

ENTERED

June 17, 2024

Nathan Ochsner, Clerk

**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.))	(Joint Administration Requested)
))	Re: Docket No. 13 & 60

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO
 (A) CONTINUE OPERATING THEIR CASH MANAGEMENT SYSTEM AND
 MAINTAIN EXISTING BANK ACCOUNTS, (B) CONTINUE TO PERFORM
 INTERCOMPANY TRANSACTIONS, (C) MAINTAIN EXISTING BUSINESS
 FORMS AND BOOKS AND RECORDS, AND (D) CONTINUE UTILIZING
 CORPORATE CREDIT CARD PROGRAMS, AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) for entry of a final order (this “**Final Order**”), (a) authorizing the Debtors to (i) continue operating their Cash Management System and maintain their existing Bank Accounts, including honoring certain prepetition obligations related thereto, (ii) continue to perform Intercompany Transactions and funding as set forth herein, (iii) maintain existing Business Forms and Books and Records in the ordinary course of business, and (iv) continue utilizing corporate credit card programs, and (b) 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 this district is proper

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’ 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.

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



pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; 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 the 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, on a final basis, to: (a) continue operating the Cash Management System, substantially as illustrated in Exhibit B to the Motion; (b) designate, maintain, close, and continue to use the Bank Accounts in existence as of the Petition Date, including those Bank Accounts identified on Exhibit A attached to the Motion; (c) pay any Bank Fees, irrespective of whether such fees arose prior to the Petition Date, and perform the Debtors’ obligations under the documents and arrangements governing the Bank Accounts; and (d) continue to perform Intercompany Transactions and take any actions related thereto in the ordinary course of business consistent with the Debtors’ prepetition practice.

2. To the extent any of the Debtors’ Bank Accounts are not in compliance with section 345(b) of the Bankruptcy Code or any of the U.S. Trustee’s requirements or guidelines, the Debtors shall have until July 5, 2024, without prejudice to seek an additional extension or waiver, to come into compliance with section 345(b) of the Bankruptcy Code; *provided* that

nothing herein shall prevent the Debtors or the U. S. Trustee from seeking further relief from the Court to the extent that an agreement cannot be reached. The Debtors may obtain a further extension of the period referenced above by entering into a written stipulation with the U.S. Trustee and filing such stipulation on the Court's docket without the need for further Court order.

3. Those agreements existing between the Debtors and the Cash Management Banks shall continue to govern the postpetition cash management relationship between the Debtors and the Cash Management Banks and, subject to applicable bankruptcy or other law, the provisions of such agreements, including the termination, fee provisions, rights, benefits, collateral, offset rights, and remedies afforded under such agreements shall remain in full force and effect. The Debtors and the Cash Management Banks may, without further order of this Court, agree to implement changes to the Cash Management System in the ordinary course of business pursuant to the terms of those certain deposit agreements, including, without limitation, the opening and closing of Bank Accounts; *provided* that the Debtors shall provide seven days' prior written notice to the U.S. Trustee, counsel to the Statutory Unsecured Claimholders' Committee (the "**Committee**") and any other statutory committee, email notice being sufficient, of such opening or closing of any Bank Account and such opening or closing shall be timely reported in the Debtors' monthly operating reports.

4. The Debtors are authorized to continue using, in their present form, the Business Forms as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date without reference to the Debtors' status as debtors in possession; *provided* that once the Debtors have exhausted their existing stock of checks, the Debtors shall ensure that any new checks are clearly labeled "Debtor In Possession" within ten business days.

5. The Cash Management Banks are authorized to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession without interruption and in the ordinary course of business and to receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, ACH transfers, and other electronic transfers of any kind issued and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be (including the completion of any such transaction commenced on or before the Petition Date but not completed until on or after the Petition Date).

6. The Debtors are authorized, in the ordinary course of business, to open any new bank accounts or close any existing Bank Accounts and enter into any ancillary agreements, including new deposit account control agreements, related to the foregoing, as they may deem necessary and appropriate, subject to the terms and provisions of the Debtors' agreement with the Cash Management Banks, as applicable; *provided* that all accounts opened by the Debtors on or after the Petition Date shall be designated as "Debtor in Possession" accounts at depositories that are (a) insured by the FDIC or the Federal Savings and Loan Insurance Corporation, (b) designated as an authorized depository by the U.S. Trustee pursuant to the U.S. Trustee Operating Guidelines, and (c) with a bank that agrees to be bound by the terms of this Final Order; *provided further* that the Debtors shall provide seven days' prior written notice to the U.S. Trustee, counsel to the Committee and any other statutory committee, email notice being sufficient, of such opening or closing of any Bank Account and such opening or closing shall be timely indicated on the Debtors' monthly operating reports.

7. The relief granted in this Final Order is extended to any new bank account opened by the Debtors in the ordinary course of business and consistent with historical practice after the

date hereof, which account shall be deemed a Bank Account, and to the bank at which such account is opened, which bank shall be deemed a Cash Management Bank.

8. Each Cash Management Bank is authorized to charge, and the Debtors are authorized to pay, honor, or allow any Bank Fees or charges associated with the Bank Accounts, and charge back returned items to the Bank Accounts in the ordinary course, including any prepetition amounts. Any fees, costs, charges, and expenses, including Bank Fees, or charge-backs or any other reimbursement or payment obligations payable to the Banks after the Petition Date are hereby accorded priority as administrative expenses pursuant to section 503(b)(1) of the Bankruptcy Code.

9. Each Cash Management Bank is authorized to debit the Bank Accounts in the ordinary course of business without the need for any further order of this Court for: (a) all checks drawn on the Bank Accounts which are cashed at the Cash Management Bank's counters or exchanged for cashier's checks by the payees thereof prior to or after the Petition Date; (b) all checks or other items deposited in one of the Bank Accounts with the Cash Management Bank prior to or after the Petition Date which have been dishonored or returned unpaid for any reason, including returned items that result from wire transfers, ACH transactions, or other electronic transfers of any kind, together with any fees and costs in connection therewith, to the same extent the Debtor was responsible for such items prior to or after the Petition Date; (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Cash Management Bank as service charges for the maintenance of the Cash Management System, including any Bank Fees incurred in the ordinary course of business; and (d) any postpetition amounts due and owing to the Cash Management Bank as service charges for the maintenance of the Cash Management System, including any Bank Fees incurred in the ordinary course of business.

10. Each Cash Management Bank may rely on the representations of the Debtors with respect to whether any check or other payment order drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to this Final Order or any other order of this Court, and such Cash Management Bank shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

11. The Debtors are authorized to enter into, engage in, and satisfy any payments in connection with the Intercompany Transactions and to take any reasonable actions related thereto, in each case, in the ordinary course and consistent with the Debtors' prepetition practices; *provided* that, for the avoidance of any doubt, the Debtors shall not satisfy any prepetition obligations held by a non-Debtor affiliate that is not wholly-owned by the Debtors. The Debtors are authorized to set off mutual postpetition obligations relating to intercompany receivables and payables through the Cash Management System in the ordinary course of business consistent with the Debtors' prepetition practices. The Debtors are authorized to continue Intercompany Transactions arising from or related to the operation of their business in the ordinary course and consistent with historical practice. All postpetition obligations owing by a Debtor to another Debtor under any postpetition Intercompany Transactions authorized hereunder are hereby accorded administrative expense status under section 503(b) 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.

12. In connection with the Intercompany Transactions, the Debtors shall continue to maintain current and complete records with respect to all Intercompany Transactions, including all transfers of cash, so that all Intercompany Transactions may be readily ascertained, traced, properly recorded on intercompany accounts distinguished between prepetition and postpetition

transactions. Such records shall be made available upon request by the U.S. Trustee, the Committee, or any other statutory committee. To the extent that the transfers within the Cash Management system are disbursements, they will be noted and reflected on the monthly operating reports. Notwithstanding the Debtors' use of a consolidated cash management system, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which entity makes the disbursements or pays those disbursements.

13. The Debtors shall provide reasonable notice to the U.S. Trustee, the Committee, and any other statutory committee of material changes to the Cash Management System and procedures.

14. The Debtors are authorized to continue issuing credit cards and reimbursing expenses incurred under the Credit Card Programs in the ordinary course of business consistent with prepetition practices, including by paying obligations outstanding with respect thereto and applying any charges against prepetition deposits on a prepetition and postpetition basis, subject to the limitations of this Final Order.

15. The Debtors are authorized to continue using the commercial credit cards issued pursuant to the commercial card agreement between Zachry Holdings, Inc. and Regions Bank in the ordinary course of business consistent with prepetition practices, including by paying any prepetition and postpetition obligations outstanding with respect thereto, to the extent expressly provided in this Final Order or other order of the Court.

16. Notwithstanding anything to the contrary herein, nothing in this Final Order shall (i) authorize the Debtors to use non-Debtor funds, (ii) convert non-Debtor funds into Debtor funds, (iii) convert Debtor funds into non-Debtor funds, except as otherwise expressly provided in this Final Order, (iv) authorize the Debtors to take any unilateral action with respect to the JV Accounts

that the Debtors are otherwise prohibited or prevented from taking under any agreement applicable to the CCZJV, KZJV, or their respective members, or (v) adversely affect prepetition liens.

17. 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.

18. 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.

19. 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.

20. The Debtors shall maintain accurate and current records of all transfers of cash within the Cash Management System so that all postpetition transfers and transactions shall be adequately and promptly documented in, and readily ascertainable from, their Books and Records, to the same extent maintained by the Debtors before the Petition Date.

21. Notwithstanding anything to the contrary herein, the \$5,000,000 of funds held in the deposit account ending in 6378 (the "**Deposit Account**") maintained by the International Bank of Commerce ("**IBC**") to secure the Irrevocable Standby Letter of Credit issued by IBC on behalf of Zachry Group, Inc. on December 17, 2001 (the "**IBC Letter of Credit**") shall not constitute Cash Collateral, and such funds shall not be used for any purpose other than authorized under the

terms of the IBC Letter of Credit and applicable assignment agreements with respect to the Deposit Account. IBC reserves all rights with respect to the Deposit Account and the funds held in the Deposit Account, including with respect to the validity, extent, and priority of its liens on the Deposit Account and any proceeds thereof.

22. 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, including, for the avoidance of doubt, the cash collateral budget (any such order, a "**Cash Collateral Order**"). 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.

23. 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

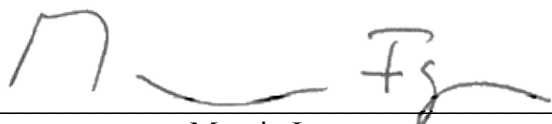
expressly reserve their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

24. 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.

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

26. 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.

Signed: June 17, 2024


Marvin Isgur
United States Bankruptcy Judge