

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 EX PARTE  
APPLICATION FOR ENTRY OF AN ORDER AUTHORIZING  
THE RETENTION AND EMPLOYMENT OF KURTZMAN CARSON  
CONSULTANTS LLC AS CLAIMS, NOTICING, AND SOLICITATION AGENT**

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 [www.kccllc.net/zhi](http://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,**” and together with their non-Debtor affiliates, the “**Company**”) state as follows in support of this application (this “**Application**”):

**Relief Requested**

1. The Debtors seek entry of an order authorizing the Debtors to employ Kurtzman Carson Consultants LLC (“**KCC**”) as claims, noticing, and solicitation agent in accordance with the terms and conditions set forth in the engagement letter dated May 17, 2024 (the “**Engagement Letter**”), attached hereto as **Exhibit 1**.

2. In support of this Application, the Debtors rely upon and incorporate by reference the *Declaration of Evan Gershbein in Support of the Debtors’ Emergency Ex Parte Application for Entry of an Order Authorizing the Retention and Employment of Kurtzman Carson Consultants LLC as Claims, Noticing, and Solicitation Agent* (the “**Gershbein Declaration**”), attached hereto as **Exhibit 2**.

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

3. 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.

4. This matter is a core proceeding under 28 U.S.C. § 157(b).

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

**Request to Employ KCC**

6. The Debtors request approval to employ KCC to serve as claims, noticing, and solicitation agent in the chapter 11 cases and to provide the services outlined in the Engagement Letter. The Debtors believe that KCC’s employment is in the best interest of the estates.

7. KCC’s rates are competitive and reasonable. KCC has the expertise required to serve as the claims, noticing, and solicitation agent in these complex chapter 11 cases.

8. The Debtors request that this Court authorize KCC's employment.

**Compensation**

9. The Debtors request that KCC's fees and expenses be paid as an administrative expense in the ordinary course of the Debtors' business without further application or order of the Court. Should a dispute develop, the matter will be brought to the Court for resolution. KCC has agreed to maintain records of all services showing dates, categories of services, fees charged, and expenses incurred.

10. KCC will provide a monthly invoice to the Debtors, Debtors' counsel, the U.S. Trustee, counsel for any official committee, and any party-in-interest who specifically requests service of the monthly invoices.

11. Prior to the Petition Date, the Debtors provided KCC an advance in the amount of \$50,000. KCC will apply these funds in accordance with the Engagement Letter.

**Indemnification**

12. The Debtors have agreed to indemnify KCC as set forth in the Engagement Letter. Notwithstanding anything to the contrary, KCC will not be indemnified for liability arising out of gross negligence, willful misconduct, and certain other matters identified in the proposed order.

**Disinterestedness**

13. KCC has reviewed its conflicts system to determine whether it has any relationships with the Debtors' creditors and other parties in interest. Except as disclosed in the Gershbein Declaration, KCC represents that it neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed. To the best of the Debtors' knowledge, KCC is a "disinterested person" as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code. KCC agrees

that it will supplement its disclosure to the Court if any facts or circumstances are discovered that would require such additional disclosure.

The Debtors respectfully request that the Court grant the relief requested in this Application.

Dated: May 21, 2024

Respectfully submitted,

/s/ James R. Old  
James R. Old  
General Counsel  
Zachry Holdings, Inc.

**Certificate of Service**

This Application is being filed *ex parte*. Service will only occur by notice on the Court's CM/ECF system.

/s/ Charles R. Koster

Charles R. Koster

**Exhibit 1**

**Engagement Letter**

## KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the 17<sup>th</sup> day of May 2024, between Zachry Holdings, Inc. (together with its affiliates and subsidiaries, the “Company”),<sup>1</sup> and Kurtzman Carson Consultants LLC (together with its affiliates and subcontractors, “KCC”). In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### Terms and Conditions

#### I. SERVICES

A. KCC agrees to provide the Company with consulting services regarding noticing, claims management and reconciliation, plan solicitation, balloting, disbursements and any other services agreed upon by the parties or otherwise required by applicable law, government regulations or court rules or orders.

B. KCC further agrees to provide (i) computer software support and training in the use of the support software, (ii) KCC’s standard reports as well as consulting and programming support for the Company requested reports, (iii) program modifications, (iv) data base modifications, and/or (v) other features and services in accordance with the fees outlined in a pricing schedule provided to the Company (the “KCC Fee Structure”).

C. Without limiting the generality of the foregoing, KCC may, upon request by the Company, (i) provide a communications plan including, but not limited to, preparation of communications materials, dissemination of information and a call center staffed by KCC and/or (ii) provide confidential on-line workspaces or virtual data rooms and publish documents to such workspaces or data rooms (which publication shall not be deemed to violate the confidentiality provisions of this Agreement).

D. The price listed for each service in the KCC Fee Structure represents a bona fide proposal for such services, which may be accepted in whole or in part. Services will be provided when requested by the Company or required by applicable law, government regulations or court rules or orders. Services are mutually exclusive and are deemed delivered and accepted by the Company when provided by KCC.

E. The Company acknowledges and agrees that KCC will often take direction from the Company’s representatives, employees, agents and/or professionals (collectively, the “Company Parties”) with respect to the services being provided under this Agreement. The parties agree that KCC may rely upon, and the Company agrees to be bound by, any requests, advice or information provided by the Company Parties to the same extent as if such requests, advice or information were provided by the Company. The Company agrees and understands that KCC shall not provide the Company or any other party with any legal advice.

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<sup>1</sup> The term Company shall include, to the extent applicable, the Company, as debtor and debtor in possession in its chapter 11 case, together with any affiliated debtors and debtors in possession whose chapter 11 cases are jointly administered with the Company’s chapter 11 case.

## KCC AGREEMENT FOR SERVICES

### II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge and the Company agrees to pay KCC for its services at the rates and prices set by KCC that are in effect as of the date of this Agreement and in accordance with the KCC Fee Structure. KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment and are inclusive of all charges. KCC reserves the right to reasonably increase its prices, charges and rates; provided, however, that if any such increase exceeds 15%, KCC will give thirty (30) days written notice to the Company.

B. In addition to fees and charges for services, the Company agrees to pay KCC's reasonable and documented transportation, lodging, and meal expenses incurred in connection with services provided under this Agreement; provided that any expenses under this section exceeding \$10,000 in the aggregate require pre-approval by the Company, not to be unreasonably withheld or delayed.

C. In addition to all fees for services and expenses hereunder, the Company shall pay to KCC (i) any fees and charges related to, arising out of, or as a result of any error or omission made by the Company or the Company Parties, as mutually determined by KCC and the Company, except to the extent caused by KCC's breach of this Agreement, gross negligence, or willful misconduct, and (ii) all taxes that are applicable to this Agreement or that are measured by payments made under this Agreement and are required to be collected by KCC or paid by KCC to a taxing authority, other than taxes assessed based on KCC's income which will be KCC's sole responsibility.

D. Where the Company requires services that are unusual or beyond the normal business practices of KCC, or are otherwise not provided for in the KCC Fee Structure, the cost of such services shall be charged to the Company at a competitive rate.

E. KCC agrees to submit its invoices to the Company monthly and the Company agrees that the amount invoiced is due and payable upon the Company's receipt of the invoice. KCC's invoices will contain reasonably detailed descriptions of charges for both hourly (fees) and non-hourly (expenses) case specific charges. Where total invoice amounts are expected to exceed \$10,000 in any single month and KCC reasonably believes it will not be paid, KCC may require advance payment from the Company due and payable upon demand and prior to the performance of services hereunder. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, the Company further agrees to pay a late charge, calculated as two and one-half percent (2-1/2%) of the total amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, the Company shall give written notice to KCC within ten (10) days of receipt of the invoice by the Company. The undisputed portion of the invoice will remain due and payable immediately upon receipt of the invoice. Late charges shall not accrue on any amounts in dispute or any amounts unable to be paid due to Court order or applicable law. Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) must be paid at least three (3) days in advance of those fees and expenses being incurred. Certain fees and charges may need to be adjusted due to availability related to the COVID-19 (novel coronavirus) global health issue.

F. In the event that the Company files for protection pursuant to chapter 11 of the United States Bankruptcy Code (a "Chapter 11 Filing"), the parties intend that KCC shall be employed



## KCC AGREEMENT FOR SERVICES

pursuant to 28 U.S.C. § 156(c) to the extent possible and otherwise in accordance with applicable Bankruptcy law and that all amounts due under this Agreement shall, to the extent possible, be paid as administrative expenses of the Company's chapter 11 estate. As soon as practicable following a Chapter 11 Filing (and otherwise in accordance with applicable law and rules and orders of the Bankruptcy Court), the Company shall cause pleadings to be filed with the Bankruptcy Court seeking entry of an order or orders approving this Agreement (the "Retention Order"). The form and substance of the pleadings and the Retention Order shall be reasonably acceptable to KCC. If any Company chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services in accordance with the terms of this Agreement. The parties recognize and agree that if there is a conflict between the terms of this Agreement and the terms of the Retention Order, the terms of the Retention Order shall govern during the chapter 11 or other proceeding.

G. To the extent permitted by applicable law, KCC shall receive a retainer in the amount of \$50,000 (the "Retainer") that may be held by KCC as security for the Company's payment obligations under the Agreement. The Retainer is due upon execution of this Agreement. In the event of a Chapter 11 Filing, KCC will first apply the Retainer to all pre-petition invoices, and thereafter, will have the Retainer replenished to the original amount. KCC shall be entitled to hold the Retainer until the termination of the Agreement. Following termination of the Agreement, KCC shall return to the Company any amount of the Retainer that remains following application of the Retainer to the payment of unpaid invoices.

### III. RIGHTS OF OWNERSHIP

A. The parties understand that the software programs and other materials furnished by KCC pursuant to this Agreement and/or developed during the course of this Agreement by KCC are the sole property of KCC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Company agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement.

B. The Company further agrees that any ideas, concepts, know-how or techniques relating to data processing or KCC's performance of its services developed or utilized during the term of this Agreement by KCC shall be the exclusive property of KCC. Fees and expenses paid by the Company do not vest in the Company any rights in such property, it being understood that such property is only being made available for the Company's use during and in connection with the services provided by KCC under this Agreement. KCC agrees that all Company data submitted to KCC by or on behalf of the Company shall remain the exclusive property of the Company.

### IV. NON-SOLICITATION

The Company agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain employees of KCC during the term of this Agreement and for a period of twelve (12) months after termination of this Agreement unless KCC provides prior written consent to such solicitation or retention.



## KCC AGREEMENT FOR SERVICES

### V. CONFIDENTIALITY

Each of KCC and the Company, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.

### VI. SUSPENSION OF SERVICE AND TERMINATION

A. This Agreement shall remain in force until terminated or suspended by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) gross negligence or willful misconduct of KCC that causes serious and material harm to the Company's reorganization under chapter 11 of the Bankruptcy Code, (ii) the failure of the Company to pay KCC invoices for more than sixty (60) days from the date of receipt of the invoice, or (iii) the accrual of invoices or unpaid services in excess of the retainer held by KCC where KCC reasonably believes it will not be paid.

B. In the event that this contract is terminated, regardless of the reason for such termination, KCC shall coordinate with the Company and, to the extent applicable, the clerk of the Bankruptcy Court, to maintain an orderly transfer of record keeping functions and KCC shall provide all necessary staff, services and assistance required for an orderly transfer. The Company agrees to pay for such services in accordance with KCC's then existing prices for such services. If such termination occurs following entry of the Retention Order, the Company shall immediately seek entry of an order (in form and substance reasonably acceptable to KCC) that discharges KCC from service and responsibility in the Company's bankruptcy case.

C. Any data, programs, storage media or other materials furnished by the Company to KCC or received by KCC in connection with the services provided under the terms of this Agreement may be retained by KCC until the services provided are paid for, or until this Agreement is terminated with the services paid in full. The Company shall remain liable for all fees and expenses imposed under this Agreement as a result of data or physical media maintained or stored by KCC. KCC shall dispose of the data and media in the manner requested by the Company. The Company agrees to pay KCC for reasonable expenses incurred as a result of the disposition of data or media. If the Company has not utilized KCC's services under this Agreement for a period of at least ninety (90) days, KCC may dispose of the data or media, and be reimbursed by the Company for the expense of such disposition, after giving the Company thirty (30) days' notice. Notwithstanding any term herein to the contrary, following entry of the Retention Order, the disposition of any data or media by KCC shall be in accordance with any applicable instructions from the clerk of the Bankruptcy Court, local Bankruptcy Court rules and orders of the Bankruptcy Court.

## KCC AGREEMENT FOR SERVICES

### VII. SYSTEM IMPROVEMENTS

KCC strives to provide continuous improvements in the quality of service to its clients. KCC, therefore, reserves the right to make changes in operating procedure, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the KCC data center serving the Company, so long as any such changes do not materially interfere with ongoing services provided to the Company in connection with the Company's chapter 11 case.

### VIII. BANK ACCOUNTS

At the Company's request and subject to Court approval following any chapter 11 filing, KCC may be authorized to establish accounts with financial institutions in the name of and as agent for the Company. To the extent that certain financial products are provided to the Company pursuant to KCC's agreement with financial institutions, KCC may receive compensation from such financial institutions for the services KCC provides pursuant to such agreement.

### IX. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

A. The Company shall indemnify and hold KCC, its affiliates, members, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to KCC's performance under this Agreement. Such indemnification shall exclude Losses resulting from KCC's breach of contract, fraud, gross negligence or willful misconduct. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third-parties against any Indemnified Party. The Company shall notify KCC in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that the Company becomes aware of with respect to the services provided by KCC under this Agreement. The Company's indemnification obligations hereunder shall survive the termination of this Agreement.

B. Except as provided herein, KCC's liability to the Company or any person making a claim through or under the Company for any Losses of any kind, even if KCC has been advised of the possibility of such Losses, whether direct or indirect and unless due to gross negligence or willful misconduct of KCC, shall be limited to the total amount billed or billable to the Company for the portion of the particular work which gave rise to the alleged Loss. In no event shall KCC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement. In no event shall KCC's liability to the Company for any Losses, whether direct or indirect, arising out of this Agreement exceed the total amount billed to the Company and actually paid to KCC for the services contemplated under the Agreement; provided, however, that this limitation shall not apply to the Company during any chapter 11 case in which the Company is a debtor.

C. The Company is responsible for the accuracy of the programs, data and information it or any Company Party submits for processing to KCC and for the output of such information. KCC

## **KCC AGREEMENT FOR SERVICES**

does not verify information provided by the Company and, with respect to the preparation of schedules and statements, all decisions are at the sole discretion and direction of the Company. The Company reviews and approves all schedules and statements filed on behalf of, or by, the Company; KCC bears no responsibility for the accuracy or contents therein. The Company agrees to initiate and maintain backup files that would allow the Company to regenerate or duplicate all programs and data submitted by the Company to KCC. Pursuant to Section V of this Agreement, KCC and its employees, agents, professionals, and representatives shall safeguard and protect the confidentiality of the Company's non-public records, systems, procedures, software, and other information received in connection with the services provided under this Agreement with no less care than KCC would take to safeguard and protect the confidentiality of its own confidential information.

D. The Company agrees that except as expressly set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

### **X. FORCE MAJEURE**

KCC will not be liable for any delay or failure in performance when such delay or failure arises from circumstances beyond its reasonable control, including without limitation acts of God, acts of government in its sovereign or contractual capacity, acts of public enemy or terrorists, acts of civil or military authority, war, riots, civil strife, terrorism, blockades, sabotage, rationing, embargoes, epidemics, pandemics, outbreaks of infectious diseases or any other public health crises, earthquakes, fire, flood, other natural disaster, quarantine or any other employee restrictions, power shortages or failures, utility or communication failure or delays, labor disputes, strikes, or shortages, supply shortages, equipment failures, or software malfunctions.

### **XI. INDEPENDENT CONTRACTORS**

The Company and KCC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this Agreement.

### **XII. NOTICES**

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by facsimile or electronic mail or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth below:

## KCC AGREEMENT FOR SERVICES

Kurtzman Carson Consultants LLC  
222 N. Pacific Coast Highway, 3rd Floor  
El Segundo, CA 90245  
Attn: Drake D. Foster  
Tel: (310) 823-9000  
Fax: (310) 823-9133  
E-Mail: dfoster@kccllc.com

Zachry Holdings, Inc.  
527 Logwood Avenue  
San Antonio, TX 78221  
Attn: D. Kirk McDonald  
Tel: (210) 588-5824  
Email: mcdonaldk@zachrygroup.com

Or to such other address as the party to receive the notice or request so designates by written notice to the other.

### XIII. APPLICABLE LAW

The validity, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

### XIV. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings, other agreements, and communications oral and written between the parties relating to the subject matter of this Agreement. The Company represents that it has the authority to enter into this Agreement, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be modified only by a written instrument duly executed by an authorized representative of the Company and an officer of KCC.

### XV. COUNTERPARTS; EFFECTIVENESS

This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, which delivery may be made by exchange of copies of the signature page by facsimile or electronic mail.

### XVI. ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned without written consent by KCC to a wholly-owned subsidiary or affiliate of KCC.

### XVII. ATTORNEYS' FEES

In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance or interpret the provisions of this Agreement, the parties agree to reimburse the prevailing party's reasonable attorneys' fees, court costs, and all other related expenses, which

## **KCC AGREEMENT FOR SERVICES**

may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

[SIGNATURE PAGE FOLLOWS]



**Exhibit 2**

**Gershbein Declaration**



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

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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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**DECLARATION OF EVAN GERSHBEIN  
IN SUPPORT OF DEBTORS' APPLICATION  
FOR ENTRY OF AN ORDER AUTHORIZING  
THE RETENTION AND EMPLOYMENT OF KURTZMAN CARSON  
CONSULTANTS LLC AS CLAIMS, NOTICING, AND SOLICITATION AGENT**

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I, Evan Gershbein, under penalty of perjury, declare as follows:

1. I am an Executive Vice President of Corporate Restructuring Services for Kurtzman Carson Consultants LLC (“KCC”), a chapter 11 administrative services firm whose offices are located at 222 N. Pacific Coast Hwy, 3rd Floor, El Segundo, CA 90245. Except as otherwise noted, I have personal knowledge of the matters set forth herein, and if called and sworn as a witness, I could and would testify competently thereto.

2. This declaration (this “**Declaration**”) is made in support of the *Debtors’ Application for Entry of an Order Authorizing the Retention and Employment of Kurtzman Carson Consultants LLC as Claims, Noticing, and Solicitation Agent Effective as of the Petition Date* (the “**Application**”).

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<sup>1</sup> The last four digits of Zachry Holdings, Inc.’s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors’ proposed claims and noticing agent at [www.kccllc.net/zhi](http://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.

3. KCC represents the following:
  - a) KCC, its members, and employees are not and were not, within two years before the date of the filing of these chapter 11 cases, creditors, equity security holders, insiders, or employees of the Debtors;
  - b) KCC will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims, Noticing, and Solicitation Agent in these chapter 11 cases;
  - c) By accepting employment in these chapter 11 cases, KCC waives any rights to receive compensation from the United States government in connection with these chapter 11 cases;
  - d) In its capacity as the Claims, Noticing, and Solicitation Agent in these chapter 11 cases, KCC will not be an agent of the United States and will not act on behalf of the United States;
  - e) KCC will not employ any past or present employees of the Debtors in connection with its work as the Claims, Noticing, and Solicitation Agent in these chapter 11 cases;
  - f) KCC is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is engaged;
  - g) In its capacity as Claims, Noticing, and Solicitation Agent in these chapter 11 cases, KCC will not intentionally misrepresent any fact to any person;
  - h) KCC shall be under the supervision and control of the Clerk with respect to the receipt and recordation of claims and claim transfers;

- i) KCC will comply with all requests of the Clerk and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- j) None of the services provided by KCC as Claims, Noticing, and Solicitation Agent in these chapter 11 cases shall be at the expense of the Clerk.

4. I caused to be submitted for review in our conflicts database the names of all known potential parties in interest (the “**Potential Parties in Interest**”) in these chapter 11 cases. The results of the conflict check were compiled and reviewed by KCC professionals under my supervision. KCC is not aware of any connection that would present a disqualifying conflict of interest. Should KCC discover any new relevant facts or connections bearing on the matters described herein during the period of its retention, KCC will use reasonable efforts to promptly file a supplemental declaration.

5. To the best of my knowledge, neither KCC, nor any of its professionals, has any materially adverse connection to the Debtors, their creditors, or other relevant parties. KCC may have relationships with certain of the Debtors’ creditors as vendors or in connection with cases in which KCC serves or has served in a neutral capacity as claims and noticing agent and/or administrative advisor for another chapter 11 debtor.

6. On May 1, 2023, funds affiliated with GCP Capital Partners LLC (“**GCP**”) indirectly acquired a controlling equity interest in KCC (the “**Acquisition**”). Pursuant to the Acquisition, an indirect, non-controlling, beneficial minority interest in KCC was acquired by funds affiliated with J.P. Morgan Investment Management Inc. (“**JPMIM**”). GCP is a middle-market private equity investment firm based in New York. GCP has made investments in a number of industries, including tech-enabled business services, payments, and select financials. JPMIM

is a U.S. registered investment adviser. Designees of GCP are members of the Board of Managers (the “**Board**”) of KCC’s ultimate parent company, KCC Parent LLC (“**Parent**”). Parent wholly owns KCC Intermediate LLC, which in turn wholly owns KCC Global Administration, LLC, which in turn wholly owns KCC Topco LLC, which in turn wholly owns KCC. One representative of JPMIM is entitled to attend and observe (but not vote) at all meetings of the Board, but no designee of JPMIM is a member of the Board.

7. KCC searched all entities listed in the list of Potential Parties in Interest against an internal database that includes (i) KCC’s parent entities, affiliates, and subsidiaries and (ii) GCP, GCP’s funds, and each such fund’s respective portfolio companies and investments as set forth in the list most recently provided to KCC by GCP. Based solely on the foregoing search, KCC has determined, to the best of its knowledge, that there are no material connections. JPMorgan Chase and JP Mogan Chase Bank are listed on the Potential Parties in Interest List. There are information barriers between JPMIM and the line of business where JPMorgan Chase may be associated with the Debtors.

8. To the extent KCC learns of any other material connections between the funds or investments included in the above-described conflicts search and the Debtor, KCC will promptly file a supplemental disclosure. In addition, KCC may have had, may currently have, or may in the future have business relationships unrelated to the Debtor with one or more GCP or JPMIM entities including, among others, portfolio companies of GCP.

9. Based on the foregoing, I believe that KCC is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

Dated: May 21, 2024

Respectfully submitted,

*/s/ Evan Gershbein*

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Evan Gershbein

Executive Vice President

Kurtzman Carson Consultants LLC

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

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

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**ORDER AUTHORIZING THE RETENTION  
AND EMPLOYMENT OF KURTZMAN CARSON  
CONSULTANTS LLC AS CLAIMS, NOTICING, AND SOLICITATION AGENT**

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The Court has considered the Debtors' application (the "**Application**")<sup>2</sup> to employ Kurtzman Carson Consultants, LLC ("**KCC**") as its claims, noticing, and solicitation agent in these cases. The Court finds that *ex parte* relief is appropriate. The Court orders:

1. The Debtors are authorized to employ KCC under the terms of the Engagement Letter attached to the Application as modified by this order (this "**Order**").
2. KCC is authorized and directed to perform the services as described in the Application, the Engagement Letter, and this Order. If a conflict exists, this Order controls.
3. The Clerk shall provide KCC with Electronic Case Filing ("**ECF**") credentials that allow KCC to receive ECF notifications and file certificates and/or affidavits of service.
4. KCC is a custodian of court records and is designated as the authorized repository for all proofs of claim filed in these cases. KCC shall maintain the official Claims Register(s) in these cases. KCC must make complete copies of all proofs of claims available to the public electronically without charge. Proofs of claims and all attachments may be redacted only as ordered by the Court.
5. KCC must not transmit or utilize the data obtained by KCC in exchange for direct or indirect compensation from any person other than the Debtors.
6. KCC shall provide the Clerk with a certified duplicate of the official Claims Register(s) upon request.

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<sup>1</sup> The last four digits of Zachry Holdings, Inc.'s tax identification number are 6814. A complete list of each of the Debtors in these chapter 11 cases and the last four digits of their federal tax identification numbers may be obtained on the website of the Debtors' proposed claims and noticing agent at [www.kccllc.net/zhi](http://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.

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

7. KCC shall provide (i) an electronic interface for filing proofs of claim in these cases; and (ii) a post office box or street mailing address for the receipt of proofs of claim sent by United States Mail or overnight delivery.

8. KCC is authorized to take such other actions as are necessary to comply with all duties and provide the Services set forth in the Application and the Engagement Letter.

9. KCC shall provide detailed invoices setting forth the services provided and the rates charged on a monthly basis to the Debtors, their counsel, the Office of the United States Trustee, counsel for any official committee, and any party in interest who specifically requests service of the monthly invoices in writing.

10. KCC shall not be required to file fee applications. Upon receipt of KCC's invoices, the Debtors are authorized to compensate and reimburse KCC for all undisputed amounts in the ordinary course in accordance with the terms of the Engagement Letter. All amounts due to KCC will be treated as § 503(b) administrative expenses. KCC may apply its advance in accordance with the Engagement Letter and the terms of this Order.

11. The Debtors shall indemnify KCC under the terms of the Engagement Letter, as modified and limited by this Order. Notwithstanding the foregoing, KCC is not indemnified for, and may not receive any contribution or reimbursement with respect to:

- a. Matters or services arising before this case is closed, any matter or service not approved by an order of this Court.
- b. Any matter that is determined by a final order of a court of competent jurisdiction that arises from (i) KCC's gross negligence, willful misconduct, fraud, bad faith, self-dealing, or breach of fiduciary duty (ii) a contractual dispute if the court determines that indemnification, contribution, or reimbursement would not be permissible under applicable law; or (iii) any situation in which the court determines that indemnification, contribution, or reimbursement would not be permissible pursuant to *In re Thermadyne Holdings Corp.*, 283 B.R. 749, 756 (B.A.P. 8th Cir. 2002). No matter governed by this paragraph may be settled without this Court's approval.
- c. This paragraph does not preclude KCC from seeking an order from this Court requiring the advancement of indemnity, contribution, or reimbursement obligations in accordance with applicable law.

12. KCC shall not cease providing services during these chapter 11 cases for any reason, including nonpayment, without an order of the Court. In the event KCC is unable to provide the services set out in this Order and/or the Engagement Letter, KCC will immediately notify the Clerk and the Debtors' attorney and cause all original proofs of claim and data turned over to such persons as directed by the Court.

13. After entry of an order terminating KCC's services, KCC shall deliver to the Clerk an electronic copy in pdf format of all proofs of claim. Once the electronic copy has been received by the Clerk, KCC may destroy all proofs of claim in its possession sixty days after filing a Notice of Intent to Destroy on the Court's docket.

14. The terms and conditions of this Order are immediately effective and enforceable upon its entry.

15. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order. The scope of KCC's services may be altered only on further order of this Court.

Houston, Texas

Dated: \_\_\_\_\_, 2024

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UNITED STATES BANKRUPTCY JUDGE