, 273 B.R. at 498; *see also In re Scotia Dev., LLC*, No. 07-20027, 2007 WL 2788840, at \*2 (applying *CoServ* factors); *In re Mirant Corp.*, 296 B.R. 427, 429–30 (Bankr. N.D. Tex. 2003) (same).

36. The Debtors require a steady stream of products and services from their Critical Vendors and other Trade Claimants in order to maintain operational stability during these chapter 11 cases. Without the products and services provided by the Trade Claimants, the Debtors could be forced to halt operations immediately while they search for substitute vendors and service providers and may have to forego existing favorable trade terms. Importantly, any disruption to the provision of products and services could result in a significant loss of operational efficiency, risk the customer projects, and impact progress payments on account of such projects, each of which could impair stakeholder value. Having the authority to pay the Trade Claimants will signal clearly to the Debtors' business partners and customers that it is "business as usual." Payment of the Trade Claims, subject to obtaining Customary Trade Terms, affords the Debtors the greatest likelihood of post-emergence success.

37. For the reasons set forth herein, the Debtors submit that the Court should authorize the Debtors to satisfy the Trade Claims as necessary to preserve the value of the Debtors' business. *See In re CoServ*, 273 B.R. at 498.

## **II. Additional Bases Support Payment of Certain Trade Claims**

### **A. Certain Trade Claims are Administrative Expenses**

38. Section 503(b)(9) of the Bankruptcy Code provides administrative priority for the "value of any goods received by the debtor within twenty days before the date of commencement of a case under this title in which goods have been sold to the debtor in the ordinary course of such debtor's business." The 503(b)(9) Claims must be paid in full for the Debtors to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(A). Payment of such claims now only provides such parties

with what they would be entitled to receive under a chapter 11 plan unless they consented otherwise. The timing of such payments also lies squarely within the Court's discretion. *See In re Global Home Prods., LLC*, No. 06-10340, 2006 WL 3791955, at \*3 (Bankr. D. Del. Dec. 21, 2006) (agreeing with parties that "the timing of the payment of that administrative expense claim is left to the discretion of the Court"). The Debtors' ongoing ability to obtain certain goods and services as provided herein is key to their survival and necessary to preserve the value of their estates. Absent payment of 503(b)(9) Claims at the Debtors' discretion at the outset of these chapter 11 cases—which merely accelerates the timing of payment and not the ultimate treatment of such claims—the Debtors could be denied access to the goods necessary to maintain the Debtors' business operations and maximize the value of the Debtors' estates. Finally, authorizing the Debtors to pay Trade Claims pursuant to the terms set forth herein should eliminate the burden on this Court and the Debtors, which would arise from numerous motions requesting payment on account of claims under section 503(b)(9) of the Bankruptcy Code.

**B. Certain Trade Claims May Be Secured by Liens**

39. The Debtors anticipate that certain Trade Claimants may assert or perfect liens to secure their claims. Under section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay.<sup>8</sup> As a result, the Debtors anticipate that certain of the Lien Claimants may assert or perfect liens, simply refuse to turn over goods in their possession, or stop performing their ongoing obligations. Even absent a valid lien, to the extent certain Lien Claimants have

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<sup>8</sup> *See* 11 U.S.C. § 546(b)(1)(A) (providing that a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection.")

possession of goods, inventory, or other products ordered by the Debtors, mere possession or retention could disrupt the Debtors' operations.

40. Furthermore, paying the Lien Claims should not impair unsecured creditor recoveries in these chapter 11 cases. In instances where the amount owed to a Lien Claimant is less than the value of the goods that could be held to secure a Lien Claimant's claim, such party may be a fully secured creditor of the Debtors' estates, which claims might otherwise accrue interest during these chapter 11 cases. Conversely, all creditors will benefit from the seamless transition of the Debtors' operations into bankruptcy and the ultimate completion of the Debtors' ongoing projects. Unsecured creditors will thus not be unduly burdened by the payment of Lien Claims during these cases, pursuant to the terms of the Interim and Final Orders.

**C. The Court Should Authorize the Payment of Foreign Claims**

41. A critical component of the Debtors' businesses involves transacting with certain Foreign Claimants. The Foreign Claimants supply goods and services to the Debtors that are crucial for the continuation of their businesses in the ordinary course during these chapter 11 cases. Failure to pay the Foreign Claims held by certain Foreign Claimants and accrued in the ordinary course of business could cause such Foreign Claimants to refuse to provide the goods and services necessary for the Debtors to continue business operations.

42. Each Foreign Claimant is based outside the United States. The Foreign Claimants may lack minimum contacts with the United States. Thus, there is significant risk that the Foreign Claimants consider themselves beyond the jurisdiction of the Court and therefore may disregard the automatic stay, notwithstanding the automatic stay's global effect. Failure to make payment to such parties in the ordinary course could lead to a proliferation of lawsuits in foreign courts and efforts to exercise other detrimental remedies overseas. In many instances, it would be unduly

time-consuming and expensive to seek to enforce an order of the Court in the creditor's home country. For the foregoing reasons, the Court has recognized the need to pay prepetition foreign claims in the past. *See, e.g., In re Anagram Holdings, LLC*, No. 23-90901 (MI) [Docket No. 86] (authorizing payment of prepetition foreign claims).

43. To maintain access to the critical goods and services provided by the Foreign Claimants, the Debtors request authority to pay certain prepetition Foreign Claims as they become due and payable and to continue paying certain Foreign Claims in the ordinary course of business, subject to and in accordance with the Cash Collateral Order. For the avoidance of doubt, the Debtors intend to pay prepetition Foreign Claims only where they believe, in their business judgment, that the benefits to their estates from making such payments will exceed the costs.

44. Absent such relief, however, the Debtors may be required to expend substantial time and effort reissuing the Outstanding Orders to provide certain suppliers with assurance of such administrative priority status. The disruption to the continuous and timely flow of critical raw materials and other merchandise to the Debtors would force the Debtors to potentially halt operations and production, damage the Debtors' business reputation, erode the Debtors' customer base, and ultimately lead to a loss of revenue, all to the detriment of the Debtors and their creditors. Accordingly, the Debtors submit that the Court should confirm the administrative expense priority status of the Outstanding Orders and should authorize the Debtors to pay the Outstanding Orders in the ordinary course of business, subject to and in accordance with the Cash Collateral Order.

### **III. Confirmation of Administrative Expense Priority Status of Outstanding Orders is Appropriate and Necessary to the Debtors' Reorganization**

45. Pursuant to section 503(b)(1) of the Bankruptcy Code, obligations that arise in connection with the postpetition delivery of goods and services, including goods ordered prepetition, are administrative expense priority claims because they benefit the Debtors' estates

postpetition. *See* 11 U.S.C. § 503(b)(1). Thus, the granting of the relief sought herein with respect to the Outstanding Orders will not afford such claimants any greater priority than they otherwise would have if the relief requested herein were not granted, and will not unduly prejudice any other party in interest; *provided* that any such administrative expense claim shall be junior and subordinate to the carve out and approved superpriority administrative expense claims provided for in any order, including a Cash Collateral Order.

**Processing of Checks and Electronic Fund Transfers Should Be Authorized**

46. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations. Under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. There is minimal risk that checks or wire transfer requests that the Court has not authorized will be honored inadvertently. The Debtors request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

**Emergency Consideration**

47. Bankruptcy Rule 6003 empowers a court to grant relief within the first twenty-one days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." Failure to receive the relief requested in this Motion during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. The Debtors have satisfied the "immediate and irreparable" harm standard in Bankruptcy Rule 6003 and request that the Court approve the relief requested on an emergency basis.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

48. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Reservation of Rights**

49. Nothing contained in this Motion nor any action taken pursuant to the relief requested herein is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a waiver of any claim or cause of action that may exist against any creditor or interest holder; (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (g) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to this Motion are valid and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to an order of the Court is not intended and should not be construed as an admission as to the validity or priority of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.

**Notice**

50. The Debtors will provide notice of this Motion to: (a) the United States Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the United States Attorney's Office for the Southern District of Texas; (d) the state attorneys general for the states in which the Debtors operate; (e) the Internal Revenue Service; (f) the United States Securities and Exchange Commission; (g) the Prepetition Agent; and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002 and Bankruptcy Local Rule 9013-1(d). In light of the nature of the relief requested, no other or further notice need be provided.

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

*[Remainder of Page Intentionally Left Blank]*



Dated: May 21, 2024  
Houston, Texas

*/s/ Charles R. Koster*

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**WHITE & CASE LLP**

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*Proposed Counsel to the Debtors and  
Debtors in Possession*

**Certificate of Accuracy**

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Charles R. Koster

Charles R. Koster

**Certificate of Service**

I certify that on May 21, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Charles R. Koster

Charles R. Koster

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

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In re:	)	
	)	Chapter 11
ZACHRY HOLDINGS, INC., <i>et al.</i> <sup>1</sup>	)	
	)	Case No. 24-90377 (MI)
Debtors.	)	(Joint Administration Requested)
	)	Re: Docket No. ____

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**INTERIM ORDER (I) AUTHORIZING  
THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF  
(A) CRITICAL VENDORS, (B) LIEN CLAIMANTS, (C) FOREIGN CLAIMANTS,  
AND (D) 503(B)(9) CLAIMANTS, (II) CONFIRMING ADMINISTRATIVE EXPENSE  
PRIORITY OF OUTSTANDING ORDERS AND AUTHORIZING THE DEBTORS  
TO SATISFY SUCH OBLIGATIONS, AND (III) GRANTING RELATED RELIEF**

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Upon the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an interim order (this “**Interim Order**”), pursuant to sections 105(a), 363, 503(b), 1107(a), 1108, and 1129 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Bankruptcy Local Rule 9013-1, (a) authorizing the Debtors to pay in the ordinary course of business and consistent with their prepetition practice certain prepetition claims held by (i) Critical Vendors, (ii) Lien Claimants, (iii) Foreign Claimants, and (iv) 503(b)(9) Claimants, (b) confirming the administrative expense priority status of the Outstanding Orders; (c) scheduling a hearing to consider approval of the Motion on a final basis, and (d) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant

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

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

to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due, sufficient, and proper notice of the Motion having been provided under the circumstances and in accordance with the Bankruptcy Rules and the Bankruptcy Local Rules, and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the “**Hearing**”); and upon consideration of the First Day Declaration and the record of the Hearing and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, their stakeholders, and all other parties in interest, and that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. The final hearing (the “**Final Hearing**”) on the Motion shall be held on \_\_\_\_\_, 2024 at \_\_:\_\_ .m., prevailing Central Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Central Time, on \_\_\_\_\_, 2024. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

2. The Debtors are authorized, pursuant to sections 105(a), 363(b), 503(b), 1107(a), 1108, and 1129 of the Bankruptcy Code, in the reasonable exercise of their business judgment, and subject to the terms of this Order, to honor, pay, or otherwise satisfy, in the ordinary course of business and in accordance with the Debtors’ prepetition practice, the prepetition Trade Claims (or a portion thereof) comprising Critical Vendor Claims, Lien Claims, Foreign Claims, and 503(b)(9) Claims, as described in the motion, in an aggregate amount not to exceed \$4,500,000 on an interim basis, and in each instance, subject to and in accordance with the Cash Collateral Order (defined

below). In the event the Debtors will exceed the aggregate amounts in any category as detailed in the Motion during the interim period, the Debtors shall file a notice with the Court describing the category and overage amount prior to payments. If no objections are filed with the Court and served on the Debtors within five (5) business days, such overage shall be authorized to be paid.

3. Prior to entry of a Final Order, the Debtors shall not pay any obligations under this Interim Order unless they are due or are deemed necessary to be paid in the Debtors' reasonable business judgment to ensure ongoing provision of goods or services or otherwise to avoid an adverse effect on operations.

4. Any party that accepts payment from the Debtors on account of any prepetition Trade Claims (or a portion thereof) comprising Critical Vendor Claims, Lien Claims, Foreign Claims, and 503(b)(9) Claims shall (i) be deemed to have agreed to the terms and provisions of this Interim Order and shall be deemed to have waived, to the extent so paid, any and all prepetition claims, of whatever type, kind or priority, against the Debtors, their properties and estates up to the paid amount; provided that, prior to making any payment pursuant to this Interim Order, the Debtors shall provide such party with a copy of this Interim Order (unless previously provided to such party); and (ii) at the Debtors' request, take all actions necessary to remove any mechanics' liens, possessory liens, or similar state law trade liens on the Debtors' assets such party may have based upon such Trade Claims at such party's sole expense.

5. As a condition to receiving payment pursuant to this Interim Order on account of a Trade Claim, the Debtors shall condition payment of Trade Claims upon each Trade Claimant's Trade Agreement, which may be obtained via email, to continue providing goods and services to the Debtors in accordance with Customary Trade Terms during the pendency of the chapter 11 cases that are at least as favorable as those existing in the twelve months prior to the Petition Date.

The Debtors reserve the right to require additional favorable trade terms with any Trade Claimant as a condition to payment of any Trade Claim. Any party that accepts payment from the Debtors on account of a Trade Claim shall be provided with a copy of this Interim Order and are deemed to have agreed to the terms and provisions of this Interim Order.

6. In the event that a Trade Claimant does not maintain or reinstate trade terms at least as favorable as those existing in the twelve months prior to the Petition Date during the pendency of the chapter 11 cases, regardless of whether a Trade Agreement has been executed, any payments made pursuant to this Interim Order after the Petition Date shall be, in the Debtors' reasonable discretion, deemed applied to postpetition amounts payable to such Trade Claimant or treated as an unauthorized postpetition transfer recoverable by the Debtors under section 549 of the Bankruptcy Code or other applicable law.

7. The undisputed obligations of the Debtors arising under the Outstanding Orders shall be afforded administrative expense priority status pursuant to section 503(b)(1)(A) of the Bankruptcy Code; *provided* that any such administrative expense status claim shall be junior and subordinate to the carve out and approved superpriority administrative expense claims provided for in any order, including a Cash Collateral Order.

8. The Debtors shall maintain a matrix/schedule of all amounts directly or indirectly paid under the terms and conditions of this Interim Order (the "**Vendor Matrix**"), including the following information: (i) the category of Trade Claims for amount paid, applied, offset or setoff, as further described and classified in the Motion; (ii) the amount of the payment, application, offset or setoff by category; (iii) the Debtor or Debtors that made the payment, application, offset or setoff; (iv) the recipient of the payment, application, offset or setoff; and (v) the date of the payment, application, offset or setoff. The Debtors shall provide a copy of such Vendor Matrix on a

confidential basis to the U.S. Trustee and counsel to any statutory committee appointed in this case no later than ten business days following the last day of each calendar month.

9. The Debtors are authorized, pursuant to section 363(c)(1) of the Bankruptcy Code, to pay in the ordinary course of their businesses all undisputed obligations arising from the postpetition delivery or shipment of goods or provision of services under the Outstanding Orders consistent with their customary past practice, subject to and in accordance with the Cash Collateral Order.

10. The Debtors are authorized to execute and deliver such documents and to take and perform all actions necessary to implement and effectuate the relief granted in this Interim Order.

11. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

12. The Debtors are authorized to issue postpetition checks or effect postpetition fund transfer requests in replacement of any checks or fund transfer requests that are inadvertently dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

13. Notwithstanding anything to the contrary contained in the Motion or this Interim Order, any payment to be made and any relief or authorization granted hereunder shall be limited by, and shall be subject to, the requirements imposed on the Debtors in any orders entered by this Court authorizing the Debtors' use of cash collateral (any such order, a "**Cash Collateral Order**"),

including, for the avoidance of doubt, the approved cash collateral budget. To the extent of any conflict (but solely to the extent of such conflict) between the terms of this Interim Order and the terms of any Cash Collateral Order, the terms of the Cash Collateral Order will govern.

14. Nothing contained in the Motion or this Interim Order, nor any action taken pursuant thereto, nor any payment made pursuant to the authority granted thereby, is intended to be or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a waiver of any claims or causes of action that may exist against any creditor or interest holder; (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (g) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the Motion are valid and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

15. Nothing herein shall impair or prejudice the rights of the U.S. Trustee and any statutory committee appointed in these chapter 11 cases, which are expressly reserved, to object to any payment made pursuant to this Order to an insider (as such term is defined in section 101(31) of the Bankruptcy Code), or an affiliate of an insider, of the Debtors. To the extent the Debtors intend to make a payment to an insider or an affiliate of an insider of the Debtors, the Debtors shall, to the extent reasonably practicable, provide three (3) business days' advance notice to, and



opportunity to object by the U.S. Trustee and any statutory committee appointed in these chapter 11 cases; *provided*, that if any party objects to the payment, the Debtors shall not make such payment without further order of this Court.

16. Further, nothing herein shall prejudice the Debtors' ability to seek a further order from this Court authorizing the Debtors to exceed the aggregate amounts of any Vendor category as set forth herein during the interim period.

17. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

18. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

19. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

20. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

Dated: \_\_\_\_\_, 2024  
Houston, Texas

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

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

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In re:	)	
	)	Chapter 11
ZACHRY HOLDINGS, INC., <i>et al.</i> <sup>1</sup>	)	
	)	Case No. 24-90377 (MI)
Debtors.	)	(Joint Administration Requested)
	)	Re: Docket No. ____

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**FINAL ORDER (I) AUTHORIZING  
THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF  
(A) CRITICAL VENDORS, (B) LIEN CLAIMANTS, (C) FOREIGN CLAIMANTS,  
AND (D) 503(B)(9) CLAIMANTS, (II) CONFIRMING ADMINISTRATIVE EXPENSE  
PRIORITY OF OUTSTANDING ORDERS AND AUTHORIZING THE DEBTORS  
TO SATISFY SUCH OBLIGATIONS, AND (III) GRANTING RELATED RELIEF**

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Upon the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of a final order (this “**Final Order**”), pursuant to sections 105(a), 363, 503(b), 1107(a), 1108, and 1129 of the Bankruptcy Code, Bankruptcy Rule 6004, and Bankruptcy Local Rule 9013-1, (a) authorizing the Debtors to pay in the ordinary course of business and consistent with their prepetition practice certain prepetition claims held by (i) Critical Vendors, (ii) Lien Claimants, (iii) Foreign Claimants, and (iv) 503(b)(9) Claimants, (b) confirming the administrative expense priority status of the Outstanding Orders, and (c) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in

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

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

this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due, sufficient, and proper notice of the Motion having been provided under the circumstances and in accordance with the Bankruptcy Rules and the Bankruptcy Local Rules, and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the “**Hearing**”); and upon consideration of the First Day Declaration and the record of the Hearing and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, their stakeholders, and all other parties in interest, and that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. The Debtors are authorized, pursuant to sections 105(a), 363(b), 503(b), 1107(a), 1108, and 1129 of the Bankruptcy Code, in the reasonable exercise of their business judgment, and subject to the terms of this Order, to honor, pay, or otherwise satisfy, in the ordinary course of business and in accordance with the Debtors’ prepetition practice, the prepetition Trade Claims (or a portion thereof) comprising Critical Vendor Claims, Lien Claims, Foreign Claims, and 503(b)(9) Claims, as described in the Motion, in an aggregate amount not to exceed \$69,362,483 (which amount is inclusive of the Interim Amount), and in each instance, subject to and in accordance with the Cash Collateral Order (defined below). In the event the Debtors will exceed the aggregate amounts in any category as detailed in the Motion, the Debtors shall file a notice with the Court describing the category and overage amount prior to payments. If no objections are filed with the Court and served on the Debtors within five (5) business days, such overage shall be authorized to be paid.

2. Any party that accepts payment from the Debtors on account of any prepetition Trade Claims (or a portion thereof) comprising Critical Vendor Claims, Lien Claims, Foreign Claims, and 503(b)(9) Claims shall (i) be deemed to have agreed to the terms and provisions of this Final Order and shall be deemed to have waived, to the extent so paid, any and all prepetition claims, of whatever type, kind or priority, against the Debtors, their properties and estates up to the paid amount; provided that, prior to making any payment pursuant to this Final Order, the Debtors shall provide such party with a copy of this Final Order (unless previously provided to such party); and (ii) at the Debtors' request, take all actions necessary to remove any mechanics' liens, possessory liens, or similar state law trade liens on the Debtors' assets such party may have based upon such Trade Claims at such party's sole expense.

3. As a condition to receiving payment pursuant to this Final Order on account of a Trade Claim, the Debtors shall condition payment of Trade Claims upon each Trade Claimant's Trade Agreement, which may be obtained via email, to continue providing goods and services to the Debtors in accordance with Customary Trade Terms during the pendency of the chapter 11 cases that are at least as favorable as those existing in the twelve months prior to the Petition Date. The Debtors reserve the right to require additional favorable trade terms with any Trade Claimant as a condition to payment of any Trade Claim. Any party that accepts payment from the Debtors on account of a Trade Claim shall be provided with a copy of this Final Order and are deemed to have agreed to the terms and provisions of this Final Order.

4. In the event that a Trade Claimant does not maintain or reinstate trade terms at least as favorable as those existing in the twelve months prior to the Petition Date during the pendency of the chapter 11 cases, regardless of whether a Trade Agreement has been executed, any payments made pursuant to this Final Order after the Petition Date shall be, in the Debtors' reasonable

discretion, deemed applied to postpetition amounts payable to such Trade Claimant or treated as an unauthorized postpetition transfer recoverable by the Debtors under section 549 of the Bankruptcy Code or other applicable law.

5. The undisputed obligations of the Debtors arising under the Outstanding Orders shall be afforded administrative expense priority status pursuant to section 503(b)(1)(A) of the Bankruptcy Code; *provided* that any such administrative expense status claim shall be junior and subordinate to the carve out and approved superpriority administrative expense claims provided for in any order, including a Cash Collateral Order.

6. The Debtors shall maintain a matrix/schedule of all amounts directly or indirectly paid under the terms and conditions of this Final Order (the “**Vendor Matrix**”), including the following information: (i) the category of Trade Claims for amount paid, applied, offset or setoff, as further described and classified in the Motion; (ii) the amount of the payment, application, offset or setoff by category; (iii) the Debtor or Debtors that made the payment, application, offset or setoff; (iv) the recipient of the payment, application, offset or setoff; and (v) the date of the payment, application, offset or setoff. The Debtors shall provide a copy of such Vendor Matrix on a confidential basis to the U.S. Trustee and counsel to any statutory committee appointed in this case no later than ten business days following the last day of each calendar month.

7. The Debtors are authorized, pursuant to section 363(c)(1) of the Bankruptcy Code, to pay in the ordinary course of their businesses all undisputed obligations arising from the postpetition delivery or shipment of goods or provision of services or software under the Outstanding Orders consistent with their customary past practice, subject to and in accordance with the Cash Collateral Order.

8. The Debtors are authorized to execute and deliver such documents and to take and perform all actions necessary to implement and effectuate the relief granted in this Final Order.

9. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

10. The Debtors are authorized to issue postpetition checks or effect postpetition fund transfer requests in replacement of any checks or fund transfer requests that are inadvertently dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

11. Notwithstanding anything to the contrary contained in the Motion or this Final Order, any payment to be made and any relief or authorization granted hereunder shall be limited by, and shall be subject to, the requirements imposed on the Debtors in any orders entered by this Court authorizing the Debtors' use of cash collateral (any such order, a "**Cash Collateral Order**"), including, for the avoidance of doubt, the approved cash collateral budget. To the extent of any conflict (but solely to the extent of such conflict) between the terms of this Final Order and the terms of any Cash Collateral Order, the terms of the Cash Collateral Order will govern.

12. Nothing contained in the Motion or this Final Order, nor any action taken pursuant thereto, nor any payment made pursuant to the authority granted thereby, is intended to be or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of

the Debtors' rights to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a waiver of any claims or causes of action that may exist against any creditor or interest holder; (f) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (g) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the Motion are valid and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

13. Nothing herein shall impair or prejudice the rights of the U.S. Trustee and any statutory committee appointed in these chapter 11 cases, which are expressly reserved, to object to any payment made pursuant to this Order to an insider (as such term is defined in section 101(31) of the Bankruptcy Code), or an affiliate of an insider, of the Debtors. To the extent the Debtors intend to make a payment to an insider or an affiliate of an insider of the Debtors, the Debtors shall, to the extent reasonably practicable, provide three (3) business days' advance notice to, and opportunity to object by the U.S. Trustee and any statutory committee appointed in these chapter 11 cases; provided, that if any party objects to the payment, the Debtors shall not make such payment without further order of this Court.

14. Further, nothing herein shall prejudice the Debtors' ability to seek a further order from this Court authorizing the Debtors to exceed the aggregate amounts of any Vendor category as set forth herein.

15. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

16. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

17. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.

Dated: \_\_\_\_\_, 2024  
Houston, Texas

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UNITED STATES BANKRUPTCY JUDGE