

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> , ¹)	Case No. 24-90377 (MI)	
)		
Debtors.)	(Jointly Administered)	
)	Re: Docket No. 10	

**ORDER (I) DETERMINING ADEQUATE ASSURANCE
OF PAYMENT FOR FUTURE UTILITY SERVICES,
(II) PROHIBITING UTILITIES FROM DISCONTINUING
SERVICE, (III) ESTABLISHING PROCEDURES FOR DETERMINING
ADEQUATE ASSURANCE OF PAYMENT, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (this “**Order**”), (i) approving the Debtors’ proposed form of adequate assurance of payment to their utility providers in accordance with section 366 of the Bankruptcy Code, (ii) prohibiting the utility providers from altering, refusing, or discontinuing utility services, (iii) establishing procedures for resolving any disputes regarding adequate assurance or requests for additional assurance by the utility providers, and (iv) granting related relief, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408

¹ 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. The location of the Debtors’ service address in these chapter 11 cases is: P.O. Box 240130, San Antonio, Texas 78224.

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



and 1409; and appropriate notice of and the opportunity for a hearing on the Motion having been given and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having determined 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 Adequate Assurance Deposit and the Adequate Assurance Procedures shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

2. The Debtors shall cause a copy of the Motion and this Order to be served on each Utility Provider listed on the Utility Services List attached hereto as **Exhibit 1** no later than one (1) business days after the date this Order is entered.

3. The Debtors shall deposit the Adequate Assurance Deposit into the Adequate Assurance Account as soon as reasonably practicable after entry of this Order, but no later than ten (10) business days after the entry hereof. The Debtors are further authorized to cause the Adequate Assurance Deposit to be held in the Adequate Assurance Account until either (a) the Debtors' termination of Utility Services, at the earliest, if there are no outstanding disputes related to postpetition payments due or (b) at the conclusion of the Chapter 11 Cases, if not applied earlier.

4. The following "**Adequate Assurance Procedures**" are hereby approved:

(a) The Debtors will serve a copy of the Motion and this Order, which includes the proposed Adequate Assurance Procedures, on each Utility Provider

listed on the Utility Providers List within one (1) business days after entry of this Order.

- (b) The Debtors will deposit the Adequate Assurance Deposit into the Adequate Assurance Account within ten (10) business days after entry of this Order, subject to and in accordance with the Cash Collateral Order. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account in the amount set forth for such Utility Provider in the column labelled “Adequate Assurance Deposit” on the Utility Providers List; *provided, however,* that to the extent any Utility Provider receives any other value from the Debtors as adequate assurance of payment, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account on account of such Utility Provider by the amount of such other value.
- (c) The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors automatically, without further order of the Court, on the earlier of (a) reconciliation and payment by the Debtors of the Utility Provider’s final invoice in accordance with applicable nonbankruptcy law following the Debtors’ termination of Utility Services from such Utility Provider, (b) the effective date of any chapter 11 plan confirmed in these Chapter 11 Cases, or (c) the consummation of a sale, pursuant to section 363 of the Bankruptcy Code, of all or substantially all the assets of the Debtors.
- (d) If a Utility Provider is not satisfied with the Adequate Assurance Deposit provided by the Debtors, the Utility Provider must serve a request for additional assurance (an “**Additional Assurance Request**”) so that it is actually received by: (i) Zachry Holdings, Inc., 527 Logwood Avenue San Antonio, Texas 78221, Attn: Jay Old (oldj@zachrygroup.com); (ii) proposed counsel to the Debtors, White & Case LLP, 555 South Flower Street, Suite 2700, Los Angeles, CA 90071 Attn: RJ Szuba (rj.szuba@whitecase.com) and White & Case LLP, 111 South Wacker Drive, Suite 5100, Chicago, Illinois 60606 Attn: Gabriela Delgado (gabriela.delgado@whitecase.com); (iii) counsel to the Prepetition Agent, McGuireWoods LLP, 845 Texas Ave., 24th Floor, Houston, TX 77002-2906 (dliggins@mcguirewoods.com) and McGuireWoods LLP, 1251 Avenue of the Americas, 20th Floor, New York, NY 10020 (sfox@mcguirewoods.com), and (iv) the United States Trustee for the Southern District of Texas, 515 Rusk Street, Suite 3516, Houston, TX 77001, Attn: Jana Smith Whitworth (jana.whitworth@usdoj.gov) and Andrew Jimenez (andrew.jimenez@usdoj.gov) (collectively, the “**Notice Parties**”).
- (e) Any Additional Assurance Request must (i) be made in writing, (ii) set forth the account number, the type of Utility Services, and identify the location(s)

for which such services are provided, (iii) summarize the Debtors' payment history relevant to the affected account(s), including any deposits and other security held by the Utility Provider; (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Provider.

- (f) If a Utility Provider fails to serve on the Notice Parties an Additional Assurance Request within fourteen (14) calendar days of service of the Motion and this Order, such Utility Provider shall be (i) deemed to have received adequate assurance of payment "satisfactory" to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (ii) prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of the commencement of the Debtors' Chapter 11 Cases or any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- (g) Upon the Debtors' receipt of any Additional Assurance Request as provided herein, the Debtors shall have ten (10) calendar days from the receipt of the Additional Assurance Request (the "**Resolution Period**") to negotiate with the Utility Provider to resolve the Utility Provider's Additional Assurance Request. The Resolution Period may be extended by agreement of the Debtors and the applicable Utility Provider without application to or approval of the Court.
- (h) The Debtors may, without further order of the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider if the Debtors determine that such Additional Assurance Request is reasonable, and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, which may include but shall not be limited to cash deposits, prepayments, or other forms of security, in each case, subject to and in accordance with the terms of the Cash Collateral Order and without further order of the Court; *provided, however*, that the Debtors shall maintain a summary record of such agreements and their respective terms, and such summary record and the agreements themselves shall be available upon request to any official committee appointed in these cases and the U.S. Trustee.
- (i) If the Debtors and the Utility Provider are not able to reach a resolution within ten (10) days of receipt of the Additional Assurance Request, the Debtors may request a hearing before the Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the "**Determination Hearing**") pursuant to section 366(c)(3) of the Bankruptcy Code as soon as reasonably practicable, but no later than thirty (30) days from the Petition Date.

- (j) Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Additional Assurance Request; (iii) any objections filed in response to the Proposed Adequate Assurance; or (iv) the commencement of these Chapter 11 Cases.
- (k) Absent compliance with the Adequate Assurance Procedures and the terms of this Order, the Debtors' Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of these Chapter 11 Cases and/or any unpaid charges for prepetition services provided to any of the Debtors and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.

5. Pursuant to the terms of this Order and the Adequate Assurance Procedures, upon an undisputed postpetition default, each Utility Provider may be entitled to the funds in the Adequate Assurance Account in the amount set forth for such Utility Provider in the column labeled "Proposed Adequate Assurance" on the Utility Services List and as may be modified in accordance with this Order.

6. The Utility Providers are prohibited from requiring additional or different adequate assurance of payment other than pursuant to the Adequate Assurance Procedures set forth herein; *provided, however*, nothing herein shall prejudice the right of a Utility Provider to propose alternative procedures by filing a motion after notice and hearing and to have that motion heard within thirty (30) days of the Petition Date.

7. Absent compliance with the procedures set forth in this Order, the Utility Providers including, without limitation, those listed on the Utility Providers List annexed hereto, are prohibited from altering, refusing, or discontinuing Utility Services, or otherwise discriminating against the Debtors, on account of any unpaid prepetition charges or any perceived inadequacy of the Debtors' Proposed Adequate Assurance.

8. The Adequate Assurance Procedures set forth herein bind all Utility Providers providing Utility Services to the Debtors and are not limited to those parties or entities listed on the Utility Services List.

9. Notwithstanding anything in this Order to the contrary, upon a timely motion filed and served on the Notice Parties by any Utility Provider, the Court shall conduct a hearing on or before the date that is thirty (30) days following the Petition Date to resolve any disputes between the Debtors and such Utility Provider regarding the Adequate Assurance Procedures or the Proposed Adequate Assurance.

10. The Debtors' service of the Motion upon the Utility Services List shall not constitute an admission or concession that any such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

11. The Debtors shall also serve a copy of this Order on any non-Debtor landlord that pays directly for Utility Services for the benefit of the Debtors pursuant to a nonresidential real property lease.

12. The Debtors are authorized to: (a) add any Subsequently Identified Utility Provider to the Utility Providers List; (b) remove any Utility Provider from the Utility Providers List; and (c) add to or subtract from the Adequate Assurance Deposit the portion of such deposit allocated to added or removed Utility Providers or Subsequently Identified Utility Providers; *provided* that the Debtors shall provide notice (as set forth in paragraph 9 herein) to the Subsequently Identified Utility Provider of its addition to the Utility Providers List and of its corresponding proposed Adequate Assurance Deposit; *provided further*, that the Debtors shall provide fourteen (14) days' notice to the Utility Provider that it is being removed from the Utility Providers List and that the

corresponding amount in the Adequate Assurance Deposit will be deducted from the Adequate Assurance Account. If an objection is received, the Debtors may request a hearing before this Court regarding such objection. The Debtors shall not deduct the Adequate Assurance Deposit in the amount set aside for any Utility Provider that the Debtors seek to terminate or delete from the Utility Providers List unless and until the fourteen (14) day notice period has expired and, in the case of any terminated Utility Services, upon reconciliation and payment by the Debtors of the Utility Provider's final invoice in accordance with applicable non-bankruptcy law following the Debtors' termination of Utility Services provided by such Utility Provider; *provided, however*, that there are no outstanding disputes related to postpetition payments due.

13. The Debtors must: (a) serve any Subsequently Identified Utility Provider a copy of the Motion and Order within three (3) business days of such provider being added to the Utility Providers List; (b) allocate additional amounts to the Adequate Assurance Deposit in accordance with this Order; and (c) provide notice to the Subsequently Identified Utility Provider of its proposed Adequate Assurance Deposit. Any Subsequently Identified Utility Provider shall (a) be bound to the Adequate Assurance Procedures and (b) be provided sufficient time from the date of service of the Motion and the Order to make a request for additional adequate assurance of payment in accordance with the Adequate Assurance Procedures.

14. Should the Debtors designate any Subsequently Identified Utility Provider, and that entity contests such designation or the adequacy of the Debtors' proposed Additional Adequate Assurance Deposit, the Court shall hold a hearing regarding the status of such Subsequently Identified Utility Provider and/or the adequacy of the proposed Additional Adequate Assurance Deposit within thirty (30) days from the Petition Date unless the Debtors and the Subsequently Identified Utility Provider are able to reach mutual resolution in advance of such hearing.

15. 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 Order.

16. 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 Order.

17. 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.

18. 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.

19. 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.

20. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b) because the relief granted in this Final Order is necessary to avoid immediate and irreparable harm to the Debtors' estates.

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

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

Dated: _____, 2024
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Utility Providers List

Provider	Provider's Address	Service(s) Provided	Account Number(s)	Proposed Adequate Assurance
Ameren Illinois Company	PO Box 88034 Chicago, IL 60680	Electric & Gas	3595271044	\$356
Ameren Missouri	PO Box 88068 Chicago, IL 60680-1068	Electric	2602518168 9502518172	\$30
Aquarion Water Company	PO Box 9265 Chelsea, MA 02150	Water	200300686	\$185
Atmos Energy Corporation	PO Box 740353 Cincinnati, OH 45274	Gas	4033855175 3002114122	\$250
AT&T	PO Box 5001 Carol Stream, IL 60197 PO Box 5019 Carol Stream, IL 60197	Telecom	512 719-3401 418 9 831 000-7083 332 831-000-5324 700 831-000-7233 773 831-001-1794 493	\$4000
AT&T Mobility	PO Box 6463 Carol Stream, IL 60197	Telecom	287025267756 287242574306 287283215329	\$2870
Baton Rouge Water Company	PO Box 96025 Baton Rouge, LA 70896	Water	04-04-21-591-0167-01 04-04-21-591-0168-01 04-04-18-523-0585-01 04-04-18-523-0586-01 04-04-18-523-0628-02 04-04-21-591-0210-03 04-04-21-591-0211-03	\$770
Cascade Natural Gas	PO Box 7608	Gas	894-343-7004-8	\$184

Provider	Provider's Address	Service(s) Provided	Account Number(s)	Proposed Adequate Assurance
	Boise, ID 83707-1608			
CenturyLink	PO BOX 52187 Phoenix, AZ 85072	Telecom	88291384 88291413	\$525
City of Freeport	200 West 2nd Street Freeport, TX 77541	Water/Sewer	13-2780-08	\$23
City of Moss Point	4320 McInnis Street Moss Point, MS 39563	Water	13-19757-03 13-19757-02 13-19816-05	\$146
City of Pasadena	PO Box 1337 Pasadena, TX 77501	Water	10100005-06 25305250-14 25305400-10 25305499-02 25305500-07 25305610-09 25305810-15 25307400-07	\$1,600
City of Port Arthur Texas	P.O. Box 1089 Port Arthur, TX 77641	Water	140101-00025416	\$350
Comcast	PO Box 70219 Philadelphia, PA 19176 PO Box 4089 Carol Stream, IL 60197	Telecom	8773 40 406 0142009 8771 40 302 1799263	\$350

Provider	Provider's Address	Service(s) Provided	Account Number(s)	Proposed Adequate Assurance
Consensus Cloud Solutions	PO Box 51873 Los Angeles, CA 90051	Telecom	251016 251016	\$1300
Consolidated PWSD C-1	PO Box 430 Barnhart, MO 63012-0430	Water	143837	\$11
CPS Energy	PO Box 2678 San Antonio, TX 78289 - 0001	Electric & Gas	300-2142-072 300-2142-555 300-2142-558 300-2144-720 300-2148-959 300-3327-332 300-3347-400 300-3347-400 300-3327-332	\$44,000
DIRECTV	PO BOX 5006 Carol Stream, IL 60197	Telecom	002509485 022704666	\$190
Dominion Energy	PO Box 45360 Salt Lake City, UT 84145- 0360	Gas	2351461642	\$232
Duke Energy	PO Box 1094 Charlotte, NC 28201	Electric	9100-3480-3718	\$2,615
Engie Resources LLC	PO Box 841680 Dallas, TX 75284	Electric	0000267903 0000267897 0000267902 0000267899 0000267901	\$15,750

Provider	Provider's Address	Service(s) Provided	Account Number(s)	Proposed Adequate Assurance
			0000267895 0000267898 0000267900 0000267896 0000267893 0000103383 0000103998 0000103374 0000103381 0000103379 0000103380 0000103376 0000103386 0000103385 0000103384 0000103377 3342819928 2294338204 210326415 582005591 0000260566	
Entergy Louisiana, LLC	P.O. Box 8104 Baton Rouge, LA 70891	Electricity	163428394 168106326 171816986 197206667 100580398	\$3,650
Frontier Communications	PO Box 740407 Cincinnati, OH 45274	Telecom	860-535-8583-071511-5	\$250

Provider	Provider's Address	Service(s) Provided	Account Number(s)	Proposed Adequate Assurance
			979-822-6523-081310-5	
Glaize Creek Sewer District	PO Box 305 Barnhart, MO 63012	Sewer	2216	\$31
Greater Ouachita Water Company	PO Box 2457 West Monroe, LA 71294	Water	5082001529	\$36
MCI	PO Box 15043 Albany, NY 12212	Telecom	08639275473	\$35
Mississippi Power	PO Box 245 Birmingham, AL 35201-0245	Electric	29316-76043 02677-16049 32661-67045 67531-66037	\$3,530
One Gas, Inc.	P.O. Box 219913 Kansas City, MO 64121	Gas	912917419-11860022-45	\$75
PECO	PO Box 37629 Philadelphia, PA 19101-0629	Electric	195286000 195286000	\$120
Rocky Mountain Power	PO Box 400 Portland, OR 97207	Electric	75583162-001 7	\$334
Salt Lake City Public Utilities	1530 South West Temple Salt Lake City, UT 84115-5223	Water	W2702468	\$93

Provider	Provider's Address	Service(s) Provided	Account Number(s)	Proposed Adequate Assurance
San Antonio Water System	PO Box 650989 Dallas, TX 75265 - 0989	Water/Sewer & Fire Line	000278816-0278817-0001 000277055-0277056-0001 000278072-0278073-0001 000277056-0277057-0001 000277058-0277059-0001 000278814-0278815-0001 000278817-0278818-0001 001188532-2720891-0001 001309136-2735285-0001 001309295-2735312-0001 000813977-2687671-0002 000813992-2687673-0002 000814085-2687674-0002 000813992-2687673-0002	\$13,300

Provider	Provider's Address	Service(s) Provided	Account Number(s)	Proposed Adequate Assurance
SatellitePhoneStore.Com	PO Box 790379 St. Louis, MO 63179	Telecom	N/A	\$140
Time Warner/Spectrum	PO Box 223085 Pittsburgh, PA 15251	Telecom	062661201 071670101 087679001 183891301 183973601	\$1,850
The Connecticut Light & Power Company	PO Box 56002 Boston, MA 02205	Electric	5123-571-9069 5191-595-5017	\$5,800
Town of Stonington	152 Elm Street Stonington, CT 06378	Garbage	122365073	\$167
Verizon	PO Box 660108 Dallas, TX 75266	Telecom	842056363-00001 920359326-00001	\$12,300
Waste Connections of North Carolina	5516 Rozzelles Ferry Rd Charlotte, NC 28214	Garbage	6111-375777-001	\$218
Waste Management, Inc.	PO Box 660345 Dallas, TX 75266	Garbage	14-42962-63006 21-72823-73005 22-44003-23005 22-83469-43006	\$2,500
Windstream Corporation	P.O. Box 9001013 Louisville, KY 40290-1013	Telecom	209637240 214460269 200168150 204273303 210257391	\$77,150

Provider	Provider's Address	Service(s) Provided	Account Number(s)	Proposed Adequate Assurance
			208434109 5345342 5345389 209536665	

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

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)	Chapter 11
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Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of an order (this “**Order**”), (i) approving the Debtors’ proposed form of adequate assurance of payment to their utility providers in accordance with section 366 of the Bankruptcy Code, (ii) prohibiting the utility providers from altering, refusing, or discontinuing utility services, (iii) establishing procedures for resolving any disputes regarding adequate assurance or requests for additional assurance by the utility providers, and (iv) granting related relief, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United

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States Constitution; and venue of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and the opportunity for a hearing on the Motion having been given and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and the relief requested in the Motion being in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having determined 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 Adequate Assurance Deposit and the Adequate Assurance Procedures shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

2. The Debtors shall cause a copy of the Motion and this Order to be served on each Utility Provider listed on the Utility Services List attached hereto as **Exhibit 1** no later than ~~three~~one (31) business days after the date this Order is entered.

3. The Debtors shall deposit the Adequate Assurance Deposit into the Adequate Assurance Account as soon as reasonably practicable after entry of this Order, but no later than ten (10) business days after the entry hereof. The Debtors are further authorized to cause the Adequate Assurance Deposit to be held in the Adequate Assurance Account until either (a) the Debtors' termination of Utility Services, at the earliest, if there are no outstanding disputes related to postpetition payments due or (b) at the conclusion of the Chapter 11 Cases, if not applied earlier.

4. The following “**Adequate Assurance Procedures**” are hereby approved:
- (a) The Debtors will serve a copy of the Motion and this Order, which includes the proposed Adequate Assurance Procedures, on each Utility Provider listed on the Utility Providers List within ~~three~~one (1) business days after entry of this Order.
 - (b) The Debtors will deposit the Adequate Assurance Deposit into the Adequate Assurance Account within ten (10) business days after entry of this Order, subject to and in accordance with the Cash Collateral Order. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account in the amount set forth for such Utility Provider in the column labelled “Adequate Assurance Deposit” on the Utility Providers List; *provided, however*, that to the extent any Utility Provider receives any other value from the Debtors as adequate assurance of payment, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account on account of such Utility Provider by the amount of such other value.
 - (c) The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors automatically, without further order of the Court, on the earlier of (a) reconciliation and payment by the Debtors of the Utility Provider’s final invoice in accordance with applicable nonbankruptcy law following the Debtors’ termination of Utility Services from such Utility Provider, (b) the effective date of any chapter 11 plan confirmed in these Chapter 11 Cases, or (c) the consummation of a sale, pursuant to section 363 of the Bankruptcy Code, of all or substantially all the assets of the Debtors.
 - (d) If a Utility Provider is not satisfied with the Adequate Assurance Deposit provided by the Debtors, the Utility Provider must serve a request for additional assurance (an “**Additional Assurance Request**”) so that it is actually received by: (i) Zachry Holdings, Inc., 527 Logwood Avenue San Antonio, Texas 78221, Attn: Jay Old (oldj@zachrygroup.com); (ii) proposed counsel to the Debtors, White & Case LLP, 555 South Flower Street, Suite 2700, Los Angeles, CA 90071 Attn: RJ Szuba (rj.szuba@whitecase.com) and White & Case LLP, 111 South Wacker Drive, Suite 5100, Chicago, Illinois 60606 Attn: Gabriela Delgado (gabriela.delgado@whitecase.com); (iii) counsel to the Prepetition Agent, McGuireWoods LLP, 845 Texas Ave., 24th Floor, Houston, TX 77002-2906 (dliggins@mcguirewoods.com) and McGuireWoods LLP, 1251 Avenue of the Americas, 20th Floor, New York, NY 10020 (sfox@mcguirewoods.com), and (iv) the United States Trustee for the Southern District of Texas, 515 Rusk Street, Suite 3516, Houston, TX 77001, Attn: Jana Smith Whitworth (jana.whitworth@usdoj.gov) and

Andrew Jimenez (andrew.jimenez@usdoj.gov) (collectively, the “**Notice Parties**”).

- (e) Any Additional Assurance Request must (i) be made in writing, (ii) set forth the account number, the type of Utility Services, and identify the location(s) for which such services are provided, (iii) summarize the Debtors’ payment history relevant to the affected account(s), including any deposits and other security held by the Utility Provider; (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Provider.
- (f) If a Utility Provider fails to serve on the Notice Parties an Additional Assurance Request within ~~twenty-one~~fourteen (~~21~~14) calendar days of service of the Motion and this Order, such Utility Provider shall be (i) deemed to have received adequate assurance of payment “satisfactory” to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (ii) prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtors on account of the commencement of the Debtors’ Chapter 11 Cases or any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- (g) Upon the Debtors’ receipt of any Additional Assurance Request as provided herein, the Debtors shall have ~~twenty-one~~ten (~~21~~10) calendar days from the receipt of the Additional Assurance Request (the “**Resolution Period**”) to negotiate with the Utility Provider to resolve the Utility Provider’s Additional Assurance Request. The Resolution Period may be extended by agreement of the Debtors and the applicable Utility Provider without application to or approval of the Court.
- (h) The Debtors may, without further order of the Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider if the Debtors determine that such Additional Assurance Request is reasonable, and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, which may include but shall not be limited to cash deposits, prepayments, or other forms of security, in each case, subject to and in accordance with the terms of the Cash Collateral Order and without further order of the Court; *provided, however*, that the Debtors shall maintain a summary record of such agreements and their respective terms, and such summary record and the agreements themselves shall be available upon request to any official committee appointed in these cases and the U.S. Trustee.

- (i) If the Debtors ~~determine that~~ and the Utility Provider are not able to reach a resolution within ten (10) days of receipt of the Additional Assurance Request ~~is not reasonable and the Debtors are unable to reach an alternative resolution with the Utility Provider,~~ the Debtors, ~~during or immediately after the Resolution Period,~~ will may request a hearing (a ~~“Determination Hearing”~~) before the Court to determine the adequacy of ~~assurance~~ assurances of payment with respect to ~~that~~ a particular Utility Provider (the “Determination Hearing”) pursuant to section 366(c)(3) of the Bankruptcy Code as soon as reasonably practicable, but no later than thirty (30) days from the Petition Date.
- (j) Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Additional Assurance Request; (iii) any objections filed in response to the Proposed Adequate Assurance; or (iv) the commencement of these Chapter 11 Cases.
- (k) Absent compliance with the Adequate Assurance Procedures and the terms of this Order, the Debtors’ Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of these Chapter 11 Cases and/or any unpaid charges for prepetition services provided to any of the Debtors and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.

5. Pursuant to the terms of this Order and the Adequate Assurance Procedures, upon an undisputed postpetition default, each Utility Provider may be entitled to the funds in the Adequate Assurance Account in the amount set forth for such Utility Provider in the column labeled “Proposed Adequate Assurance” on the Utility Services List and as may be modified in accordance with this Order.

6. The Utility Providers are prohibited from requiring additional or different adequate assurance of payment other than pursuant to the Adequate Assurance Procedures set forth herein; *provided, however,* nothing herein shall prejudice the right of a Utility Provider to propose alternative procedures by filing a motion after notice and hearing and to have that motion heard within thirty (30) days of the Petition Date.

7. Absent compliance with the procedures set forth in this Order, the Utility Providers including, without limitation, those listed on the Utility Providers List annexed hereto, are prohibited from altering, refusing, or discontinuing Utility Services, or otherwise discriminating against the Debtors, on account of any unpaid prepetition charges or any perceived inadequacy of the Debtors' Proposed Adequate Assurance.

8. The Adequate Assurance Procedures set forth herein bind all Utility Providers providing Utility Services to the Debtors and are not limited to those parties or entities listed on the Utility Services List.

9. Notwithstanding anything in this Order to the contrary, upon a timely motion filed and served on the Notice Parties by any Utility Provider, the Court shall conduct a hearing on or before the date that is thirty (30) days following the Petition Date to resolve any disputes between the Debtors and such Utility Provider regarding the Adequate Assurance Procedures or the Proposed Adequate Assurance.

10. The Debtors' service of the Motion upon the Utility Services List shall not constitute an admission or concession that any such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

11. The Debtors shall also serve a copy of this Order on any non-Debtor landlord that pays directly for Utility Services for the benefit of the Debtors pursuant to a nonresidential real property lease.

12. The Debtors are authorized to: (a) add any Subsequently Identified Utility Provider to the Utility Providers List; (b) remove any Utility Provider from the Utility Providers List; and (c) add to or subtract from the Adequate Assurance Deposit the portion of such deposit

allocated to added or removed Utility Providers or Subsequently Identified Utility Providers; *provided* that the Debtors shall provide notice (as set forth in paragraph 9 herein) to the Subsequently Identified Utility Provider of its addition to the Utility Providers List and of its corresponding proposed Adequate Assurance Deposit; *provided further*, that the Debtors shall provide fourteen (14) days' notice to the Utility Provider that it is being removed from the Utility Providers List and that the corresponding amount in the Adequate Assurance Deposit will be deducted from the Adequate Assurance Account. If an objection is received, the Debtors may request a hearing before this Court regarding such objection. The Debtors shall not deduct the Adequate Assurance Deposit in the amount set aside for any Utility Provider that the Debtors seek to terminate or delete from the Utility Providers List unless and until the fourteen (14) day notice period has expired and, in the case of any terminated Utility Services, upon reconciliation and payment by the Debtors of the Utility Provider's final invoice in accordance with applicable non-bankruptcy law following the Debtors' termination of Utility Services provided by such Utility Provider; *provided, however*, that there are no outstanding disputes related to postpetition payments due.

13. The Debtors must: (a) serve any Subsequently Identified Utility Provider a copy of the Motion and Order within three (3) business days of such provider being added to the Utility Providers List; (b) allocate additional amounts to the Adequate Assurance Deposit in accordance with this Order; and (c) provide notice to the Subsequently Identified Utility Provider of its proposed Adequate Assurance Deposit. Any Subsequently Identified Utility Provider shall (a) be bound to the Adequate Assurance Procedures and (b) ~~have twenty one (21) days~~be provided sufficient time from the date of service of the Motion and the Order to make a request

for additional adequate assurance of payment in accordance with the Adequate Assurance Procedures.

14. Should the Debtors designate any Subsequently Identified Utility Provider, and that entity contests such designation or the adequacy of the Debtors' proposed Additional Adequate Assurance Deposit, the Court shall hold a hearing regarding the status of such Subsequently Identified Utility Provider and/or the adequacy of the proposed Additional Adequate Assurance Deposit within thirty (30) days from the Petition Date unless the Debtors and the Subsequently Identified Utility Provider are able to reach mutual resolution in advance of such hearing.

15. ~~14.~~ 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 Order.

16. ~~15.~~ 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 Order.

17. ~~16.~~ 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.

~~17. Notwithstanding anything to the contrary contained in the Motion or this 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 Order and the terms of any Cash Collateral Order, the terms of the Cash Collateral Order will govern.~~

18. 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.

19. 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.

20. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b) because the relief granted in this Final Order is necessary to avoid immediate and irreparable harm to the Debtors' estates.

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

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

Dated: _____, 2024
Houston, Texas

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Utility Providers List

Summary report:	
Litera Compare for Word 11.6.0.100 Document comparison done on 5/23/2024 12:18:12 PM	
Style name: 2 WC StandardSet	
Intelligent Table Comparison: Active	
Original DMS: iw://AMERICASDMS.whitecase.com/AMERICAS/127048706/1	
Modified filename: Zachry - Proposed Order - Utilities Motion(127048706.3).docx	
Changes:	
Add	19
Delete	19
Move From	0
Move To	0
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	0
Total Changes:	38